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

FORM 10-K

(Mark One)
☐ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2015

☐ 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 001-35238

HORIZON PHARMA PUBLIC LIMITED COMPANY
(Exact name of Registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

011 353 1 772 2100
(Registrant’s telephone number, including area code)

Connaught House, 1st Floor
1 Burlington Road, Dublin 4, D04 C5Y6, Ireland
(Address of principal executive offices)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐.

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒.

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T 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 is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company.

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

The aggregate market value of the registrant’s voting ordinary shares held by non-affiliates of the registrant, based upon the $34.74 per share closing sale price of the registrant’s ordinary shares on June 30, 2015 (the last business day of the registrant’s most recently completed second quarter), was approximately $4.7 billion. Solely for purposes of this calculation, the registrant’s directors and executive officers and holders of 10% or more of the registrant’s outstanding ordinary shares have been assumed to be affiliates and an aggregate of 21,858,502 shares of the registrant’s voting ordinary shares held by such persons on June 30, 2015 are not included in this calculation.

As of February 23, 2016, the registrant had outstanding 159,884,455 ordinary shares.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant’s definitive Proxy Statement for the registrant’s 2016 Annual Meeting of Shareholders are incorporated by reference into Part III of this Annual Report on Form 10-K.
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Special Note Regarding Forward-Looking Statements

This Annual Report on Form 10-K contains “forward-looking statements” — that is, statements related to future, not past, events — as defined in Section 21E of the Securities Exchange Act of 1934, as amended, that reflect our current expectations regarding our future growth, results of operations, financial condition, cash flows, performance, business prospects, and opportunities, as well as assumptions made by, and information currently available to, our management. Forward-looking statements include any statement that does not directly relate to a current or historical fact. We have tried to identify forward-looking statements by using words such as “believe,” “may,” “could,” “will,” “estimate,” “continue,” “anticipate,” “intend,” “seek,” “plan,” “expect,” “should,” or “would.” Among the factors that could cause actual results to differ materially from those indicated in the forward-looking statements are risks and uncertainties inherent in our business including, without limitation: our ability to successfully execute our sales and marketing strategy, including continuing to successfully recruit and retain sales and marketing personnel and to successfully build the market for our medicines; whether we will be able to realize the expected benefits of strategic transactions, such as our acquisitions of Hyperion Therapeutics Inc. and Crealta Holdings LLC, including whether and when such transactions will be accretive to our net income; the rate and degree of market acceptance of, and our ability and our distribution and marketing partners’ ability to obtain coverage and adequate reimbursement and pricing for, any approved medicines from government and third-party payors and risks relating to the success of our patient access programs; our ability to maintain regulatory approvals for our medicines; our ability to conduct clinical development and obtain regulatory approvals for our medicine candidates, including potential delays in initiating and completing studies and filing for and obtaining regulatory approvals and whether data from clinical studies will support regulatory approval; our need for and ability to obtain additional financing; the accuracy of our estimates regarding expenses, future revenues and profitability; our ability to successfully execute our strategy to develop or acquire additional medicines or companies, including disruption from any future acquisition, making it more difficult to conduct business as usual or maintain relationships with our customers, employees or suppliers, and the possibility that the potential benefits of any acquisition will not be achieved as rapidly or to the extent expected; our ability to manage our anticipated future growth; the ability of our medicines to compete with generic medicines, especially those representing the active pharmaceutical ingredients in our medicines as well as new medicines that may be developed by our competitors; our ability and our distribution and marketing partners’ ability to comply with regulatory requirements regarding the sales, marketing and manufacturing of our medicines and medicine candidates, the performance of our third-party distribution partners, licensees and manufacturers over which we have limited control; our ability to obtain and maintain intellectual property protection for our medicines; our ability to defend our intellectual property rights with respect to our medicines; our ability to operate our business without infringing the intellectual property rights of others; the loss of key commercial or management personnel; regulatory developments in the United States and other countries, including potential changes in healthcare laws and regulations; and other risks detailed below in Part I — Item 1A. “Risk Factors.”

Although we believe that the expectations reflected in our forward-looking statements are reasonable, we cannot guarantee future results, events, levels of activity, performance or achievement. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, unless required by law.

Item 1. Business

Unless otherwise indicated or the context otherwise requires, references to the “Company”, “we”, “us” and “our” refer to Horizon Pharma plc and its consolidated subsidiaries, including its predecessor Horizon Pharma, Inc., or HPI. All references to “Vidara” are references to Horizon Pharma plc (formerly known as Vidara Therapeutics International Public Limited Company) and its consolidated subsidiaries prior to the effective time of the merger of the businesses of HPI and Vidara on September 19, 2014, or the Vidara Merger. The disclosures in this report relating to the pre-Vidara Merger business of Horizon Pharma plc, unless noted as being the business of Vidara prior to the Vidara Merger, pertain to the business of HPI prior to the Vidara Merger.
Overview

We are a biopharmaceutical company focused on improving patients’ lives by identifying, developing, acquiring and commercializing differentiated and accessible medicines that address unmet medical needs. We market nine medicines through our orphan, primary care and rheumatology business units. Our marketed medicines are ACTIMMUNE® (interferon gamma-1b), BUPHENYL® (sodium phenylbutyrate) Tablets and Powder, DUEXIS® (ibuprofen/famotidine), KRYSTEXXA® (pegolitacase), MIGERGOT® (ergotamine tartrate and caffeine suppositories), PENNSAID® (diclofenac sodium topical solution) 2% w/w, or PENNSAID 2%, RAVICTI® (glycerol phenylbutyrate) Oral Liquid, RAYOS® (prednisone) delayed-release tablets and VIMOVO® (naproxen/esomeprazole magnesium). We developed DUEXIS and RAYOS, known as LODOTRA® outside the United States, acquired the U.S. rights to VIMOVO from AstraZeneca AB, or AstraZeneca, in November 2013, acquired certain rights to ACTIMMUNE as a result of the Vidara Merger in September 2014, acquired the U.S. rights to PENNSAID 2% from Nuvo Research Inc., or Nuvo, in October 2014, acquired RAVICTI and BUPHENYL, known as AMMONAPS® in Europe, as a result of our acquisition of Hyperion Therapeutics Inc., or Hyperion, in May 2015, and acquired KRYSTEXXA and MIGERGOT as a result of our acquisition of Crealta Holdings LLC, or Crealta, in January 2016.

Our Strategy

Our strategy is to use the commercial strength and infrastructure we have established in creating a global biopharmaceutical company to continue the successful commercialization of our existing medicine portfolio while also expanding and leveraging these capabilities by identifying, developing, acquiring and commercializing additional differentiated and accessible medicines that address unmet medical needs.

We are building a sustainable biopharmaceutical company by helping patients access and afford their medicines and by investing in the further development of medicines to address the individual health challenges faced by patients with rare or underserved diseases. Our growing business is driven by a successful commercial model that focuses on differentiated, long-life medicines and patient access and is diversified across three business units: orphan, primary care and rheumatology and a disciplined business development strategy. Our key areas of focus are:

- **Revenue diversification** – We have successfully diversified our portfolio of medicines from two in 2013 to nine in January 2016. Our intent is to continue to generate organic growth, broaden our medicine portfolio to ensure net revenues are not dominated by any one medicine and increase the proportion of net revenues derived from our orphan medicines.

- **Clinical development** – We work diligently to unlock the full therapeutic potential of our medicines by working closely with regulatory agencies, premier academic centers with established study consortiums, healthcare professionals and patient groups to facilitate our clinical development program and generate data for possible new indications that may help more patients in need. We have a robust clinical development pipeline and nine separate clinical programs underway for ACTIMMUNE, RAVICTI, RAYOS and KRYSTEXXA.

- **Business development** – Our success and rapid transformation have led to an evolution in our business development strategy. While we remain focused on acquiring clinically differentiated assets and executing transactions that are accretive and net present value positive, we have expanded our criteria to potentially include late-stage development assets. We continue to prioritize orphan medicines.

- **Global expansion** – We continue to seek opportunities for our medicines outside of the United States, specifically in Europe, and are focused on capitalizing on current and future regulatory approvals.

Our Company

We are a public limited company formed under the laws of Ireland. Our predecessor, HPI, was originally incorporated in Delaware in March 2010 and Vidara was originally incorporated in Ireland in December 2011. We operate through a number of international and U.S. subsidiaries with principal business purposes to hold intellectual property assets, perform research and development or manufacturing operations, serve as distributors of our medicines, or provide us with services and financial support.

Our principal executive offices are located at Connaught House, 1st Floor, 1 Burlington Road, Dublin 4, D04 C5V6, Ireland and our telephone number is +011 353 1 772 2100. Our website address is www.horizonpharma.com. Information found on, or accessible through, our website is not a part of, and is not incorporated into, this Annual Report on Form 10-K.
Vidara Merger and Hyperion Acquisition

The Vidara Merger occurred on September 19, 2014 and was accounted for as a reverse acquisition under the acquisition method of accounting for business combinations, with HPI treated as the acquiring company for accounting purposes. As part of the Vidara Merger, a wholly-owned subsidiary of Vidara merged with and into HPI, with HPI surviving the Vidara Merger as a wholly-owned subsidiary of Vidara. Prior to the Vidara Merger, Vidara changed its name to Horizon Pharma plc. Upon the consummation of the Vidara Merger, the historical financial statements of HPI became our historical financial statements. Accordingly, the historical financial statements of HPI are included in the comparative prior periods.

On May 7, 2015, we completed the acquisition of Hyperion in which we acquired all of the issued and outstanding shares of Hyperion’s common stock for $46.00 per share in cash or approximately $1.1 billion on a fully-diluted basis. Following the completion of the acquisition, Hyperion became our wholly-owned subsidiary and was renamed as Horizon Therapeutics, Inc. The consolidated financial statements presented herein include the results of operations of the acquired business from the date of acquisition.

Our Medicines

We believe our medicines address unmet therapeutic needs in orphan diseases, arthritis, pain and/or inflammatory diseases and provide significant advantages over existing therapies.
Our current marketed medicine portfolio consists of the following:

<table>
<thead>
<tr>
<th>Medicine</th>
<th>Disease</th>
<th>Marketing Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ORPHAN BUSINESS UNIT MEDICINES:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACTIMMUNE</td>
<td>Chronic granulomatous disease and severe, malignant osteopetrosis</td>
<td>United States and selected foreign countries</td>
</tr>
<tr>
<td>RAVICTI</td>
<td>Urea cycle disorders</td>
<td>Worldwide (1)</td>
</tr>
<tr>
<td>BUPHENYL/AMMONAPS</td>
<td>Urea cycle disorders</td>
<td>Worldwide (2)</td>
</tr>
<tr>
<td><strong>PRIMARY CARE BUSINESS UNIT MEDICINES:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DUEXIS</td>
<td>Signs and symptoms of osteoarthritis and rheumatoid arthritis</td>
<td>Worldwide (3)</td>
</tr>
<tr>
<td>VIMOVO</td>
<td>Signs and symptoms of osteoarthritis, rheumatoid arthritis and ankylosing spondylitis</td>
<td>United States</td>
</tr>
<tr>
<td>PENNSAID 2%</td>
<td>Pain of osteoarthritis of the knee(s)</td>
<td>United States</td>
</tr>
<tr>
<td>MIGERGOT</td>
<td>Vascular headache</td>
<td>United States</td>
</tr>
<tr>
<td><strong>RHEUMATOLOGY BUSINESS UNIT MEDICINES:</strong></td>
<td></td>
<td></td>
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<tr>
<td>RAYOS/LODOTRA</td>
<td>Rheumatoid arthritis, polymyalgia rheumatic, systemic lupus erythematosus and multiple other indications</td>
<td>Worldwide (4)</td>
</tr>
<tr>
<td>KRISTEXXA</td>
<td>Chronic refractory gout</td>
<td>Worldwide</td>
</tr>
</tbody>
</table>

(1) RAVICTI distribution rights in the Middle East and North Africa have been licensed to Swedish Orphan Biovitrum AB, or SOBI.
(2) BUPHENYL/AMMONAPS distribution rights in Europe, certain Asian, Latin American, Middle Eastern, North African and other countries have been licensed to SOBI.
(3) DUEXIS rights in Latin America have been licensed to Grünenthal S.A., or Grünenthal.
(4) RAYOS/LODOTRA distribution rights in Europe, Australia, certain Asian, Latin American, Middle Eastern, African, and other countries have been licensed to Mundipharma International Corporation Limited, or Mundipharma.

**ORPHAN BUSINESS UNIT**

**Market**

*Chronic Granulomatous Disease*

Chronic granulomatous disease, or CGD, is a genetic disorder of the immune system. It is described as a primary immunodeficiency disorder, which means it is not caused by another disease or disorder. In people who have CGD, a type of white blood cell, called a phagocyte, is defective. These defective phagocytes cannot generate superoxide, leading to an inability to kill harmful microorganisms such as bacteria and fungi. As a result, the immune system is weakened. People with CGD are more likely to have certain problems such as recurrent severe bacterial and fungal infections and chronic inflammatory conditions. These patients are prone to developing masses called granulomas, which can occur repeatedly in organs throughout the body and cause a variety of problems. CGD is considered to be a condition that patients can live with and manage. Studies suggest overall survival has improved over the last decade with more patients living well into adulthood. Approximately 1 out of every 100,000 to 200,000 babies in the United States is born with CGD.
Severe, Malignant Osteopetrosis

Severe, malignant osteopetrosis, or SMO, is a form of osteopetrosis and is sometimes referred to as marble bone disease or malignant infantile osteopetrosis because it occurs in very young children. While exact numbers are not known, it has been estimated that 1 out of 250,000 children is born with SMO. During normal bone development, existing bone material is constantly being replaced by new bone. Cells called osteoblasts cause new bone formation while other cells called osteoclasts remove old bone through a process called resorption. In people with osteopetrosis, this balance is not maintained because their osteoclasts do not function properly. As a result, resorption of old bone material decreases while the formation of new bone continues. This leads to an abnormal increase in bone mass, which can make the bones more brittle. Because abnormal bone development affects many different systems in the body, osteopetrosis may cause problems such as blood disorders, decreased ability to fight infection, bone fractures, problems with vision and hearing, and abnormal appearance of the face and head.

Urea Cycle Disorders

Urea cycle disorders, or UCDs, are inherited metabolic diseases caused by a deficiency of one of the enzymes or transporters that constitute the urea cycle. The urea cycle involves a series of biochemical steps in which ammonia, a potent neurotoxin, is converted to urea, which is excreted in the urine. UCD patients may experience episodes where they get symptoms from the ammonia in their blood being excessively high – called hyperammonemic crises – which may result in irreversible brain damage, coma or death. UCD symptoms may first occur at any age depending on the severity of the disorder, with more severe defects presenting earlier in life.

Our Solutions

ACTIMMUNE

ACTIMMUNE is a biologically manufactured protein called interferon gamma-1b that is similar to a protein the human body makes naturally. In the body, interferon gamma is produced by cells of the immune system and helps to prevent infection in patients with CGD and enhances osteoclast function in patients with SMO. ACTIMMUNE is approved by the U.S. Food and Drug Administration, or FDA, to reduce the frequency and severity of serious infections associated with CGD and for delaying time to disease progression in patients with SMO. The precise way that ACTIMMUNE works to help prevent infection in patients with CGD and slow the worsening of SMO is not fully understood, but ACTIMMUNE is believed to work by modifying the cellular function of various cells, including those in the immune system and those that help form bones.

Efficacy in CGD

The International Chronic Granulomatous Disease Cooperative Study Group conducted a controlled clinical trial in 128 patients (ages ranging from 1 to 44 years old) at 13 medical centers across 4 countries. The purpose of this clinical trial was to evaluate the safety and efficacy of ACTIMMUNE in reducing the frequency and severity of serious infections in patients with CGD. Patients enrolled in the trial were randomly selected to receive either ACTIMMUNE or placebo in addition to antibiotics. The number and timing of serious infections were tracked in all patients for up to 1 year. Investigators concluded that ACTIMMUNE is an effective and safe therapy for patients with CGD, because the therapy statistically reduced the frequency of serious infections.

Efficacy in SMO

In a controlled clinical trial, 16 patients were randomized to receive either ACTIMMUNE with calcitriol or calcitriol alone. The age of patients ranged from 1 month to 8 years; with a mean age of 1.5 years. The median time to progression in the ACTIMMUNE plus calcitriol arm was 165 days versus a median of 65 days in the calcitriol only arm. In a separate analysis that combined data from a second trial, 19 of 24 patients on ACTIMMUNE therapy (with or without calcitriol) for at least 6 months had reduced trabecular bone volume compared to baseline.


**Commercial Status**

ACTIMMUNE is the only drug currently approved by the FDA for the treatment for CGD and SMO. Our licenses allow us to market and sell ACTIMMUNE in the United States, Canada and Japan. We currently commercialize ACTIMMUNE in the United States and also supply ACTIMMUNE to patients in Canada, if so requested by way of a prescription from their treating physicians, through Health Canada’s Special Access Program, which provides access to non-marketed drugs in Canada for practitioners treating patients with serious or life-threatening conditions when conventional therapies have failed, are unsuitable or are unavailable. We have not otherwise registered or sold ACTIMMUNE in any other territories for which we currently hold commercial rights.

**Potential for ACTIMMUNE in Friedreich’s ataxia**

Friedreich’s ataxia, or FA, is a debilitating, life-shortening and degenerative neuro-muscular disorder that affects approximately 3,700 people in the United States. Onset of symptoms can vary from five years old to adulthood, with the childhood onset tending to be associated with a more rapid progression. A progressive loss of coordination and muscle strength leads to motor incapacitation and often the full-time use of a wheelchair. Most young people diagnosed with FA require mobility aids such as a cane, walker or wheelchair by their teens or early twenties. There are currently no approved treatments for FA.

In October 2014, we announced and presented data from the Phase 2 open-label study of ACTIMMUNE treatment in children with FA. The results showed ACTIMMUNE was well tolerated with no serious adverse events, and two subjects reporting severe events and subsequent dose reductions. The safety findings generally reflected the label safety profile for ACTIMMUNE. Changes in frataxin protein levels, the primary study endpoint, were statistically significant in red blood cells, white blood cells and platelets. Mean improvement in the modified Friedreich’s Ataxia Rating Scale, or mFARS, was statistically significant. The mFARS score is used to measure neurological signs associated with FA, with higher scores reflecting a greater level of disability.

In June 2015, we initiated the Phase 3 Safety, Tolerability and Efficacy of ACTIMMUNE Dose Escalation in Friedreich’s Ataxia Study, or STEADFAST, of ACTIMMUNE for the treatment of people with FA. This Phase 3 trial (NCT02415127) is a randomized, multi-center, double-blind, placebo-controlled study with patients randomized 1:1 to receive subcutaneous doses of either ACTIMMUNE or placebo three times a week for a total of 26 weeks. Approximately 90 patients will be enrolled at four sites in the United States. The primary endpoint will measure the change in neurological outcome and evaluate the effect of ACTIMMUNE versus placebo as measured by the mFARS score focused on objective neurologic measures such as upper and lower extremity coordination change from baseline. In addition to safety and efficacy, the STEADFAST trial will evaluate the pharmacokinetic characteristics of ACTIMMUNE in people with FA. We expect to complete enrollment in the second quarter of 2016, with top-line data anticipated to become available by the end of 2016. Assuming positive data from the trial, we would plan to submit a supplemental biologics license application in the first quarter of 2017, and given the fast-track designation of ACTIMMUNE for this potential indication, we would request priority review, which, if awarded, would allow us to potentially receive a decision from the FDA within six months of the submission, in the third quarter of 2017.

**RAVICTI**

RAVICTI is indicated for use as a nitrogen-binding agent for chronic management of adult and pediatric patients 2 years of age and older (2 months of age and older in Europe) with UCDs that cannot be managed by dietary protein restriction and/or amino acid supplementation alone. RAVICTI must be used with dietary protein restriction and, in some cases, dietary supplements (e.g., essential amino acids, arginine, citrulline, or protein-free calorie supplements).

**Efficacy in the Treatment of UCDs in Adult Patients**

A randomized, double-blind, active-controlled, crossover, noninferiority study compared RAVICTI to sodium phenylbutyrate by evaluating venous ammonia levels in patients with UCDs that had been on sodium phenylbutyrate prior to enrollment for control of their UCD. Patients adhered to a low-protein diet and received amino acid supplements throughout the study. After two weeks of dosing, by which time patients had reached a steady state on each treatment, all patients had 24 hours of ammonia measurements.
Another study was conducted to assess monthly ammonia control and hyperammonemic crisis over a 12-month period. A total of 51 adults were in the study and all but six had been converted from sodium phenylbutyrate to RAVICTI. Venous ammonia levels were monitored monthly. Of 51 adult patients participating in the 12-month, open-label treatment with RAVICTI, seven patients (14 percent) reported a total of 10 hyperammonemic crises.

The efficacy of RAVICTI in pediatric patients two to 17 years of age was evaluated in two fixed-sequence, open-label, sodium phenylbutyrate to RAVICTI switchover studies, seven and 10 days in duration. These studies compared blood ammonia levels of patients on RAVICTI to venous ammonia levels of patients on sodium phenylbutyrate in 16 pediatric UCD patients. Twenty-four hour blood ammonia levels of UCD patients six to 17 years of age (Study 3) and patients two to five years of age (Study 4) were similar between treatments but trended higher with sodium phenylbutyrate.

Long-term (12-month), uncontrolled, open-label studies were conducted to assess monthly ammonia control and hyperammonemic crisis over a 12-month period. Of the 26 pediatric patients six to 17 years of age participating in these two trials, five patients (19 percent) reported a total of five hyperammonemic crises.

Commercial Status

RAVICTI was approved for marketing in the United States in 2013.

On November 30, 2015, we announced the European Commission, or EC, has adopted a binding decision to approve RAVICTI for use as an adjunctive therapy for chronic management of adult and pediatric patients two months of age and older with six subtypes of UCDs. This decision follows the Positive Opinion previously adopted on September 24, 2015 by the Committee for Medicinal Products for Human Use, or CHMP, of the European Medicines Agency, or EMA. The approval authorizes us to market RAVICTI in all 28 Member States of the European Union, or EU, and the centralized marketing authorization will form the basis for recognition by the Member States of the European Economic Area, or EEA, namely Norway, Iceland and Liechtenstein, for the medicine to be placed on the market.

We have worldwide rights to market and distribute RAVICTI. In relation to marketing and distribution rights in the Middle East and North Africa region, we have entered into a distribution agreement with SOBI until 2018. We market and sell RAVICTI in the United States and plan to determine the marketing and sales distribution model for Europe in 2016.

We are in the process of seeking approval for label expansions for RAVICTI, with assessments in progress studying the use of RAVICTI in patients both from two months to two years (targeted supplemental new drug application, or sNDA, submission in the second quarter of 2016), and from birth to two months (targeted sNDA submission in the first quarter of 2018). Current FDA approval is for patients from two years of age and older only. In patients with UCDs for which RAVICTI is an FDA-approved medicine, there is a variable age of diagnosis (from newborn to adulthood), and the severity of the disease can be associated with the age of onset and enzymatic deficit. However, a prompt diagnosis and careful management of the disease can lead to good clinical outcomes.

**BUPHENYL**

BUPHENYL tablets for oral administration and BUPHENYL powder for oral, nasogastric, or gastrostomy tube administration are indicated as adjunctive therapy in the chronic management of patients with UCDs involving deficiencies of carbamoyl phosphate synthetase, ornithine transcarbamylase or argininosuccinic acid synthetase.

BUPHENYL is indicated in all patients with neonatal-onset deficiency (complete enzymatic deficiency, presenting within the first 28 days of life). It is also indicated in patients with late-onset disease (partial enzymatic deficiency, presenting after the first month of life) who have a history of hyperammonemic encephalopathy. It is important that the diagnosis be made early and treatment initiated immediately to improve survival. BUPHENYL must be combined with dietary protein restriction and, in some cases, essential amino acid supplementation.

Commercial Status

BUPHENYL was approved by the FDA in the United States in 1996 and by the EMA in Europe in 1999. We commercially market and distribute BUPHENYL in the United States. BUPHENYL is known as AMMONAPS in Europe, and the marketing and distribution rights are licensed to SOBI through the end of 2016. We provide BUPHENYL in certain other countries through various Special Access Programs and licensed distributors.
Competition

ACTIMMUNE presently faces limited competition. ACTIMMUNE is the only drug currently approved by the FDA specifically for the treatment for CGD and SMO. While there are additional or alternative approaches used to treat patients with CGD and SMO, including the increasing trend towards the use of bone marrow transplants in patients with CGD, there are currently no medicines on the market that compete directly with ACTIMMUNE.

In the United States, RAVICTI and BUPHENYL compete with generic forms of sodium phenylbutyrate. In Europe and certain other countries, RAVICTI and BUPHENYL compete with Pheburane, which is a sugar-coated version of sodium phenylbutyrate. Pheburane claims a taste advantage over BUPHENYL. However the volume of Pheburane that must be ingested multiple times per day is much greater than BUPHENYL, and significantly greater than RAVICTI, and is a barrier to patient compliance.

PRIMARY CARE BUSINESS UNIT

Market

Pain is a serious and costly public health concern. In 2010, the U.S. National Center for Health Statistics reported that approximately 30 percent of U.S. adults 18 years of age and over reported recent symptoms of pain, aching or swelling around a joint within the past 30 days.

Some of the most common and debilitating chronic inflammation and pain-related diseases are osteoarthritis, or OA, rheumatoid arthritis, or RA, and acute and chronic pain. According to National Health Interview Survey data analyzed by the U.S. Centers for Disease Control and Prevention, from 2010-2012, 52.5 million U.S. adults 18 years of age and over had reported being diagnosed with some form of arthritis. With the aging of the U.S. population, the prevalence of arthritis is expected to rise by approximately 40 percent by 2030, impacting 67 million people in the United States.

Osteoarthritis

OA is a type of arthritis that is caused by the breakdown and eventual loss of the cartilage of one or more joints. Cartilage is a protein substance that serves as a cushion between the bones of the joints. Among the over 100 different types of arthritis conditions, OA is the most common and occurs more frequently with age. OA commonly affects the hands, feet, spine and large weight-bearing joints, such as the hips and knees. Symptoms of OA manifest in patients as joint pain, tenderness, stiffness, limited joint movement, joint cracking or creaking (crepitation), locking of joints and local inflammation. OA can also lead to joint deformity in later stages of the disease. Many drugs are used to treat the inflammation and pain associated with OA, including aspirin and other nonsteroidal anti-inflammatory drugs, or NSAIDs, such as ibuprofen, naproxen and diclofenac, that have a rapid analgesic and anti-inflammatory response.

Rheumatoid Arthritis

RA is a chronic disease that causes pain, stiffness and swelling, primarily in the joints. According to a 2006 DataMonitor report, 2.9 million people in the United States suffer from RA, of which 1.8 million are diagnosed and treated with various drugs. RA has no known cause, but unlike OA, RA is not associated with factors such as aging. RA occurs when the body’s immune system malfunctions, attacking healthy tissue and causing inflammation, which leads to pain and swelling in the joints and may eventually cause permanent joint damage and painful disability. The primary symptoms of RA include progressive immobility and pain, especially in the morning, with long-term sufferers experiencing continual joint destruction for the remainder of their lives. There is no known cure for RA. Once the disease is diagnosed, treatment is prescribed for life to alleviate symptoms and/or to slow or stop disease progression. RA treatments include medications, physical therapy, exercise, education and sometimes surgery. Early, aggressive treatment of RA can delay joint destruction. Treatment of RA usually includes multiple drug therapies taken concurrently. Disease-modifying anti-rheumatic drugs, or DMARDs, are the current standard of care for the treatment of RA, in addition to rest, exercise and anti-inflammatory drugs such as NSAIDs.

Ankylosing Spondylitis

Ankylosing spondylitis, or AS, is a type of arthritis that affects the spine. AS symptoms include pain and stiffness from the neck down to the lower back. The spine’s bones (vertebrae) may grow or fuse together, resulting in a rigid spine. These changes may be mild or severe, and may lead to a stooped-over posture. Early diagnosis and treatment helps control pain and stiffness and may reduce or prevent significant deformity.
Market Opportunity and Limitations of Existing Treatments

GI-Associated Adverse Events

NSAIDs are very effective at providing pain relief, including pain associated with OA and RA; however, there are significant upper gastrointestinal, or GI, associated adverse events that can result from the use of NSAIDs. According to a 2004 article published in Alimentary Pharmacology & Therapeutics, significant GI side effects, including serious ulcers, afflict up to approximately 25 percent of all chronic arthritis patients treated with NSAIDs for three months, and OA and RA patients are two to five times more likely than the general population to be hospitalized for NSAID-related GI complications. It is estimated that NSAID-induced GI toxicity causes over 16,500 related deaths in OA and RA patients alone and over 107,000 hospitalizations for serious GI complications each year. In more than 70 percent of patients with these serious GI complications, there are no prior symptoms.

Despite the fact that GI ulcers are one of the most prevalent adverse events resulting from the use of NSAIDs in the United States, according to a 2006 article published in BMC Musculoskeletal Disorders, 11 observational studies indicated that physicians do not commonly co-prescribe GI protective agents to high-risk patients. Physicians prescribe concomitant therapy to only 24 percent of NSAID users, and studies show sub-optimal patient compliance with concomitant prophylaxis therapy. According to a 2003 article published in Alimentary Pharmacology & Therapeutics, in a study of 784 patients, 37 percent of patients were non-compliant, a rate increasing to 61 percent in patients treated with three or more drugs. This noncompliance results in a substantial unmet clinical need, which we believe can be appropriately addressed with DUEXIS or VIMOVO, creating smarter solutions for both patients and physicians.

Topical NSAIDs

Within the NSAID market there exists a significant niche for topical NSAIDs, which are prescribed more than 5 million times per year. Topical NSAID treatment may be appropriate for some patients, such as patients who may benefit from the lower systemic exposure in a topical NSAID, patients with OA in just one joint such as the knee, patients who have trouble taking oral medications, or patients who are older. However, applying the correct dosage of the topical NSAID amount can often be a barrier to patient compliance, and there exists a market for a more convenient and more accurate application technique.

Our Solutions

DUEXIS

DUEXIS is a proprietary single-tablet formulation containing a fixed-dose combination of ibuprofen, the most widely prescribed NSAID, and famotidine, a well-established GI agent used to treat dyspepsia, gastroesophageal reflux disease and active ulcers, in one pill. Based on clinical study results, DUEXIS has been proven to reduce the risk of NSAID-induced upper GI ulcers.

Ibuprofen: One of the World’s Most Widely Prescribed NSAIDs

Ibuprofen continues to be one of the most widely prescribed NSAIDs worldwide. According to Intercontinental Marketing Services, or IMS, in the United States alone, there were over 42 million prescriptions written for ibuprofen in 2015. Ibuprofen’s flexible three times daily dosing allows it to be used for both chronic conditions such as arthritis and chronic back pain, and acute conditions such as sprains and strains.

Famotidine: A Safe and Effective GI Agent

Famotidine is the most potent marketed drug in the class of histamine-2 receptor antagonists, or H2RA. H2RAs are a class of drugs used to block the action of histamine on the cells in the stomach that secrete gastric acid. Famotidine was chosen as the ideal GI protectant to be combined with ibuprofen as it is a well-studied compound with an estimated 18.8 million patients treated worldwide that provides distinct advantages including:

- rapid onset of action; and
- well-tolerated with a low incidence of adverse drug reactions and a demonstrated safety margin of up to eight times the approved prescription dose for an extended period of greater than 12 months.
Although famotidine as a standalone product is not indicated for risk reduction of GI ulcers, two well-controlled clinical trials of famotidine formulated in DUEXIS found a significant decrease in the risk of developing upper GI ulcers, which in the clinical trials was defined as a gastric and/or duodenal ulcer in patients who are taking ibuprofen for those indications.

**Benefits of a Fixed-Dose Combination Therapy**

Numerous studies have demonstrated that fixed-dose combination therapy provides significant advantages over taking multiple pills. Specifically, fixed-dose combinations can reduce the number of pills, ensure that the correct dosage of each component is taken at the correct time and improve compliance, often associated with better treatment outcomes. DUEXIS has been formulated to provide an optimal dosing regimen of ibuprofen and famotidine together in the convenience of a single pill. Data shows that physicians co-prescribe GI protective agents less than 25 percent of the time when prescribing an NSAID. On occasions where a patient is co-prescribed a GI protective agent, data shows that after three prescriptions, 61 percent of patients no longer take a GI protective agent.

**Commercial Status**

DUEXIS is indicated for the relief of signs and symptoms of RA and OA and to decrease the risk of developing GI ulcers in patients who are taking ibuprofen for these indications. We began marketing DUEXIS to physicians in December 2011.

In June 2012, we licensed DUEXIS rights in Latin America to Grünenthal, a private company focused on the promotion of pain medicines.

**VIMOVO**

VIMOVO is a proprietary, fixed-dose, delayed-release tablet. VIMOVO combines enteric-coated naproxen, an NSAID, surrounded by a layer of immediate-release esomeprazole magnesium surrounding the core. Naproxen has proven anti-inflammatory and analgesic properties and esomeprazole magnesium reduces the stomach acid secretions that can cause upper GI ulcers. Both naproxen and esomeprazole magnesium have well-documented and excellent long-term safety profiles and both medicines have been used by millions of patients worldwide. Based on clinical trial results, VIMOVO has been shown to decrease the risk of developing gastric ulcers in patients at risk of developing NSAID associated gastric ulcers.

**Naproxen: One of the World’s Most Widely Prescribed NSAIDs**

Naproxen is another of the most widely prescribed NSAIDs worldwide. According to IMS, in the United States alone, there were more than 17 million prescriptions written for naproxen in 2015. In addition, naproxen’s twice daily dosing allows it to be used for chronic conditions such as arthritis and AS.

**Esomeprazole Magnesium: A Safe and Effective GI Agent**

Esomeprazole magnesium, a gastroprotective agent, is a proton pump inhibitor, or PPI, that works by inhibiting the secretion of gastric acid thus decreasing the amount of acid in the stomach. PPIs are considered to be very potent inhibitors of acid secretion. Esomeprazole magnesium is indicated for reducing the risk of NSAID-induced gastric ulcers.

**Benefits of a Fixed-Dose Combination Therapy**

VIMOVO is specifically formulated to allow esomeprazole magnesium to achieve its gastroprotective impact before naproxen is released into the system. VIMOVO’s design is intended to produce a sequential delivery of gastroprotective esomeprazole before exposure to naproxen. Data shows that physicians co-prescribe GI protective agents less than 25 percent of the time when prescribing an NSAID. On occasions where a patient is co-prescribed a GI protective agent, data shows that after three prescriptions, 61 percent of patients no longer take a GI protective agent.

**Commercial Status**

Following our acquisition of the U.S. rights to VIMOVO in November 2013, we began marketing VIMOVO in early January 2014.
**PENNSAID 2%**

PENNSAID 2% is a topical NSAID that is applied directly to the knee and is indicated for the treatment of pain of OA of the knee(s). PENNSAID 2% contains diclofenac sodium, a commonly prescribed NSAID to treat OA pain. PENNSAID 2% also includes dimethyl sulfoxide, or DMSO, a powerful penetrating agent that helps ensure that diclofenac sodium is absorbed through the skin to the site of inflammation and pain. Topical NSAIDs such as PENNSAID 2% are an alternative to oral NSAID treatment because they reduce systemic exposure to a fraction of that provided by an oral NSAID. PENNSAID 2% is the only topical NSAID offered with the convenience of a metered-dose pump, which ensures that the patient will get the correct amount of PENNSAID 2% solution each time. PENNSAID 2% is easy to apply for patients because PENNSAID 2% is applied in two pumps, twice daily, delivering relief right to the site of OA knee pain.

**Commercial Status**

On January 16, 2014, the FDA approved PENNSAID 2% for the treatment of the pain of OA of the knee(s). We acquired the U.S. rights to PENNSAID 2% in October 2014, and began marketing PENNSAID 2% with our primary care sales force in early January 2015.

**Competition**

Our industry is highly competitive and subject to rapid and significant technological change. Our potential competitors in our primary care markets include large pharmaceutical and biotechnology companies, specialty pharmaceutical companies and generic drug companies, although we are not currently aware of any other ibuprofen/famotidine combination medicine or naproxen/esomeprazole magnesium combination medicine in development. We believe that the key competitive factors that will affect the commercial success of our medicines, as well as future drug candidates that we may develop, are their efficacy, safety and tolerability profile, convenience in dosing, price and reimbursement.

DUEXIS and VIMOVO compete with other NSAIDs, including Celebrex® which is marketed by Pfizer Inc., and is also a generic medicine known as celecoxib and marketed by other pharmaceutical companies. Celecoxib is an NSAID that selectively inhibits the COX-2 enzyme and is an effective anti-arthritis agent that reduces the risk of ulceration compared to traditional NSAIDs such as ibuprofen.

In general, DUEXIS and VIMOVO also face competition from the separate use of NSAIDs for pain relief and GI medications to address the risk of NSAID-induced ulcers. Use of these therapies separately in generic form may be less expensive than DUEXIS and VIMOVO. We expect to compete with the separate use of NSAIDs and ulcer medications primarily through DUEXIS’ and VIMOVO’s advantages in dosing convenience and patient compliance, and by educating physicians about such advantages. DUEXIS is the only NSAID medicine containing a histamine-2 receptor antagonist with an indication to reduce the risk of NSAID-induced upper GI ulcers and VIMOVO is the only NSAID medicine containing a PPI with an indication to reduce the risk of NSAID-induced ulcers. Data shows that physicians co-prescribe GI protective agents less than 25 percent of the time when prescribing an NSAID. On occasions where a patient is co-prescribed a GI protective agent, data shows that after three prescriptions, 61 percent of patients no longer take a GI protective agent.

PENNSAID 2% faces competition from generic versions of diclofenac sodium topical solutions which are priced significantly lower than the price we charge for PENNSAID 2%. In addition, PENNSAID 2% competes with two other branded topical NSAIDS, including Voltaren® Gel, marketed by Endo Pharmaceuticals, which is the market leader in the topical NSAID category. We expect to compete with these other medicines primarily through PENNSAID 2%’s dosing convenience and patient compliance. Unlike the other two medicines that are dosed four times per day and require the patient to measure out the correct dose, only PENNSAID 2% is easy to apply with the convenience of twice-daily dosing and a metered-dose pump, which ensures that the patient will get the correct amount of PENNSAID 2% solution each time.

**RHEUMATOLOGY BUSINESS UNIT**

**Market**

*Rheumatoid Arthritis*

The market for RA has been discussed above in the Primary Care Business Unit section (refer to page 8).
**Polymyalgia Rheumatica**

Polymyalgia Rheumatica, or PMR, is an inflammatory disorder that causes significant muscle pain and stiffness. The pain and stiffness often occur in the shoulders, neck, upper arms and hip with pronounced morning stiffness lasting at least one hour. Most people who develop PMR are older than 65 years of age. It rarely affects people younger than 50. There are approximately 1.1 million patients with PMR in the United States and it afflicts one in every 133 people over the age of 50. Prednisone is the standard of care for treating PMR and treatment is generally initiated at a relatively high dose (e.g., 10-20 mg per day) and reduced as clinical improvement is seen. Treatment usually lasts 18-24 months. Similar to RA, PMR is associated with circadian patterns of Interleukin 6, or IL-6, elevation in early morning hours.

**Systemic Lupus Erythematosus**

Systemic Lupus Erythematosus, or SLE, is a chronic autoimmune disease that causes inflammation and pain in the joints and muscles as well as overall fatigue. SLE affects from 161,000 to 322,000 adults in the United States. More than 90 percent of cases of SLE occur in women, frequently starting at childbearing age. In addition to affecting the muscles and joints, it can affect other organs in the body such as the kidneys, tissue lining the lungs (pleura), heart (pericardium), and brain. Most patients feel fatigue and have rashes, arthritis (painful and swollen joints) and fever. SLE flares vary from mild to serious.

In November 2015, we announced our collaboration with the Alliance for Lupus Research, or ALR, to study the effect of RAYOS on the fatigue experienced by SLE patients. SLE is a chronic autoimmune disease that causes inflammation and pain in the joints and muscles, as well as overall fatigue. RAYOS is currently indicated for patients with SLE. The first study planned as part of the collaboration is an investigator-initiated, randomized, double-blind, active comparator, cross-over study in which patients will be randomized to receive either prednisone for three months or RAYOS at 10 p.m. for three months, and then switched to the alternative medication for an additional three months. Approximately 62 patients across 25 sites will be enrolled in the United States. The primary endpoint will assess fatigue as measured by Functional Assessment of Chronic Illness Therapy-Fatigue, a 13-question survey to be completed by study participants that focuses on the daily fatigue experienced in patients with chronic illnesses.

**Chronic Refractory Gout**

Chronic refractory gout, or CRG, is a type of arthritis that occurs when uric acid build-up in the blood remains high and inflammation persists even after treatment with conventional therapies. Gout is one of the most common forms of inflammatory arthritis, estimated to affect 8.3 million in the United States, with CRG impacting 40,000 to 50,000 people in the United States. CRG frequently causes crippling disabilities and significant joint damage.

**Market Opportunity and Limitations of Existing Treatments**

**Morning Stiffness, Pain and Immobility**

A Medical Marketing Economics May 2008 study of 150 RA patients in the United States, which we sponsored, showed that despite the use of a combination of currently available treatments for RA, more than 90 percent of the patients reported suffering from morning stiffness, pain and immobility, which is linked to peak IL-6 levels in the early morning hours. Patients with RA in general have substantially increased IL-6 levels, with peak IL-6 levels tending to occur in the early morning hours, and low levels typically occurring in the afternoon and evening. Therefore, we believe an optimal treatment would reduce IL-6 levels in the early morning hours.
Side Effects of Current High-Dose Corticosteroid Treatments

According to the 2006 DataMonitor report, approximately 50 percent of RA patients in the United States, Japan, France, Italy, Spain, Germany and the United Kingdom are prescribed combination therapy which often includes corticosteroids, with prednisone being one of the most common. Corticosteroids, including prednisone, are used to suppress various autoimmune, inflammatory and allergic disorders by inhibiting the production of various pro-inflammatory cytokines, such as IL-6 and TNF-alpha. Joint inflammation in RA is driven by excessive production of inflammatory mediators and cytokines such as IL-6 and TNF-alpha. While corticosteroids are potent and effective agents to treat patients with RA, they are often used at high doses to treat RA flares or significant inflammation. High-dose oral corticosteroid treatment is not a viable long-term treatment option due to adverse side effects such as osteoporosis, cardiovascular disease and weight gain. However, clinical studies have shown that the long-term use of low-dose prednisone (<10 mg per day) does not dramatically increase total adverse events. In addition, low doses, typically less than 10 mg daily, of corticosteroids such as prednisone have been shown to treat the symptoms of RA while slowing the overall progression of the disease.

Our Solutions

RAYOS/LODOTRA

The medicine sold and marketed as RAYOS in the United States is known as LODOTRA outside the United States. While the FDA has approved RAYOS for the treatment of RA, AS, PMR, primary systemic amyloidosis, asthma, chronic obstructive pulmonary disease, SLE and a number of other conditions, we have focused our promotion of RAYOS/LODOTRA on rheumatology indications, including RA and PMR.

The proprietary formulation technology of RAYOS/LODOTRA enables a delayed-release of prednisone approximately four hours after administration. The RAYOS/LODOTRA proprietary delivery system synchronizes the prednisone delivery time with the patient’s elevated cytokine levels, thereby taking effect at a physiologically optimal point to inhibit cytokine production, and thus significantly reduces the signs and symptoms of RA and PMR.

RAYOS/LODOTRA was developed using SkyePharma AG’s, or SkyePharma, proprietary GeoClock™ and GeoMatrix™ technologies, for which we hold an exclusive worldwide license for the delivery of glucocorticoid, a class of corticosteroid. RAYOS/LODOTRA is composed of an active core containing prednisone, which is encapsulated by an inactive porous shell. The inactive shell acts as a barrier between the medicine’s active core and a patient’s GI fluids. RAYOS/LODOTRA is intended to be administered at bedtime. At approximately four hours following bedtime administration of RAYOS/LODOTRA, water in the digestive tract diffuses through the shell, causing the active core to expand, which leads to a weakening and breakage of the shell and allows the release of prednisone from the active core. Our pharmacokinetic studies have shown that the blood concentration of prednisone from RAYOS/LODOTRA is similar to immediate release prednisone except for the intended time delay of medicine release after administration.

Commercial Status

We began marketing RAYOS to U.S. rheumatologists in December 2012. LODOTRA received its first approval in Europe in March 2009 and is currently approved for marketing in more than 30 countries outside the United States where Mundipharma holds the commercial rights. Reimbursement has been approved in Germany, Italy and a number of other European countries.

KRYSTEXXA

KRYSTEXXA is an orphan biologic medicine which is the first and only FDA-approved medicine for the treatment of CRG. KRYSTEXXA is a PEGylated uric acid specific enzyme (uricase) indicated for the treatment of CRG in adult patients that are refractory to conventional therapy. Gout refractory to conventional therapy occurs in patients who have failed to normalize serum uric acid and whose signs and symptoms are inadequately controlled with xanthine oxidase inhibitors at the maximum medically appropriate dose or for whom these drugs are contraindicated. KRYSTEXXA has a unique mechanism of action which rapidly reverses disease progression. A PEGylated uric acid specific enzyme catalyzes the conversion of serum uric acid to allantoin, which is then excreted in urine. This PEGylated uric acid specific enzyme is given via an intravenous infusion to patients every two weeks.
Commercial Status

KRYSTEXXA was launched in January 2011. KRYSTEXXA has biologic exclusivity until 2022 and a composition of matter patent until 2026. Orphan drug exclusivity was granted on February 21, 2011, which exclusivity lasts for 7 years and will expire in February 2018.

Competition

RAYOS/LODOTRA competes with a number of medicines on the market to treat RA, including corticosteroids, such as prednisone, traditional DMARDs, such as methotrexate, and biologic agents, such as HUMIRA and Enbrel. The majority of RA patients are treated with DMARDs, which are typically used as initial therapy in patients with RA. Biologic agents are typically added to DMARDs as combination therapy. It is common for an RA patient to take a combination of a DMARD, an oral corticosteroid, an NSAID, and/or a biologic agent. We are not currently aware of any other delayed-release prednisone medicine in development.

As the only FDA approved medication for the treatment of CRG, KRYSTEXXA faces limited direct competition. We believe that the complexity of manufacturing KRYSTEXXA provides a barrier to potential generic competition. However, a number of competitors have medicines in Phase 1 or Phase 2 trials. On December 22, 2015, AstraZeneca secured approval from the FDA for ZURAMPIC® (lesinurad) 200mg tablets in combination with a xanthine oxidase inhibitor, or XOI, for the treatment of hyperuricemia associated with gout in patients who have not achieved target serum uric acid levels with a XOI alone. Although ZURAMPIC is not a direct competitor because it has not been approved for CRG, this therapy could be used prior to use of KRYSTEXXA, and if effective, could reduce the target patient population for KRYSTEXXA.

Distribution

Finished tablets of DUEXIS, VIMOVO, RAYOS, MIGERGOT and BUPHENYL, vials of ACTIMMUNE and KRYSTEXXA, bottles of RAVICTI and PENNSAID 2% and powder of BUPHENYL are shipped to central third-party logistics FDA-compliant warehouses for storage and distribution into the supply chain. Our third-party logistics providers specialize in integrated operations that include warehousing and transportation services that can be scaled and customized to our needs based on market conditions and the demands and delivery service requirements for our medicines and materials. Their services eliminate the need to build dedicated internal infrastructures that would be difficult to scale without significant capital investment. Our third-party logistics providers warehouse all medicines in controlled FDA-registered facilities. Incoming orders are prepared and shipped through an order entry system to ensure just in time delivery of the medicines.

Sales and Marketing

As of December 31, 2015, our sales force was composed of approximately 395 sales representatives consisting of approximately 15 orphan disease sales representatives, 340 primary care sales representatives and 40 rheumatology sales specialists. Our orphan disease representatives focus on marketing our orphan medicines to a limited number of healthcare practitioners who specialize in fields such as pediatric immunology, allergy, infectious diseases, hematology/oncology and metabolic disorders to help them understand the potential benefits of ACTIMMUNE for their patients with CGD and SMO, and the benefits of RAVICTI and BUPHENYL for patients with UCDs. Our primary care sales force is expected to total approximately 375 representatives in the first quarter of 2016 and markets DUEXIS, PENNSAID 2%, VIMOVO and MIGERGOT. Following the acquisition of Crealta our rheumatology sales force is expected to total approximately 80 representatives by mid-year 2016 and is now marketing RAYOS, KRYSTEXXA and PENNSAID 2%. We have entered into, and may continue to enter into, agreements with third parties for commercialization of our medicines outside the United States.
Our medicines are distributed by retail and specialty pharmacies. Part of our commercial strategy for our primary care and rheumatology business units is to offer physicians the opportunity to have their patients fill prescriptions through pharmacies participating in our HorizonCares patient access program, previously known as Prescriptions Made Easy. This program does not involve us in the prescribing of medicines. The purpose of this program is solely to assist in ensuring that, when physicians determine one of our medicines offers a potential clinical benefit to their patients and prescribe the medicine for an eligible patient, financial assistance may be available to reduce the commercial patient’s out-of-pocket costs. In 2015, this resulted in 96 percent of commercial patients having co-pay amounts of $10 or less when filling prescriptions for our medicines utilizing our patient access program. For commercial patients who were prescribed our primary care or rheumatology medicines, the HorizonCares program offers co-pay assistance when a third-party payor covers a prescription but requires an eligible patient to pay a co-pay or deductible, and offers full subsidization when a third-party payor rejects coverage for an eligible patient. For patients prescribed our orphan medicines, HorizonCares provides reimbursement support, a clinical nurse program, co-pay and other patient assistance. The aggregate commercial value of our patient access programs for the year ended December 31, 2015 was approximately $1,020 million. All pharmacies that fill prescriptions for our medicines are fully independent, including those that participate in HorizonCares. We do not own or possess any option to purchase an ownership stake in any pharmacy that distributes our medicines, and our relationship with each pharmacy is non-exclusive and arm’s length. All of our sales are processed through pharmacies independent of our business. As of December 31, 2015, approximately 25 independent pharmacies participated in the HorizonCares program for our primary care and rheumatology medicines.

We have a compliance program in place to address adherence with various laws and regulations relating to our sales, marketing, and manufacturing of our medicines, as well as certain third-party relationships, including pharmacies. Specifically with respect to pharmacies, the compliance program utilizes a variety of methods and tools to monitor and audit pharmacies, including those that participate in our access programs, to confirm their activities, adjudication and practices are consistent with our compliance policies and guidance.

**Manufacturing, Commercial and Supply Agreements**

We have agreements with third parties for active pharmaceutical ingredients, or APIs, and product manufacturing, formulation and development services, fill, finish and packaging services, transportation, and distribution and logistics services for certain medicines. In most cases, we retain certain levels of safety stock or maintain alternate supply relationships that we can utilize without undue disruption of our manufacturing processes if a third party fails to perform its contractual obligations.

**ACTIMMUNE**

ACTIMMUNE is a recombinant protein that is produced by fermentation of a genetically engineered Escherichia coli bacterium containing the DNA which encodes for the human protein. Purification of the active drug substance is achieved by conventional column chromatography. The resulting active drug substance is then formulated as a highly purified sterile solution and filled in a single-use vial for subcutaneous injection, which is the ACTIMMUNE finished drug medicine. In support of its manufacturing process, we and Boehringer Ingelheim RCV GmbH & Co KG, or Boehringer Ingelheim, store multiple vials of the Escherichia coli bacterium master cell bank and working cell bank in order to ensure that it will have adequate backup should any cell bank be lost in a catastrophic event.

**Boehringer Ingelheim Supply Agreement**

In July 2013, Vidara and Boehringer Ingelheim entered into an exclusive supply agreement, which we assumed as a result of the Vidara Merger. Pursuant to the agreement, Boehringer Ingelheim manufactures the ACTIMMUNE active drug substance and commercial quantities of the ACTIMMUNE finished drug medicine. Boehringer Ingelheim is our sole source supplier for ACTIMMUNE active drug substance and finished drug medicine. Under the terms of this agreement, we are required to purchase minimum quantities of finished drug medicine of 75,000 vials per annum. Boehringer Ingelheim manufactures our commercial requirements of ACTIMMUNE on an annual basis, and based on our forecasts and the annual contractual minimum purchase quantity. The supply agreement has a term that runs until July 31, 2020 and which can be further renewed by agreement between parties. Under this supply agreement, either we or Boehringer Ingelheim may terminate the agreement for an uncured material breach by the other party or upon the other party’s bankruptcy or insolvency.
Under a development and marketing agreement with Boehringer Ingelheim, we are required to pay royalties on net sales in certain applicable markets in Latin America, Asia, Africa and Eastern Europe if we elect to commercialize ACTIMMUNE in those territories. To date, we have not pursued regulatory or other approvals or commercialized ACTIMMUNE in those territories.

**Genentech License Agreement**

As a result of the Vridara Merger, we acquired a license agreement, as amended, with Genentech, Inc., or Genentech, who was the original developer of ACTIMMUNE. Under such agreement, we are or were obligated to pay royalties to Genentech on our net sales of ACTIMMUNE as follows:

- Through November 25, 2014, a royalty of 45 percent of the first $3.7 million in net sales achieved in a calendar year, and 10 percent on all additional net sales in that year;
- For the period from November 26, 2014 through May 5, 2018, a royalty in the 20 percent to 30 percent range for the first tier in net sales and in the 1 percent to 9 percent range for the second tier; and
- From May 6, 2018 and for so long as we continue to commercially sell ACTIMMUNE, an annual royalty in the low-single digits as a percentage of annual net sales.

Either Genentech or we may terminate the agreement if the other party becomes bankrupt or defaults, however, in the case of a default, the defaulting party has 30 days to cure the default before the license agreement may be terminated.

**RAVICTI**

We have clinical and commercial supplies of glycerol phenylbutyrate API manufactured for us by two alternate suppliers, Helsinn Advanced Synthesis SA (Switzerland) and DSM Fine Chemicals Austria (now known as DPx Fine Chemicals GmbH & Co KG) on a purchase order basis. We have finished RAVICTI drug medicine manufactured by Lyne Laboratories, Inc. under a manufacturing agreement and we have an agreement in place for a fill/finish supplier, Halo Pharmaceuticals, Inc., for European supplies.

**Ucyclyd Asset Purchase Agreement**

As a result of the Hyperion acquisition, we acquired an asset purchase agreement with Ucyclyd Pharma, Inc., or Ucyclyd, pursuant to which we are obligated to pay to Ucyclyd tiered mid- to high- single digit royalties on our global net sales of RAVICTI. The asset purchase agreement cannot be terminated by either party. However, we have a license to certain Ucyclyd manufacturing technology, and Ucyclyd may have a license to certain of our technology, and the party granting a license is permitted to terminate the license if the other party fails to comply with any payment obligations relating to the license and does not cure such failure within a defined time period.

**Brusilow License Agreement**

As a result of the Hyperion acquisition, we acquired a license agreement with Saul W. Brusilow, M.D. and Brusilow Enterprises, Inc., or Brusilow, pursuant to which we license patented technology related to RAVICTI from Brusilow. Under such agreement, we are obligated to pay low- single digit royalties to Brusilow on net sales of RAVICTI that are covered by a valid claim of a licensed patent. The license agreement may be terminated for any uncured breach as well as bankruptcy. We may terminate also the agreement at any time by giving Brusilow prior written notice, in which case all rights granted to us would revert to Brusilow.

**ASD Distribution Services Agreement**

As a result of the Hyperion acquisition, we acquired a distribution services agreement, as amended, with ASD Healthcare, a division of ASD Specialty Healthcare, Inc., or ASD. Pursuant to the distribution services agreement, ASD is the exclusive reseller of RAVICTI and BUPHENYL in the United States. The distribution services agreement terminates on February 13, 2017, but may be renewed upon mutual written agreement with ASD. Either party may terminate the agreement without cause upon 120 days written notice to the other party, in the case of a material breach that is not cured by the other party, upon 30 days written notice, or in the case of bankruptcy or similar proceeding of the other party, immediately upon written notice.
**BUPHENYL**

When Hyperion purchased BUPHENYL, Hyperion assumed all of Ucyclyd’s rights and obligations under its manufacturing agreements for the medicine. We assumed these agreements when we acquired Hyperion. We purchase API for BUPHENYL from CU Chemie Uetikon GmbH and final manufacturing, testing and packaging of the medicine is provided by Pharmaceutics International Inc.

**DUEXIS**

The DUEXIS manufacturing process is well-established and we validated the process in accordance with regulatory requirements prior to commercialization in the United States.

The first API in DUEXIS is ibuprofen in a direct compression blend called DC85 and is manufactured for us by BASF Corporation, or BASF, in Bishop, Texas. The second API in DUEXIS is famotidine, which is available from a number of international suppliers. We currently purchase famotidine manufactured by Dr. Reddy’s in India. We currently receive both APIs in powder form and each is blended with a number of U.S. Pharmacopeia inactive ingredients. We purchase DUEXIS in final, packaged form exclusively from Sanofi-Aventis U.S. LLC, or Sanofi, for our commercial requirements in North America.

**BASF Contract**

In July 2010, we entered into a contract with BASF for the purchase of DC85. Pursuant to the agreement, we are obligated to purchase a significant majority of our commercial demand for DC85 from BASF. The contract expires in December 2017. Thereafter, the agreement automatically renews for successive renewal terms of three years each until terminated by either party giving specified prior written notice to the other party. Either party may also terminate the agreement in the event of uncured breach by the other party.

**Manufacturing and Supply Agreement with Sanofi**

In May 2011, we entered into a manufacturing and supply agreement with Sanofi, which was amended in September 2013. Pursuant to the agreement, Sanofi is obligated to manufacture and supply DUEXIS to us in final, packaged form, and we are obligated to purchase DUEXIS exclusively from Sanofi for our commercial requirements in North America and certain countries and territories in Europe, including the EU member states and Scandinavia, and South America. Sanofi must acquire the components necessary to manufacture DUEXIS, including the APIs, DC85 and famotidine, and is obligated to acquire all DC85 under the terms of our agreements with suppliers, including the current BASF contract. In order to allow Sanofi to perform its obligations under the agreement, we granted Sanofi a non-exclusive license to our related intellectual property. The price for DUEXIS under the agreement varies depending on the volume of DUEXIS we purchase and is subject to annual adjustments to reflect changes in costs as measured by the Producer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics, and certain other changes and events set forth in the agreement. We have paid for the purchase and installation of equipment necessary to manufacture DUEXIS tablets, and Sanofi is obligated to pay the costs of routine maintenance of the equipment. Upon expiration or termination of the agreement we may also be obligated to reimburse Sanofi for the depreciated net book value of any other equipment purchased by Sanofi in order to fulfill its obligations under the agreement.

The agreement term extends until May 2019, and automatically extends for successive two-year terms unless terminated by either party upon two years prior written notice. Either party may terminate the agreement upon 30 days prior written notice to the other party in the event of breach by the other party that is not cured within 30 days of notice (which notice period may be longer in certain, limited situations) or in the event we lose regulatory approval to market DUEXIS in all countries worldwide, and either party may terminate the agreement without cause upon two years prior written notice to the other party at any time after the third anniversary of the first commercial sale of DUEXIS in any country worldwide.
AstraZeneca License Agreement

In November 2013, we entered into a license agreement with AstraZeneca, or the AstraZeneca license agreement, pursuant to which AstraZeneca granted us an exclusive license under certain intellectual property (including patents, know-how, trademarks, copyrights and domain names) of AstraZeneca and its affiliates to develop, manufacture and commercialize VIMOVO in the United States. AstraZeneca also granted us a non-exclusive license under certain intellectual property of AstraZeneca and its affiliates to manufacture, import, export and perform research and development activities with respect to VIMOVO outside the United States but solely for purposes of commercializing VIMOVO in the United States. In addition, AstraZeneca granted us a non-exclusive right of reference and use under certain regulatory documentation controlled by AstraZeneca and its affiliates to develop, manufacture and commercialize VIMOVO in the United States and to manufacture, import, export and perform research and development activities with respect to VIMOVO outside the United States but solely for purposes of commercializing VIMOVO in the United States.

Under the AstraZeneca license agreement, we granted AstraZeneca a non-exclusive sublicense under such licensed intellectual property and a non-exclusive right of reference under certain regulatory documentation controlled by us to manufacture, import, export and perform research and development activities with respect to VIMOVO in the United States but solely for purposes of commercializing VIMOVO outside the United States.

Under the AstraZeneca license agreement, we and our affiliates are subject to certain limitations and restrictions on our ability to develop, commercialize and seek regulatory approval with respect to VIMOVO or other medicines that contain gastroprotective agents in a single fixed combination oral solid dosage form with NSAIDs (excluding DUEXIS). These limitations and restrictions include, among other things, restrictions on indications for which we may commercialize VIMOVO or any such other medicines, restrictions on our ability to develop or seek regulatory approval with respect to such other medicines that contain esomeprazole, restrictions on our ability to develop or seek regulatory approval for VIMOVO for any indications other than the indications for which NSAIDs are indicated, and restrictions on our marketing activities with respect to VIMOVO and any such other medicines.

The AstraZeneca license agreement continues in full force and effect until terminated in accordance with its terms. Under the AstraZeneca license agreement, the parties may terminate upon mutual written agreement by the parties, or either party may terminate rights granted to us with respect to licensed trademarks and licensed domain names under the AstraZeneca license agreement upon uncured material breach by the other party of certain specified provisions of the AstraZeneca license agreement.

Amended and Restated Collaboration and License Agreement with Pozen; Letter Agreement with AstraZeneca and Pozen

We entered into a license agreement with Pozen Inc., or Pozen, who subsequently entered into a business combination with Tribute Pharmaceuticals Canada Inc. to become known as Aralez Pharmaceuticals Inc. Under this agreement, we were granted an exclusive, royalty-bearing license under certain of Pozen’s intellectual property in the United States to manufacture, develop and commercialize VIMOVO and other medicines controlled by us that contain gastroprotective agents in a single fixed combination oral solid dosage form with NSAIDs, excluding DUEXIS, in the United States.

Under the Pozen license agreement, we are required to pay Pozen a flat 10 percent royalty based on net sales of VIMOVO and such other medicines sold by us, our affiliates or sublicensees during the royalty term, subject to minimum annual royalty obligations of $7.5 million, which minimum royalty obligations will continue for each year during which one of Pozen’s patents covers such medicines in the United States and there are no competing medicines in the United States. The royalty rate may be reduced to a mid-single digit royalty rate as a result of loss of market share to competing medicines. Our obligation to pay royalties to Pozen will expire upon the later of (a) expiration of the last-to-expire of certain patents covering such medicines in the United States, and (b) 10 years after the first commercial sale of such medicines in the United States. In addition, we will be obligated to reimburse Pozen for costs, including attorneys’ fees, incurred by Pozen in connection with VIMOVO patent litigation moving forward, subject to agreed caps.
We are responsible for, and are required to use diligent and reasonable efforts directed to commercializing VIMOVO or another qualified medicine in the United States. We also own and maintain all regulatory filings and marketing approvals in the United States for any such medicines, including all investigational new drugs, or INDs, and new drug applications, or NDAs, for VIMOVO. Pozen covenanted that it will not at any time prior to the expiration of the royalty term, and will ensure that its affiliates do not, directly or indirectly, develop or commercialize or license any third party to develop or commercialize certain competing medicines in the United States.

The Pozen license agreement, unless earlier terminated, will expire upon expiration of the royalty term for all such medicines in the United States. Either party has the right to terminate the agreement upon uncured material breach by the other party or upon the bankruptcy or similar proceeding of the other party. We also have the right to terminate the Pozen license agreement for cause upon certain defined medicine failures.

In November 2013, we, AstraZeneca and Pozen entered into a letter agreement in which Pozen consented to AstraZeneca’s assignment of the Pozen license agreement to us and that addresses the rights and responsibilities of the parties in relation to the Pozen license agreement and the amended and restated collaboration and license agreement between Pozen and AstraZeneca for territories outside the United States, or the Pozen-AstraZeneca license agreement. Under the letter agreement, we and AstraZeneca agreed to pay Pozen milestone payments upon the achievement by us and AstraZeneca, collectively, of certain annual aggregate global net sales thresholds ranging from $550.0 million to $1.25 billion with respect to medicines licensed by Pozen to us under the Pozen license agreement and to AstraZeneca under the Pozen-AstraZeneca license agreement. The aggregate milestone payment amount that may be owed by AstraZeneca and us, collectively, under the letter agreement is $260.0 million, with the amount payable by each of us and AstraZeneca with respect to each milestone to be based upon the proportional sales achieved by each of us and AstraZeneca, respectively, in the applicable year.

The letter agreement will terminate with respect to Pozen and us upon the termination of the Pozen license agreement.

Patheon Agreement

In November 2013, we entered into a master manufacturing services agreement and product agreement, or, collectively, the Patheon manufacturing agreement, with Patheon Pharmaceuticals Inc., or Patheon, who was AstraZeneca’s contract manufacturer of VIMOVO, for the manufacture and supply of VIMOVO. Under the Patheon manufacturing agreement, we agreed to purchase a specified percentage of our VIMOVO requirements for the United States from Patheon or its affiliates. In addition, under the terms of the Patheon manufacturing agreement, we are able to enter into individual product agreements with Patheon for the manufacture of specific medicines in addition to VIMOVO.

Pursuant to the Patheon manufacturing agreement, we are required to supply Patheon with any active materials for VIMOVO. We must pay an agreed price for final, packaged VIMOVO supplied by Patheon subject to adjustments, including certain unilateral adjustments by Patheon, such as annual adjustments for inflation and adjustments to account for certain increases in the cost of components of VIMOVO other than active materials.

The Patheon manufacturing agreement will be effective until December 31, 2019 and will automatically renew for successive terms of three years each if there is any product agreement in effect, unless either party gives written notice to the other party of its intention to terminate the agreement at least 24 months prior to the end of the then current term. Either party may terminate the Patheon manufacturing agreement or any product agreement early for uncured material breach by the other party or upon the other party’s bankruptcy or insolvency. We may terminate any product agreement if any regulatory authority takes any action or raises any objection that prevents us from commercializing the product. Additionally, Patheon may terminate the Patheon manufacturing agreement or any product agreement early if we assign our rights or obligations under the Patheon manufacturing agreement or such product agreement to a competitor of Patheon or to a party that, in the reasonable opinion of Patheon, is not a credit worthy substitute for us, or in certain other circumstances where we assign the Patheon manufacturing agreement or product agreement without Patheon’s consent.
**PENNSAID 2%**

**Nuvo Supply Agreement**

In October 2014, in connection with the acquisition of the U.S. rights to PENNSAID 2% from Nuvo, we entered into an exclusive supply agreement with Nuvo, which was amended in February 2016, under which Nuvo will manufacture and supply PENNSAID 2% to us. We have committed to a binding purchase order to Nuvo for delivery of PENNSAID 2%. In addition, at least 90 days prior to the first day of each calendar month during the term of the supply agreement, we are required to submit a binding written purchase order to Nuvo for PENNSAID 2% in minimum batch quantities. The term of our supply agreement is through December 31, 2029, but the agreement may be terminated earlier by either party for any uncured material breach by the other party of its obligations under the supply agreement or upon the bankruptcy or similar proceeding of the other party.

A key excipient used in PENNSAID 2% as a penetration enhancer is DMSO. We and Nuvo rely on a sole proprietary form of DMSO for which we maintain a substantial safety stock. However, should this supply become inadequate, damaged, destroyed or unusable, we and Nuvo may not be able to qualify a second source.

**RAYOS/LODOTRA**

We rely on well-established third-party manufacturers for the manufacture of RAYOS/LODOTRA. We purchase the primary active ingredients for RAYOS/LODOTRA from Tianjin Tianyao Pharmaceuticals Co., Ltd. in China and from Sanofi Chimie SA in France. We have contracted with Jagotec AG, or Jagotec, for the production of RAYOS/LODOTRA tablets through its affiliate SkyePharma, and we entered into an agreement with Patheon for the packaging and assembling of RAYOS/LODOTRA.

**SkyePharma and Jagotec Agreements**

**Development and License Agreement**

In August 2004, we entered into a development and license agreement with SkyePharma and Jagotec, a wholly-owned subsidiary of SkyPharma, regarding certain proprietary technology and know-how owned by SkyPharma for the delayed-release of corticosteroids. Under the agreement, which was amended in August 2007, we received an exclusive, sub-licensable worldwide license to the oral formulation of any glucocorticoid, including prednisone, prednisolone, methylprednisolone and/or cortisone, with delayed-release technology covered by intellectual property rights and know-how owned by SkyPharma. We were also granted an option to acquire a royalty-free, exclusive and sub-licensable right to license and manufacture RAYOS/LODOTRA which we could exercise any time upon specified prior written notice, expiring no earlier than five years after the first launch of RAYOS/LODOTRA. We have exercised the option to acquire the manufacturing license, which became effective in April 2014.

In return for the grant of the license, Jagotec has the right to manufacture, package and supply RAYOS/LODOTRA to us in accordance with terms and conditions of a separate manufacturing and supply agreement we entered into with Jagotec. In addition, Jagotec is entitled to receive a single-digit percentage royalty on net sales of RAYOS/LODOTRA and on any sub-licensing income, which includes any payments not calculated based on the net sales of RAYOS/LODOTRA, such as license fees, and lump sum and milestone payments.

The agreement expires on a country-by-country basis, upon the expiration of the last patent rights for RAYOS/LODOTRA, which will occur between 2024 and 2028. In the event of expiration, the licenses under the agreement will be perpetual, fully paid-up and royalty-free. Either party may also terminate the agreement in the event of a liquidation or bankruptcy of the other party or upon an uncured breach by the other party.

**Manufacturing and Supply Agreement**

In August 2007, we entered into a manufacturing and supply agreement with Jagotec for RAYOS/LODOTRA. Under the agreement, which was amended in March 2011, Jagotec or its affiliates manufacture and supply RAYOS/LODOTRA to us in bulk. Aenova France SAS, a large contract manufacturing organization, is now a subcontractor for Jagotec for the manufacture of RAYOS/LODOTRA, with our consent. As of December 31, 2015, our total remaining minimum purchase commitment was approximately $3.0 million based on tablet pricing under the agreement as of that date, which amount is subject to volume and price adjustments due to, among other things, inflation, order quantities and launch and approval in certain EU countries. We also supply the prednisone API to Jagotec at our expense for use in the manufacture of RAYOS/LODOTRA.
We pay Jagotec, exclusive of any value added tax or similar governmental charges, a price for RAYOS/LODOTRA representing a negotiated mark-up over manufacturing costs. The price is adjusted annually to reflect changes in both manufacturing and materials costs as measured by the Ensemble price index. If Jagotec makes a major capital expenditure during the contract term to fulfill increased orders forecast by us, the price per unit will increase if the actual order falls short of the forecast.

The original agreement term has run such that the agreement now automatically extends on a yearly basis unless terminated by either party upon prior written notice. Either party may also terminate the agreement in the event of insolvency, liquidation or bankruptcy of the other party or upon an uncured breach by the other party. We have the right to receive a continuing supply of RAYOS/LODOTRA from Jagotec for a period of 24 months after termination by Jagotec, regardless of the reason for termination. In April 2015, the agreement automatically renewed for an additional one-year term. Therefore, the earliest the right to receive a continuing supply from Jagotec would expire is April 15, 2018, absent any early termination of the agreement.

Pursuant to a letter agreement between Jagotec and us, Jagotec agreed to allow us to give Bayer Pharma AG, or Bayer, the right to manufacture, test and release quantities of RAYOS/LODOTRA in order to establish and maintain Bayer as a manufacturer of RAYOS/LODOTRA. Under certain circumstances, we may also purchase shortfall quantities of RAYOS/LODOTRA from Bayer to the extent Jagotec is unable to supply us. In March 2013, we entered into an agreement with Bayer to allow us to purchase quantities of RAYOS/LODOTRA for these purposes. We may also purchase quantities of RAYOS/LODOTRA from Bayer pursuant to our agreement with Bayer.

**KRYSTEXXA**

KRYSTEXXA is produced by fermentation and subsequent purification to produce the urate oxidase enzyme, uricase. Uricase is then PEGylated with a pegylation agent to produce the bulk medicine, pegloticase. Finally, pegloticase is filled and packaged to produce the final medicine.

**NOF Supply Agreement**

In August 2015, Crealta and NOF Corporation, or NOF, entered into an exclusive supply agreement for the pegylation agent used in the manufacture of KRYSTEXXA. Under the terms of this agreement, we are required to issue NOF forecasts of our requirements for the pegylation agent, a portion of which are binding. The agreement expires in August 2020, however, either we or NOF may terminate the agreement for any reason upon 24 months’ prior notice. Either we or NOF may also terminate the agreement upon a material breach, if not cured within a specified period of time, or in the event of the other party’s insolvency. While there are no minimum purchase obligations under the agreement, we are required to use NOF as our exclusive supplier for the pegylation agent, subject to certain exceptions if NOF is unable to supply the pegylation agent.

**Bio-Technology General (Israel) Supply Agreement**

In March 2007, Savient Pharmaceuticals, Inc. (as predecessor in interest in Crealta), or Savient, entered into a commercial supply agreement with Bio-Technology General (Israel) Ltd., or BTG Israel, for the production of the bulk KRYSTEXXA medicine, or bulk medicine. We assumed this agreement as part of the Crealta acquisition. Under this agreement, we are obligated to purchase at least 80 percent of our annual world-wide bulk medicine requirements from BTG Israel. In December 2015, Crealta received a notice of termination from BTG Israel and as a result the agreement will terminate on December 15, 2018. Either we or BTG Israel may also terminate the agreement upon a material breach, if not cured within a specified period of time, or in the event of the other party’s insolvency or bankruptcy. We are seeking a new manufacturer and, under the terms of the agreement, BTG Israel has the obligation to convey all the know-how, licensed improvements, and other information related to the processing of the bulk medicine sufficient to enable us to manufacture the medicine. BTG Israel also has an obligation not to compete against KRYSTEXXA for a period of 30 months subsequent to the termination of the agreement. If we determine to move the manufacture of the bulk medicine out of Israel, we may be required to obtain the approval of the Office of the Chief Scientist (Israel), or OCS, because certain KRYSTEXXA intellectual property was developed with a grant funded by OCS. Under the terms of our agreement, BTG Israel must help us obtain such consent. If we are unable to obtain such consent and we do not select a different supplier located in Israel, we may be required to pay additional amounts as a repayment for the OCS grant funding.
Sigma Tau PharmaSource Supply Agreement

In October 2008, Savient and Sigma Tau PharmaSource, Inc. (as successor in interest to Enzon Pharmaceuticals, Inc.), or Sigma Tau, entered into a commercial supply agreement for the packaging and supply of the final drug medicine KRYSTEXXA, which we acquired as part of the Crealta acquisition. This agreement remains in effect until terminated, and either we or Sigma Tau may terminate the agreement with three years notice, given 30 days prior to the agreement anniversary date. Either we or Sigma Tau may also terminate the agreement upon a material default, if not cured within a specified period of time, or in the event of the other party’s insolvency or bankruptcy.

Duke University and Mountain View Pharmaceutical License Agreement

In August 1998, Savient entered into an exclusive, worldwide license agreement with Duke University, or Duke, and Mountain View Pharmaceuticals, or MVP. Duke developed the recombinant uricase enzyme used in KRYSTEXXA and MVP developed the PEGylation technology used in the manufacture of KRYSTEXXA. Duke and MVP may terminate the agreement if we commit fraud or for our willful misconduct or illegal conduct; upon our material breach of the agreement, if not cured within a specified period of time; upon written notice if we have committed two or more material breaches under the agreement; or in the event of our bankruptcy or insolvency. Under the terms of the agreement, we are obligated to pay Duke a mid-single digit percentage royalty on our global net sales of KRYSTEXXA and a low-double digit percentage royalty on any global sublicense revenue. We are also obligated to pay MVP a mid-single digit percentage royalty on our net sales of KRYSTEXXA outside of the United States and a low-double digit percentage royalty on any sublicense revenue outside of the United States. Royalties terminate upon last to expire of licensed patents on a country-by-country basis, and royalties are reduced by a mid-double digit percentage in countries that never had patents.

Customers and Information About Geographic Areas

Information regarding our total revenues attributed to United States and non-United States sources in the years ended December 31, 2015, 2014 and 2013, as well as the location of our long-lived assets, is included in Note 14, Segment and Other Information, to our consolidated financial statements included in Item 15 in this Annual Report on Form 10-K.

Research and Development

We devote significant resources to research and development activities associated with our current branded medicines. For the years ended December 31, 2015, 2014 and 2013, we recorded $41.9 million, $17.5 million and $10.1 million, respectively, in research and development expenses.
The following chart depicts our current clinical development pipeline with respect to ACTIMMUNE, RAVICTI, RAYOS and KRYSTEXXA:

**ACTIMMUNE**

In February 2015, we submitted an IND application to the FDA for ACTIMMUNE in the treatment of FA, a degenerative neuro-muscular disorder. In June 2015, we commenced the Phase 3 STEADFAST study. This Phase 3 trial (NCT02415127) is a randomized, multi-center, double-blind, placebo-controlled study with patients randomized 1:1 to receive subcutaneous doses of either ACTIMMUNE or placebo three times a week for a total of 26 weeks. Approximately 90 patients will be enrolled at four sites in the United States. The primary endpoint will measure the change in neurological outcome and evaluate the effect of ACTIMMUNE versus placebo as measured by the mFARS score, focused on objective neurologic measures such as upper and lower extremity coordination improvement from baseline. The mFARS score is used to measure neurological signs associated with FA, with higher scores reflecting a greater level of disability. In addition to safety and efficacy, the STEADFAST trial will evaluate the pharmacokinetic characteristics of ACTIMMUNE in people with FA. The target date for the full enrollment of 90 patients is the second quarter of 2016, with data anticipated to become available in late 2016. Assuming positive data from the trial, we would plan to submit a supplemental biologics license application in the first quarter of 2017, and given the fast-track designation of ACTIMMUNE for this potential indication, we would request priority review, which, if awarded, would allow us to potentially receive a decision from the FDA within six months of the submission, in the third quarter of 2017.
In July 2015, we announced our collaboration with Fox Chase Cancer Center to study ACTIMMUNE in combination with PD-1/PD-L1 inhibitors in various forms of cancer including advanced urothelial carcinoma (bladder cancer) and renal cell carcinoma. Pre-clinical cell line research has indicated that interferon gamma enhances cellular PD-L1 expression on endothelial cells (inner lining of the blood vessel) and on some tumor cells. By enhancing cellular PD-L1 expression on tumor cells, interferon gamma may promote or enhance the effect of the PD-1 or PD-L1 inhibitors. In December 2015, we announced that an investigator-initiated Phase 1 clinical study had been initiated to evaluate ACTIMMUNE in combination with OPDIVO® (nivolumab), a registered trademark of Bristol-Myers Squibb, in advanced solid tumors. The Phase 1 open label study will evaluate the combination of ACTIMMUNE and nivolumab in patients with advanced solid tumors who have progressed on at least one prior systemic therapy, which may include prior immunotherapy. Patients will be treated with a one week induction phase of ACTIMMUNE (starting dose 50 mcg/m² subcutaneously), followed by a combination phase with ACTIMMUNE and nivolumab (3 mg/kg intravenously) for three cycles, followed by a single-agent phase of nivolumab alone for up to one year. The study will primarily assess the safety and tolerability of the combination of ACTIMMUNE and nivolumab. Secondary objectives, including overall response rate, progression free survival and overall survival, will also be assessed, as will various correlative analyses. Initial subject enrollment will occur using a modified 6+6 design, and if endpoints for safety (using dose-limiting toxicity criteria) are met, expansion cohorts in renal cell carcinoma (kidney cancer) and urothelial carcinoma (bladder cancer) are planned for up to 15 patients per cohort.

We are collaborating with Indiana University to study ACTIMMUNE in the treatment of type 2 osteopetrosis, autosomal dominant osteopetrosis, or ADO2. ADO2 is a genetic condition characterized by generalized osteosclerosis predominating in some skeletal sites such as the spine and pelvis. The short-term, open label treatment trial in ADO2 patients aims to determine if administration of ACTIMMUNE increases biochemical markers of bone turnover, and thus determine if the medicine can completely or partially reverse the defective osteoclastic bone resorption in ADO2 patients. The clinical study is expected to run over a period of three years, and commenced in early 2016.

We are also collaborating with several partners to investigate opportunities for next generation formulations of ACTIMMUNE in current and new indications.

RAVICTI

We are in the process of seeking approval for label expansions for RAVICTI, with assessments in progress studying the use of RAVICTI in patients both from two months to two years (targeted sNDA submission in the second quarter of 2016), and from birth to two months (targeted sNDA submission in the first quarter of 2018). Current FDA approval is for patients from two years of age and older only. In patients with UCDs for which RAVICTI is an FDA-approved medicine, there is a variable age of diagnosis (from newborn to adulthood), and the severity of the disease can be associated with the age of onset and enzymatic deficit. However, a prompt diagnosis and careful management of the disease can lead to good clinical outcomes.

RAYOS

In November 2015, we announced our collaboration with the ALR to study the effect of RAYOS on the fatigue experienced by SLE patients. SLE is a chronic autoimmune disease that causes inflammation and pain in the joints and muscles, as well as overall fatigue. RAYOS is currently indicated for patients with SLE. The first study planned as part of the collaboration is an investigator-initiated, randomized, double-blind, active comparator, cross-over study in which patients will be randomized to receive either prednisone for three months or RAYOS at 10 p.m. for three months, and then switched to the alternative medication for an additional three months. Approximately 62 patients across 25 sites will be enrolled in the United States. The primary endpoint will assess fatigue as measured by Functional Assessment of Chronic Illness Therapy-Fatigue, a 13-question survey to be completed by study participants that focuses on the daily fatigue experienced in patients with chronic illnesses.

We are also collaborating with the University of Alabama at Birmingham School of Medicine in a randomized, open-label, dose-ranging study of RAYOS in patients with untreated PMR. The study aims to determine the relative reduction in the severity of morning stiffness of three night time doses (4mg, 7mg, and 10mg) of RAYOS, compared to the reduction after treatment in the morning with immediate-release 15mg prednisone medicines, in newly diagnosed PMR patients. The selected patients will have had no evidence of other systemic inflammatory diseases and will be known to be responsive to standard treatment in the morning with immediate-release 15mg prednisone medicines.
In January 2016, following our acquisition of Crealta, we assumed responsibility for a study designed to test the potential reduction of immunogenicity in KRYSTEXXA patients, known as the Tolerization Reduces Intolerance to Pegloticase and Prolongs the Urate Lowering Effect, or TRIPLE, study. The TRIPLE study is an investigator-initiated, post-market interventional, exploratory open-label, multicenter study of approximately 20 patients to evaluate the effectiveness of a 16-week high zone tolerance regimen of KRYSTEXXA on response to therapy (serum uric acid <6 mg/dL) in adult hyperuricemic patients with gout refractory to conventional therapy. We are also developing a potential registration study to expand the label should the TRIPLE study show positive results. Success in the TRIPLE study and the subsequent registration study would have the potential to significantly expand the patient population and usage of KRYSTEXXA.

As part of the TRIPLE study, initial, more frequent dosing is being examined to determine if this reduces antibody formation by inducing antigen specific non-responsiveness. This would prevent the formation of anti-pegloticase antibodies and prevent the loss of drug response. This involves evaluating the drug’s lowest trough level, which pharmacokinetically occurs between the first and second doses. Increasing this trough level should suppress the high titer antibody formation. Current labelling states that KRYSTEXXA should be given every two weeks. This study adds one extra dose that occurs one week after the initial dose. Active study will last 16 weeks (10 doses) and will compare responder rates with historical control KRYSTEXXA data. The IND for this trial was filed in August 2015, site selection and final investigator meetings were completed in October 2015 and patient enrollment began in November 2015.

An observational study is also being conducted to satisfy certain conditions in the KRYSTEXXA biologics license application, or BLA, approval letter. A clinical study report was submitted to FDA in February 2016 and the next steps for this study will be established during the first quarter of 2016.

Intellectual Property

Our objective is to aggressively patent the technology, inventions and improvements that we consider important to the development of our business. We have a portfolio of patents and applications based on clinical and pharmacokinetic/pharmacodynamic modeling discoveries, and our novel formulations. We intend to continue filing patent applications seeking intellectual property protection as we generate anticipated formulation refinements, new methods of manufacturing and clinical trial results.

We have multiple patents and patent applications related to DUEXIS. Unless otherwise invalidated, those patents expire in 2026. However, under the license agreement with Par Pharmaceutical, Inc. and Par Pharmaceutical Companies, Inc., or collectively Par, Par may enter the market on January 1, 2023, or earlier under certain circumstances.

We have an exclusive license to U.S. and foreign patents and patent applications from SkyePharma covering RAYOS/LODOTRA. If not otherwise invalidated, those in-licensed patents expire between 2024 and 2028. We continue to prosecute and pursue additional patent coverage on RAYOS/LODOTRA and its uses. However, under the Settlement Agreement with Actavis Laboratories FL, Inc. (formerly known as Watson Laboratories, Inc. – Florida), or Actavis, Actavis may enter the market on December 23, 2022, or earlier under certain circumstances.

We also have licenses to U.S. patents and patent applications and trademarks covering VIMOVO from Pozen and AstraZeneca. We co-own other U.S. patents and patent applications with Pozen. If not otherwise invalidated, those in-licensed patents expire between 2016 and 2031. We continue to prosecute and pursue patent protection in the United States to obtain additional patent coverage on VIMOVO and its uses.

We also have licenses to U.S. patents and patent applications covering PENNSAID 2% from Nuvo. We also co-own other U.S. patent applications with Mallinckrodt LLC. If not otherwise invalidated, those patents expire between 2027 and 2030. We continue to prosecute and pursue patent protection in the United States to obtain additional patent coverage on PENNSAID 2% and its uses.

We have licenses to U.S. patents covering ACTIMMUNE. If not otherwise invalidated, those patents expire in 2022. We continue to prosecute and pursue patent protection to obtain additional patent coverage on ACTIMMUNE and its uses.

We also have licenses to U.S. and foreign patents and applications covering KRYSTEXXA. If not otherwise invalidated, those patents expire between 2019 and 2027. We continue to prosecute and pursue patent protection to obtain additional patent coverage on KRYSTEXXA and its uses.
We also have an exclusive license to U.S. and foreign patents from Brusilow Enterprises LLC covering RAVICTI which expire in the United States in 2018 and if extended, in certain countries in Europe in 2021. We also have ownership of U.S. and foreign patents and patent applications covering RAVICTI. If not otherwise invalidated, those patents expire between 2030 and 2032. We continue to prosecute and pursue patent protection to obtain additional patent coverage on RAVICTI and its uses.

We will only be able to protect our technologies and medicines from unauthorized use by third parties to the extent that valid and enforceable patents or trade secrets cover them. As such, our commercial success will depend in part on receiving and maintaining patent protection and trade secret protection of our technologies and medicines as well as successfully defending these patents against third-party challenges.

In the United States, ACTIMMUNE has been granted orphan-drug designation for the treatment of FA and we anticipate that ACTIMMUNE will receive seven years of orphan drug exclusivity upon approval for that indication in the United States. In the United States, KRYSTEXXA has received 12 years of biologic exclusivity, expiring in 2022, and seven years of orphan drug exclusivity, expiring in 2017.

In the United States, in addition to patent protections, PENNSAID 2% has been granted three years of marketing exclusivity as a Section 505(b)(2) NDA. This marketing exclusivity period for each medicine began upon marketing approval of such medicine and runs in parallel with any patents that have issued or we expect to be issued protecting such medicine. In the United States, RAVICTI has been granted seven years of orphan drug exclusivity. In the EU, RAVICTI received 10 years of marketing exclusivity protection, beginning with its December 2015 marketing authorization. In the EU, LODOTRA has received 10 years of marketing exclusivity protection, beginning with its March 2009 marketing authorization in Germany.

The patent positions of life sciences companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in such companies’ patents has emerged to date in the United States. The patent situation outside the United States is even more uncertain. Changes in either the patent laws or in interpretations of patent laws in the United States or other countries may diminish the value of our intellectual property. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patents or in third-party patents. For example:

- we or our licensors might not have been the first to make the inventions covered by each of our pending patent applications and issued patents;
- we or our licensors might not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies;
- it is possible that none of our pending patent applications or the pending patent applications of our licensors will result in issued patents;
- our issued patents and the issued patents of our licensors may not provide a basis for commercially viable drugs, or may not provide us with any competitive advantages, or may be challenged and invalidated by third parties;
- we may not be successful in any patent litigation to enforce our patent rights, including our pending patent litigation regarding, PENNSAID 2%, RAVICTI and/or VIMOVO;
- we may not develop additional proprietary technologies or medicine candidates that are patentable; or
- the patents of others may have an adverse effect on our business.

For a description of our legal proceedings, see Note 17, Legal Proceedings, of the Notes to Consolidated Financial Statements, included in Item 15 of this Annual Report on Form 10-K.

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Third-Party Coverage and Reimbursement

In both U.S. and foreign markets, our ability to commercialize our medicines successfully depends in significant part on the availability of coverage and adequate reimbursement to healthcare providers from third-party payors, including, in the United States, government payors such as the Medicare and Medicaid programs, managed care organizations and private health insurers. Third-party payors are increasingly challenging the prices charged for medicines and examining their cost effectiveness, in addition to their safety and efficacy. This is especially true in markets where over-the-counter and generic options exist. Even if coverage is made available by a third-party payor, the reimbursement rates paid for covered medicines might not be adequate. For example, third-party payors may use tiered coverage and may adversely affect demand for our medicines by not covering our medicines or by placing them in a more expensive formulary tier relative to competitive medicines (where patients have to pay relatively more out of pocket than for medicines in a lower tier). We cannot be certain that our medicines will be covered by third-party payors or that such coverage, where available, will be adequate, or that our medicines will successfully be placed on the list of drugs covered by particular health plan formularies. Many states have also created preferred drug lists and include drugs on those lists only when the manufacturers agree to pay a supplemental rebate. The industry competition to be included on such formularies and preferred drug lists often leads to downward pricing pressures on pharmaceutical companies. Also, third-party payors may refuse to include a particular branded drug on their formularies or otherwise restrict patient access to a branded drug when a less costly generic equivalent or other therapeutic alternative is available. In addition, because each third-party payor individually approves coverage and reimbursement levels, obtaining coverage and adequate reimbursement is a time-consuming and costly process. We may be required to provide scientific and clinical support for the use of any medicine to each third-party payor separately with no assurance that approval would be obtained, and we may need to conduct pharmacoeconomic studies to demonstrate the cost effectiveness of our medicines for formulary coverage and reimbursement. Even with studies, our medicines may be considered less safe, less effective or less cost-effective than competitive medicines, and third-party payors may not provide coverage and adequate reimbursement for our medicines or our medicine candidates. These pricing and reimbursement pressures may create negative perceptions to any medicine price increases, or limit the amount we may be able to increase our medicine prices, which may adversely affect our medicine sales and results of operations. Where coverage and reimbursement are not adequate, physicians may limit how much or under what circumstances they will prescribe or administer such medicines, and patients may decline to purchase them. This, in turn, could affect our ability to successfully commercialize our medicines and impact our profitability, results of operations, financial condition, and future success.

The U.S. market has seen a trend in which retail pharmacies have become increasingly involved in determining which prescriptions will be filled with the requested medicine or a substitute medicine, based on a number of factors, including potentially perceived medicine costs and benefits, as well as payor substitution policies. Many states have in place requirements for prescribers to indicate “dispense as written” on their prescriptions if they do not want pharmacies to make substitutions; these requirements are varied and not consistent across states. We may need to increasingly spend time and resources to ensure the prescriptions written for our medicines are filled as written, where appropriate.

Coverage policies, third-party reimbursement rates and medicine pricing regulation may change at any time. Even if favorable coverage and adequate reimbursement status is attained for one or more medicines that receive regulatory approval, less favorable coverage policies and reimbursement rates may be implemented in the future.

Government Regulation

The FDA and comparable regulatory agencies in state and local jurisdictions and in foreign countries impose extensive requirements upon the clinical development, pre-market approval, manufacture, labeling, marketing, promotion, pricing, import, export, storage and distribution of medicines. These agencies and other regulatory agencies regulate research and development activities and the testing, approval, manufacture, quality control, safety, effectiveness, labeling, storage, recordkeeping, advertising and promotion of drugs and biologics. Failure to comply with applicable FDA or foreign regulatory agency requirements may result in Warning Letters, fines, civil or criminal penalties, suspension or delays in clinical development, recall or seizure of medicines, partial or total suspension of production or withdrawal of a medicine from the market.
In the United States, the FDA regulates drug products under the Federal Food, Drug, and Cosmetic Act and its implementing regulations and biologics additionally under the Public Health Service Act. The process required by the FDA before medicine candidates may be marketed in the United States generally involves the following:

- submission to the FDA of an IND, which must become effective before human clinical trials may begin and must be updated annually;
- completion of extensive preclinical laboratory tests and preclinical animal studies, all performed in accordance with the FDA’s Good Laboratory Practice, or GLP, regulations;
- performance of adequate and well-controlled human clinical trials to establish the safety and efficacy of the medicine candidate for each proposed indication;
- submission to the FDA of an NDA or BLA, as appropriate, after completion of all pivotal clinical trials to demonstrate the safety, purity and potency of the medicine candidate for each proposed indication;
- a determination by the FDA within 60 days of its receipt of an NDA or BLA to file the application for review;
- satisfactory completion of an FDA pre-approval inspection of the manufacturing facilities to assess compliance with the FDA’s current good manufacturing practices regulations for pharmaceuticals, or cGMPs; and
- FDA review and approval of an NDA or BLA prior to any commercial marketing or sale of the medicine in the United States.

The development and approval process requires substantial time, effort and financial resources, and we cannot be certain that any approvals for our medicine candidates will be granted on a timely basis, if at all.

The results of preclinical tests (which include laboratory evaluation as well as GLP studies to evaluate toxicity in animals) for a particular medicine candidate, together with related manufacturing information and analytical data, are submitted as part of an IND to the FDA. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA, within the 30-day time period, raises concerns or questions about the conduct of the proposed clinical trial, including concerns that human research subjects will be exposed to unreasonable health risks. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. IND submissions may not result in FDA authorization to commence a clinical trial. A separate submission to an existing IND must also be made for each successive clinical trial conducted during medicine development. Further, an independent institutional review board, or IRB, for each medical center proposing to conduct the clinical trial must review and approve the plan for any clinical trial before it commences at that center and it must monitor the study until completed. The FDA, the IRB or the sponsor may suspend a clinical trial at any time on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk. Clinical testing also must satisfy extensive good clinical practice regulations and regulations for informed consent and privacy of individually identifiable information. Similar requirements to the U.S. IND are required in the EEA and other jurisdictions in which we may conduct clinical trials.

Clinical Trials. For purposes of NDA or BLA submission and approval, clinical trials are typically conducted in the following sequential phases, which may overlap:

- **Phase 1.** Studies are initially conducted in a limited population to test the medicine candidate for safety, dose tolerance, absorption, distribution, metabolism, and excretion, typically in healthy humans, but in some cases in patients.

- **Phase 2.** Studies are generally conducted in a limited patient population to identify possible adverse effects and safety risks, explore the initial efficacy of the medicine for specific targeted indications and to determine dose range or pharmacodynamics. Multiple Phase 2 clinical trials may be conducted by the sponsor to obtain information prior to beginning larger and more expensive Phase 3 clinical trials.

- **Phase 3.** These are commonly referred to as pivotal studies. When Phase 2 evaluations demonstrate that a dose range of the medicine is effective and has an acceptable safety profile, Phase 3 clinical trials are undertaken in large patient populations to further evaluate dosage, provide substantial evidence of clinical efficacy and further test for safety in an expanded and diverse patient population at multiple, geographically dispersed clinical trial centers.
Phase 4. The FDA may approve an NDA or BLA for a medicine candidate, but require that the sponsor conduct additional clinical trials to further assess the medicine after approval under a post marketing commitment or post marketing requirement. In addition, a sponsor may decide to conduct additional clinical trials after the FDA has approved a medicine. Post-approval trials are typically referred to as Phase 4 clinical trials.

The results of drug development, preclinical studies and clinical trials are submitted to the FDA as part of an NDA or BLA, as appropriate. Applications also must contain extensive chemistry, manufacturing and control information. Applications must be accompanied by a significant user fee. Once the submission has been accepted for filing, the FDA’s goal is to review applications within 12 months of submission or, if the application relates to an unmet medical need in a serious or life-threatening indication, eight months from submission. The review process is often significantly extended by FDA requests for additional information or clarification. The FDA will typically conduct a pre-approval inspection of the manufacturer to ensure that the medicine can be reliably produced in compliance with cGMPs and will typically inspect certain clinical trial sites for compliance with good clinical practice, or GCP. The FDA may refer the application to an advisory committee for review, evaluation and recommendation as to whether the application should be approved. The FDA is not bound by the recommendation of an advisory committee, but it typically follows such recommendations. The FDA may deny approval of an application by issuing a Complete Response Letter if the applicable regulatory criteria are not satisfied. A Complete Response Letter may require additional clinical data and/or trial(s), and/or other significant, expensive and time-consuming requirements related to clinical trials, preclinical studies or manufacturing. Data from clinical trials are not always conclusive and the FDA may interpret data differently than we or our collaborators interpret data. Approval may occur with boxed warnings on medicine labeling or Risk Evaluation and Mitigation Strategies, or REMS, which limit the labeling, distribution or promotion of a medicine. Once issued, the FDA may withdraw medicine approval if ongoing regulatory requirements are not met or if safety problems occur after the medicine reaches the market. In addition, the FDA may require testing, including Phase 4 clinical trials, and surveillance programs to monitor the safety effects of approved medicines which have been commercialized and the FDA has the power to prevent or limit further marketing of a medicine based on the results of these post-marketing programs or other information.

Orphan Medicines. Under the Orphan Drug Act, the FDA may designate a medicine as an “orphan drug” if it is intended to treat a rare disease or condition, meaning that it affects fewer than 200,000 individuals in the United States, or more in cases in which there is no reasonable expectation that the cost of developing and making a medicine available in the United States for treatment of the disease or condition will be recovered from sales of the medicine. A company must request orphan drug designation before submitting an NDA for the drug and rare disease or condition. If the request is granted, the FDA will disclose the identity of the therapeutic agent and its potential use. Orphan drug designation does not shorten the Prescription Drug User Fee Act, or PDUFA, goal dates for the regulatory review and approval process, although it does convey certain advantages such as tax benefits and exemption from the PDUFA application fee.

If a medicine with orphan designation receives the first FDA approval for the disease or condition for which it has such designation or for a select indication or use within the rare disease or condition for which it was designated, the medicine generally will receive orphan drug exclusivity. Orphan drug exclusivity means that the FDA may not approve another sponsor’s marketing application for the same drug for the same indication for seven years, except in certain limited circumstances. Orphan exclusivity does not block the approval of a different drug for the same rare disease or condition, nor does it block the approval of the same drug for different indications. If a drug designated as an orphan drug ultimately receives marketing approval for an indication broader than what was designated in its orphan drug application, it may not be entitled to exclusivity. Orphan exclusivity will not bar approval of another medicine under certain circumstances, including if a subsequent medicine with the same drug for the same indication is shown to be clinically superior to the approved medicine on the basis of greater efficacy or safety, or providing a major contribution to patient care, or if the company with orphan drug exclusivity is not able to meet market demand.
In the EU, Regulation (EC) No 141/2000 and Regulation (EC) No. 847/2000 provide that a medicine can be designated as an orphan medicinal product by the EC if its sponsor can establish: that the medicine is intended for the diagnosis, prevention or treatment of (1) a life-threatening or chronically debilitating condition affecting not more than five in ten thousand persons in the EU when the application is made, or (2) a life-threatening, seriously debilitating or serious and chronic condition in the EU and that without incentives the medicinal product is unlikely to be developed. For either of these conditions, the applicant must demonstrate that there exists no satisfactory method of diagnosis, prevention or treatment of the condition in question that has been authorized in the EU or, if such method exists, the medicinal product will be of significant benefit to those affected by that condition. Once authorized, orphan medicinal products are entitled to ten years of market exclusivity in all EU Member States and in addition a range of other benefits during the development and regulatory review process including scientific assistance for study protocols, authorization through the centralized marketing authorization procedure covering all member countries and a reduction or elimination of registration and marketing authorization fees. However, marketing authorization may be granted to a similar medicinal product with the same orphan indication during the ten year period with the consent of the marketing authorization holder for the original orphan medicinal product or if the manufacturer of the original orphan medicinal product is unable to supply sufficient quantities. Marketing authorization may also be granted to a similar medicinal product with the same orphan indication if this medicine is safer, more effective or otherwise clinically superior to the original orphan medicinal product. The period of market exclusivity may, in addition, be reduced to six years if it can be demonstrated on the basis of available evidence that the original orphan medicinal product is sufficiently profitable not to justify maintenance of market exclusivity.

Other Regulatory Requirements. Medicines manufactured or distributed pursuant to FDA approvals are subject to continuing regulation by the FDA, including recordkeeping, annual medicine quality review, payment of medicine and manufacturing establishment fees and reporting requirements. Adverse event experience with the medicine must be reported to the FDA in a timely fashion and pharmacovigilance programs to proactively look for these adverse events are mandated by the FDA. Our medicines may be subject to REMS requirements that affect labeling, distribution or post market reporting. Drug manufacturers and their subcontractors are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with ongoing regulatory requirements, including cGMPs, which impose certain procedural and documentation requirements upon us and our third-party manufacturers. Following such inspections, the FDA may issue notices on Form 483 and Untitled Letters or Warning Letters that could cause us or our third-party manufacturers to modify certain activities. A Form 483 notice, if issued at the conclusion of an FDA inspection, can list conditions the FDA investigators believe may have violated cGMP or other FDA regulations or guidelines. In addition to Form 483 notices and Untitled Letters or Warning Letters, failure to comply with the statutory and regulatory requirements can subject a manufacturer to possible legal or regulatory action, such as suspension of manufacturing, seizure of medicine, injunctive action, import alert or possible civil penalties. The FDA may also require us to recall a drug from distribution or withdraw approval for that medicine.

The FDA closely regulates the post-approval marketing and promotion of pharmaceuticals, including standards and regulations for direct-to-consumer advertising, dissemination of off-label information, industry-sponsored scientific and educational activities and promotional activities involving the Internet, including certain social media activities. Medicines may be marketed only for the approved indications and in accordance with the provisions of the approved label. Further, if there are any modifications to the medicine, including changes in indications, labeling, or manufacturing processes or facilities, we may be required to submit and obtain FDA approval of a new or supplemental application, which may require us to develop additional data or conduct additional preclinical studies and clinical trials. Failure to comply with these requirements can result in adverse publicity, Warning Letters or "untitled letters", corrective advertising and potential administrative, civil and criminal penalties, as well as damages, fines, withdrawal of regulatory approval, the curtailment or restructuring of our operations, the exclusion from participation in federal and state healthcare programs and imprisonment, any of which could adversely affect our ability to sell our medicines or operate our business and also adversely affect our financial results.
Physicians may, in their independent medical judgment, prescribe legally available pharmaceuticals for uses that are not described in the medicine’s labeling and that differ from those tested by us and approved by the FDA. Such off-label uses are common across medical specialties. Physicians may believe that such off-label uses are the best treatment for many patients in varied circumstances. The FDA does not regulate the behavior of physicians in their choice of treatments. The FDA does, however, impose stringent restrictions on manufacturers’ communications regarding off-label use. Additionally, a significant number of pharmaceutical companies have been the target of inquiries and investigations by various U.S. federal and state regulatory, investigative, prosecutorial and administrative entities in connection with the promotion of medicines for off-label uses and other sales practices. These investigations have alleged violations of various U.S. federal and state laws and regulations, including claims asserting antitrust violations, violations of the Food, Drug and Cosmetic Act, false claims laws, the Prescription Drug Marketing Act, anti-kickback laws, and other alleged violations in connection with the promotion of medicines for unapproved uses, pricing and Medicare and/or Medicaid reimbursement. If our promotional activities, including any promotional activities that a contracted sales force may perform on our behalf, fail to comply with these regulations or guidelines, we may be subject to warnings from, or enforcement action by, these authorities. In addition, our failure to follow FDA rules and guidelines relating to promotion and advertising may cause the FDA to issue warning letters or untitled letters, suspend or withdraw an approved medicine from the market, require corrective advertising or a recall or institute fines or civil fines, or could result in disgorgement of money, operating restrictions, injunctions or criminal prosecution, any of which could harm our business. In addition, the distribution of prescription medicines is subject to the Prescription Drug Marketing Act, or PDMA, which regulates the distribution of drugs and drug samples at the federal level, and sets minimum standards for the registration and regulation of drug distributors by the states. Both the PDMA and state laws limit the distribution of prescription medicine samples and impose requirements to ensure accountability in distribution, including a drug pedigree which tracks the distribution of prescription drugs. Further, under the Drug Quality and Security Act, drug manufacturers are subject to a number of requirements, including, medicine identification, tracing and verification, among others, that are designed to detect and remove counterfeit, stolen, contaminated or otherwise potentially harmful drugs from the U.S. drug supply chain. These requirements will be phased in over several years and compliance will likely increase the costs of the manufacture and distribution of drug medicines.

Outside the United States, the ability of our partners and us to market a medicine is contingent upon obtaining marketing authorization from the appropriate regulatory authorities. The requirements governing marketing authorization, pricing and reimbursement vary widely from country to country and region to region.

The EU and the EEA consist of the 28 Member States of the EU, plus Norway, Iceland and Liechtenstein which are Member States of the EEA. These Member States have all acceded to the single market rules governing the supervision of medicinal products. Under the prevailing rules, medicinal products can only be commercialized after obtaining a Marketing Authorization, or MA. There are three procedures for a marketing authorization to be obtained:

- **the Centralized MA**, which is issued by the EC through the Centralized Procedure, based on the scientific opinion of the CHMP of the EMA, and which is valid throughout the entire territory of the EU/EEA. When decisions on granting of a Centralized MA are taken by the EU, the EEA Member States will take corresponding decisions on the basis the relevant acts to permit marketing of medicinal products. The Centralized Procedure is mandatory for certain types of products, such as biotechnology medicinal products, orphan medicinal products, and medicinal products containing a new active substance indicated for the treatment of AIDS, cancer, neurodegenerative disorders, diabetes, autoimmune and viral diseases. The Centralized Procedure is optional for products containing a new active substance not yet authorized in the EU/EEA, or for products that constitute a significant therapeutic, scientific or technical innovation or which are in the interest of public health in the EU.

- **Decentralized Procedure MAs** are available for products not falling within the mandatory scope of the Centralized Procedure. An identical dossier is submitted to the competent authorities of each of the Member States in which the MA is sought, one of which is selected by the applicant as the Reference Member State, or RMS, to lead the evaluation of the regulatory submission. The competent authority of the RMS prepares a draft assessment report, a draft summary of the product characteristics, or SmPC, and a draft of the labeling and package leaflet as distilled from the preliminary evaluation, which are sent to the other Member States (referred to as the Concerned Member States, or CMS, for their approval. If the CMS raise no objections, based on a potential serious risk to public health, to the assessment, SmPC, labeling, or packaging proposed by the RMS, the RMS records the agreement, closes the procedure and informs the applicant accordingly. Each Member State concerned by the procedure is required to adopt a national decision to grant a national MA in conformity with the approved assessment report, SmPC and the labelling and package leaflet as approved. Where a product has already been authorized for marketing in a Member State of the EEA, the granted national MA can be used for mutual recognition in other Member States through the Mutual Recognition Procedure, or MRP resulting in progressive national approval of the product in the EU/EEA.
• National MAs, which are issued by a single competent authority of the Member States of the EEA and only cover their respective territory, are also available for products not falling within the mandatory scope of the Centralized Procedure. Once a product has been authorized for marketing in a Member State of the EEA through the National Procedure, this National MA can also be recognized in other Member States through the MRP.

Under the procedures described above, before granting the MA, the EMA or the competent authority(ies) of the Member State(s) of the EEA prepare an assessment of the risk-benefit balance of the product against the scientific criteria concerning its quality, safety and efficacy.

Under Regulation (EC) No 726/2004/EC and Directive 2001/83/EC (each as amended), the EU has adopted a harmonized approach to data and market protection or exclusivity (known as the 8 + 2 + 1 formula). The data exclusivity period begins to run on the date when the first MA is granted in the EU. It confers on the MA holder of the reference medicinal product eight years of data protection and 10 years of market protection. A reference medicinal product is defined to mean a medicinal product authorized based on a full dossier consisting of pharmaceutical and preclinical testing results and clinical trial data, such as a medicinal product containing a new active substance. The 10-year market protection can be extended cumulatively to a maximum period of 11 years if during the first eight years of those ten years of protection period, the MA holder obtains an authorization for one or more new therapeutic indications that are deemed to bring a significant clinical benefit compared to existing therapies.

The protection period means that an applicant for a generic medicinal product is not permitted to rely on preclinical pharmacological, toxicological, and clinical data contained in the file of the reference medicinal product of the originator until the first eight years of data protection have expired. Thereafter, a generic product application may be submitted and generic companies may rely on the preclinical and clinical data relating to the reference medicinal product to support approval of the generic product. However, a generic cannot market until ten years have elapsed from the initial authorization of the reference medicinal product or eleven years if the protection period is extended, based on the formula of 8+2+1.

The 8 + 2 + 1 exclusivity scheme applies to products that have been authorized in the EU by either the EMA through the Centralized Procedure or the competent authorities of the Member States of the EEA nationally albeit through the Decentralized, or Mutual Recognition procedures.

For a medicinal product which is designated as orphan under Regulation 141/2000, it will benefit from a period of 10 years of orphan market exclusivity which essentially constitutes a period of market monopoly. During this period of orphan market exclusivity, no EU regulatory authority is permitted to accept or approve an application for marketing authorization for a similar medicinal product or an extension application for the same therapeutic indication. This period can be extended cumulatively to a total of 12 years if the marketing authorization holder or applicant complies with the requirements for an agreed pediatric investigation plan pursuant to Regulation 1901/2006.

The holder of a Centralized MA or National MA is subject to various obligations under the applicable EU laws, such as pharmacovigilance obligations, requiring it to, among other things, report and maintain detailed records of adverse reactions, and to submit periodic safety update reports to the competent authorities. The holder must also ensure that the manufacturing and batch release of its product is in compliance with the applicable requirements. The MA holder is further obligated to ensure that the advertising and promotion of its products complies with applicable EU laws and industry code of practice as implemented in the domestic laws of the Member States of the EU/EEA. The advertising and promotional rules are enforced nationally by the EU/EEA Member States.

Healthcare Fraud and Abuse Laws. As a pharmaceutical company, certain federal and state healthcare laws and regulations pertaining to fraud and abuse and patients’ rights are and will be applicable to our business. We may be subject to various federal and state laws targeting fraud and abuse in the healthcare industry. For example, in the United States, there are federal and state anti-kickback laws that prohibit the payment or receipt of kickbacks, bribes or other remuneration intended to induce the purchase or recommendation of healthcare products and services or reward past purchases or recommendations. Violations of these laws can lead to civil and criminal penalties, including fines, imprisonment and exclusion from participation in federal healthcare programs. These laws are potentially applicable to manufacturers of products regulated by the FDA, such as us, and pharmacies, hospitals, physicians and other potential purchasers of such products.
The federal Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, to induce either the referral of an individual, or the furnishing, recommending, or arranging for a good or service, for which payment may be made under a federal healthcare program, such as the Medicare and Medicaid programs. The term “remuneration” is not defined in the federal Anti-Kickback Statute and has been broadly interpreted to include anything of value, including for example, gifts, discounts, the furnishing of supplies or equipment, credit arrangements, payments of cash, waivers of payment, ownership interests and providing anything at less than its fair market value. Several courts have interpreted the statute’s intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the statute may have been violated, and enforcement will depend on the relevant facts and circumstances. The Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, or collectively the ACA, among other things, amended the intent requirement of the federal Anti-Kickback Statute to state that a person or entity needs not have actual knowledge of this statute or specific intent to violate it in order to have committed a violation. In addition, ACA provides that the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the civil False Claims Act (discussed below) or the civil monetary penalties statute, which imposes penalties against any person who is determined to have presented or caused to be presented a claim to a federal health program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent, or to have offered improper inducements to federal health care program beneficiaries to select a particular provider or supplier. The federal Anti-Kickback Statute is broad, and despite a series of narrow safe harbors, prohibits many arrangements and practices that are lawful in businesses outside of the healthcare industry. Many states have also adopted laws similar to the federal Anti-Kickback Statute, some of which apply to the referral of patients for healthcare items or services reimbursed by any source, not only the Medicare and Medicaid programs, and do not contain identical safe harbors. In addition, where such activities involve foreign government officials, they may also potentially be subject to the Foreign Corrupt Practices Act. Because of the breadth of these laws and the narrowness of the statutory exceptions and safe harbors available, it is possible that some of our business activities, including our activities with physician customers, pharmacies, and patients, as well as our activities pursuant to partnerships with other companies and pursuant to contracts with contract research organizations, could be subject to challenge under one or more of such laws.

The federal False Claims Act prohibits any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government or knowingly making, using or causing to be made or used a false record or statement material to a false or fraudulent claim to the federal government. A claim includes “any request or demand” for money or property presented to the U.S. government. In addition, the ACA specified that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the civil False Claims Act. The federal False Claims Act has been the basis for numerous enforcement actions and settlements by pharmaceutical and other healthcare companies in connection with various alleged financial relationships with customers. In addition, a number of pharmaceutical manufacturers have reached substantial financial settlements in connection with allegedly causing false claims to be submitted because of the companies’ marketing of products for unapproved, and thus non-reimbursable, uses. Certain marketing practices, including off-label promotion, may also violate false claims laws, as might violations of the federal physician self-referral laws, such as the Stark laws, which prohibit a physician from making a referral to a provider of certain health services with which the physician or the physician’s family member has a financial interest and prohibit submission of a claim for reimbursement pursuant to a prohibited referral. The “qui tam” provisions of the False Claims Act allow a private individual to bring civil actions on behalf of the federal government alleging that the defendant has submitted a false claim to the federal government, and to share in any monetary recovery. In addition, various states have enacted similar fraud and abuse statutes or regulations, including, without limitation, false claims laws analogous to the False Claims Act, and laws analogous to the federal Anti-Kickback Statute, that apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor, and there are also federal criminal false claims laws.

Separately, there are a number of other fraud and abuse laws that pharmaceutical manufacturers must be mindful of, particularly after a medicine candidate has been approved for marketing in the United States. For example, a federal criminal law enacted as part of, the Health Insurance Portability and Accountability Act of 1996, or HIPAA, prohibits knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private third-party payors. The false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. There are also federal civil monetary penalty laws, which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payors that are false or fraudulent, as well as federal and state consumer protection and unfair competition laws, which broadly regulate marketplace activities and activities that potentially harm consumers.
Healthcare Privacy and Security Laws. We may be subject to, or our marketing activities may be limited by, HIPAA, as amended by the Health Information Technology and Clinical Health Act and their respective implementing regulations, which established uniform standards for certain “covered entities” (healthcare providers, health plans and healthcare clearinghouses) governing the conduct of certain electronic healthcare transactions and protecting the security and privacy of protected health information. Among other things, HIPAA’s privacy and security standards are directly applicable to “business associates” — independent contractors or agents of covered entities that create, receive, maintain or transmit protected health information in connection with providing a service for or on behalf of a covered entity. In addition to possible civil and criminal penalties for violations, state attorneys general are authorized to file civil actions for damages or injunctions in federal courts to enforce HIPAA and seek attorney’s fees and costs associated with pursuing federal civil actions. In addition, state laws govern the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts. In the EU/EEA, Directive 95/46/EEC (as amended) or its successor applies to identified or identifiable personal data processed by automated means (e.g. a computer database of customers) and data contained in, or intended to be part of, non-automated filing systems (traditional paper files) as well as transfer of such data to a country outside of the EU/EEA.

“Sunshine” and Marketing Disclosure Laws. There are an increasing number of federal and state “sunshine” laws that require pharmaceutical manufacturers to make reports to states on pricing and marketing information. Several states have enacted legislation requiring pharmaceutical companies to, among other things, establish marketing compliance programs, file periodic reports with the state, and make periodic public disclosures on sales and marketing activities, and prohibiting certain other sales and marketing practices. In addition, a similar recently implemented federal requirement requires manufacturers, including pharmaceutical manufacturers, to track and report to the federal government certain payments and other transfers of value made to physicians and other healthcare professionals and teaching hospitals and ownership or investment interests held by physicians and their immediate family members. The federal government began disclosing the reported information on a publicly available website in 2014. These laws may adversely affect our sales, marketing, and other activities with respect to our medicines in the United States by imposing administrative and compliance burdens on us. If we fail to track and report as required by these laws or otherwise comply with these laws, we could be subject to the penalty provisions of the pertinent state and federal authorities. In the EU/EEA, declaration of transfers of value to healthcare professionals is subject to the requirements under the voluntary industry code of practice. France however has a statutory regime similar to the US Sunshine Act.

Government Price Reporting. For those marketed medicines which are covered in the United States by the Medicaid programs, we have various obligations, including government price reporting and rebate requirements, which generally require medicines be offered at substantial rebates/discounts to Medicaid and certain purchasers (including “covered entities” purchasing under the 340B Drug Discount Program). We are also required to discount such medicines to authorized users of the Federal Supply Schedule of the General Services Administration, under which additional laws and requirements apply. These programs require submission of pricing data and calculation of discounts and rebates pursuant to complex statutory formulas, as well as the entry into government procurement contracts governed by the Federal Acquisition Regulations, and the guidance governing such calculations is not always clear. Compliance with such requirements can require significant investment in personnel, systems and resources, but failure to properly calculate our prices, or offer required discounts or rebates could subject us to substantial penalties. One component of the rebate and discount calculations under the Medicaid and 340B programs, respectively, is the “additional rebate”, a complex calculation which is based, in part, on the rate at which a branded drug price increases over time more than the rate of inflation (based on the CPI-U). This comparison is based on the baseline pricing data for the first full quarter of sales associated with a branded drug’s NDA, and baseline data cannot generally be reset, even on transfer of the NDA to another manufacturer. This “additional rebate” calculation can, in some cases where price increase have been relatively high versus the first quarter of sales of the NDA, result in Medicaid rebates up to 100 percent of a drug’s “average manufacturer price” and 340B prices of one penny. Subject to the control of Directive 89/105/EEC, pricing and reimbursement in the EU/EEA is governed by national rules and policy and may vary from Member State to Member State.
In General. Because of the breadth of these laws and the narrowness of available statutory and regulatory exemptions, it is possible that some of our business activities, in the United States, could be subject to challenge under one or more of such laws. If we or our operations are found to be in violation of any of the laws described above or any other governmental regulations that apply to us, we may be subject to penalties, including significant civil and criminal penalties, damages, fines, imprisonment, exclusion from participation in U.S. federal or state healthcare programs, and the curtailment or restructuring of our operations. To the extent that any medicine we make is sold in a foreign country, we may be subject to similar foreign laws and regulations, which may include, for instance, applicable post-marketing requirements, including safety surveillance, anti-fraud and abuse laws, and implementation of corporate compliance programs and reporting of payments or transfers of value to healthcare professionals. Any penalties, damages, fines, curtailment or restructuring of our operations could materially adversely affect our ability to operate our business and our financial results. Although compliance programs can mitigate the risk of investigation and prosecution for violations of these laws, the risks cannot be entirely eliminated. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management’s attention from the operation of our business. Moreover, achieving and sustaining compliance with applicable federal and state privacy, security, sunshine, government price reporting, and fraud laws may prove costly.

Impact of Healthcare Reform and Recent Public Scrutiny of Specialty Drug Pricing on Coverage, Reimbursement, and Pricing. In the United States and other potentially significant markets for our medicines, government authorities and third-party payors are increasingly attempting to limit or regulate the price of medical products and services, particularly for new and innovative medicines and therapies, which has resulted in lower average selling prices. Further, the increased scrutiny of prescription drug pricing practices and emphasis on managed healthcare in the United States and on country-specific and regional pricing and reimbursement controls in the EU will put additional pressure on medicine pricing, reimbursement and usage, which may adversely affect our future medicine sales and results of operations. These pressures can arise from rules and practices of managed care groups, judicial decisions and governmental laws and regulations related to Medicare, Medicaid and healthcare reform, pharmaceutical reimbursement policies and pricing in general.

The U.S. and some foreign jurisdictions are considering or have enacted a number of additional legislative and regulatory proposals to change the healthcare system in ways that could affect our ability to sell our medicines 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 (including a number of proposals pertaining to prescription drugs, specifically), improving quality and/or expanding access. There has been particular and increasing legislative and enforcement interest in the United States with respect to specialty drug pricing practices over the course of 2015, particularly with respect to drugs that have been subject to relatively large price increases over relatively short time periods. There have been several recent U.S. 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, and reform government program reimbursement methodologies for drugs. In the United States, the pharmaceutical industry has already been significantly affected by major legislative initiatives, including, for example, the ACA. The ACA, among other things, imposes a significant annual fee on companies that manufacture or import branded prescription drug medicines. It also contains substantial provisions intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, and impose additional health policy reforms, any or all of which may affect our business. The ACA, compounded by the intense public scrutiny of drug pricing in the United States, is likely to continue the downward pressure on pharmaceutical pricing, especially under the Medicare program, and may also increase our regulatory burdens and operating costs. Other legislative changes have also been proposed and adopted since the ACA was enacted. For example, the Budget Control Act of 2011 resulted in aggregate reductions in Medicare payments to providers of up to 2 percent per fiscal year, starting in 2013, and the American Taxpayer Relief Act of 2012, among other things, reduced Medicare payments to several types of providers and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. Such laws, and others that may affect our business that have been recently enacted or may in the future be enacted, may result in additional reductions in Medicare and other healthcare funding. In the future, there will likely continue to be additional proposals relating to the reform of the U.S. healthcare system, some of which could further limit coverage and reimbursement of medicines, including our medicine candidates. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability or commercialize our medicines.

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Irish Law Matters

As a result of the Vidara Merger, the outstanding shares of the common stock of Horizon Pharma, Inc. were canceled and automatically converted into the right to receive our ordinary shares. As we are an Irish-incorporated company, the following matters of Irish law are relevant to the holders of our ordinary shares.

Irish Restrictions on Import and Export of Capital. Except as indicated below, there are no restrictions imposed specifically on non-residents of Ireland dealing in Irish domestic securities, which includes ordinary shares of Irish companies. Dividends and redemption proceeds also continue to be freely transferable to non-resident holders of such securities. The Financial Transfers Act 1992 gives power to the Minister for Finance of Ireland to restrict financial transfers between Ireland and other countries and persons. Financial transfers are broadly defined and include all transfers that would be movements of capital or payments within the meaning of the treaties governing the member states of the EU. The acquisition or disposal of interests in shares issued by an Irish incorporated company and associated payments falls within this definition. In addition, dividends or payments on redemption or purchase of shares and payments on a liquidation of an Irish incorporated company would fall within this definition. The Criminal Justice (Terrorist Offences) Act 2005 also gives the Minister of Finance of Ireland the power to take various measures, including the freezing or seizure of assets, in order to combat terrorism. At present the Financial Transfers Act 1992 and the Criminal Justice (Terrorist Offences) Act prohibits financial transfers involving the late Slobodan Milosevic and associated persons, Republic of Guinea-Bissau, Myanmar/Burma, Belarus, certain persons indicted by the International Criminal Tribunal for the former Yugoslavia, the late Osama bin Laden, Al-Qaeda, the Taliban of Afghanistan, Democratic Republic of Congo, Democratic People's Republic of Korea (North Korea), Iran, Iraq, Côte d'Ivoire, Lebanon, Liberia, Zimbabwe, Sudan, Somalia, Republic of Guinea, Afghanistan, Egypt, Eritrea, Libya, Syria, Tunisia, certain known terrorists and terrorist groups, and countries that harbor certain terrorist groups, without the prior permission of the Central Bank of Ireland or the Minister of Finance (as applicable).

Any transfer of, or payment in respect of, a share or interest in a share involving the government of any country that is currently the subject of United Nations sanctions, any person or body controlled by any of the foregoing, or by any person acting on behalf of the foregoing, may be subject to restrictions pursuant to such sanctions as implemented into Irish law.

Irish Taxes Applicable to U.S. Holders

Withholding Tax on Dividends. While we have no current plans to pay dividends, dividends on our ordinary shares would generally be subject to Irish Dividend Withholding Tax, or DWT, at the standard rate of income tax (currently 20 percent), unless an exemption applies.

Dividends on our ordinary shares that are owned by residents of the United States and held beneficially through the Depositary Trust Company, or DTC, will not be subject to DWT provided that the address of the beneficial owner of the ordinary shares in the records of the broker is in the United States.

Dividends on our ordinary shares that are owned by residents of the United States and held directly (outside of DTC) will not be subject to DWT provided that the shareholder has completed the appropriate Irish DWT form and this form remains valid. Such shareholders must provide the appropriate Irish DWT form to our transfer agent at least seven business days before the record date for the first dividend payment to which they are entitled.

If any shareholder who is resident in the United States receives a dividend subject to DWT, he or she should generally be able to make an application for a refund from the Irish Revenue Commissioners on the prescribed form.

While the U.S./Ireland Double Tax Treaty contains provisions regarding withholding, due to the wide scope of the exemptions from DWT available under Irish domestic law, it would generally be unnecessary for a U.S. resident shareholder to rely on the treaty provisions.

Income Tax on Dividends. A shareholder who is neither resident nor ordinarily resident in Ireland and who is entitled to an exemption from DWT generally has no additional liability to Irish income tax or to the universal social charge on a dividend from us unless that shareholder holds our ordinary shares through a branch or agency in Ireland through which a trade is carried on.
A shareholder who is neither resident nor ordinarily resident in Ireland and who is not entitled to an exemption from DWT generally has no additional liability to Irish income tax or to the universal social charge on a dividend from us. The DWT deducted by us discharges the liability to Irish income tax and to the universal social charge. This however is not the case where the shareholder holds the ordinary shares through a branch or agency in Ireland through which a trade is carried on.

Irish Tax on Capital Gains. A shareholder who is neither resident nor ordinarily resident in Ireland and does not hold our ordinary shares in connection with a trade or business carried on by such shareholder in Ireland through a branch or agency should not be within the charge to Irish tax on capital gains on a disposal of our ordinary shares.

Capital Acquisitions Tax. Irish capital acquisitions tax, or CAT, is composed principally of gift tax and inheritance tax. CAT could apply to a gift or inheritance of our ordinary shares irrespective of the place of residence, ordinary residence or domicile of the parties. This is because our ordinary shares are regarded as property situated in Ireland as our share register must be held in Ireland. The person who receives the gift or inheritance has primary liability for CAT.

CAT is levied at a rate of 33 percent above certain tax-free thresholds. The appropriate tax-free threshold is dependent upon (i) the relationship between the donor and the donee and (ii) the aggregation of the values of previous gifts and inheritances received by the donee from persons within the same category of relationship for CAT purposes. Gifts and inheritances passing between spouses are exempt from CAT. Our shareholders should consult their own tax advisers as to whether CAT is creditable or deductible in computing any domestic tax liabilities.

Stamp Duty. Irish stamp duty (if any) may become payable in respect of ordinary share transfers. However, a transfer of our ordinary shares from a seller who holds shares through DTC to a buyer who holds the acquired shares through DTC will not be subject to Irish stamp duty. A transfer of our ordinary shares (i) by a seller who holds ordinary shares outside of DTC to any buyer, or (ii) by a seller who holds the ordinary shares through DTC to a buyer who holds the acquired ordinary shares outside of DTC, may be subject to Irish stamp duty (currently at the rate of 1 percent of the price paid or the market value of the ordinary shares acquired, if greater). The person accountable for payment of stamp duty is the buyer or, in the case of a transfer by way of a gift or for less than market value, all parties to the transfer.

A shareholder who holds ordinary shares outside of DTC may transfer those ordinary shares into DTC without giving rise to Irish stamp duty provided that the shareholder would be the beneficial owner of the related book-entry interest in those ordinary shares recorded in the systems of DTC (and in exactly the same proportions) as a result of the transfer and at the time of the transfer into DTC there is no sale of those book-entry interests to a third party being contemplated by the shareholder. Similarly, a shareholder who holds ordinary shares through DTC may transfer those ordinary shares out of DTC without giving rise to Irish stamp duty provided that the shareholder would be the beneficial owner of the ordinary shares (and in exactly the same proportions) as a result of the transfer and at the time of the transfer out of DTC there is no sale of those ordinary shares to a third party being contemplated by the shareholder. In order for the share registrar to be satisfied as to the application of this Irish stamp duty treatment where relevant, the shareholder must confirm to us that the shareholder would be the beneficial owner of the related book-entry interest in those ordinary shares recorded in the systems of DTC (and in exactly the same proportions) as a result of the transfer and there is no agreement for the sale of the related book-entry interest or the ordinary shares or an interest in the ordinary shares, as the case may be, by the shareholder to a third party being contemplated.

Employees

As of December 31, 2015, we had approximately 750 full-time employees. Of our employees as of December 31, 2015, approximately 85 were engaged in development, regulatory and manufacturing activities, approximately 520 were engaged in sales and marketing and approximately 145 were engaged in administration, including business development, finance, legal, information systems, facilities and human resources. None of our employees is subject to a collective bargaining agreement. We consider our employee relations to be satisfactory.
Available Information

We make available free of charge on or through our internet website our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and all amendments to those reports as soon as reasonably practicable after such material is electronically filed with or furnished to the Securities and Exchange Commission. We also regularly post copies of our press releases as well as copies of presentations and other updates about our business on our website. Our internet address is www.horizonpharma.com. The information contained in or that can be accessed through our website is not part of this report. Information is also available through the Securities and Exchange Commission’s website at www.sec.gov or is available at the Securities and Exchange Commission’s Public Reference Room located at 100 F Street, NE, Washington DC, 20549. Information on the operation of the Public Reference Room is available by calling the Securities and Exchange Commission at 800-SEC-0330.

Item 1A. Risk Factors

Certain factors may have a material adverse effect on our business, financial condition and results of operations, and you should carefully consider them. Accordingly, in evaluating our business, we encourage you to consider the following discussion of risk factors in its entirety, in addition to other information contained in this report as well as our other public filings with the Securities and Exchange Commission.

Risks Related to Our Business and Industry

Our ability to generate revenues from our medicines is subject to attaining significant market acceptance among physicians, patients and healthcare payors.

Our current medicines, and other medicines or medicine candidates that we may develop or acquire, may not attain market acceptance among physicians, patients, healthcare payors or the medical community. We have a limited history of commercializing medicines and most of our medicines have not been on the market for an extensive period of time, which subjects us to numerous risks as we attempt to increase our market share. We believe that the degree of market acceptance and our ability to generate revenues from our medicines will depend on a number of factors, including:

- timing of market introduction of our medicines as well as competitive medicines;
- efficacy and safety of our medicines;
- continued projected growth of the markets in which our medicines compete;
- prevalence and severity of any side effects;
- if and when we are able to obtain regulatory approvals for additional indications for our medicines;
- acceptance by patients, primary care physicians and key specialists, including rheumatologists, orthopedic surgeons, pain specialists and specialists in pediatric immunology, allergy, infectious diseases and hematology/oncology;
- availability of coverage and adequate reimbursement and pricing from government and other third-party payors;
- potential or perceived advantages or disadvantages of our medicines over alternative treatments, including cost of treatment and relative convenience and ease of administration;
- strength of sales, marketing and distribution support;
- the price of our medicines, both in absolute terms and relative to alternative treatments;
- impact of past and limitation of future medicine price increases;
- our ability to maintain a continuous supply of medicine for commercial sale;
- the effect of current and future healthcare laws;
- the performance of third-party distribution partners, over which we have limited control; and
- medicine labeling or medicine insert requirements of the U.S. Food and Drug Administration, or FDA, or other regulatory authorities.
With respect to DUEXIS and VIMOVO, studies indicate that physicians do not commonly co-prescribe gastrointestinal, or GI, protective agents to high-risk patients taking nonsteroidal anti-inflammatory drugs, or NSAIDs. We believe this is due in part to a lack of awareness among physicians prescribing NSAIDs regarding the risk of NSAID-induced upper GI ulcers, in addition to the inconvenience of prescribing two separate medications and patient compliance issues associated with multiple prescriptions. If physicians remain unaware of, or do not otherwise believe in, the benefits of combining GI protective agents with NSAIDs, our market opportunity for DUEXIS and VIMOVO will be limited. Some physicians may also be reluctant to prescribe DUEXIS or VIMOVO due to the inability to vary the dose of ibuprofen and naproxen, respectively, or if they believe treatment with NSAIDs or GI protective agents other than those contained in DUEXIS and VIMOVO, including those of its competitors, would be more effective for their patients. With respect to each of DUEXIS, PENNSAID 2%, RAYOS/LODOTRA, VIMOVO and BUPHENYL, their higher cost compared to the generic or branded forms of their active ingredients alone may limit adoption by physicians, patients and healthcare payors. With respect to ACTIMMUNE, while it is the only FDA-approved treatment for chronic granulomatous disease, or CGD, and severe, malignant osteopetrosis, or SMO, they are very rare conditions and, as a result, our ability to grow ACTIMMUNE sales will depend on our ability to further penetrate this limited market and obtain marketing approval for additional indications. With respect to RAVICITL, which is also approved to treat a very limited patient population, our ability to grow sales will depend in large part on our ability to transition urea cycle disorder, or UCD, patients from BUPHENYL or generic equivalents, which are comparatively much less expensive, to RAVICITL. With respect to KRYSTEXXA, our ability to grow sales will be affected by the success of our sales and marketing strategies and life cycle management, including studies designed to test reduction of immunogenicity in KRYSTEXXA which could expand the patient population and usage of KRYSTEXXA. With respect to MIGERGOT, our ability to sustain sales will depend on the management of inventory levels and the continued awareness of its benefits among physicians. If our current medicines or any other medicine that we may seek approval for or acquire fail to attain market acceptance, we may not be able to generate significant revenue to achieve or sustain profitability, which would have a material adverse effect on our business, results of operations, financial condition and prospects (including, possibly, the value of our ordinary shares).

Our future prospects are highly dependent on our ability to successfully formulate and execute commercialization strategies for each of our medicines. Failure to do so would adversely impact our financial condition and prospects.

A substantial majority of our resources are focused on the commercialization of our current medicines. Our ability to generate significant medicine revenues and to achieve commercial success in the near-term will initially depend almost entirely on our ability to successfully commercialize these medicines in the United States. While DUEXIS has been approved for marketing in the United Kingdom, or U.K., it is not approved in any other countries in Europe and we do not expect the opportunity for DUEXIS in Europe to be material. Furthermore, the marketing approval in the U.K. will expire in March 2016 and we do not intend to renew this approval. Therefore, we expect that our ability to successfully commercialize DUEXIS will depend on our sales and marketing efforts in the United States. Following our acquisition of the U.S. rights to VIMOVO in November 2013 and PENNSAID 2% in October 2014, our strategy has included bringing both medicines’ pricing in-line with DUEXIS and other branded NSAIDs, thereby significantly increasing the value we realize per prescription, and also increasing sales and marketing support to drive volume growth in prescriptions. We cannot guarantee that this strategy will continue to be effective generally, due to negative reactions to price increases or otherwise. Our strategy for RAYOS is to solely focus on the rheumatology indications approved for RAYOS where our Phase 3 clinical trial data supports our commercial plans. Our strategy with respect to ACTIMMUNE includes pursuing label expansion for additional indications, such as Friedrich’s ataxia, or FA, and price increases but we cannot be certain that our pricing strategy will not result in downward pressure on sales or that we will be able to successfully complete clinical trials and obtain regulatory approvals in additional indications. Although LODOTRA is approved for marketing in more than 35 countries outside the United States, to date it has only been marketed in a limited number of countries. While we anticipate that LODOTRA will be marketed in additional countries as our distribution partner, Mundipharma International Corporation Limited, or Mundipharma, formulates its reimbursement strategy, the ability to market LODOTRA in additional countries will depend on Mundipharma’s ability to obtain reimbursement approvals in these countries.
Our strategy with respect to RAVICTI includes accelerating the transition of UCD patients from BUPHENYL or generic equivalents to RAVICTI, increasing the diagnosis of UCD and treatment of untreated UCD patients through patient and physician outreach, and increasing the price of the medicine. Part of our success in our strategy will be obtaining favorable results from an on-going study of the use of RAVICTI to treat UCD in patients less than two years of age, the timely submission of a supplemental new drug application and approval of RAVICTI for the treatment in UCD in patients less than two years of age, and we cannot guarantee that any of these events will occur on our anticipated timeline or at all. In November 2015, we received approval of the Committee for Medicinal Products for Human Use of the European Medicines Agency, or EMA, for RAVICTI for use as an adjunctive therapy for chronic management of adult and pediatric UCD patients greater than two months of age. This authorizes us to market RAVICTI in all 28 Member States of the European Union, or EU, and will form the basis for recognition by the Member States of the European Economic Area, namely Norway, Iceland and Liechtenstein, for the medicine to be placed on the market. While we expect to commercially launch RAVICTI in Europe in 2017, we cannot guarantee we will be able to successfully implement our commercial plans for RAVICTI in Europe. Our strategy with respect to KRYSTEXXA includes the expansion of our salesforce to approximately 80 rheumatology sales specialists, the planned enhancement of the KRYSTEXXA marketing campaign with improved immunogenicity data, continued volume growth and pricing optimization.

In order to increase adoption and sales of our medicines, we will need to continue developing our commercial organization as well as recruit and retain qualified sales representatives.

Part of our strategy is to continue to build a biopharmaceutical company to successfully execute the commercialization of our medicines in the U.S. market, and in selected markets in Europe where we have commercial rights. We may not be able to successfully commercialize our medicines in the United States or in any other territories where we have commercial rights. Prior to our commercial launch of DUEXIS in the United States in December 2011, we did not have any experience commercializing medicines on our own. In order to commercialize any approved medicines, we must continue to build our sales, marketing, distribution, managerial and other non-technical capabilities. Although we had expanded our sales force to approximately 395 sales representatives as of December 31, 2015, consisting of approximately 15 orphan disease sales representatives, 340 primary care sales representatives and 40 rheumatology sales specialists, we currently have limited resources compared to some of our competitors, and the continued development of our own commercial organization to market our medicines and any additional medicines we may acquire will be expensive and time-consuming. We also cannot be certain that we will be able to continue to successfully develop this capability.

As a result of the evolving role of various constituents in the prescription decision making process, we adjusted the profile of the sales representatives we hire for our primary care and rheumatology business units from those with traditional pharmaceutical sales experience to those with successful business to business experience. For example, we have faced challenges due to pharmacists increasingly switching a patient’s intended prescription from DUEXIS and VIMOVO to a generic or over-the-counter brand of their active ingredients. We have faced similar challenges for RAYOS, BUPHENYL and PENNSAID 2% with respect to generic brands. While we believe the profile of our representatives is better suited for this evolving environment, we cannot be certain that our representatives will be able to successfully protect our market for DUEXIS, PENNSAID 2%, RAYOS, MIGERGOT and VIMOVO or that we will be able to continue attracting and retaining sales representatives with our desired profile and skills. We will also have to compete with other pharmaceutical and biotechnology companies to recruit, hire, train and retain commercial personnel. To the extent we rely on additional third parties to commercialize any approved medicines, we may receive less revenue than if we commercialized these medicines ourselves. In addition, we may have little or no control over the sales efforts of any third parties involved in our commercialization efforts. In the event we are unable to successfully develop and maintain our own commercial organization or collaborate with a third-party sales and marketing organization, we may not be able to commercialize our medicines and medicine candidates and execute on our business plan.
If we are unable to effectively train and equip our sales force, our ability to successfully commercialize our medicines in the United States will be harmed.

As we recently acquired additional medicines through acquisition transactions, the members of our sales force may have limited experience promoting these medicines. To the extent we have retained the sales forces promoting recently-acquired medicines, we may not be successful in continuing to retain these employees and we otherwise have limited experience marketing these medicines under our commercial organization. As a result, we are required to expend significant time and resources to train our sales force to be credible and persuasive in convincing physicians to prescribe and pharmacists to dispense our medicines. In addition, we must train our sales force to ensure that a consistent and appropriate message about our medicines is being delivered to our potential customers. Our sales representatives may also experience challenges promoting multiple medicines when we call on physicians and their office staff. We have experienced, and may continue to experience, turnover of the sales representatives that we hired or will hire, requiring us to train new sales representatives. If we are unable to effectively train our sales force and equip them with effective materials, including medical and sales literature to help them inform and educate physicians about the benefits of our medicines and their proper administration and label indication, as well as our access programs, our efforts to successfully commercialize our medicines could be put in jeopardy, which could have a material adverse effect on our financial condition, share price and operations.

If we cannot successfully implement our patient access programs in the face of increasing pressure to reduce the price of medications, the adoption of our medicines by physicians, patients and payors may decline.

There continues to be immense pressure from healthcare payors and pharmacy benefit managers, or PBMs, to use less expensive generics or over-the-counter brands instead of branded medicines. For example, two of the largest PBMs have placed DUEXIS and VIMOVO on their formulary exclusion lists. Additional healthcare plans, including those that contract with these PBMs but use different formularies, may also choose to exclude our medicines from their formularies or restrict coverage to situations where a generic or over-the-counter medicine has been tried first. Many payors and PBMs also require patients to make co-payments for branded medicines, including many of our medicines, in order to incentivize the use of generic or other lower-priced alternatives instead. Legislation enacted in most states in the United States allows or, in some instances mandates, that a pharmacist dispense an available generic equivalent when filling a prescription for a branded medicine, in the absence of specific instructions from the prescribing physician. Because our medicines (other than BUPHENYL) do not currently have FDA-approved generic equivalents in the United States, we do not believe our medicines should be subject to mandatory generic substitution laws. However we understand that some pharmacies may attempt to obtain physician authorization to switch prescriptions for DUEXIS or VIMOVO to prescriptions for multiple generic medicines with similar active pharmaceutical ingredients, or APIs, to ensure payment for the medicine if the physician’s prescription for the branded medicine is not immediately covered by the payor, despite such substitution being off-label in the case of DUEXIS. If these limitations in coverage and other incentives result in patients refusing to fill prescriptions or being dissatisfied with the out-of-pocket costs of their medications, or if pharmacies otherwise seek and receive physician authorization to switch prescriptions, not only would we lose sales on prescriptions that are ultimately not filled, but physicians may be dissuaded from writing prescriptions for our medicines in the first place in order to avoid potential patient non-compliance or dissatisfaction over medication costs, or to avoid spending the time and effort of responding to pharmacy requests to switch prescriptions.

A part of our commercial strategy to increase adoption and access to our medicines in the face of these incentives to use generic alternatives is to offer physicians to have their patients fill their prescriptions through independent pharmacies participating in our HorizonCares access program. Through HorizonCares, financial assistance may be available to reduce eligible patient’s out-of-pocket costs for prescriptions filled. Because of this assistance, the eligible patient’s out-of-pocket cost for our medicines when dispensed through HorizonCares may be significantly lower than such costs when our medicines are dispensed outside of the HorizonCares program. However, to the extent physicians do not direct prescriptions currently filled through traditional pharmacies, including those associated with or controlled by PBMs, to pharmacies participating in our HorizonCares program, we may experience a significant decline in DUEXIS, VIMOVO and PENNSAID 2% prescriptions as a result of formulary exclusions, co-payment requirements or other incentives to use cheaper alternatives to our medicines. Our ability to increase utilization of our access programs will depend on physician and patient awareness and comfort with the programs, and we have limited ability to influence whether physicians use our access programs to prescribe our medicines or whether patients will agree to receive our medicines through the HorizonCares program. In addition, the HorizonCares program is not available to federal health care program (such as Medicare and Medicaid) beneficiaries. If we are unable to increase adoption of HorizonCares for filling prescriptions of our medicines, our ability to maintain or increase prescriptions for our medicines could be impaired.
There has been recent negative publicity regarding the use of specialty pharmacies and drug pricing. Our patient access programs are not involved in the prescribing of medicines, and are solely to assist in ensuring that when a physician determines one of our medicines offers a potential clinical benefit to their patients and they prescribe one for an eligible patient, financial assistance may be available to reduce the patient’s out-of-pocket costs. In addition, all pharmacies that fill prescriptions for our medicines are fully independent, including those that participate in HorizonCares. We do not own or possess any option to purchase an ownership stake in any pharmacy that distributes our medicines, and our relationship with each pharmacy is non-exclusive and arm’s length. All of our sales are processed through pharmacies independent of the Company. Despite this, the recent negative publicity regarding specialty pharmacies may result in physicians being less willing to participate in our patient access programs and thereby limit our ability to increase patient access and adoption of our medicines.

We may also encounter difficulty in forming and maintaining relationships with pharmacies that participate in our patient access programs. We currently depend on a limited number of pharmacies participating in HorizonCares to fulfill patient prescriptions under the HorizonCares program. If these HorizonCares participating pharmacies are unable to process and fulfill the volume of patient prescriptions directed to them under the HorizonCares program, our ability to maintain or increase prescriptions for our medicines will be impaired. The commercialization of our medicines and our operating results could be affected should any of the HorizonCares participating pharmacies choose not to continue participation in our HorizonCares program or by any adverse events at any of those HorizonCares participating pharmacies. For example, pharmacies that dispense our medicines could lose contracts that they currently maintain with managed care organizations, or MCOs, including PBMs. Pharmacies often enter into agreements with MCOs. They may be required to abide by certain terms and conditions to maintain access to MCO networks, including terms and conditions that could limit their ability to participate in patient access programs like ours. Failure to comply with the terms of their agreements with MCOs could result in a variety of penalties, including termination of their agreement, which could negatively impact the ability of those pharmacies to dispense our medicines and collect reimbursement from MCOs for such medicines.

The HorizonCares program may implicate certain state laws related to, among other things, unlawful schemes to defraud, excessive fees for services, tortious interference with patient contracts and statutory or common law fraud. We have a compliance program in place to address adherence with various laws and regulations relating to the selling, marketing, and manufacturing of our medicines, as well as certain third-party relationships, including pharmacies. Specifically with respect to pharmacies, the compliance program utilizes a variety of methods and tools to monitor and audit pharmacies, including those that participate in the HorizonCares program, to confirm their activities, adjudication and practices are consistent with our compliance policies and guidance. Despite our compliance efforts, to the extent the HorizonCares program is found to be inconsistent with applicable laws or the pharmacies that participate in our patient access programs do not comply with applicable laws, we may be required to restructure or discontinue such programs, terminate our relationship with certain pharmacies, or be subject to other significant penalties. In November 2015, we received a subpoena from the U.S. Attorney’s Office for the Southern District of New York requesting documents and information related to our patient assistance programs and other aspects of our marketing and commercialization activities. We are unable to predict how long this investigation will continue or its outcome, but we anticipate that we may incur significant costs in connection with the investigation, regardless of the outcome. We may also become subject to similar investigations by other governmental agencies. The investigation by the U.S. Attorney’s Office and any additional investigations of our patient assistance programs may result in damages, fines, penalties or other administrative sanctions against us.

Even if we are successful in increasing the use of our patient access programs, these programs may become too costly for us to maintain if we are unable to maintain or enhance payor reimbursement of our medicines. The aggregate commercial value of our patient access programs for the year ended December 31, 2015 was approximately $1,020 million. If additional formularies place our medicines on their exclusion lists or increase the co-payments applicable to our medicines, our cost of ensuring that patients have low-cost access to our medicines will increase and our profitability could decline. If the cost of maintaining our patient access programs increases relative to our sales revenues, we could be forced to reduce the amount of patient financial assistance that we offer or otherwise scale back or eliminate such programs, which could in turn have a negative impact on physicians’ willingness to prescribe and patients’ willingness to fill prescriptions of our medicines.

If we are unable to successfully implement our commercial plans and facilitate adoption by patients and physicians of any approved medicines through our sales, marketing and commercialization efforts then we will not be able to generate sustainable revenues from medicine sales which will have a material adverse effect on our business and prospects.
We are solely dependent on third parties to commercialize certain of our medicines outside the United States. Failure of these third parties or any other third parties to successfully commercialize our medicines and medicine candidates in the applicable jurisdictions could have a material adverse effect on our business.

We rely on Mundipharma for commercialization of LODOTRA in various European countries and certain Asian, Latin American, Middle Eastern, African and other countries. We rely on other third-party distributors for commercialization of BUPHENYL in certain territories outside the United States for which we currently have rights. We have limited contractual rights to force these third parties to invest significantly in commercialization of LODOTRA or BUPHENYL in our markets. In the event that Mundipharma, our current ex-U.S. distributors for BUPHENYL, or any other third-party with any future commercialization rights to any of our medicines or medicine candidates fail to adequately commercialize those medicines or medicine candidates because they lack adequate financial or other resources, decide to focus on other initiatives or otherwise, our ability to successfully commercialize our medicines or medicine candidates in the applicable jurisdictions would be limited, which would adversely affect our business, financial condition, results of operations and prospects. We have had disagreements with Mundipharma under our European agreements and may continue to have disagreements, which could harm commercialization of LODOTRA in Europe or result in the termination of our agreements with Mundipharma. We also rely on Mundipharma’s ability to obtain regulatory approval for LODOTRA in certain Asian, Latin American, Middle Eastern, African and other countries. In addition, our agreements with Mundipharma and our agreements with our current ex-U.S. distributors for BUPHENYL may be terminated by either party in the event of a bankruptcy of the other party or upon an uncured material breach by the other party. If these third parties terminated their agreements, we may not be able to secure an alternative distributor in the applicable territory on a timely basis or at all, in which case our ability to generate revenues from the sale of LODOTRA or BUPHENYL outside the United States would be materially harmed.

Our medicines are subject to extensive regulation, and we may not obtain additional regulatory approvals for our medicines.

The clinical development, manufacturing, labeling, packaging, storage, recordkeeping, advertising, promotion, export, marketing and distribution and other possible activities relating to our medicines and our medicine candidates are, and will be, subject to extensive regulation by the FDA and other regulatory agencies. Failure to comply with FDA and other applicable regulatory requirements may, either before or after medicine approval, subject us to administrative or judicially imposed sanctions.

To market any drugs or biologics outside of the United States, we and current or future collaborators must comply with numerous and varying regulatory and compliance related requirements of other countries. Approval procedures vary among countries and can involve additional medicine testing and additional administrative review periods, including obtaining reimbursement and pricing approval in select markets. The time required to obtain approval in other countries might differ from that required to obtain FDA approval. The regulatory approval process in other countries may include all of the risks associated with FDA approval as well as additional, presently unanticipated, risks. Regulatory approval in one country does not ensure regulatory approval in another, but a failure or delay in obtaining regulatory approval in one country may negatively impact the regulatory process in others.

Applications for regulatory approval, including a marketing authorization application for marketing new drugs in Europe, must be supported by extensive clinical and preclinical data, as well as extensive information regarding chemistry, manufacturing and controls, or CMC, to demonstrate the safety and effectiveness of the applicable medicine candidate. The number and types of preclinical studies and clinical trials that will be required for regulatory approval varies depending on the medicine candidate, the disease or the condition that the medicine candidate is designed to target and the regulations applicable to any particular medicine candidate. Despite the time and expense associated with preclinical and clinical studies, failure can occur at any stage, and we could encounter problems that cause us to repeat or perform additional preclinical studies, CMC studies or clinical trials. Regulatory authorities could delay, limit or deny approval of a medicine candidate for many reasons, including because they:

- may not deem a medicine candidate to be adequately safe and effective;
- may not find the data from preclinical studies, CMC studies and clinical trials to be sufficient to support a claim of safety and efficacy;
- may interpret data from preclinical studies, CMC studies and clinical trials significantly differently than we do;
- may not approve the manufacturing processes or facilities associated with our medicine candidates;
- may conclude that we have not sufficiently demonstrated long-term stability of the formulation for which we are seeking marketing approval;
may change approval policies (including with respect to our medicine candidates’ class of drugs) or adopt new regulations; or
may not accept a submission due to, among other reasons, the content or formatting of the submission.

Even if we believe that data collected from our preclinical studies, CMC studies and clinical trials of our medicine candidates are promising and that our information and procedures regarding CMC are sufficient, our data may not be sufficient to support marketing approval by regulatory authorities, or regulatory interpretation of these data and procedures may be unfavorable. Even if approved, medicine candidates may not be approved for all indications requested and such approval may be subject to limitations on the indicated uses for which the medicine may be marketed, restricted distribution methods or other limitations. Our business and reputation may be harmed by any failure or significant delay in obtaining regulatory approval for the sale of any of our medicine candidates. We cannot predict when or whether regulatory approval will be obtained for any medicine candidate we develop.

While we anticipate that LODOTRA will be marketed in additional countries as Mundipharma formulates its reimbursement strategy, the ability to market LODOTRA in additional countries will depend on Mundipharma’s ability to obtain regulatory and reimbursement approvals in these countries.

Hyperion Therapeutics Inc., or Hyperion, submitted a New Drug Submission, or NDS, to Health Canada, or HC, for approval to market RAVICTI in Canada. However, in January 2015, Lucane Pharma, or Lucane, announced that it had received approval from HC to market its taste-masked NaPBA granules in Canada. It is our understanding that in Canada only the first phenylbutyrate-containing medicine approved for any indication receives “data protection” which is similar to “orphan drug exclusivity” in the United States. On May 1, 2015, Hyperion was notified by Health Canada that RAVICTI was not eligible for data protection. On May 20, 2015, Horizon appealed Health Canada’s decision to the Federal Court of Canada. On February 22, 2016, we announced that the Therapeutic Products Directorate of Health Canada had determined that RAVICTI is eligible for data protection as it is an “innovative drug”. Regardless of this decision, which is subject to final review, we cannot be assured that the NDS to market RAVICTI in Canada will be approved nor can we be certain of the timelines for regulatory decisions to be made. If we are unable to obtain approvals for RAVICTI outside the United States and Europe or determine that commercializing RAVICTI outside the United States and Europe is not economically viable, the market potential of RAVICTI will be limited.

Our limited history of commercial operations makes evaluating our business and future prospects difficult, and may increase the risk of any investment in our ordinary shares.

We face considerable risks and difficulties as a company with limited commercial operating history, particularly as a global consolidated entity with operating subsidiaries that also have limited operating histories. If we do not successfully address these risks, our business, prospects, operating results and financial condition will be materially and adversely harmed. Our limited commercial operating history, including our limited history commercializing our current medicines, makes it particularly difficult for us to predict our future operating results and appropriately budget for our expenses. In the event that actual results differ from our estimates or we adjust our estimates in future periods, our operating results and financial position could be materially affected. For example, we may underestimate the resources we will require to successfully integrate recent or future medicine or company acquisitions, or to commercialize our medicines, or not realize the benefits we expect to derive from our recent or future acquisitions. In addition, we have a limited history implementing our commercialization strategy focused on patient access, and cannot guarantee that we will be able to successfully implement this strategy or that it will represent a viable strategy over the long-term.
We have certain rights to ACTIMMUNE, PENNSAID 2% and VIMOVO but have no control over the activities of Boehringer Ingelheim to commercialize ACTIMMUNE, which they market as IMUKIN, outside the United States, Canada and Japan, AstraZeneca AB, or AstraZeneca, to commercialize VIMOVO outside of the United States, Swedish Orphan Biovitrum AB to commercialize BUPHENYL, also known as AMMONAPS, in Europe, certain Asian, Latin American, Middle East, North African and other countries, or Nuvo Research Inc., or Nuvo, or its licensees to commercialize PENNSAID 2% outside the United States, which could adversely impact commercialization of ACTIMMUNE, PENNSAID 2%, BUPHENYL and VIMOVO in the United States.

Boehringer Ingelheim RCV GmbH & Co. KG, or Boehringer Ingelheim, has rights to commercialize ACTIMMUNE, known as IMUKIN, outside the United States, Canada and Japan, and AstraZeneca has retained its existing rights to VIMOVO in territories outside of the United States, including the right to use the VIMOVO name and related trademark. While we have the worldwide rights to BUPHENYL, the marketing and distribution rights are licensed to Swedish Orphan Biovitrum AB, or SOBI, through the end of 2016. Similarly, Nuvo has retained its rights to PENNSAID 2% in territories outside of the United States and has announced its intention to seek commercialization partners outside the United States. We have little or no control over Boehringer Ingelheim’s activities with respect to IMUKIN outside the United States, Canada and Japan, over AstraZeneca’s activities with respect to VIMOVO outside of the United States, over SOBI’s activities with respect to BUPHENYL in Europe, certain Asian, Latin American, Middle East, North African and other countries or over Nuvo’s or its future commercial partners’ activities with respect to PENNSAID 2% outside of the United States, even though those activities could impact our ability to successfully commercialize ACTIMMUNE, PENNSAID 2%, BUPHENYL and VIMOVO in the United States. For example, Nuvo or its assignees or AstraZeneca or its assignees can make statements or use promotional materials with respect to PENNSAID 2% or VIMOVO, respectively, outside of the United States that are inconsistent with our positioning of the medicines in the United States, and could sell PENNSAID 2% or VIMOVO, respectively, in foreign countries, including Canada, at prices that are dramatically lower than the prices we charge in the United States. These activities and decisions, while occurring outside of the United States, could harm our commercialization strategy in the United States, in particular because AstraZeneca is continuing to market VIMOVO outside the United States under the same VIMOVO brand name that we are using in the United States. In addition, medicine recalls or safety issues with ACTIMMUNE, PENNSAID 2%, BUPHENYL or VIMOVO outside the United States, even if not related to the commercial medicine we sell in the United States, could result in serious damage to the brand in the United States and impair our ability to successfully market ACTIMMUNE, PENNSAID 2%, BUPHENYL and VIMOVO. We also rely on Boehringer Ingelheim, Nuvo, SOBI and AstraZeneca or their assignees to provide us with timely and accurate safety information regarding the use of ACTIMMUNE, PENNSAID 2%, BUPHENYL or VIMOVO, respectively, outside of the United States (and outside of Canada and Japan with regards to Boehringer Ingelheim), as we have or will have limited access to this information ourselves.

We rely on third parties to manufacture commercial supplies of all of our medicines, and we currently intend to rely on third parties to manufacture commercial supplies of any other approved medicines. The commercialization of any of our medicines could be stopped, delayed or made less profitable if those third parties fail to provide us with sufficient quantities of medicine or fail to do so at acceptable quality levels or prices or fail to maintain or achieve satisfactory regulatory compliance.

The facilities used by our third-party manufacturers to manufacture our medicines and medicine candidates must be approved by the applicable regulatory authorities. We do not control the manufacturing processes of third-party manufacturers and are currently completely dependent on our third-party manufacturing partners. In addition, we are required to obtain AstraZeneca’s consent prior to engaging any third-party manufacturers for esomeprazole, one of the APIs in VIMOVO, other than the third-party manufacturer(s) used by AstraZeneca or its affiliates or licensees. To the extent such manufacturers are unwilling or unable to manufacture esomeprazole for us on commercially acceptable terms, we cannot guarantee that AstraZeneca would consent to our use of alternate sources of supply.
We rely on an exclusive supply agreement with Boehringer Ingelheim for manufacturing and supply of ACTIMMUNE. However, Boehringer Ingelheim also manufactures interferon gamma-1 b to supply its own commercial needs in its licensed territory, and this may lead to capacity allocation issues and supply constraints to our company. Furthermore, ACTIMMUNE is manufactured by starting with cells from working cell bank samples which are derived from a master cell bank. We and Boehringer Ingelheim separately store multiple vials of the master cell bank. In the event of catastrophic loss at our or Boehringer Ingelheim’s storage facility, it is possible that we could lose multiple cell banks and have the manufacturing capacity of ACTIMMUNE severely impacted by the need to substitute or replace the cell banks. In addition, a key excipient used in PENNSAID 2% as a penetration enhancer is dimethyl sulfoxide, or DMSO. We and Nuvo, our exclusive supplier of PENNSAID 2%, rely on a sole proprietary form of DMSO for which we maintain a substantial safety stock. However, should this supply become inadequate, damaged, destroyed or unusable, we and Nuvo may not be able to qualify a second source. We rely on NOF Corporation, or NOF, as our exclusive supplier of the pegylation agent that is a critical raw material in the manufacture of KRYSTEXXA. If NOF failed to supply such pegylation agent, it may lead to KRYSTEXXA supply constraints.

If any of our third-party manufacturers cannot successfully manufacture material that conforms to our specifications and the applicable regulatory authorities’ strict regulatory requirements, or pass regulatory inspection, they will not be able to secure or maintain regulatory approval for the manufacturing facilities. In addition, we have no control over the ability of third-party manufacturers to maintain adequate quality control, quality assurance and qualified personnel. If the FDA or any other applicable regulatory authorities do not approve these facilities for the manufacture of our medicines or if they withdraw any such approval in the future, or if our suppliers or third-party manufacturers decide they no longer want to supply our primary active ingredients or manufacture our medicines, we may need to find alternative manufacturing facilities, which would significantly impact our ability to develop, obtain regulatory approval for or market our medicines. To the extent any third-party manufacturers that we engage with respect to our medicines are different from those currently being used for commercial supply in the United States, the FDA will need to approve the facilities of those third-party manufacturers used in the manufacture of our medicines prior to our sale of any medicine using these facilities.
Although we have entered into supply agreements for the manufacture of our medicines, our manufacturers may not perform as agreed or may terminate their agreements with us. Under our manufacturing and supply agreement with Sanofi-aventis U.S. LLC, or Sanofi, either we or Sanofi may terminate the agreement upon an uncured breach by the other party or without cause upon two years prior written notice. Under our master manufacturing services and medicine agreement with Patheon Pharmaceuticals Inc., or Patheon, for finished VIMOVO medicine, either we or Patheon may terminate the agreement for an uncured material breach by the other party or upon the other party’s bankruptcy or insolvency. Under our manufacturing and supply agreement with Jagotec AG, or Jagotec, either we or Jagotec may terminate the agreement in the event of an insolvency, liquidation or bankruptcy of the other party or upon an uncured breach by the other party. While we have the right to receive a continuing supply of RAYOS/LODOTRA from Jagotec for a period of 24 months after termination, we would need to move our manufacturing to our alternate supplier of RAYOS/LODOTRA, Bayer Pharma AG, in such an event and we would have to qualify a new back-up manufacturer. The initial term of our supply agreement with Nuvo for PENNSAID 2% is through December 31, 2022, but the agreement may be terminated earlier by either party for any uncured material breach by the other party or of its obligations under the supply agreement or upon the bankruptcy or similar proceeding of the other party. With respect to BUPHENYL, our supply agreement with Pharmaceutics International, Inc., or PII, is in place until April 1, 2017, however, the agreement may be terminated earlier by either party. The term of our manufacturing agreement with Halo Pharmaceutical, Inc. for RAVICTI runs until July 4, 2018, however, the agreement may be terminated earlier in the case of breach by either party if the other party is in material breach of any provision of the agreement and the other party fails to remedy such a breach within thirty days, or by us at any time for any reason. Our master services agreement with Lyne Laboratories, Inc., or Lyne, for RAVICTI runs until February 1, 2016, with provision for 12 monthly auto renewals thereafter, unless 6 months’ written notice is provided by either party. As neither party has given 6 months’ notice this contract will auto-renew until February 1, 2017. The agreement may be terminated earlier, on 30 days’ notice, in case of breach by either party. Our manufacturing and supply agreement with Bio-Technology General (Israel) Ltd., or BTG Israel, for KRYSTEXXA bulk medicine terminates on December 15, 2018, and we are seeking a new manufacturer. Under the terms of the agreement BTG Israel has the obligation to convey all the know-how, licensed improvements, and other information related to the processing of the bulk medicine sufficient to enable us to manufacture the medicine. BTG Israel also has an obligation not to compete against KRYSTEXXA for a period of 30 months subsequent to the termination of the agreement. If we determine to move the manufacture of the bulk medicine out of Israel, we may be required to obtain the approval of the Office of the Chief Scientist (Israel), or OCS, because certain KRYSTEXXA intellectual property was developed with a grant funded by OCS. Under the terms of our agreement, BTG Israel must help us obtain such consent, but we can provide no assurance that the OCS will grant us approval to move the manufacturing outside of Israel. If we are unable to obtain such consent and we do not select a different supplier located in Israel, we may be required to pay additional amounts as repayment for the OCS grant funding. We rely on safety stock to mitigate the risk of our current suppliers electing to cease producing bulk drug medicine or ceasing to do so at acceptable prices and quality. However, we can provide no assurance that such safety stocks would be sufficient to avoid supply shortfalls in the event we have to identify and qualify new contract manufacturers.

In addition, we do not have the capability to package any of our medicines for distribution. Under our master manufacturing services agreement with Patheon, we have entered into a medicine agreement for packaging of RAYOS/LODOTRA. Valeant Pharmaceuticals International, Inc. manufactures and supplies DUEXIS to us in final, packaged form for the United States as well as any additional countries as may be agreed to by the parties. Patheon supplies final, packaged VIMOVO medicine pursuant to the master manufacturing services and product agreement we executed in connection with our acquisition of the U.S. rights to VIMOVO. Boehringer Ingelheim supplies final, packaged ACTIMMUNE to us and Nuvo is obligated to supply final, packaged PENNSAID 2% to us, in each case under exclusive supply agreements. We have clinical and commercial supplies of BUPHENYL finished medicine manufactured for us by PII on a purchase order basis. We have clinical and commercial supplies of RAVICTI finished drug medicine manufactured by Lyne under a commercial supply agreement and have an agreement in place with Halo Pharmaceutical, Inc. to serve as a finished drug medicine supplier for RAVICTI in the EU. Sigma Tau PharmaSource Inc. supplies final, packaged KRYSTEXXA to us for the United States. G & W Laboratories, Inc. manufactures and supplies MIGERGOT to us in final, packaged form for the United States.
The manufacture of medicines requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of medicines often encounter difficulties in production, particularly in scaling up and validating initial production. These problems include difficulties with production costs and yields, quality control, including stability of the medicine, quality assurance testing, shortages of qualified personnel, as well as compliance with strictly enforced federal, state and foreign regulations. Furthermore, if microbial, viral or other contaminations are discovered in the medicines or in the manufacturing facilities in which our medicines are made, such manufacturing facilities may need to be closed for an extended period of time to investigate and remedy the contamination. We cannot assure you that issues relating to the manufacture of any of our medicines will not occur in the future. Additionally, our manufacturers may experience manufacturing difficulties due to resource constraints or as a result of labor disputes or unstable political environments. If our manufacturers were to encounter any of these difficulties, or otherwise fail to comply with their contractual obligations, our ability to commercialize our medicines in the United States or provide any medicine candidates to patients in clinical trials would be jeopardized.

Any delay or interruption in our ability to meet commercial demand for our medicines will result in the loss of potential revenues and could adversely affect our ability to gain market acceptance for these medicines. In addition, any delay or interruption in the supply of clinical trial supplies could delay the completion of clinical trials, increase the costs associated with maintaining clinical trial programs and, depending upon the period of delay, require us to commence new clinical trials at additional expense or terminate clinical trials completely.

Failures or difficulties faced at any level of our supply chain could materially adversely affect our business and delay or impede the development and commercialization of any of our medicines or medicine candidates and could have a material adverse effect on our business, results of operations, financial condition and prospects.

We have experienced recent growth and expanded the size of our organization substantially in connection with our recent acquisition transactions, and we may experience difficulties in managing this growth as well as potential additional growth in connection with future medicine or company acquisitions.

As of December 31, 2010 and prior to the commercial launch of DUEXIS, we employed approximately 40 full-time employees as a consolidated entity. As of December 31, 2015, we employed approximately 750 full-time employees, including approximately 395 sales representatives, representing a substantial change to the size of our organization over a relatively short period of time. We have also experienced, and may continue to experience, turnover of the sales representatives that we hired or will hire in connection with the commercialization of our medicines, requiring us to hire and train new sales representatives. Our management, personnel, systems and facilities currently in place may not be adequate to support this recent and anticipated growth, and we may not be able to retain or recruit qualified personnel in the future due to competition for personnel among pharmaceutical businesses.

As our commercialization plans and strategies continue to develop, we will need to continue to recruit and train sales and marketing personnel and expect to need to expand the size of our employee base for managerial, operational, financial and other resources as a result of our recent acquisitions. Our ability to manage any future growth effectively may require us to, among other things:

- continue to manage and expand the sales and marketing efforts for our existing medicines;
- enhance our operational, financial and management controls, reporting systems and procedures;
- expand our international resources;
- successfully identify, recruit, hire, train, maintain, motivate and integrate additional employees;
- establish and increase our access to commercial supplies of our medicines and medicine candidates;
- expand our facilities and equipment; and
- manage our internal development efforts effectively while complying with our contractual obligations to licensors, licensees, contractors, collaborators, distributors and other third parties.
In particular, the merger of our business with the business of Vidara Therapeutics International plc, or Vidara, is subject to numerous uncertainties and risks and will continue to require significant efforts and expenditures. For example, we have transitioned from a standalone public Delaware corporation to being part of a combined company organized in Ireland. This combination as well as our other recent acquisitions have resulted in many changes, including significant changes in the corporate business and legal entity structure, the integration of other companies and their personnel with us, and changes in systems. We are currently undertaking numerous complex transition activities associated with our recent acquisitions, and we may encounter unexpected difficulties or incur unexpected costs, including:

- difficulties in achieving growth prospects from combining third party businesses with our business;
- difficulties in the integration of operations and systems;
- difficulties in the assimilation of employees and corporate cultures;
- challenges in preparing financial statements and reporting timely results at both a statutory level for multiple entities and jurisdictions and at a consolidated level for public reporting;
- challenges in keeping existing physician prescribers and patients and increasing adoption of acquired medicines;
- difficulties in achieving anticipated cost savings, synergies, business opportunities and growth prospects from the combination;
- potential unknown liabilities, adverse consequences and unforeseen increased expenses associated with the transaction; and
- challenges in attracting and retaining key personnel.

If any of these factors impair our ability to continue to integrate our operations with those of any companies or businesses we acquire, we may not be able to realize the business opportunities, growth prospects and anticipated tax synergies from combining the businesses. In addition, we may be required to spend additional time or money on integration that otherwise would be spent on the development and expansion of our business.

Our management may also have to divert a disproportionate amount of its attention away from day-to-day activities and toward managing these growth and integration activities. Our future financial performance and our ability to execute on our business plan will depend, in part, on our ability to effectively manage any future growth and our failure to effectively manage growth could have a material adverse effect on our business, results of operations, financial condition and prospects.

*We face significant competition from other biotechnology and pharmaceutical companies, including those marketing generic medicines and our operating results will suffer if we fail to compete effectively.*

The biotechnology and pharmaceutical industries are intensely competitive. We have competitors both in the United States and international markets, including major multinational pharmaceutical companies, biotechnology companies and universities and other research institutions. Many of our competitors have substantially greater financial, technical and other resources, such as larger research and development staff, experienced marketing and manufacturing organizations and well-established sales forces. Additional consolidations in the biotechnology and pharmaceutical industries may result in even more resources being concentrated in our competitors and we will have to find new ways to compete and may have to potentially merge with or acquire other businesses to stay competitive. Competition may increase further as a result of advances in the commercial applicability of technologies and greater availability of capital for investment in these industries. Our competitors may succeed in developing, acquiring or in-licensing on an exclusive basis, medicines that are more effective and/or less costly than our medicines.
Duexis and VimoVO face competition from other NSAIDs, including Celebrex® which is marketed by Pfizer Inc., and is also a generic medicine known as celecoxib and marketed by other pharmaceutical companies. Duexis and VimoVO also face significant competition from the separate use of NSAIDs for pain relief and GI protective medications to reduce the risk of NSAID-induced upper GI ulcers. Both NSAIDs and GI protective medications are available in generic form and may be less expensive to use separately than Duexis or VimoVO. Pennsaid 2% faces competition from generic versions of diclofenac sodium topical solutions that are priced significantly less than the price we charge for Pennsaid 2% and Voltaren Gel, marketed by Endo Pharmaceuticals Solutions Inc., which is the market leader in the topical NSAID category. Legislation enacted in most states in the United States allows or, in some instances mandates, that a pharmacist dispense an available generic equivalent when filling a prescription for a branded medicine, in the absence of specific instructions from the prescribing physician. Because pharmacists often have economic and other incentives to prescribe lower-cost generics, if physicians prescribe Duexis, Pennsaid 2% or VimoVO, those prescriptions may not result in sales. If physicians do not complete prescriptions through our HorizonCares program or otherwise provide prescriptions instructing the substitution of generic ibuprofen and famotidine separately as a substitution for Duexis or generic naproxen and branded Nexium® (esomeprazole) as a substitute for VimoVO or generic diclofenac sodium topical solutions as a substitute for Pennsaid 2%, sales of Duexis, Pennsaid 2% and VimoVO may suffer despite any success we may have in promoting Duexis, Pennsaid 2% or VimoVO to physicians. In addition, other medicine candidates that contain ibuprofen and famotidine in combination or naproxen and esomeprazole in combination, while not currently known or FDA approved, may be developed and compete with Duexis or VimoVO, respectively, in the future. While Krystexxa faces limited direct competition, a number of competitors have drugs in Phase 1 or Phase 2 trials. On December 22, 2015, AstraZeneca secured approval from the FDA for Zurampic (lesinurad) 200mg tablets in combination with a xanthine oxidase inhibitor, or XOI, for the treatment of hyperuricemia associated with gout in patients who have not achieved target serum uric acid (sUA) levels with an XOI alone. Although Zurampic is not a direct competitor because it has not been approved for refractory gout, this therapy could be used prior to use of Krystexxa and if effective, could reduce the target patient population for Krystexxa.

We have also entered into settlement and license agreements that may allow certain of our competitors to sell generic versions of certain of our medicines in the United States, subject to the terms of such agreements. On August 21, 2013, we entered into a settlement agreement, or the Par settlement agreement, and license agreement, or the Par license agreement, with Par Pharmaceutical, Inc. and Par Pharmaceutical Companies, Inc., or collectively Par, relating to our patent infringement litigation with Par. Under the Par license agreement, we granted Par a non-exclusive license (that is only royalty-bearing in some circumstances), or the License, to manufacture and commercialize Par’s generic version of Duexis in the United States after the generic entry date (as defined below) and to take steps necessary to develop inventory of, and obtain regulatory approval for, but not commercialize, Par’s generic version of Duexis prior to the generic entry date. Under the Par license agreement, the generic entry date is January 1, 2023; however, Par may be able to enter the market earlier under certain circumstances. Such events relate to the resolution of potential future third-party Duexis patent litigation, the entry of other third-party generic versions of Duexis or certain changes in Duexis market conditions. Only in the event that Par enters the Duexis market due to the specified changes in Duexis market conditions will the License become royalty-bearing, with the royalty obligations ceasing upon the occurrence of one of the other events that would have allowed Par to enter the Duexis market.

On May 6, 2015, we entered into a settlement and license agreement, or the Perrigo settlement agreement, with Perrigo Company plc and its subsidiary Paddock Laboratories, LLC, or collectively Perrigo, relating to patent infringement litigation with Perrigo. Under the Perrigo settlement agreement, we granted Perrigo a non-exclusive license to manufacture and commercialize Perrigo’s generic version of Pennsaid 2% in the United States after the license effective date (as defined below) and to take steps necessary to develop inventory of, and prepare to commercialize, Perrigo’s generic version of Pennsaid 2% during certain limited periods prior to the license effective date. Under the Perrigo settlement agreement, the license effective date is January 10, 2029; however, Perrigo may be able to enter the market earlier in certain circumstances. Such events relate to the resolution of any other third-party Pennsaid 2% patent litigation, the entry of other third-party generic versions of Pennsaid 2% or certain substantial reductions in our Pennsaid 2% shipments over specified periods of time. In certain circumstances following the entry of other third-party generic versions of Pennsaid 2%, we may be required to supply Perrigo Pennsaid 2% as our authorized distributor of generic Pennsaid 2%, with us receiving specified percentages of any net sales by Perrigo. We also agreed that if we enter into any similar agreements with other parties with respect to generic versions of Pennsaid 2%, we will amend the Perrigo settlement agreement to provide Perrigo with terms that are no less favorable than those provided to the other parties.
On September 9, 2015, we entered into a settlement and license agreement, or the Taro Settlement Agreement, with Taro Pharmaceuticals USA, Inc. and Taro Pharmaceutical Industries, Ltd., or collectively Taro, relating to patent infringement litigation with Taro. Under the Taro Settlement Agreement, we granted Taro a non-exclusive license to manufacture and commercialize Taro’s generic version of PENNSAID 2% in the United States after the license effective date (as defined below) and to take steps necessary to develop inventory of, and prepare to commercialize, Taro’s generic version of PENNSAID 2% during certain limited periods prior to the license effective date. Under the Taro Settlement agreement, the license effective date is January 10, 2029; however, Taro may be able to enter the market earlier under certain circumstances. Such events relate to the resolution of any other third-party PENNSAID 2% patent litigation, the entry of other third-party generic versions of PENNSAID 2% or certain substantial reductions in our PENNSAID 2% shipments over specified periods of time. We also agreed that if we enter into any similar agreements with other parties with respect to generic versions of PENNSAID 2%, we will amend the Taro Settlement Agreement to provide Taro with terms that are no less favorable than those provided to the other parties.

On October 1, 2015, we, as well as Jagotec, entered into a License and Settlement Agreement, or the Actavis Settlement Agreement, with Actavis Laboratories FL, Inc. (formerly known as Watson Laboratories, Inc. – Florida), or Actavis FL, relating to patent infringement litigation with Actavis FL. Under the Actavis Settlement Agreement, we and Jagotec granted Actavis FL a non-exclusive license to manufacture and commercialize Actavis FL’s generic version of RAYOS tablets in the United States after the generic entry date (as defined below) and to take steps necessary to develop inventory of, and prepare to commercialize, Actavis FL’s generic version of RAYOS tablets during certain limited periods prior to the generic entry date. We and Jagotec also agreed that during the 180 days after the Generic Entry Date, the license granted to Actavis FL would be exclusive with respect to any third-party generic version of RAYOS tablets. Under the Actavis Settlement Agreement, the generic entry date is December 23, 2022; however, Actavis FL may be able to enter the market earlier under certain circumstances. Such events relate to the resolution of any other third-party RAYOS patent litigation, the entry of other generic versions of RAYOS tablets or certain substantial reductions in RAYOS prescriptions over specified periods of time. If we or Jagotec enter into any similar agreements with other parties with respect to generic versions of RAYOS tablets, we and Jagotec agreed to amend the Actavis Settlement Agreement to provide Actavis FL with terms that are no less favorable than those provided to the other parties with respect to the license terms, generic entry date, permitted pre-market activities and notice provisions.

Patent litigation is currently pending in the United States District Court for the District of New Jersey against several companies intending to market a generic version of VIMOVO before the expiration of certain of our patents listed in the Orange Book. These cases are collectively known as the VIMOVO cases, and involve the following sets of defendants: (i) Dr. Reddy’s Laboratories Inc. and Dr. Reddy’s Laboratories Ltd., or collectively Dr. Reddy’s; (ii) Lupin Limited and Lupin Pharmaceuticals Inc., or collectively Lupin; (iii) Mylan Pharmaceuticals Inc., Mylan Laboratories Limited, and Mylan Inc., or collectively Mylan; and (iv) Watson and Actavis Pharma, Inc., or collectively Actavis Inc. The cases were filed in response to Paragraph IV Patent Certification notice letters forwarded by each of Dr. Reddy’s, Lupin, Mylan and Actavis Inc. advising us that each had filed an ANDA with the FDA seeking approval to market generic versions of VIMOVO.

Patent litigation is currently pending in the United States District Court for the District of New Jersey against several companies intending to market a generic version of PENNSAID 2% prior to the expiration of certain of our patents listed in the Orange Book. These cases are collectively known as the PENNSAID 2% cases, and involve the following sets of defendants: (i) Actavis FL, Actavis, Inc., and Actavis plc, or collectively Actavis; (ii) Lupin Limited; (iii) IGI Laboratories, Inc., or IGI; and (iv) Amneal Pharmaceuticals LLC, or Amneal. These cases arise from Paragraph IV Patent Certification notice letters from each of Actavis, Lupin Limited, IGI, and Amneal advising each had filed an ANDA with the FDA seeking approval to market a generic version of PENNSAID 2%.

Patent litigation is currently pending in the United States District Court for the Eastern District of Texas and in the United States District Court for the District of New Jersey against Par Pharmaceutical, Inc., or Par Pharmaceutical, and Lupin, respectively, which are each intending to market generic versions of RAVICTI prior to the expiration of certain of our patents listed in the Orange Book. These cases are collectively known and the RAVICTI cases and arise from Paragraph IV Patent Certification notice letters from each of Par Pharmaceutical and Lupin advising each had filed an ANDA with the FDA seeking approval to market a generic version of RAVICTI.

If we are unsuccessful in any of the VIMOVO cases or PENNSAID 2% cases, we will likely face generic competition with respect to VIMOVO and/or PENNSAID 2% and sales of VIMOVO and/or PENNSAID 2% will be substantially harmed. If we are unsuccessful in any of the RAVICTI cases, RAVICTI would likely face generic competition in the United States when its orphan exclusivity expires (currently scheduled to occur in February 2020), and its sales would likely materially decline.
ACTIMMUNE is the only medicine currently approved by the FDA specifically for the treatment for CGD and SMO. While there are additional or alternative approaches used to treat patients with CGD and SMO, there are currently no medicines on the market that compete directly with ACTIMMUNE. A widely accepted protocol to treat CGD in the United States is the use of concomitant “triple prophylactic therapy” comprising ACTIMMUNE, an oral antibiotic agent and an oral antifungal agent. However, the FDA-approved labeling for ACTIMMUNE does not discuss this “triple prophylactic therapy,” and physicians may choose to prescribe one or both of the other modalities in the absence of ACTIMMUNE. Because of the immediate and life-threatening nature of SMO, the preferred treatment option for SMO is often to have the patient undergo a bone marrow transplant which, if successful, will likely obviate the need for further use of ACTIMMUNE in that patient. Likewise, the use of bone marrow transplants in the treatment of patients with CGD is becoming more prevalent, which could have a material adverse effect on sales of ACTIMMUNE and its profitability. We are aware of a number of research programs investigating the potential of gene therapy as a possible cure for CGD. Additionally, other companies may be pursuing the development of medicines and treatments that target the same diseases and conditions which ACTIMMUNE is currently approved to treat. As a result, it is possible that our competitors may develop new medicines that manage CGD or SMO more effectively, cost less or possibly even cure CGD or SMO. In addition, U.S. healthcare legislation passed in March 2010 authorized the FDA to approve biological products, known as biosimilars, that are similar to or interchangeable with previously approved biological products, like ACTIMMUNE, based upon potentially abbreviated data packages. Biosimilars are likely to be sold at substantially lower prices than branded medicines because the biosimilar manufacturer would not have to recoup the research and development and marketing costs associated with the branded medicine. Though we are not currently aware of any biosimilar under development, the development and commercialization of any competing medicines or the discovery of any new alternative treatment for CGD or SMO could have a material adverse effect on sales of ACTIMMUNE and its profitability.

BUPHENYL’s composition of matter patent protection and orphan drug exclusivity have expired. Because BUPHENYL has no regulatory exclusivity or listed patents, there is nothing to prevent a competitor from submitting an ANDA for a generic version of BUPHENYL and receiving FDA approval. In November 2011, Ampolgen Pharmaceuticals, LLC received FDA approval for a generic version of NaPBA tablets, which may compete with RAVICTI and BUPHENYL in treating UCD. In March 2013, SigmaPharm Laboratories, LLC received FDA approval for a generic version of NaPBA powder, which competes with BUPHENYL and may compete with RAVICTI in treating UCD. In July 2013, Lucane received marketing approval from the EMA for taste-masked NaPBA and has announced a distribution partnership in Canada. In January 2015, Lucane announced it had received marketing approval for its taste-masked NaPBA in Canada. We believe Lucane is also seeking approval via an ANDA in the United States. If this ANDA is approved, this formulation may compete with RAVICTI and BUPHENYL in treating UCD in the United States. Generic versions of BUPHENYL to date have been priced at a discount relative to BUPHENYL or RAVICTI, and physicians, patients, or payors may decide that this less expensive alternative is preferable to BUPHENYL and RAVICTI. If this occurs, sales of BUPHENYL and/or RAVICTI could be materially reduced, but we would nevertheless be required to make royalty payments to Ucyclyd Pharma, Inc., or Ucyclyd, and another external party, at the same royalty rates. While Ucyclyd and its affiliates are generally contractually prohibited from developing or commercializing new medicines, anywhere in the world, for the treatment of UCD or HE, which are chemically similar to RAVICTI, they may still develop and commercialize medicines that compete with RAVICTI. For example, medicines approved for indications other than UCD and HE may still compete with RAVICTI if physicians prescribe such medicines off-label for UCD or HE. We are also aware that Orphan Europe SARL, or Orphan Europe, is conducting a clinical trial of carglumic acid to treat some of the UCD enzyme deficiencies for which RAVICTI was approved. Promethera Biosciences SA has successfully completed Phase I/II trials of its cell-based therapy for the treatment of UCD and plans to conduct a Phase IIb/III clinical trial. Carglumic acid is approved for maintenance therapy for chronic hyperammonemia and to treat hyperammonemic crises in N-acetylglutamate synthase deficiency, a rare UCD subtype, and is sold under the name Carbaglu. If the results of this trial are successful and Orphan Europe is able to complete development and obtain approval of Carbaglu to treat additional UCD enzyme deficiencies, RAVICTI would face additional competition from this compound.

The availability and price of our competitors’ medicines could limit the demand, and the price we are able to charge, for our medicines. We will not successfully execute on our business objectives if the market acceptance of our medicines is inhibited by price competition, if physicians are reluctant to switch from existing medicines to our medicines, or if physicians switch to other new medicines or choose to reserve our medicines for use in limited patient populations.
In addition, established pharmaceutical companies may invest heavily to accelerate discovery and development of novel compounds or to acquire novel compounds that could make our medicines obsolete. Our ability to compete successfully with these companies and other potential competitors will depend largely on our ability to leverage our experience in clinical, regulatory and commercial development to:

- develop, acquire medicines that are superior to other medicines in the market;
- attract qualified clinical, regulatory, and sales and marketing personnel;
- obtain patent and/or other proprietary protection for our medicines and technologies;
- obtain required regulatory approvals; and
- successfully collaborate with pharmaceutical companies in the discovery, development and commercialization of new medicine candidates.

If we are unable to maintain or realize the benefits of orphan drug exclusivity for RAVICTI for the treatment of UCD or KRISTEXXA for the treatment of chronic refractory gout in the United States, we may face increased competition.

Under the Orphan Drug Act of 1983, the FDA may designate a medicine as an orphan drug if it is a drug intended to treat a rare disease or condition affecting fewer than 200,000 people in the United States. A company that first obtains FDA approval for a designated orphan drug for the specified rare disease or condition receives orphan drug marketing exclusivity for that drug for a period of seven years from the date of its approval. RAVICTI was granted orphan drug exclusivity by the FDA in May 2013, which we expect will provide the drug with orphan drug marketing exclusivity in the United States until February 2020, seven years from the date of its approval. KRISTEXXA has also been granted orphan drug exclusivity in February 2011, which we expect will provide the drug with orphan drug marketing exclusivity in the United States until February 2018. However, despite orphan drug exclusivity, the FDA can still approve another drug containing the same active ingredient and used for the same orphan indication if it determines that a subsequent drug is safer, more effective or makes a major contribution to patient care, and orphan exclusivity can be lost if the orphan drug manufacturer is unable to assure that a sufficient quantity of the orphan drug is available to treat the needs of patients with the rare disease or condition. Orphan drug exclusivity may also be lost if the FDA later determines that the initial request for designation was materially defective. In addition, orphan drug exclusivity does not prevent the FDA from approving competing drugs for the same or similar indication containing a different active ingredient. If orphan drug exclusivity is lost and we were unable to successfully enforce any remaining patents covering RAVICTI or KRISTEXXA, we could be subject to generic competition and revenues from RAVICTI or KRISTEXXA could decrease materially. In addition, if a subsequent drug is approved for marketing for the same or a similar indication as RAVICTI or KRISTEXXA despite orphan drug exclusivity, we may face increased competition and lose market share with respect to RAVICTI or KRISTEXXA. Neither RAVICTI nor KRISTEXXA have orphan drug exclusivity in the EU or other regions of the world.

Our business operations may subject us to numerous commercial disputes, claims and/or lawsuits.

Operating in the pharmaceutical industry, particularly the commercialization of medicines, involves numerous commercial relationships, complex contractual arrangements, uncertain intellectual property rights, potential product liability and other aspects that create heightened risks of disputes, claims and lawsuits. In particular, we may face claims related to the safety of our medicines, intellectual property matters, employment matters, tax matters, commercial disputes, competition, sales and marketing practices, environmental matters, personal injury, insurance coverage and acquisition or divestiture-related matters. Any commercial dispute, claim or lawsuit may divert management’s attention away from our business, we may incur significant expenses in addressing or defending any commercial dispute, claim or lawsuit, and we may be required to pay damage awards or settlements or become subject to equitable remedies that could adversely affect our operations and financial results.

We are currently in litigation with multiple generic drug manufacturers regarding intellectual property infringement. For example, we are currently involved in Hatch Waxman litigation with generic drug manufacturers related to VIMOVO, PENNSAID 2% and RAVICTI.
Similarly, from time to time we are involved in disputes with distributors, PBMs and licensing partners regarding our rights and performance of obligations under contractual arrangements. For example, we are currently in litigation with Express Scripts, Inc. or Express Scripts, regarding the payment of certain rebates and administrative fees Express Scripts claims we owe under a previous agreement. In its complaint, Express Scripts seeks damages of $139.9 million for alleged unpaid rebates and administrative fees as of October 1, 2015, additional potential rebates and administrative fees through the end of 2015, late fees, interest, and attorneys’ fees and costs. Based upon the terms of the agreement and Express Scripts’ actions, we believe that Express Scripts’ claims are without merit and we intend to vigorously defend against them. However, we cannot predict the outcome of this litigation.

Litigation related to these disputes may be costly and time-consuming and could materially and adversely impact our financial position and results of operations if resolved against us.

On June 12, 2014, Hyperion acquired Andromeda Biotech Ltd., or Andromeda, an Israeli company developing DiaPep277® for the treatment of recent onset Type 1 diabetes, from Clal Biotechnology Industries Ltd., or CBI. On September 8, 2014, Hyperion announced the termination of further development of DiaPep277 beyond completion of the ongoing clinical trial as a result of evidence Hyperion uncovered that certain employees of Andromeda engaged in serious misconduct that compromised clinical trial results. Hyperion subsequently terminated the Andromeda employees involved in the misconduct and became involved in a legal dispute with CBI related to Andromeda. On February 16, 2015 Hyperion reached an agreement with CBI and Yeda Research and Development Company Ltd., or Yeda, the company from which Andromeda licenses the underlying DiaPep277 technology, to resolve DiaPep277-related claims against one another, and Hyperion granted CBI an option to acquire all of the outstanding stock of Andromeda. On September 30, 2015, which was the end of the option exercise period, CBI chose not to exercise its option to acquire all of the outstanding stock of Andromeda. In connection with the agreement, the parties appointed a steering committee to oversee the completion of an ongoing clinical trial of DiaPep277 with representatives of CBI and Yeda and a non-voting member appointed by Hyperion. Also on February 16, 2015, Hyperion entered into a release with Evotec International GmbH, or Evotec, pursuant to which Evotec released its previously asserted claims that it was entitled to a milestone payment from Hyperion in connection with Hyperion’s acquisition of Andromeda and that it had suffered harm from recent incidents in relation to DiaPep277 in exchange for a payment of $500,000 from Hyperion. In connection with the settlement agreement, CBI transferred to Hyperion beneficial ownership of 96,612 shares of Hyperion common stock. CBI cannot complete the transfer until it obtains a valid tax certificate from the tax authority in Israel exempting CBI from an obligation to withhold Israeli taxes in connection with the transfer. It is possible that this transfer will be delayed and it is possible we may owe taxes in Israel in connection with this transfer. The voluntary liquidation process of Andromeda was approved by the board of its immediate parent Horizon Pharma Israel Holding Corp. Limited in December 2015.

Although the Andromeda release agreements resolved the disputes among the parties relating to DiaPep277, we cannot be certain that additional legal disputes will not arise with respect to Andromeda, including in connection with the recently completed Phase 3 clinical trial of DiaPep277, the potential termination of DiaPep277 development by us and the return of related intellectual property to Yeda following CBI’s decision to not exercise its option. Further, under the terms of the release agreement, Hyperion agreed to retain certain liabilities relating to its ownership of Andromeda, including any liability related to or based on the misconduct of certain former Andromeda employees that led to its decision to terminate further development of DiaPep277. For example, in February 2015, one of the former employees of Andromeda sued Hyperion in Israeli labor court for wrongful dismissal and related employment causes of action. In addition to these potential liabilities, we may incur currently unknown liabilities related to Hyperion’s acquisition of Andromeda. Any such potential legal dispute could lead to costly litigation, divert management’s attention from our core business and harm our business.
A variety of risks associated with operating our business and marketing our medicines internationally could materially adversely affect our business.

In addition to our U.S. operations, we have operations in Ireland, Bermuda, the Grand Duchy of Luxembourg, or Luxembourg, Switzerland, Germany and in Israel (through Andromeda). Moreover, LODOTRA is currently being marketed in a limited number of countries outside the United States, and Mundipharma is in the process of obtaining pricing and reimbursement approval for, and preparing to market, LODOTRA in other European countries, as well as in certain Asian, Latin American, Middle Eastern and African countries. Also, Grünenthal S.A. is in the registration process for the commercialization of DUEXIS in Latin America. BUPHENYL is currently marketed in various territories outside the United States by third-party distributors. RAVICTI received marketing approval in the EU in November 2015 and we plan to begin commercializing RAVICTI in Europe in 2017. We face risks associated with our international operations, including possible unfavorable regulatory, pricing and reimbursement, political, tax and labor conditions, which could harm our business. We are subject to numerous risks associated with international business activities, including:

- compliance with differing or unexpected regulatory requirements for our medicines;
- compliance with Irish laws and the maintenance of our Irish tax residency with respect to our overall corporate structure and administrative operations, including the need to generally hold meetings of our board of directors and make decisions in Ireland, which may make certain corporate actions more cumbersome, costly and time-consuming;
- difficulties in staffing and managing foreign operations;
- in certain circumstances, including with respect to the commercialization of LODOTRA in Europe and certain Asian, Latin American, Middle Eastern and African countries, commercialization of BUPHENYL in select countries throughout Europe, the Middle East, and the Asia-Pacific region, commercialization of RAVICTI in select countries throughout Europe and commercialization of DUEXIS in Latin America, increased dependence on the commercialization efforts and regulatory compliance of third-party distributors or strategic partners;
- compliance with German laws with respect to our Horizon Pharma GmbH subsidiary through which Horizon Pharma Switzerland GmbH conducts most of its European operations;
- foreign government taxes, regulations and permit requirements;
- U.S. and foreign government tariffs, trade restrictions, price and exchange controls and other regulatory requirements;
- anti-corruption laws, including the Foreign Corrupt Practices Act, or the FCPA;
- economic weakness, including inflation, natural disasters, war, events of terrorism or political instability in particular foreign countries;
- fluctuations in currency exchange rates, which could result in increased operating expenses and reduced revenues, and other obligations related to doing business in another country;
- compliance with tax, employment, immigration and labor laws, regulations and restrictions for employees living or traveling abroad;
- workforce uncertainty in countries where labor unrest is more common than in the United States;
- production shortages resulting from any events affecting raw material supply or manufacturing capabilities abroad;
- changes in diplomatic and trade relationships; and
- challenges in enforcing our contractual and intellectual property rights, especially in those foreign countries that do not respect and protect intellectual property rights to the same extent as the United States.
Our business activities outside of the United States are subject to the FCPA and similar anti-bribery or anti-corruption laws, regulations or rules of other countries in which we operate, including the U.K.’s Bribery Act 2010, or the U.K. Bribery Act. The FCPA and similar anti-corruption laws generally prohibit the offering, promising, giving, or authorizing others to give anything of value, either directly or indirectly, to non-U.S. government officials in order to improperly influence any act or decision, secure any other improper advantage, or obtain or retain business. The FCPA also requires public companies to make and keep books and records that accurately and fairly reflect the transactions of the company and to devise and maintain an adequate system of internal accounting controls. The U.K. Bribery Act prohibits giving, offering, or promising bribes to any person, including non-U.K. government officials and private persons, as well as requesting, agreeing to receive, or accepting bribes from any person. In addition, under the U.K. Bribery Act, companies which carry on a business or part of a business in the U.K. may be held liable for bribes given, offered or promised to any person, including non-U.K. government officials and private persons, by employees and persons associated with the company in order to obtain or retain business or a business advantage for the company. Liability is strict, with no element of a corrupt state of mind, but a defense of having in place adequate procedures designed to prevent bribery is available. Furthermore, under the U.K. Bribery Act there is no exception for facilitation payments. As described above, our business is heavily regulated and therefore involves significant interaction with public officials, including officials of non-U.S. governments. Additionally, in many other countries, the health care providers who prescribe pharmaceuticals are employed by their government, and the purchasers of pharmaceuticals are government entities; therefore, any dealings with these prescribers and purchasers may be subject to regulation under the FCPA. Recently the SEC and the U.S. Department of Justice have increased their FCPA enforcement activities with respect to pharmaceutical companies. In addition, under the Dodd–Frank Wall Street Reform and Consumer Protection Act, private individuals who report to the SEC original information that leads to successful enforcement actions may be eligible for a monetary award. We are engaged in ongoing efforts that are designed to ensure our compliance with these laws, including due diligence, training, policies, procedures and internal controls. However, there is no certainty that all employees and third-party business partners (including our distributors, wholesalers, agents, contractors, and other partners) will comply with anti-bribery laws. In particular, we do not control the actions of manufacturers and other third-party agents, although we may be liable for their actions. Violation of these laws may result in civil or criminal sanctions, which could include monetary fines, criminal penalties, and disgorgement of past profits, which could have a material adverse impact on our business and financial condition.

These and other risks associated with our international operations may materially adversely affect our business, financial condition and results of operations.

If we fail to develop or acquire other medicine candidates or medicines, our business and prospects would be limited.

A key element of our strategy is to develop or acquire and commercialize a portfolio of other medicines or medicine candidates in addition to our current medicines, through business or medicine acquisitions. Because we do not engage in proprietary drug discovery, the success of this strategy depends in large part upon the combination of our regulatory, development and commercial capabilities and expertise and our ability to identify, select and acquire approved or clinically enabled medicine candidates for therapeutic indications that complement or augment our current medicines, or that otherwise fit into our development or strategic plans on terms that are acceptable to us. Identifying, selecting and acquiring promising medicines or medicine candidates requires substantial technical, financial and human resources expertise. Efforts to do so may not result in the actual acquisition or license of a particular medicine or medicine candidate, potentially resulting in a diversion of our management’s time and the expenditure of our resources with no resulting benefit. If we are unable to identify, select and acquire suitable medicines or medicine candidates from third parties or acquire businesses at valuations and on other terms acceptable to us, or if we are unable to raise capital required to acquire businesses or new medicines, our business and prospects will be limited.

Moreover, any medicine candidate we acquire may require additional, time-consuming development or regulatory efforts prior to commercial sale or prior to expansion into other indications, including preclinical studies if applicable, and extensive clinical testing and approval by the FDA and applicable foreign regulatory authorities. All medicine candidates are prone to the risk of failure that is inherent in pharmaceutical medicine development, including the possibility that the medicine candidate will not be shown to be sufficiently safe and/or effective for approval by regulatory authorities. In addition, we cannot assure you that any such medicines that are approved will be manufactured or produced economically, successfully commercialized or widely accepted in the marketplace or be more effective or desired than other commercially available alternatives.

In addition, if we fail to successfully commercialize and further develop our medicines, there is a greater likelihood that we will fail to successfully develop a pipeline of other medicine candidates to follow our existing medicines or be able to acquire other medicines to expand our existing portfolio, and our business and prospects would be harmed.

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Our recent medicine and company acquisitions and any other strategic transactions that we may pursue in the future could have a variety of negative consequences, and we may not realize the benefits of such transactions or attempts to engage in such transactions.

We have recently completed multiple medicine and company acquisitions and our strategy is to engage in additional strategic transactions with third parties, such as acquisitions of companies or divisions of companies and asset purchases of medicines, medicine candidates or technologies that we believe will complement or augment our existing business. We may also consider a variety of other business arrangements, including spin-offs, strategic partnerships, joint ventures, restructurings, divestitures, business combinations and other investments. Any such transaction may require us to incur non-recurring and other charges, increase our near and long-term expenditures, pose significant integration challenges, create additional tax, legal, accounting and operational complexities in our business, require additional expertise, result in dilution to our existing shareholders and disrupt our management and business, which could harm our operations and financial results. For example, in connection with our acquisition of the U.S. rights to VIMOVO, we assumed primary responsibility for the existing patent infringement litigation with respect to VIMOVO, and have also agreed to reimburse certain legal expenses of Pozen Inc., or Pozen, with respect to its continued involvement in such litigation, and we assumed responsibility for the existing patent infringement litigation with respect to RAVICTI upon the closing of the acquisition of Hyperion and have assumed responsibility for completing post-marketing clinical trials of RAVICTI that are required by the FDA and are ongoing. We expect that the RAVICTI litigation will result in substantial on-going expenses and potential distractions to our management team. Moreover, we face significant competition in seeking appropriate strategic transaction opportunities and the negotiation process for any strategic transaction can be time-consuming and complex. In addition, we may not be successful in our efforts to engage in certain strategic transactions because our financial resources may be insufficient and/or third parties may not view our commercial and development capabilities as being adequate. We may not be able to expand our business or realize our strategic goals if we do not have sufficient funding or cannot borrow or raise additional capital. There is no assurance that following any of our recent acquisition transactions or any other strategic transaction, we will achieve the anticipated revenues, net income, tax or other benefits that we believe justify such transactions. In addition, any failures or delays in entering into strategic transactions anticipated by analysts or the investment community could seriously harm our consolidated business, financial condition, results of operations or cash flow.

Our parent company may not be able to successfully maintain its current advantageous tax status and resulting tax rates, which could adversely affect our business and financial condition, results of operations and growth prospects.

Our parent company is incorporated in Ireland and maintains subsidiaries in multiple jurisdictions, including Ireland, the U.K., the United States, Switzerland, Luxembourg, Germany and Bermuda. Prior to the acquisition of Vidara, Vidara was able to achieve a favorable tax rate through the performance of certain functions and ownership of certain assets in tax-efficient jurisdictions, including Ireland and Bermuda, together with intra-group service and transfer pricing agreements, each on an arm’s length basis. We are continuing a substantially similar structure and arrangements. Taxing authorities, such as the U.S. Internal Revenue Service, or IRS, actively audit and otherwise challenge these types of arrangements, and have done so in the pharmaceutical industry. We expect that these challenges will continue as a result of the recent increase in scrutiny and political attention on corporate tax structures. The IRS may challenge our structure and transfer pricing arrangements through an audit or lawsuit. Responding to or defending such a challenge could be expensive and consume time and other resources, and divert management’s time and focus from operating our business. We cannot predict whether taxing authorities will conduct an audit or file a lawsuit challenging this structure, the cost involved in responding to any such audit or lawsuit, or the outcome. If we are unsuccessful, we may be required to pay taxes for prior periods, interest, fines or penalties, and may be obligated to pay increased taxes in the future, any of which could require us to reduce our operating expenses, decrease efforts in support of our medicines or seek to raise additional funds, all of which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

The IRS may not agree with our conclusion that our parent company should be treated as a foreign corporation for U.S. federal income tax purposes following the combination of the businesses of Horizon Pharma, Inc. and Vidara Therapeutics International plc.

Although our parent company is incorporated in Ireland, the IRS may assert that it should be treated as a U.S. corporation (and, therefore, a U.S. tax resident) for U.S. federal income tax purposes pursuant to Section 7874 of the Internal Revenue Code of 1986, as amended, or the Code. A corporation is generally considered a tax resident in the jurisdiction of its organization or incorporation for U.S. federal income tax purposes. Because our parent company is an Irish incorporated entity, it would generally be classified as a foreign corporation (and, therefore, a non-U.S. tax resident) under these rules. Section 7874 provides an exception pursuant to which a foreign incorporated entity may, in certain circumstances, be treated as a U.S. corporation for U.S. federal income tax purposes.
Under Section 7874, and as a result of the fact that the former stockholders of Horizon Pharma, Inc., or HPI, owned (within the meaning of Section 7874) less than 80 percent (by both vote and value) of the combined entity’s stock immediately after the acquisition of Vidara, we believe our parent company qualifies as a foreign corporation for U.S. federal income tax purposes following the acquisition of Vidara. However, there can be no assurance that there will not exist in the future a subsequent change in the facts or in law which might cause our parent company to be treated as a domestic corporation for U.S. federal income tax purposes, including with retroactive effect.

Further, there can be no assurance that the IRS will agree with the position that the ownership test was satisfied. There is limited guidance regarding the application of Section 7874 of the Code, including with respect to the provisions regarding the application of the ownership test. If our parent company were unable to be treated as a foreign corporation for U.S. federal income tax purposes, one of our significant strategic reasons for completing the acquisition of Vidara would be nullified and we may not be able to recoup the significant investment in completing the transaction.

Future changes to U.S. and non-U.S. tax laws could materially adversely affect our company.

Under current law, we expect our parent company to be treated as a foreign corporation for U.S. federal income tax purposes. However, changes to the rules in Section 7874 of the Code or regulations promulgated thereunder or other guidance issued by the U.S. Treasury, or the Treasury, or the IRS could adversely affect our parent company’s status as a foreign corporation for U.S. federal income tax purposes, and any such changes could have prospective or retroactive application. If our parent company is treated as a domestic corporation, more of our income will be taxed by the United States which may substantially increase our effective tax rate.

Notice 2014-52, issued in September 2014, states that the Treasury and the IRS expect to issue guidance to further limit the benefits of inversions including guidance that will address earnings stripping by foreign multinational corporations through interest deductions on inter-company debt. Limitations on the ability of our U.S. group to deduct interest on inter-company debt could result in more of our income being taxed by the United States and thereby increase our effective tax rate.

In July 2015, the International Tax Bipartisan Tax Working Group of the United States Senate Committee on Finance, or the Finance Committee, issued its report on international tax reform. The Finance Committee’s co-chairs concluded that it will be necessary to limit earnings stripping by foreign multinationals through interest deductions on inter-company debt in order to eliminate a competitive advantage that foreign multinationals would otherwise have over domestic multinational companies. This and other international tax reforms proposed by the Finance Committee could result in more of our income being taxed by the United States and thereby increase our effective tax rate.

In addition, the Organization for Economic Co-operation and Development released its Base Erosion and Profit Shifting project final report on October 5, 2015. This report provides the basis for international standards for corporate taxation that are designed to prevent, among other things, the artificial shifting of income to tax havens and low-tax jurisdictions, the erosion of the tax base through interest deductions on inter-company debt and the artificial avoidance of permanent establishments (i.e., tax nexus with a jurisdiction). Legislation to adopt these standards has been enacted or is currently under consideration in a number of jurisdictions to implement these standards, including country-by-country reporting. As a result, our income may be taxed in jurisdictions where it is not currently taxed and at higher rates of tax than it is currently taxed at which may substantially increase our effective tax rate.
If we are not successful in attracting and retaining highly qualified personnel, we may not be able to successfully implement our business strategy. Our ability to compete in the highly competitive biotechnology and pharmaceutical industries depends upon our ability to attract and retain highly qualified managerial, scientific, and medical personnel. We are highly dependent on our management, sales, marketing, and scientific and medical personnel, including our executive committee composed of our Chairman, President and Chief Executive Officer, Timothy P. Walbert; our Executive Vice President and Chief Business Officer, Robert F. Carey; our Executive Vice President and Chief Financial Officer, Paul W. Hoelscher; our Executive Vice President, Company Secretary, and Managing Director, Ireland, David G. Kelly; our Executive Vice President, Chief Operating Officer, Barry J. Moze; our Executive Vice President, Research and Development and Chief Medical Officer, Jeffrey W. Sherman, M.D.; our Executive Vice President, General Counsel, Brian K. Beeler; our Executive Vice President, Strategy and Investor Relations, John B. Thomas; our Executive Vice President, Global Orphan Business Unit and International Operations, George Hampton; our Senior Vice President, Commercial Operations, Timothy J. Ackerman; and our Senior Vice President, Corporate Communications, Geoffrey M. Curtis. In order to retain valuable employees at our company, in addition to salary and cash incentives, we provide performance stock units and stock options and restricted stock units that vest over time. The value to employees of performance stock units, stock options, and restricted stock units will be significantly affected by movements in our share price that are beyond our control, and may at any time be insufficient to counteract more lucrative offers from other companies.

Despite our efforts to retain valuable employees, members of our management, sales and marketing, regulatory affairs, clinical affairs, medical affairs, and development teams may terminate their employment with us on short notice. Although we have written employment arrangements with all of our employees, these employment arrangements generally provide for at-will employment, which means that our employees can leave our employment at any time, with or without notice. The loss of the services of any of our executive officers or other key employees and our inability to find suitable replacements could potentially harm our business, financial condition, and prospects. We do not maintain “key man” insurance policies on the lives of these individuals or the lives of any of our other employees. Our success also depends on our ability to continue to attract, retain, and motivate highly skilled junior, mid-level, and senior managers as well as junior, mid-level, and senior sales and marketing and scientific and medical personnel.

Many of the other biotechnology and pharmaceutical companies with whom we compete for qualified personnel have greater financial and other resources, different risk profiles, and longer histories in the industry than we do. They also may provide more diverse opportunities and better chances for career advancement. Some of these characteristics may be more appealing to high-quality candidates than that which we have to offer. If we are unable to continue to attract and retain high-quality personnel, the rate and success at which we can develop and commercialize medicines and medicine candidates will be limited.
We are, with respect to our current medicines, and will be, with respect to any other medicine or medicine candidate for which we obtain FDA approval or which we acquire, subject to ongoing FDA obligations and continued regulatory review, which may result in significant additional expense. Additionally, any other medicine candidate, if approved by the FDA, could be subject to labeling and other restrictions and market withdrawal, and we may be subject to penalties if we fail to comply with regulatory requirements or experience unanticipated problems with our medicines.

Any regulatory approvals that we obtain for our medicine candidates may also be subject to limitations on the approved indicated uses for which the medicine may be marketed or to the conditions of approval, or contain requirements for potentially costly post-marketing testing, including Phase 4 clinical trials and surveillance to monitor the safety and efficacy of the medicine candidate. In addition, with respect to our currently FDA-approved medicines (and with respect to our medicine candidates, if approved), the manufacturing processes, labeling, packaging, distribution, adverse event reporting, storage, advertising, promotion and recordkeeping for the medicine are subject to extensive and ongoing regulatory requirements. These requirements include submissions of safety and other post-marketing information and reports, registration, as well as continued compliance with current good manufacturing practices, or cGMPs, good clinical practices, or GCPs, international conference on harmonization regulations, or ICH regulations, and good laboratory practices, which are regulations and guidelines enforced by the FDA for all of our medicines in clinical development, for any clinical trials that we conduct post-approval. In connection with our November 2013 acquisition of the U.S. rights to VIMOVO, we assumed responsibility for completing an ongoing Pediatric Research Equity Act post-marketing requirement study in children 12 years to 16 years and 11 months of age with Juvenile RA. This report was submitted to the FDA in December 2015. With respect to RAVICTI, the FDA imposed several post-marketing requirements and a post-marketing commitment, which include remaining obligations to conduct studies in UCD patients during the first two months of life and from two months to two years of age, including a study of the pharmacokinetics in both age groups, and a randomized study to determine the safety and efficacy in UCD patients who are treatment naïve to phenylbutyrate treatment. These studies are ongoing and have targeted sNDA submission dates of the second quarter of 2016 for UCD patients from two months to two years of age and the first quarter of 2018 for UCD patients during the first two months of life. In connection with our acquisition of Crealta in January 2016, we assumed responsibility for an observational study related to KRYSTEXXA. Thus far in this study there have been no new signals and safety results are parallel to those in label. We are continuing to screen and enroll patients in the near term.

In addition, the FDA closely regulates the marketing and promotion of drugs and biologics. The FDA does not regulate the behavior of physicians in their choice of treatments. The FDA does, however, restrict manufacturers’ promotional communications. A significant number of pharmaceutical companies have been the target of inquiries and investigations by various U.S. federal and state regulatory, investigative, prosecutorial and administrative entities in connection with the promotion of medicines for off-label uses and other sales practices. These investigations have alleged violations of various U.S. federal and state laws and regulations, including claims asserting antitrust violations, violations of the Food, Drug and Cosmetic Act, false claims laws, the Prescription Drug Marketing Act, anti-kickback laws, and other alleged violations in connection with the promotion of medicines for unapproved uses, pricing and Medicare and/or Medicaid reimbursement.

Later discovery of previously unknown problems with a medicine, including adverse events of unanticipated severity or frequency, or with our third-party manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may result in, among other things:

- restrictions on the marketing or manufacturing of the medicine, withdrawal of the medicine from the market, or voluntary or mandatory medicine recalls;
- fines, warning letters or holds on clinical trials;
- refusal by the FDA to approve pending applications or supplements to approved applications filed by us or our strategic partners, or suspension or revocation of medicine license approvals;
- medicine seizure or detention, or refusal to permit the import or export of medicines; and
- injunctions, the imposition of civil or criminal penalties, or exclusion, debarment or suspension from government healthcare programs.

If we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained and we may not achieve or sustain profitability, which would have a material adverse effect on our business, results of operations, financial condition and prospects.
Coverage and reimbursement may not be available, or reimbursement may be available at only limited levels, for our medicines, which could make it difficult for us to sell our medicines profitably or to successfully execute planned medicine price increases.

Market acceptance and sales of our medicines will depend in large part on global coverage and reimbursement policies and may be affected by future healthcare reform measures, both in the United States and other key international markets. Successful commercialization of our medicines will depend in part on the availability of governmental and third-party payer reimbursement for the cost of our medicines. Government health administration authorities, private health insurers and other organizations generally provide reimbursement for healthcare. In particular, in the United States, private health insurers and other third-party payors often provide reimbursement for medicines and services based on the level at which the government (through the Medicare or Medicaid programs) provides reimbursement for such treatments. In the United States, the EU and other significant or potentially significant markets for our medicines and medicine candidates, government authorities and third-party payors are increasingly attempting to limit or regulate the price of medicines and services, particularly for new and innovative medicines and therapies, which has resulted in lower average selling prices. Further, the increased scrutiny of prescription drug pricing practices and emphasis on managed healthcare in the United States and on country and regional pricing and reimbursement controls in the EU will put additional pressure on medicine pricing, reimbursement and usage, which may adversely affect our medicine sales and results of operations. These pressures can arise from rules and practices of managed care groups, judicial decisions and governmental laws and regulations related to Medicare, Medicaid and healthcare reform, pharmaceutical reimbursement policies and pricing in general. These pressures may create negative reactions to any medicine price increases, or limit the amount by which we may be able to increase our medicine prices, which may adversely affect our medicine sales and results of operations.

Patients are unlikely to use our medicines unless coverage is provided and reimbursement is adequate to cover a significant portion of the cost of our medicines. Third-party payors may limit coverage to specific medicines on an approved list, also known as a formulary, which might not include all of the FDA-approved medicines for a particular indication. Moreover, a third-party payor’s decision to provide coverage for a medicine does not imply that an adequate reimbursement rate will be approved. Additionally, one third-party payor’s decision to cover a particular medicine does not ensure that other payors will also provide coverage for the medicine, or will provide coverage at an adequate reimbursement rate. Even though we have contracts with some PBMs in the United States, that does not guarantee that they will perform in accordance with the contracts, nor does that preclude them from taking adverse actions against us, which could materially adversely affect our operating results. In addition, the existence of such PBM contracts does not guarantee coverage by such PBM’s contracted health plans or adequate reimbursement to their respective providers for our medicines. For example, two significant PBMs placed DUEXIS and VIMOVO on their exclusion lists beginning in 2015, which has resulted in a loss of coverage for patients whose healthcare plans have adopted these PBM lists. Also, as noted above, we are currently in an ongoing contract and rebate dispute with a U.S. PBM involving VIMOVO and DUEXIS, the outcome of which we cannot determine at this time, and which has the potential to negatively impact our relationship with that PBM, which could affect its coverage and/or reimbursement treatment of our other medicines. Additional healthcare plan formularies may also exclude our medicines from coverage due to actions of these PBMs, future price increases we may implement, our use of the HorizonCares program or any other co-pay programs, or other reasons. If our strategies to mitigate formulary exclusions are not effective, these events may reduce the likelihood that physicians prescribe our medicines and increase the likelihood that prescriptions for our medicines are not filled.

Outside of the United States, the success of our medicines, including LODOTRA, BUPHENYL and RAVICTI, will depend largely on obtaining and maintaining government coverage, because in many countries patients are unlikely to use prescription drugs that are not covered by their government healthcare programs. To date, LODOTRA is approved in more than 35 countries outside the United States, and reimbursement for LODOTRA has been obtained in Germany, Italy, Sweden and Switzerland. Mundipharma is seeking coverage for LODOTRA in a number of countries and currently sells LODOTRA without coverage in a limited number of countries. BUPHENYL is marketed in select countries throughout Europe, the Middle East and the Asia-Pacific region. With respect to RAVICTI, we expect to begin commercializing the medicine in Europe in 2017. Negotiating coverage and reimbursement with governmental authorities can delay commercialization by 12 months or more. Coverage and reimbursement policies may adversely affect our ability to sell our medicines on a profitable basis. In many international markets, governments control the prices of prescription pharmaceuticals, including through the implementation of reference pricing, price cuts, rebates, revenue-related taxes and profit control, and we expect prices of prescription pharmaceuticals to decline over the life of the medicine or as volumes increase. Recently, many countries in the EU have increased the amount of discounts required on medicines, which we believe has impacted the reimbursement rates and timing to launch for LODOTRA to date, and we expect these discounts to continue as countries attempt to manage healthcare expenditures, especially in light of current economic conditions. As a result of these pricing practices, it may become difficult to achieve or sustain profitability or expected rates of growth in revenue or results of operations. Any shortfalls in revenue could adversely affect our business, financial condition and results of operations.

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In light of such policies and the uncertainty surrounding proposed regulations and changes in the coverage and reimbursement policies of
governments and third-party payors, we cannot be sure that coverage and reimbursement will be available for any of our medicines in any additional markets
or for any other medicine candidates that we may develop. Also, we cannot be sure that reimbursement amounts will not reduce the demand for, or the price
of, our medicines. If coverage and reimbursement are not available or are available only at limited levels, we may not be able to successfully commercialize
our medicines.

We expect to experience pricing pressures in connection with the sale of our medicines due to the trend toward managed healthcare, the increasing
influence of health maintenance organizations and additional legislative proposals. There may be additional pressure by payors and healthcare providers to
use generic drugs that contain the active ingredients found in our medicines or any other medicine candidates that we may develop or acquire. If we fail to
successfully secure and maintain coverage and adequate reimbursement for our medicines or are significantly delayed in doing so, we will have difficulty
achieving market acceptance of our medicines and expected revenue and profitability which would have a material adverse effect on our business, results of
operations, financial condition and prospects. We may also experience pressure from payors concerning certain promotional approaches that we may
implement such as our HorizonCares program or any other co-pay or free medicine programs whereby we assist qualified patients with certain out-of-pocket
expenditures for our medicine. If we are unsuccessful with our HorizonCares program or any other co-pay initiatives or free medicine programs, we would be
at a competitive disadvantage in terms of pricing versus preferred branded and generic competitors. We may also experience financial pressure in the future
which would make it difficult to support investment levels in areas such as managed care contract rebates, HorizonCares and other access tools.

We are subject to federal, state and foreign healthcare laws and regulations and implementation or changes to such healthcare laws and
regulations could adversely affect our business and results of operations.

The U.S. and some foreign jurisdictions are considering or have enacted a number of legislative and regulatory proposals to regulate and to change
the healthcare system in ways that could affect our ability to sell our medicines profitably. In the United States and elsewhere, there is significant interest in
promoting changes in healthcare systems with the stated goals of containing healthcare costs (including a number of proposals pertaining to prescription
drugs, specifically), 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.

If we are found to be in violation of any of these laws or any other federal or state regulations, we may be subject to civil and/or criminal penalties,
damages, fines, exclusion from federal health care programs and the restructuring of our operations. Any of these could have a material adverse effect on our
business and financial results. Since many of these laws have not been fully interpreted by the courts, there is an increased risk that we may be found in
violation of one or more of their provisions. Any action against us for violation of these laws, even if we ultimately are successful in our defense, will cause us
to incur significant legal expenses and divert our management’s attention away from the operation of our business.

We expect that the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, or collectively the
ACA, as well as other healthcare reform measures that may be adopted in the future, may result in more rigorous coverage criteria and in additional downward
pressure on the price that we may receive for any approved medicine. An expansion in the government’s role in the U.S. healthcare industry may cause
general downward pressure on the prices of prescription medicines, lower reimbursements for providers using our medicines, reduce medicine utilization and
adversely affect our business and results of operations. It is unclear whether and to what extent, if at all, other potential developments resulting from the ACA,
such as an increase in the number of people with health insurance and an increased focus on preventive medicine, may provide us with additional revenue to
offset the annual excise tax (on certain medicine sales) enacted under the ACA, subject to limited exceptions. It is possible that the tax burden, if ours is not
excepted, would adversely affect our financial performance, which in turn could cause the price of our ordinary shares to decline. The ACA, among other
things, also established a Medicare Part D coverage gap discount program, in which manufacturers must agree to offer 50 percent point-of-sale discounts off
negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for the manufacturer’s outpatient drugs
to be covered under Medicare Part D. Moreover, certain politicians, including presidential candidates, have announced plans to regulate the prices of
medicines. The majority of our medicines are purchased by private payors, and we do not believe that any such legislation, if enacted, would have a material
effect on us or our business, however, we cannot know what form any such legislation may take or the market’s perception of how such legislation would
affect us. Any reduction in reimbursement from government programs may result in a similar reduction in payments from private payors. The implementation
of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability, or commercialize our
current medicines and/or those for which we may receive regulatory approval in the future.
We are subject, directly or indirectly, to federal and state healthcare fraud and abuse and false claims laws and regulations. Prosecutions under such laws have increased in recent years and we may become subject to such litigation. If we are unable to comply, or have not fully complied, with such laws, we could face substantial penalties.

In the United States, we are subject directly, or indirectly through our customers, to various state and federal fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute, the federal False Claims Act, civil monetary penalty statutes prohibiting beneficiary inducements, and similar state laws, federal and state privacy and security laws, sunshine laws, government price reporting laws, and other fraud laws. These laws may impact, among other things, our current and proposed sales, marketing and educational programs, as well as other possible relationships with customers, pharmacies, physicians, payors, and patients.

Compliance with these laws, including the development of a comprehensive compliance program, is difficult, costly and time consuming. Because of the breadth of these laws and the narrowness of available statutory and regulatory exemptions, it is possible that some of our business activities could be subject to challenge under one or more of such laws. These risks may be increased where there are evolving interpretations of applicable regulatory requirements, such as those applicable to manufacturer co-pay initiatives. Pharmaceutical manufacturer co-pay initiatives and free medicine programs are the subject of ongoing litigation (involving other manufacturers and to which we are not a party) and evolving interpretations of applicable regulatory requirements and certain state laws, and any change in the regulatory or enforcement environment regarding such programs could impact our ability to offer such programs. If we are unsuccessful with our HorizonCares programs, any other co-pay initiatives or free medicine programs, we would be at a competitive disadvantage in terms of pricing versus preferred branded and generic competition, or be subject to significant penalties. We are engaged in various business arrangements with current and potential customers, and we can give no assurance that such arrangements would not be subject to scrutiny under such laws, despite our efforts to properly structure such arrangements. Even if we structure our programs with the intent of compliance with such laws, there can be no certainty that we would not need to defend our business activities against enforcement or litigation. Further, we cannot give any assurances that prior business activities or arrangements of other companies that we acquire will not be scrutinized or subject to enforcement or litigation.

There has also been a recent trend of increased federal and state regulation of payments made to physicians and other healthcare providers. The ACA, among other things, imposed new reporting requirements on drug manufacturers for payments made by them to physicians and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members. Failure to submit required information may result in significant civil monetary penalties.

We are unable to predict whether we could be subject to actions under any of these or other healthcare laws, or the impact of such actions. If we are found to be in violation of, or to encourage or assist the violation by third parties of any of the laws described above or other applicable state and federal fraud and abuse laws, we may be subject to penalties, including administrative, civil and criminal penalties, damages, fines, withdrawal of regulatory approval, imprisonment, exclusion from government healthcare reimbursement programs, contractual damages, reputational harm, diminished profits and future earnings, injunctions and other associated remedies, or private “qui tam” actions brought by individual whistleblowers in the name of the government, and the curtailment or restructuring of our operations, all of which could have a material adverse effect on our business and results of operations. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management’s attention from the operation of our business.

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Our medicines or any other medicine candidate that we develop may cause undesirable side effects or have other properties that could delay or prevent regulatory approval or commercialization, result in medicine re-labeling or withdrawal from the market or have a significant impact on customer demand.

Undesirable side effects caused by any medicine candidate that we develop could result in the denial of regulatory approval by the FDA or other regulatory authorities for any or all targeted indications, or cause us to evaluate the future of our development programs. In our two Phase 3 clinical trials with DUEXIS, the most commonly reported treatment-emergent adverse events were nausea, dyspepsia, diarrhea, constipation and upper respiratory tract infection. In Phase 3 endoscopic registration clinical trials with VIMOVO, the most commonly reported treatment-emergent adverse events were erosive gastritis, dyspepsia, gastritis, diarrhea, gastric ulcer, upper abdominal pain, nausea and upper respiratory tract infection. The most common side effects observed in pivotal trials for ACTIMMUNE were “flu-like” or constitutional symptoms such as fever, headache, chills, myalgia and fatigue. The most commonly reported treatment-emergent adverse events in the Phase 3 clinical trials with RAYOS/LODOTRA included flare in rheumatoid arthritis related symptoms, abdominal pain, nasopharyngitis, headache, flushing, upper respiratory tract infection, back pain and weight gain. The most common adverse events reported in a Phase 2 clinical trial of PENNSAID 2% were application site reactions, such as dryness, exfoliation, erythema, pruritus, pain, induration, rash and scabbing. With respect to BUPHENYL, the most common side effects are change in the frequency of breathing, lack of or irregular menstruation, lower back, side, or stomach pain, mood or mental changes, muscle pain or twitching, nausea or vomiting, nervousness or restlessness, swelling of the feet or lower legs, unpleasant taste and unusual tiredness or weakness. With respect to RAVICTI, the most common side effects are diarrhea, nausea, decreased appetite, gas, vomiting, high blood levels of ammonia, headache, tiredness and dizziness. With respect to KRYSTEXXA, the most commonly reported serious adverse reactions in the pivotal trial were gout flares, infusion reactions, nausea, contusion or ecchymosis, nasopharyngitis, constipation, chest pain, anaphylaxis, exacerbation of pre-existing congestive heart failure and vomiting.

The FDA or other regulatory authorities may also require, or we may undertake, additional clinical trials to support the safety profile of our medicines or medicine candidates.

In addition, if we or others identify undesirable side effects caused by our medicines or any other medicine candidate that we may develop that receives marketing approval, or if there is a perception that the medicine is associated with undesirable side effects:

- regulatory authorities may require the addition of labeling statements, such as a “black box” warning or a contraindication;
- regulatory authorities may withdraw their approval of the medicine or place restrictions on the way it is prescribed;
- we may be required to change the way the medicine is administered, conduct additional clinical trials or change the labeling of the medicine or implement a risk evaluation and mitigation strategy; and
- we may be subject to increased exposure to product liability and/or personal injury claims.

If any of these events occurred with respect to our medicines, our ability to generate significant revenues from the sale of these medicines would be significantly harmed.
We rely on third parties to conduct our preclinical and clinical trials. If these third parties do not successfully carry out their contractual duties or meet expected deadlines or if they experience regulatory compliance issues, we may not be able to obtain regulatory approval for or commercialize our medicine candidates and our business could be substantially harmed.

We have agreements with third-party contract research organizations, or CROs, to conduct our clinical programs, including those required for post-marketing commitments, and we expect to continue to rely on CROs for the completion of ongoing and planned clinical trials. We may also have the need to enter into other such agreements in the future if we were to develop other medicine candidates or conduct clinical trials in additional indications for our existing medicines. In connection with our ongoing Phase 3 study to evaluate ACTIMMUNE for the treatment of FA, we are working with the Clinical Trials Coordination Center, an academic research organization, or ARO, that is part of the Center for Human Experimental Therapeutics at the University of Rochester to conduct the FA Phase 3 study as well as collaborating with the Friedreich’s Ataxia Research Alliance, or FARA, and select investigators of FARA’s Collaborative Clinical Research Network in FA. In connection with the investigator-initiated study to evaluate ACTIMMUNE in combination with PD-1/PD-L1 inhibitors in various forms of cancer including advanced urothelial carcinoma (bladder cancer) and renal cell carcinoma, we are collaborating with Fox Chase Cancer Center. In connection with our ongoing study to evaluate RAYOS/LODOTRA on the fatigue experienced by systemic lupus erythematosus patients, we are collaborating with the Alliance for Lupus Research. We rely heavily on these parties for the execution of our clinical studies, and control only certain aspects of their activities. Nevertheless, we are responsible for ensuring that each of our studies is conducted in accordance with the applicable protocol. We, our CROs and our ARO are required to comply with current GCP or ICH regulations. The FDA enforces these GCP or ICH regulations through periodic inspections of trial sponsors, principal investigators and trial sites. If we or our CROs or collaborators fail to comply with applicable GCP or ICH regulations, the data generated in our clinical trials may be deemed unreliable and our submission of marketing applications may be delayed or the FDA may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that, upon inspection, the FDA will determine that any of our clinical trials comply or complied with GCP or ICH regulations. In addition, our clinical trials must be conducted with product produced under cGMP regulations, and may require a large number of test subjects. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process. Moreover, our business may be impeded if any of our CROs or collaborators violates federal or state fraud and abuse or false claims laws and regulations or healthcare privacy and security laws. We must also obtain certain third-party institutional review board, or IRB, and ethics committee approvals in order to conduct our clinical trials. Delays by IRBs and ethics committees in providing such approvals may delay our clinical trials.

If any of our relationships with these third-party CROs or collaborators terminate, we may not be able to enter into similar arrangements on commercially reasonable terms, or at all. If CROs or collaborators do not successfully carry out their contractual duties or obligations or meet expected deadlines, if they need to be replaced or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical protocols or regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated and we may not be able to obtain regulatory approval for or successfully commercialize our medicines and medicine candidates. As a result, our results of operations and the commercial prospects for our medicines and medicine candidates were harmed, our costs could increase and our ability to generate revenues could be delayed.

Switching or adding additional CROs or collaborators can involve substantial cost and require extensive management time and focus. In addition, there is a natural transition period when a new CRO or collaborator commences work. As a result, delays may occur, which can materially impact our ability to meet our desired clinical development timelines. Though we carefully manage our relationships with our CROs and collaborators, there can be no assurance that we will not encounter similar challenges or delays in the future or that these delays or challenges will not have a material adverse impact on our business, financial condition or prospects.

In addition, in connection with our November 2013 acquisition of the U.S. rights to VIMOVO, we assumed responsibility for completing an ongoing Pediatric Research Equity Act post-marketing requirement study in children 12 years to 16 years and 11 months of age with Juvenile RA. This report was submitted to the FDA in December 2015. We have also assumed Hyperion’s post-marketing obligations and commitments to conduct studies in UCD patients during the first two months of life and from two months to two years of age. Although we are committed to carrying out these commitments, there are challenges in conducting studies in pediatric patients including availability of study sites, patients, and obtaining parental informed consent. These studies are ongoing and have targeted sNDA submission dates of the second quarter of 2016 for UCD patients from two months to two years of age and the first quarter of 2018 for UCD patients during the first two months of life. In connection with our acquisition of Cretaiz in January 2016, we assumed responsibility for an observational study related to KRYSTEXXA. Thus far in this study there have been no new signals and safety results are parallel to those in label. We are continuing to screen and enroll patients in the near term.

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Clinical development of drugs and biologics involves a lengthy and expensive process with an uncertain outcome, and results of earlier studies and trials may not be predictive of future trial results.

Clinical testing is expensive and can take many years to complete, and our outcome is uncertain. Failure can occur at any time during the clinical trial process. The results of preclinical studies and early clinical trials of potential medicine candidates may not be predictive of the results of later-stage clinical trials. Medicine candidates in later stages of clinical trials may fail to show the desired safety and efficacy traits despite having progressed through preclinical studies and initial clinical testing.

With respect to our on-going Phase 3 clinical trial to evaluate ACTIMMUNE for the treatment of FA, and the investigator-initiated study to evaluate ACTIMMUNE in combination with OPDIVO® nivolumab in advanced solid tumors and to the extent that we are required to conduct additional clinical development of any of our existing or later acquired medicines or we conduct clinical development of earlier stage medicine candidates or for other additional indications for RAYOS/LODOTRA, we may experience delays in these clinical trials or investigator-initiated studies. We do not know whether any additional clinical trials will be initiated in the future, begin on time, need to be redesigned, enroll patients on time or be completed on schedule, if at all. Clinical trials can be delayed for a variety of reasons, including delays related to:

- obtaining regulatory approval to commence a trial;
- reaching agreement on acceptable terms with prospective CROs and clinical trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- obtaining institutional review board or ethics committee approval at each site;
- recruiting suitable patients to participate in a trial;
- having patients complete a trial or return for post-treatment follow-up;
- clinical sites dropping out of a trial;
- adding new sites; or
- manufacturing sufficient quantities of medicine candidates for use in clinical trials.

Patient enrollment, a significant factor in the timing of clinical trials, is affected by many factors including the size and nature of the patient population, the proximity of patients to clinical sites, the eligibility criteria for the trial, the design of the clinical trial, competing clinical trials and clinicians’ and patients’ perceptions as to the potential advantages of the medicine candidate being studied in relation to other available therapies, including any new drugs or biologics that may be approved for the indications we are investigating. Furthermore, we rely and expect to rely on CROs and clinical trial sites to ensure the proper and timely conduct of our future clinical trials and while we have and intend to have agreements governing their committed activities, we will have limited influence over their actual performance.

We could encounter delays if prescribing physicians encounter unresolved ethical issues associated with enrolling patients in clinical trials of our medicine candidates in lieu of prescribing existing treatments that have established safety and efficacy profiles. Further, a clinical trial may be suspended or terminated by us, our collaborators, the FDA or other regulatory authorities due to a number of factors, including failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols, inspection of the clinical trial operations or trial site by the FDA or other regulatory authorities resulting in the imposition of a clinical hold, unforeseen safety issues or adverse side effects, failure to demonstrate a benefit from using a medicine candidate, changes in governmental regulations or administrative actions or lack of adequate funding to continue the clinical trial. If we experience delays in the completion of, or if we terminate, any clinical trial of our medicine candidates, the commercial prospects of our medicine candidates will be harmed, and our ability to generate medicine revenues from any of these medicine candidates will be delayed. In addition, any delays in completing our clinical trials will increase our costs, slow down our medicine development and approval process and jeopardize our ability to commence medicine sales and generate revenues.

Moreover, principal investigators for our clinical trials may serve as scientific advisors or consultants to us from time to time and receive compensation in connection with such services. Under certain circumstances, we may be required to report some of these relationships to the FDA. The FDA may conclude that a financial relationship between us and a principal investigator has created a conflict of interest or otherwise affected interpretation of the study. The FDA may therefore question the integrity of the data generated at the applicable clinical trial site and the utility of the clinical trial itself may be jeopardized. This could result in a delay in approval, or rejection, of our marketing applications by the FDA and may ultimately lead to the denial of marketing approval of one or more of our medicine candidates.
Any of these occurrences may harm our business, financial condition, results of operations and prospects significantly. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our medicine candidates.

**Business interruptions could seriously harm our future revenue and financial condition and increase our costs and expenses.**

Our operations could be subject to earthquakes, power shortages, telecommunications failures, water shortages, floods, hurricanes, typhoons, fires, extreme weather conditions, medical epidemics and other natural or man-made disasters or business interruptions. While we carry insurance for certain of these events and have implemented disaster management plans and contingencies, the occurrence of any of these business interruptions could seriously harm our business and financial condition and increase our costs and expenses. We conduct significant management operations at both our global headquarters located in Dublin, Ireland and our U.S. office located in Lake Forest, Illinois. If our Dublin or Lake Forest offices were affected by a natural or man-made disaster or other business interruption, our ability to manage our domestic and foreign operations could be impaired, which could materially and adversely affect our results of operations and financial condition. We currently rely, and intend to rely in the future, on third-party manufacturers and suppliers to produce our medicines and third-party logistics partners to ship our medicines. Our ability to obtain commercial supplies of our medicines could be disrupted and our results of operations and financial condition could be materially and adversely affected if the operations of these third-party suppliers or logistics partners were affected by a man-made or natural disaster or other business interruption. The ultimate impact of such events on us, our significant suppliers and our general infrastructure is unknown.

We are dependent on information technology systems, infrastructure and data, which exposes us to data security risks.

We are dependent upon information technology systems, infrastructure and data, including mobile technologies, to operate our business. The multitude and complexity of our computer systems make them inherently vulnerable to service interruption or destruction, malicious intrusion and random attack. Likewise, data privacy or security breaches by employees or others may pose a risk that sensitive data, including our intellectual property, trade secrets or personal information of our employees, patients, customers or other business partners may be exposed to unauthorized persons or to the public. Cyber-attacks are increasing in their frequency, sophistication and intensity. Cyber-attacks could include the deployment of harmful malware, denial-of-service, social engineering and other means to affect service reliability and threaten data confidentiality, integrity and availability. Our business partners face similar risks and any security breach of their systems could adversely affect our security posture. A security breach or privacy violation that leads to disclosure or modification of or prevents access to patient information, including personally identifiable information or protected health information, could harm our reputation, compel us to comply with federal and/or state breach notification laws and foreign law equivalents, subject us to mandatory corrective action, require us to verify the correctness of database contents and otherwise subject us to liability under laws and regulations that protect personal data, any of which could disrupt our business and/or result in increased costs or loss of revenue. Moreover, the prevalent use of mobile devices that access confidential information increases the risk of data security breaches, which could result in financial, legal, business or reputational harm to us. In addition, our liability insurance may not be sufficient in type or amount to cover us against claims related to security breaches, cyber-attacks and other related breaches.
If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of our medicines.

We face an inherent risk of product liability as a result of the commercial sales of our medicines and the clinical testing of our medicine candidates. For example, we may be sued if any of our medicines or medicine candidates allegedly causes injury or is found to be otherwise unsuitable during clinical testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the medicine, negligence, strict liability or a breach of warranties. Claims could also be asserted under state consumer protection acts. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our medicines and medicine candidates. Even a successful defense would require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for our medicines or medicine candidates that we may develop;
- injury to our reputation;
- withdrawal of clinical trial participants;
- initiation of investigations by regulators;
- costs to defend the related litigation;
- a diversion of management’s time and resources;
- substantial monetary awards to trial participants or patients;
- medicine recalls, withdrawals or labeling, marketing or promotional restrictions;
- loss of revenue;
- exhaustion of any available insurance and our capital resources; and
- the inability to commercialize our medicines or medicine candidates.

Our inability to obtain and retain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the commercialization of medicines we develop. We currently carry product liability insurance covering our clinical studies and commercial medicine sales in the amount of $30 million in the aggregate. Although we maintain such insurance, any claim that may be brought against us could result in a court judgment or settlement in an amount that is not covered, in whole or in part, by our insurance or that is in excess of the limits of our insurance coverage. If we determine that it is prudent to increase our product liability coverage due to the on-going commercialization of our current medicines in the United States, and/or the potential commercial launches of any of our medicines in additional markets or for additional indications, we may be unable to obtain such increased coverage on acceptable terms or at all. Our insurance policies also have various exclusions, and we may be subject to a product liability claim for which we have no coverage. We will have to pay any amounts awarded by a court or negotiated in a settlement that exceed our coverage limitations or that are not covered by our insurance, and we may not have, or be able to obtain, sufficient capital to pay such amounts.

Our business involves the use of hazardous materials, and we and our third-party manufacturers must comply with environmental laws and regulations, which can be expensive and restrict how we do business.

Our third-party manufacturers’ activities involve the controlled storage, use and disposal of hazardous materials owned by us, including the components of our medicine candidates and other hazardous compounds. We and our manufacturers are subject to federal, state and local as well as foreign laws and regulations governing the use, manufacture, storage, handling and disposal of these hazardous materials. Although we believe that the safety procedures utilized by our third-party manufacturers for handling and disposing of these materials comply with the standards prescribed by these laws and regulations, we cannot eliminate the risk of accidental contamination or injury from these materials. In the event of an accident, state, federal or foreign authorities may curtail the use of these materials and interrupt our business operations. We do not currently maintain hazardous materials insurance coverage. If we are subject to any liability as a result of our third-party manufacturers’ activities involving hazardous materials, our business and financial condition may be adversely affected. In the future we may seek to establish longer-term third-party manufacturing arrangements, pursuant to which we would seek to obtain contractual indemnification protection from such third-party manufacturers potentially limiting this liability exposure.
Our employees, independent contractors, principal investigators, consultants, vendors, distributors and CROs may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements.

We are exposed to the risk that our employees, independent contractors, principal investigators, consultants, vendors, distributors and CROs may engage in fraudulent or other illegal activity. Misconduct by these parties could include intentional, reckless and/or negligent conduct or unauthorized activities that violate FDA regulations, including those laws that require the reporting of true, complete and accurate information to the FDA, manufacturing standards, federal and state healthcare fraud and abuse laws and regulations, and laws that require the true, complete and accurate reporting of financial information or data. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Misconduct by our employees and other third parties may also include the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. We have adopted a Code of Business Conduct and Ethics, but it is not always possible to identify and deter misconduct by our employees and other third parties, 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 or regulations. 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, including the imposition of significant civil and criminal penalties, damages, fines, the curtailment or restructuring of our operations, the exclusion from participation in federal and state healthcare programs and imprisonment.

Risks Related to our Financial Position and Capital Requirements

In the past we have incurred significant operating losses, and we recently achieved operating profitability.

We have a limited operating history and even less history operating as a combined organization following the acquisitions of Vidara and Hyperion. We have financed our operations primarily through equity and debt financings and have incurred significant operating losses in the past. We had operating income of $55.4 million for the year ended December 31, 2015 and operating losses of $8.5 million and $42.9 million for the years ended December 31, 2014 and 2013, respectively. We had net income of $39.5 million for the year ended December 31, 2015 and net losses of $263.6 million and $149.0 million for the years ended December 31, 2014 and 2013, respectively. As of December 31, 2015, we had an accumulated deficit of $681.2 million. Our prior losses have resulted principally from costs incurred in our development activities for our medicines and medicine candidates, commercialization activities related to our medicines, costs associated with our acquisition transactions and costs associated with derivative liability accounting. Our prior losses, combined with possible future losses, have had and will continue to have an adverse effect on our shareholders’ deficit and working capital. While we anticipate that we will continue to generate operating profits in the future, whether we can sustain this will depend on the revenues we generate from the sale of our medicines being sufficient to cover our operating expenses.

We have limited sources of revenues and significant expenses. We cannot be certain that we will sustain profitability, which would depress the market price of our ordinary shares and could cause our investors to lose all or a part of their investment.

Our ability to sustain profitability depends upon our ability to generate sales of our medicines. We have a limited history of commercializing our medicines as a company, and commercialization has been primarily in the United States. We may never be able to successfully commercialize our medicines or develop or commercialize other medicines in the United States, which we believe represents our most significant commercial opportunity. Our ability to generate future revenues depends heavily on our success in:

- continued commercialization of our existing medicines and any other medicine candidates for which we obtain approval;
- obtaining FDA approvals for additional indications for ACTIMMUNE and RAVICTI;
- securing additional foreign regulatory approvals for our medicines in territories where we have commercial rights; and
- developing, acquiring and commercializing a portfolio of other medicines or medicine candidates in addition to our current medicines.
Even if we do generate additional medicine sales, we may not be able to sustain profitability on a quarterly or annual basis. Our failure to remain profitable would depress the market price of our ordinary shares and could impair our ability to raise capital, expand our business, diversify our medicine offerings or continue our operations.

**We may need to obtain additional financing to fund additional acquisitions.**

Our operations have consumed substantial amounts of cash since inception. We expect to continue to spend substantial amounts to:

- commercialize our existing medicines in the United States, including due to the substantial expansion of our sales force we have completed in recent years, and our planned commercial launch of RAVICTI in Europe in 2017;
- complete the regulatory approval process, and any future required clinical development related thereto, for our medicines and medicine candidates;
- potentially acquire other businesses or additional complementary medicines or medicines that augment our current medicine portfolio, including costs associated with refinancing debt of acquired companies; and
- conduct clinical trials with respect to potential additional indications, as well as conduct post-marketing requirements and commitments, with respect to our medicines and medicines we acquire.

While we believe that our existing cash and cash equivalents will be sufficient to fund our operations based on our current expectations of continued revenue growth, we may need to raise additional funds if we choose to expand our commercialization or development efforts more rapidly than presently anticipated, if we develop or acquire additional medicines or acquire companies, or if our revenue does not meet expectations.

We cannot be certain that additional funding will be available on acceptable terms, or at all. If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we may have to significantly delay, scale back or discontinue the development or commercialization of one or more of our medicines or medicine candidates or one or more of our other research and development initiatives, or delay, cut back or abandon our plans to grow the business through acquisition. We also could be required to:

- seek collaborators for one or more of our current or future medicine candidates at an earlier stage than otherwise would be desirable or on terms that are less favorable than might otherwise be available; or
- relinquish or license on unfavorable terms our rights to technologies or medicine candidates that we would otherwise seek to develop or commercialize ourselves.

In addition, if we are unable to secure financing to support future acquisitions, our ability to execute on a key aspect of our overall growth strategy would be impaired.

Any of the above events could significantly harm our business, financial condition and prospects and cause the price of our ordinary shares to decline.

**We have incurred a substantial amount of debt, which could adversely affect our business, including by restricting our ability to engage in additional transactions or incur additional indebtedness.**

As of December 31, 2015, we had $1,145.1 million book value, or $1,273.0 million principal amount, of indebtedness, including $400.0 million in secured indebtedness. In connection with the acquisition of Hyperion, we issued $475.0 million aggregate principal amount of 6.625% Senior Notes due 2023, or the 2023 Senior Notes, in April 2015 and borrowed $400.0 million in principal amount of secured loans pursuant to a credit agreement we entered into in May 2015 with Citibank, N.A. as administrative and collateral agent, and the lenders from time to time party thereto, or the credit agreement, providing for (i) a five-year $400.0 million term loan facility, or the 2015 Term Loan Facility; (ii) an uncommitted accordion facility subject to the satisfaction of certain financial and other conditions; and (iii) one or more uncommitted refinancing loan facilities with respect to loans thereunder, or the 2015 Senior Secured Credit Facility. We repaid $1.0 million in principal amount from this facility in both September 2015 and December 2015. Accordingly, we have a significant amount of debt outstanding on a consolidated basis.
This substantial level of debt could have important consequences to our business, including, but not limited to:

- reducing the benefits we expect to receive from our recent and any future acquisition transactions;
- making it more difficult for us to satisfy our obligations;
- requiring a substantial portion of our cash flows from operations to be dedicated to the payment of principal and interest on our indebtedness, therefore reducing our ability to use our cash flows to fund acquisitions, capital expenditures, and future business opportunities;
- exposing us to the risk of increased interest rates to the extent of any future borrowings, including borrowings under our 2015 Senior Secured Credit Facility, at variable rates of interest;
- making it more difficult for us to satisfy our obligations with respect to our indebtedness, including our outstanding notes, our 2015 Senior Secured Credit Facility, and any failure to comply with the obligations of any of our debt instruments, including restrictive covenants and borrowing conditions, could result in an event of default under the agreements governing such indebtedness;
- limiting our ability to obtain additional financing for working capital, capital expenditures, debt service requirements, acquisitions, and general corporate or other purposes;
- limiting our flexibility in planning for, or reacting to, changes in our business or market conditions and placing us at a competitive disadvantage compared to our competitors who are less highly leveraged and who, therefore, may be able to take advantage of opportunities that our leverage may prevent us from exploiting; and
- restricting us from pursuing certain business opportunities.

The indenture governing the 2023 Senior Notes and the credit agreement impose, and the terms of any future indebtedness may impose, various covenants that limit our ability and/or our restricted subsidiaries’ ability to, among other things, pay dividends or distributions, repurchase equity, prepay junior debt and make certain investments, incur additional debt and issue certain preferred stock, incur liens on assets, engage in certain asset sales, merge, consolidate with or merge or sell all or substantially all of our assets, enter into transactions with affiliates, designate subsidiaries as unrestricted subsidiaries, and allow to exist certain restrictions on the ability of restricted subsidiaries to pay dividends or make other payments to us.

Our ability to obtain future financing and engage in other transactions may be restricted by these covenants. In addition, any credit ratings will impact the cost and availability of future borrowings and our cost of capital. Our ratings at any time will reflect each rating organization’s then opinion of our financial strength, operating performance and ability to meet our debt obligations. There can be no assurance that we will achieve a particular rating or maintain a particular rating in the future. A reduction in our credit ratings may limit our ability to borrow at acceptable interest rates. If our credit ratings were downgraded or put on watch for a potential downgrade, we may not be able to sell additional debt securities or borrow money in the amounts, at the times or interest rates or upon the more favorable terms and conditions that might otherwise be available. Any impairment of our ability to obtain future financing on favorable terms could have an adverse effect on our ability to refinance any of our then-existing debt and may severely restrict our ability to execute on our business strategy, which includes the continued acquisition of additional medicines or businesses.

We may not be able to generate sufficient cash to service all of our indebtedness and may be forced to take other actions to satisfy our obligations under our indebtedness, which may not be successful.

Our ability to make scheduled payments under or to refinance our debt obligations depends on our financial condition and operating performance, which is subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control. Our ability to generate cash flow to meet our payment obligations under our debt may also depend on the successful implementation of our operating and growth strategies. Any refinancing of our debt could be at higher interest rates and may require us to comply with more onerous covenants, which could further restrict our business operations.
If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay capital expenditures, sell assets or business operations, seek additional capital or restructure or refinance our indebtedness. We cannot ensure that we would be able to take any of these actions, that these actions would be successful and permit us to meet our scheduled debt service obligations or that these actions would be permitted under the terms of existing or future debt agreements, including the indentures that govern our outstanding notes and the credit agreement. In addition, any failure to make payments of interest and principal on our outstanding indebtedness on a timely basis would likely result in a reduction of our credit rating, which could harm our ability to incur additional indebtedness.

If we cannot make scheduled payments on our debt, we will be in default and, as a result:

- our debt holders could declare all outstanding principal and interest to be due and payable;
- the lenders under the credit agreement could foreclose against the assets securing the borrowings then outstanding; and
- we could be forced into bankruptcy or liquidation.

We generally have broad discretion in the use of our cash and may not use it effectively.

Our management has broad discretion in the application of our cash, and investors will be relying on the judgment of our management regarding the use of our cash. Our management may not apply our cash in ways that ultimately increase the value of any investment in our securities. We expect to use our existing cash to fund commercialization activities for our medicines, to potentially fund additional medicine or business acquisitions, to potentially fund additional regulatory approvals of certain of our medicines, to potentially fund development, life cycle management or manufacturing activities of our medicines for other indications, and for working capital, capital expenditures and general corporate purposes. We may also invest our cash in short-term, investment-grade, interest-bearing securities. These investments may not yield a favorable return to our shareholders. If we do not invest or apply our cash in ways that enhance shareholder value, we may fail to achieve expected financial results, which could cause the price of our ordinary shares to decline.

Our ability to use net operating loss carryforwards and certain other tax attributes may be limited.

Under Sections 382 and 383 of the Code, if a corporation undergoes an “ownership change” (generally defined as a greater than 50 percent change in its equity ownership over a three year period), the corporation’s ability to use pre-change net operating loss carryforwards and other pre-change tax attributes to offset post-change income may be limited. In September 2014, the acquisition of Vidara triggered an “ownership change” limitation and, as a result, we are subject to annual limits on our ability to use the net operating loss carryforwards of Horizon Pharma Inc. and its subsidiaries. We estimate this will result in annual limits of approximately $90 million in the years from 2016 through to 2031. Furthermore, we continue to carry forward our annual limitation resulting from an ownership change date of August 2, 2012. The limitation on pre-change net operating losses incurred prior to the August 2, 2012 change date is approximately $20 million for 2016, $15 million for 2017 and $8 million in the years from 2018 through to 2028. During the second quarter of 2015, we also recognized additional net operating losses and federal and state tax credits as a result of the Hyperion acquisition on May 7, 2015 in the amount of approximately $31 million of federal net operating losses, state operating losses of approximately $68 million (net of federal effect) and approximately $30 million of federal and state tax credits. We continue to carry forward our annual limitation related to Hyperion of $50.0 million resulting from the last ownership change date in 2014. The net operating loss carryforward limitation is cumulative such that any use of the carryforwards below the limitations in one year will result in a corresponding increase in the limitations for the subsequent tax year.

Following certain acquisitions of a U.S. corporation by a foreign corporation, Section 7874 of the Code limits the ability of the acquired U.S. corporation and its U.S. affiliates to utilize U.S. tax attributes such as net operating losses to offset U.S. taxable income resulting from certain transactions. Based on the limited guidance available, we expect this limitation is applicable following the acquisition of Vidara. As a result, it is not currently expected that we or our other U.S. affiliates will be able to utilize their U.S. tax attributes to offset their U.S. taxable income, if any, resulting from certain taxable transactions following the acquisition of Vidara. Notwithstanding this limitation, we expect that we will be able to fully use our U.S. net operating losses prior to their expiration. As a result of this limitation, however, it may take HPI longer to use its net operating losses. Moreover, contrary to these expectations, it is possible that the limitation under Section 7874 of the Code on the utilization of U.S. tax attributes could prevent us from fully utilizing our U.S. tax attributes prior to their expiration if we do not generate sufficient taxable income.
Any limitation on our ability to use our net operating loss and tax credit carryforwards, including the carryforwards of companies that we acquire, will likely increase the taxes we would otherwise pay in future years if we were not subject to such limitations.

Unstable market and economic conditions may have serious adverse consequences on our business, financial condition and share price.

As widely reported, global credit and financial markets have experienced extreme disruptions in the past several years, including severely diminished liquidity and credit availability, declines in consumer confidence, declines in economic growth, increases in unemployment rates, and uncertainty about economic stability. While there has been some recent improvement in some of these financial metrics, there can be no assurance that further deterioration in credit and financial markets and confidence in economic conditions will not occur. Our general business strategy may be adversely affected by any such economic downturn, volatile business environment and continued unpredictable and unstable market conditions. If the current equity and credit markets deteriorate again, or do not improve, it may make any necessary debt or equity financing more difficult to complete, more costly, and more dilutive. Failure to secure any necessary financing in a timely manner and on favorable terms could have a material adverse effect on our growth strategy, financial performance and share price and could require us to delay or abandon commercialization or development plans. In addition, there is a risk that one or more of our current service providers, manufacturers and other partners may not survive these difficult economic times, which could directly affect our ability to attain our operating goals on schedule and on budget.

At December 31, 2015, we had $859.6 million of cash and cash equivalents consisting of cash, money market funds and short-term bank time deposits. This amount does not reflect our use of approximately $510.0 million of cash for the acquisition of Crealta in January 2016. While we are not aware of any downgrades, material losses, or other significant deterioration in the fair value of our cash equivalents or marketable securities since December 31, 2015, no assurance can be given that further deterioration in conditions of the global credit and financial markets would not negatively impact our current portfolio of cash equivalents or marketable securities or our ability to meet our financing objectives. Further dislocations in the credit market may adversely impact the value and/or liquidity of marketable securities owned by us.

Changes in accounting rules or policies may affect our financial position and results of operations.

U.S. GAAP and related implementation guidelines and interpretations can be highly complex and involve subjective judgments. Changes in these rules or their interpretation, the adoption of new guidance or the application of existing guidance to changes in our business could significantly affect our financial position and results of operations. In addition, our operation as an Irish company with multiple subsidiaries in different jurisdictions adds additional complexity to the application of U.S. generally accepted accounting principles and this complexity will be exacerbated further if we complete additional strategic transactions. Changes in the application of existing rules or guidance applicable to us or our wholly-owned subsidiaries could significantly affect our consolidated financial position and results of operations.

Covenants under the indenture governing our outstanding notes and the credit agreement restrict our business and operations in many ways and if we do not effectively manage our covenants, our financial conditions and results of operations could be adversely affected.

The credit agreement and the indenture governing the 2023 Senior Notes impose various covenants that limit our ability and/or our restricted subsidiaries’ ability to, among other things:

- pay dividends or distributions, repurchase equity, prepay junior debt and make certain investments;
- incur additional debt and issue certain preferred stock;
- incur liens on assets;
- engage in certain asset sales;
- merge, consolidate with or merge or sell all or substantially all of our assets;
- enter into transactions with affiliates;
- designate subsidiaries as unrestricted subsidiaries; and
- allow to exist certain restrictions on the ability of restricted subsidiaries to pay dividends or make other payments to us.
These covenants may:

- limit our ability to borrow additional funds for working capital, capital expenditures, acquisitions or other general business purposes;
- limit our ability to use our cash flow or obtain additional financing for future working capital, capital expenditures, acquisitions or other general business purposes;
- require us to use a substantial portion of our cash flow from operations to make debt service payments;
- limit our flexibility to plan for, or react to, changes in our business and industry;
- place us at a competitive disadvantage compared to less leveraged competitors; and
- increase our vulnerability to the impact of adverse economic and industry conditions.

If we are unable to successfully manage the limitations and decreased flexibility on our business due to our significant debt obligations, we may not be able to capitalize on strategic opportunities or grow our business to the extent we would be able to without these limitations.

Our failure to comply with any of the covenants could result in a default under the credit agreement or the indenture governing the 2023 Senior Notes, which could permit the administrative agent or the trustee, as applicable, to, or permit the lenders or the holders of the 2023 Senior Notes to cause the administrative agent or the trustee, as applicable, to, declare all or part of any outstanding loans or the notes to be immediately due and payable or to exercise any remedies provided to the administrative agent or the trustee, including, in the case of the credit agreement proceeding against the collateral granted to secure our obligations under the credit agreement. An event of default under either the credit agreement or the indenture governing the 2023 Senior Notes could also lead to an event of default under the terms of the other agreement and the indentures governing our outstanding 2.50% Exchangeable Senior Notes due 2022, or the Exchangeable Senior Notes. Any such event of default or any exercise of rights and remedies by our creditors could seriously harm our business.

If intangible assets that we have recorded in connection with our acquisition transactions become impaired, we could have to take significant charges against earnings.

In connection with the accounting for our various acquisition transactions, we have recorded significant amounts of intangible assets. Under GAAP, we must assess, at least annually and potentially more frequently, whether the value of goodwill and other indefinite-lived intangible assets has been impaired. Amortizing intangible assets will be assessed for impairment in the event of an impairment indicator. Any reduction or impairment of the value of goodwill or other intangible assets will result in a charge against earnings, which could materially adversely affect our results of operations and shareholders’ equity in future periods.

Risks Related to Our Intellectual Property

If we are unable to obtain or protect intellectual property rights related to our medicines and medicine candidates, we may not be able to compete effectively in our markets.

We rely upon a combination of patents, trade secret protection and confidentiality agreements to protect the intellectual property related to our medicines and medicine candidates. The strength of patents in the biotechnology and pharmaceutical field involves complex legal and scientific questions and can be uncertain. The patent applications that we own may fail to result in issued patents with claims that cover our medicines in the United States or in other foreign countries. If this were to occur, early generic competition could be expected against our current medicines and other medicine candidates in development. There is no assurance that all potentially relevant prior art relating to our patents and patent applications has been found, which prior art can invalidate a patent or prevent a patent from issuing based on a pending patent application. In particular, because the APIs in DUEXIS, VIMOVO and RAYOS/LODOTRA have been on the market as separate medicines for many years, it is possible that these medicines have previously been used off-label in such a manner that such prior usage would affect the validity of our patents or our ability to obtain patents based on our patent applications. In addition, claims directed to dosing and dose adjustment may be substantially less likely to issue in light of the Supreme Court decision in Mayo Collaborative Services v. Prometheus Laboratories, Inc., where the court held that claims directed to methods of determining whether to adjust drug dosing levels based on drug metabolite levels in the red blood cells were not patent eligible because they were directed to a law of nature. This decision may have wide-ranging implications on the validity and scope of pharmaceutical method claims.
Even if patents do successfully issue, third parties may challenge their validity, enforceability or scope, which may result in such patents being narrowed or invalidated.

Patent litigation is currently pending in the United States District Court for the District of New Jersey against several companies intending to market a generic version of VIMOVO before the expiration of certain of our patents listed in the Orange Book. These cases are collectively known as the VIMOVO cases, and involve the following sets of defendants: (i) Dr. Reddy’s Laboratories Inc. and Dr. Reddy’s Laboratories Ltd., or collectively Dr. Reddy’s; (ii) Lupin Limited and Lupin Pharmaceuticals Inc., or collectively Lupin; (iii) Mylan Pharmaceuticals Inc., Mylan Laboratories Limited, and Mylan Inc., or collectively Mylan; and (iv) Watson and Actavis Pharma, Inc., or collectively Actavis. The cases were filed in response to Paragraph IV Patent Certification notice letters forwarded by each of Dr. Reddy’s, Lupin, Mylan and Actavis advising us that each had filed an ANDA with the FDA seeking approval to market generic versions of VIMOVO.

On February 24, 2015, Dr. Reddy’s Laboratories, Inc. filed a Petition for inter partes Review, or IPR, of U.S. Patent No. 8,557,285, one of the patents in litigation in the above referenced VIMOVO cases. On October 9, 2015, the United States Patent and Trademark Office denied such Petition for IPR.

On May 21, 2015, the Coalition for Affordable Drugs VII LLC, or the Coalition for Affordable Drugs, filed a Petition for IPR of U.S. Patent No. 6,926,907, one of the patents in litigation in the above referenced VIMOVO cases. On December 8, 2015, the United States Patent and Trademark Office denied such Petition for IPR.

On June 5, 2015, the Coalition for Affordable Drugs filed another Petition for IPR of U.S. Patent No. 8,858,996, one of the patents in litigation in the above referenced VIMOVO cases. On December 17, 2015, the United States Patent and Trademark Office denied such Petition for IPR.

On August 7, 2015, the Coalition for Affordable Drugs filed another Petition for IPR of U.S. Patent No. 8,852,636, one of the patents in litigation in the above referenced VIMOVO cases. On February 11, 2016, the United States Patent and Trademark office denied such Petition for IPR.

On August 12, 2015, the Coalition for Affordable Drugs filed another Petition for IPR of U.S. Patent No. 8,945,621, one of the patents in litigation in the above referenced VIMOVO cases. The Patent Trial and Appeal Board has not yet issued a decision with regard to whether such IPR will be instituted.

On August 19, 2015, Lupin filed Petitions for IPR of U.S. Patent Nos. 8,858,996, 8,852,636, and 8,865,190, all patents in litigation in the above referenced VIMOVO cases. The Patent Trial and Appeal Board has not yet issued decisions with regard to whether such IPRs will be instituted.

Patent litigation is currently pending in the United States District Court for the District of New Jersey against several companies intending to market a generic version of PENNSAID 2% prior to the expiration of certain of our patents listed in the Orange Book. These cases are collectively known as the PENNSAID 2% cases, and involve the following sets of defendants: (i) Actavis FL, Actavis, Inc., and Actavis plc, or collectively Actavis; (ii) Lupin Limited, or Lupin; (iii) IGI Laboratories, Inc., or IGI; and (iv) Amneal Pharmaceuticals LLC, or Amneal. These cases arise from Paragraph IV Patent Certification notice letters from each of Actavis, Lupin, IGI, and Amneal advising each had filed an ANDA with the FDA seeking approval to market a generic version of PENNSAID 2%.

Patent litigation is currently pending in the United States District Court for the Eastern District of Texas and in the United States District Court for the District of New Jersey against Par Pharmaceutical, Inc., or Par Pharmaceutical, and Lupin, respectively, who are each intending to market generic versions of RAVICTI prior to the expiration of certain of our patents listed in the Orange Book. These cases are collectively known as the RAVICTI cases, and arise from Paragraph IV Patent Certification notice letters from each of Par Pharmaceutical and Lupin advising each had filed an ANDA with the FDA seeking approval to market a generic version of RAVICTI.

On April 29, 2015, Par filed Petitions for IPRs of U.S. Patent No. 8,404,215 and U.S. Patent No. 8,642,012, two of the patents involved in the above mentioned RAVICTI cases. On November 4, 2015, the Patent Trial and Appeal Board issued decisions instituting such IPRs.
We intend to vigorously defend our intellectual property rights relating to our medicines, but we cannot predict the outcome of the VIMOVO cases, the PENNSAID 2% cases, the RAVCTI cases or the IPRs. Any adverse outcome in these matters or any new generic challenges that may arise could result in one or more generic versions of our medicines being launched before the expiration of the listed patents, which could adversely affect our ability to successfully execute our business strategy to increase sales of our medicines, and would negatively impact our financial condition and results of operations, including causing a significant decrease in our revenues and cash flows.

Furthermore, even if they are unchallenged, our patents and patent applications may not adequately protect our intellectual property or prevent others from designing around our claims. If the patent applications we hold with respect to our medicines fail to issue or if their breadth or strength of protection is threatened, it could dissuade companies from collaborating with us to develop them and threaten our ability to commercialize our medicines. We cannot offer any assurances about which, if any, patents will issue or whether any issued patents will be found not invalid and not unenforceable or will go unthreatened by third parties. Since patent applications in the United States and most other countries are confidential for a period of time after filing, and some remain so until issued, we cannot be certain that we were the first to file any patent application related to our medicines or any other medicine candidates. Furthermore, if third parties have filed such patent applications, an interference proceeding in the United States can be provoked by a third-party or instituted by us to determine who was the first to invent any of the subject matter covered by the patent claims of our applications.

With respect to RAVICTI, the composition of matter patent we hold would have expired in the United States in February 2015 without term extension. However, Hyperion applied for a term extension of approximately four years for this patent under the Drug Price Competition and Patent Term Restoration Act. Hyperion recently received notice that the United States Patent and Trademark Office, or U.S. PTO, has determined that the length of the extension is 1,267 days. We cannot guarantee that pending patent applications related to RAVICTI will result in additional patents or that other existing and future patents related to RAVICTI will be held valid and enforceable or will be sufficient to deter generic competition in the United States. Therefore, it is possible that upon expiration of the RAVICTI composition of matter patent, we would need to rely on forms of regulatory exclusivity, to the extent available, to protect against generic competition.

In addition to the protection afforded by patents, we rely on trade secret protection and confidentiality agreements to protect proprietary know-how that is not patentable, processes for which patents are difficult to enforce and any other elements of our drug discovery and development processes that involve proprietary know-how, information or technology that is not covered by patents. Although we expect all of our employees to assign their inventions to us, and all of our employees, consultants, advisors and any third parties who have access to our proprietary know-how, information or technology to enter into confidentiality agreements, we cannot provide any assurances that all such agreements have been duly executed or that our trade secrets and other confidential proprietary information will not be disclosed or that competitors will not otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques.
Our ability to obtain patents is highly uncertain because, to date, some legal principles remain unresolved, there has not been a consistent policy regarding the breadth or interpretation of claims allowed in patents in the United States and the specific content of patents and patent applications that are necessary to support and interpret patent claims is highly uncertain due to the complex nature of the relevant legal, scientific and factual issues. Changes in either patent laws or interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property or narrow the scope of our patent protection. For example, on September 16, 2011, the Leahy-Smith America Invents Act, or the Leahy-Smith Act, was signed into law. The Leahy-Smith Act includes a number of significant changes to U.S. patent law. These include provisions that affect the way patent applications will be prosecuted and may also affect patent litigation. The U.S. PTO has developed new and untested regulations and procedures to govern the full implementation of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act, and in particular, the first to file provisions, only became effective in March 2013. The Leahy-Smith Act has also introduced procedures making it easier for third-parties to challenge issued patents, as well as to intervene in the prosecution of patent applications. Finally, the Leahy-Smith Act contains new statutory provisions that still require the U.S. PTO to issue new regulations for their implementation and it may take the courts years to interpret the provisions of the new statute. Accordingly, it is too early to tell what, if any, impact the Leahy-Smith Act will have on the operation of our business and the protection and enforcement of our intellectual property. However, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents. In addition, the ACA allows applicants seeking approval of biosimilar or interchangeable versions of biological products such as ACTIMMUNE to initiate a process for challenging some or all of the patents covering the innovator biological product used as the reference product. This process is complicated and could result in the limitation or loss of certain patent rights. An inability to obtain, enforce and defend patents covering our proprietary technologies would materially and adversely affect our business prospects and financial condition.

Further, the laws of some foreign countries do not protect proprietary rights to the same extent or in the same manner as the laws of the United States. As a result, we may encounter significant problems in protecting and defending our intellectual property both in the United States and abroad. For example, if the issuance, in a given country, of a patent to us, covering an invention, is not followed by the issuance, in other countries, of patents covering the same invention, or if any judicial interpretation of the validity, enforceability, or scope of the claims in, or the written description or enablement in, a patent issued in one country is not similar to the interpretation given to the corresponding patent issued in another country, our ability to protect our intellectual property in those countries may be limited. Changes in either patent laws or in interpretations of patent laws in the United States and other countries may materially diminish the value of our intellectual property or narrow the scope of our patent protection. If we are unable to prevent material disclosure of the non-patented intellectual property related to our technologies to third parties, and there is no guarantee that we will have any such enforceable trade secret protection, we may not be able to establish or maintain a competitive advantage in our market, which could materially adversely affect our business, results of operations and financial condition.

Third-party claims of intellectual property infringement may prevent or delay our development and commercialization efforts.

Our commercial success depends in part on us avoiding infringement of the patents and proprietary rights of third parties. There is a substantial amount of litigation, both within and outside the United States, involving patent and other intellectual property rights in the biotechnology and pharmaceutical industries, including patent infringement lawsuits, interferences, oppositions and inter party reexamination proceedings before the U.S. PTO. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which our collaborators are developing medicine candidates. As the biotechnology and pharmaceutical industries expand and more patents are issued, the risk increases that our medicine candidates may be subject to claims of infringement of the patent rights of third parties.
Third parties may assert that we are employing their proprietary technology without authorization. There may be third-party patents or patent applications with claims to materials, formulations, methods of manufacture or methods for treatment related to the use or manufacture of our medicines and/or any other medicine candidates. Because patent applications can take many years to issue, there may be currently pending patent applications, which may later result in issued patents that our medicine 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 medicine candidates, any molecules formed during the manufacturing process or any final medicine itself, the holders of any such patents may be able to block our ability to commercialize such medicine candidate unless we obtained a license under the applicable patents, or until such patents expire. Similarly, if any third-party patent were held by a court of competent jurisdiction to cover aspects of our formulations, processes for manufacture or methods of use, including combination therapy, the holders of any such patent may be able to block our ability to develop and commercialize the applicable medicine candidate unless we obtained a license or until such patent expires. In either case, such a license may not be available on commercially reasonable terms or at all.

Parties making claims against us may obtain injunctive or other equitable relief, which could effectively block our ability to further develop and commercialize one or more of our medicine candidates. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. In the event of a successful claim of infringement against us, we may have to pay substantial damages, including treble damages and attorneys’ fees for willful infringement, obtain one or more licenses from third parties, pay royalties or redesign our infringing medicines, which may be impossible or require substantial time and monetary expenditure. We cannot predict whether any such license would be available at all or whether it would be available on commercially reasonable terms. Furthermore, even in the absence of litigation, we may need to obtain licenses from third parties to advance our research or allow commercialization of our medicine candidates, and we have done so from time to time. We may fail to obtain any of these licenses at a reasonable cost or on reasonable terms, if at all. In that event, we would be unable to further develop and commercialize one or more of our medicine candidates, which could harm our business significantly. We cannot provide any assurances that third-party patents do not exist which might be enforced against our medicines, resulting in either an injunction prohibiting our sales, or, with respect to our sales, an obligation on our part to pay royalties and/or other forms of compensation to third parties.

If we fail to comply with our obligations in the agreements under which we license rights to technology from third parties, we could lose license rights that are important to our business.

We are party to a number of technology licenses that are important to our business and expect to enter into additional licenses in the future. For example, we hold an exclusive license to SkyPharma AG’s, or SkyPharma, proprietary technology and know-how covering the delayed-release of corticosteroids relating to RAYOS/LODOTRA. If we fail to comply with our obligations under our agreement with SkyPharma or our other license agreements, or if we are subject to a bankruptcy, the licensor may have the right to terminate the license, in which event we would not be able to market medicines covered by the license, including RAYOS/LODOTRA.

In connection with our November 2013 acquisition of the U.S. rights to VIMOVO, we (i) received the benefit of a covenant not to sue under AstraZeneca’s patent portfolio with respect to Nexium (which shall automatically become a license under such patent portfolio if and when AstraZeneca reacquires control of such patent portfolio from Merck Sharp & Dohme Corp. and certain of its affiliates), (ii) were assigned AstraZeneca’s amended and restated collaboration and license agreement for the United States with Pozen under which AstraZeneca has in-licensed exclusive rights under certain of Pozen’s patents with respect to VIMOVO, and (iii) acquired AstraZeneca’s co-ownership rights with Pozen with respect to certain joint patents covering VIMOVO, all for the commercialization of VIMOVO in the United States. If we fail to comply with our obligations under our agreement with AstraZeneca or if we fail to comply with our obligations under our agreements with Pozen as we take over AstraZeneca’s agreements with Pozen, our rights to commercialize VIMOVO in the United States may be adversely affected or terminated by AstraZeneca or Pozen.

We also license rights to patents, know-how and trademarks for ACTIMMUNE from Genentech Inc., or Genentech, under an agreement that remains in effect for so long as we maintain the agreement upon our material default, if not cured within a specified period of time. Genentech may also terminate the agreement in the event of our bankruptcy or insolvency. Upon such a termination of the agreement, all intellectual property rights conveyed to us under the agreement, including the rights to the ACTIMMUNE trademark, revert to Genentech. If we fail to comply with our obligations under this agreement, we could lose the ability to market and distribute ACTIMMUNE, which would have a material adverse effect on our business, financial condition and results of operations.
We rely on a license from Ucyclyd with respect to technology developed by Ucyclyd in connection with the manufacturing of RAVICTI. The purchase agreement under which Hyperion purchased the worldwide rights to RAVICTI contains obligations to pay Ucyclyd regulatory and sales milestone payments relating to RAVICTI, as well as royalties on the net sales of RAVICTI. On May 31, 2013, when Hyperion acquired BUPHENYL, under a restated collaboration agreement with Ucyclyd, Hyperion received a license to use some of the manufacturing technology developed by Ucyclyd in connection with the manufacturing of BUPHENYL. The restated collaboration agreement also contains obligations to pay Ucyclyd regulatory and sales milestone payments, as well as royalties on net sales of BUPHENYL. If we fail to make a required payment to Ucyclyd and do not cure the failure within the required time period, Ucyclyd may be able to terminate the license to use its manufacturing technology for RAVICTI and BUPHENYL. If we lose access to the Ucyclyd manufacturing technology, we cannot guarantee that an acceptable alternative method of manufacture could be developed or acquired. Even if alternative technology could be developed or acquired, the loss of the Ucyclyd technology could still result in substantial costs and potential periods where we would not be able to market and sell RAVICTI and/or BUPHENYL. We also license intellectual property necessary for commercialization of RAVICTI from an external party. This party may be entitled to terminate the license if we commit fraud or for our willful misconduct or illegal conduct. We also hold an exclusive license to patents and technology from Duke University, or Duke, and Mountain View Pharmaceuticals, Inc., or MVP, covering KRYSTEXXA. Duke and MVP may terminate the license if we commit fraud or for willful misconduct or illegal conduct. Duke and MVP may also terminate the license upon our material breach of the agreement, if not cured within a specified period of time, or upon written notice if we have committed two or more material breaches under the agreement. Duke and MVP may also terminate the license in the event of our bankruptcy or insolvency. If the license is terminated, it may be impossible for us to continue to commercialize KRYSTEXXA, which would have a material adverse effect on our business, financial condition and results of operations.

We may be involved in lawsuits to protect or enforce our patents or the patents of our licensors, which could be expensive, time consuming and unsuccessful.

Competitors may infringe our patents or the patents of our licensors. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time-consuming. In addition, in an infringement proceeding, a court may decide that one of our patents, or a patent of one of our licensors, is not valid or is unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated or interpreted narrowly and could put our patent applications at risk of not issuing.

There are numerous post grant review proceedings available at the U.S. PTO (including IPR, post-grant review and ex-parte reexamination) and similar proceedings in other countries of the world that could be initiated by a third-party that could potentially negatively impact our issued patents.

Interference proceedings provoked by third parties or brought by us may be necessary to determine the priority of inventions with respect to our patents or patent applications or those of our collaborators or licensors. An unfavorable outcome could require us to cease using the related technology or to attempt to license rights to it from the prevailing party. Our business could be harmed if the prevailing party does not offer us a license on commercially reasonable terms. Our defense of litigation or interference proceedings may fail and, even if successful, may result in substantial costs and distract our management and other employees. We may not be able to prevent, alone or with our licensors, misappropriation of our intellectual property rights, particularly in countries where the laws may not protect those rights as fully as in the United States.

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 this type of 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 have a material adverse effect on the price of our ordinary shares.
Obtaining and maintaining our 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.

Periodic maintenance fees on any issued patent are due to be paid to the U.S. PTO and foreign patent agencies in several stages over the lifetime of the patent. The U.S. PTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. While an inadvertent lapse can in many cases be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. Non-compliance events that could result in abandonment or lapse of a patent or patent application include, but are not limited to, failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents. If we or licensors that control the prosecution and maintenance of our licensed patents fail to maintain the patents and patent applications covering our medicine candidates, our competitors might be able to enter the market, which would have a material adverse effect on our business.

We may be subject to claims that our employees, consultants or independent contractors have wrongfully used or disclosed confidential information of third parties.

We employ individuals who were previously employed at other biotechnology or pharmaceutical companies. We may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise used or disclosed confidential information of our employees' former employers or other third parties. We may also be subject to claims that former employers or other third parties have an ownership interest in our patents. Litigation may be necessary to defend against these claims. There is no guarantee of success in defending these claims, and if we are successful, litigation could result in substantial cost and be a distraction to our management and other employees.

Risks Related to Ownership of Our Ordinary Shares

The market price of our ordinary shares has been volatile and is likely to continue to be volatile, and you could lose all or part of any investment in our ordinary shares.

The trading price of our ordinary shares has been volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. In addition to the factors discussed in this “Risk Factors” section and elsewhere in this report, these factors include:

- our failure to successfully execute our commercialization strategy with respect to our approved medicines, particularly our commercialization of our medicines in the United States;
- actions or announcements by third-party or government payors with respect to coverage and reimbursement of our medicines;
- disputes or other developments relating to intellectual property and other proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our medicines and medicine candidates;
- unanticipated serious safety concerns related to the use of our medicines;
- adverse regulatory decisions;
- changes in laws or regulations applicable to our business, medicines or medicine candidates, including but not limited to clinical trial requirements for approvals or tax laws;
- inability to comply with our debt covenants and to make payments as they become due;
- inability to obtain adequate commercial supply for any approved medicine or inability to do so at acceptable prices;
- developments concerning our commercial partners, including but not limited to those with our sources of manufacturing supply;
- our decision to initiate a clinical trial, not to initiate a clinical trial or to terminate an existing clinical trial;
- adverse results or delays in clinical trials;

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our failure to successfully develop and/or acquire additional medicine candidates or obtain approvals for additional indications for our
existing medicine candidates;
• introduction of new medicines or services offered by us or our competitors;
• overall performance of the equity markets, including the pharmaceutical sector, and general political and economic conditions;
• failure to meet or exceed revenue and financial projections that we may provide to the public;
• actual or anticipated variations in quarterly operating results;
• failure to meet or exceed the estimates and projections of the investment community;
• inaccurate or significant adverse media coverage;
• publication of research reports about us or our industry or positive or negative recommendations or withdrawal of research coverage by
securities analysts;
• our inability to successfully enter new markets;
• the termination of a collaboration or the inability to establish additional collaborations;
• announcements of significant acquisitions, strategic partnerships, joint ventures or capital commitments by us or our competitors;
• our inability to maintain an adequate rate of growth;
• ineffectiveness of our internal controls or our inability to otherwise comply with financial reporting requirements;
• adverse U.S. and foreign tax exposure;
• additions or departures of key management, commercial or regulatory personnel;
• issuances of debt or equity securities;
• significant lawsuits, including patent or shareholder litigation;
• changes in the market valuations of similar companies to us;
• sales of our ordinary shares by us or our shareholders in the future;
• trading volume of our ordinary shares;
• effects of natural or man-made catastrophic events or other business interruptions; and
• other events or factors, many of which are beyond our control.

In addition, the stock market in general, and The NASDAQ Global Select Market and the stocks of biotechnology companies in particular, have
experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of these companies.
Broad market and industry factors may adversely affect the market price of our ordinary shares, regardless of our actual operating performance.

_We have never declared or paid dividends on our share capital and we do not anticipate paying dividends in the foreseeable future._

We have never declared or paid any cash dividends on our ordinary shares. We currently anticipate that we will retain future earnings for the
development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends for the foreseeable future, including due
to limitations that are currently imposed by the 2015 Senior Secured Credit Facility. Any return to shareholders will therefore be limited to the increase, if
any, of our ordinary share price.
We have incurred and will continue to incur significant increased costs as a result of operating as a public company and our management will be required to devote substantial time to new compliance initiatives.

As a public company, we have incurred and will continue to incur significant legal, accounting and other expenses that we did not incur as a private company. In particular, the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, as well as rules subsequently implemented by the SEC and the NASDAQ Stock Market, Inc., or NASDAQ, impose significant requirements on public companies, including requiring establishment and maintenance of effective disclosure and financial controls and changes in corporate governance practices. These rules and regulations have substantially increased our legal and financial compliance costs and have made some activities more time-consuming and costly. These effects are exacerbated by our transition to an Irish company and the integration of numerous acquired businesses and operations into our historical business and operating structure. If these requirements divert the attention of our management and personnel from other business concerns, they could have a material adverse effect on our business, financial condition and results of operations. The increased costs will continue to decrease our net income or increase our net loss, and may require us to reduce costs in other areas of our business or increase the prices of our medicines or services. For example, these rules and regulations make it more difficult and more expensive for us to obtain and maintain director and officer liability insurance. We cannot predict or estimate the amount or timing of additional costs that we may incur to respond to these requirements. The impact of these requirements could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as executive officers. If we fail to comply with the continued listing requirements of NASDAQ, our ordinary shares could be delisted from The NASDAQ Global Select Market, which would adversely affect the liquidity of our ordinary shares and our ability to obtain future financing.

The Sarbanes-Oxley Act requires, among other things, that we maintain effective internal controls for financial reporting and disclosure controls and procedures. In particular, we are required to perform annual system and process evaluation and testing of our internal controls over financial reporting to allow management to report on the effectiveness of our internal controls over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act, or Section 404. Our independent registered public accounting firm is also required to deliver a report on the effectiveness of our internal control over financial reporting. Our testing, or the 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. Our compliance with Section 404 requires that we incur substantial expense and expend significant management efforts, particularly because of our Irish parent company structure and international operations. In particular, prior to the acquisition of Vidara and Crealta, these companies and their affiliated entities were not subject to the requirements of the Sarbanes-Oxley Act. We are taking measures to establish or implement an internal control environment at these entities aimed at successfully adopting the requirements of Section 404. However, it is possible that we may experience delays in implementing or be unable to implement the required internal controls over financial reporting and other disclosure controls and procedures. In addition, while Hyperion was previously subject to some of the requirements of Section 404, we may still encounter difficulties in integrating Hyperion’s internal controls within our current internal control framework. We currently do not have an internal audit group, and we may need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge, as well as retain and work with consultants with such knowledge. Moreover, if we are not able to comply with the requirements of Section 404 or if we or our independent registered public accounting firm identify deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses, the market price of our ordinary shares could decline and we could be subject to sanctions or investigations by NASDAQ, the SEC or other regulatory authorities, which would require additional financial and management resources.

New laws and regulations as well as changes to existing laws and regulations affecting public companies, including the provisions of the Sarbanes-Oxley Act and rules adopted by the SEC and by NASDAQ, would likely result in increased costs as we respond to their requirements.

Sales of a substantial number of our ordinary shares in the public market could cause our share price to decline.

If our existing shareholders sell, or indicate an intention to sell, substantial amounts of our ordinary shares in the public market, the trading price of such ordinary shares could decline. In addition, our ordinary shares that are either subject to outstanding options or reserved for future issuance under our employee benefit plans are or may become eligible for sale in the public market to the extent permitted by the provisions of various vesting schedules and Rule 144 and Rule 701 under the Securities Act of 1933, as amended, or the Securities Act. If these additional ordinary shares are sold, or if it is perceived that they will be sold, in the public market, the trading price of our ordinary shares could decline.
Certain holders of our ordinary shares are entitled to rights with respect to the registration of their shares under the Securities Act. Registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act, except for shares purchased by our affiliates. For example, we are subject to a registration rights agreement with certain former Vidara shareholders that acquired our ordinary shares in connection with our acquisition of Vidara. Pursuant to this agreement, we filed and are required to maintain a registration statement covering the resale of ordinary shares held by these shareholders and in certain circumstances, these holders can require us to participate in an underwritten public offering of their ordinary shares. Any sales of securities by these shareholders or a public announcement of such sales could have a material adverse effect on the trading price of our ordinary shares.

In addition, any conversion or exchange of our Exchangeable Senior Notes, whether pursuant to their terms or pursuant to privately negotiated transactions between the issuer and/or us and a holder of such securities, could depress the market price for our ordinary shares.

Future sales and issuances of our ordinary shares, securities convertible into our ordinary shares or rights to purchase ordinary shares or convertible securities could result in additional dilution of the percentage ownership of our shareholders and could cause our share price to decline.

Additional capital may be needed in the future to continue our planned operations. To the extent we raise additional capital by issuing equity securities or securities convertible into or exchangeable for ordinary shares, our shareholders may experience substantial dilution. We may sell ordinary shares, and we may sell convertible or exchangeable securities or other equity securities in one or more transactions at prices and in a manner we determine from time to time. If we sell such ordinary shares, convertible or exchangeable securities or other equity securities in subsequent transactions, existing shareholders may be materially diluted. New investors in such subsequent transactions could gain rights, preferences and privileges senior to those of holders of ordinary shares. We also maintain equity incentive plans, including our 2014 Equity Incentive Plan, 2014 Non-Employee Equity Plan and 2014 Employee Share Purchase Plan, and intend to grant additional ordinary share awards under these and future plans, which will result in additional dilution to our existing shareholders.

Irish law differs from the laws in effect in the United States and may afford less protection to holders of our securities.

It may not be possible to enforce court judgments obtained in the United States against us in Ireland based on the civil liability provisions of the U.S. federal or state securities laws. In addition, there is some uncertainty as to whether the courts of Ireland would recognize or enforce judgments of U.S. courts obtained against us or our directors or officers based on the civil liabilities provisions of the U.S. federal or state securities laws or hear actions against us or those persons based on those laws. We have been advised that the U.S. currently does not have a treaty with Ireland providing for the reciprocal recognition and enforcement of judgments in civil and commercial matters. Therefore, a final judgment for the payment of money rendered by any U.S. federal or state court based on civil liability, whether or not based solely on U.S. federal or state securities laws, would not automatically be enforceable in Ireland.

As an Irish company, we are governed by the Irish Companies Acts, which differ in some material respects from laws generally applicable to U.S. corporations and shareholders, including, among others, differences relating to interested director and officer transactions and shareholder lawsuits. Likewise, the duties of directors and officers of an Irish company generally are owed to the company only. Shareholders of Irish companies generally do not have a personal right of action against directors or officers of the company and may exercise such rights of action on behalf of the company only in limited circumstances. Accordingly, holders of our securities may have more difficulty protecting their interests than would holders of securities of a corporation incorporated in a jurisdiction of the United States.

Provisions of our articles of association could delay or prevent a takeover of us by a third-party.

Our articles of association could delay, defer or prevent a third-party from acquiring us, despite the possible benefit to our shareholders, or otherwise adversely affect the price of our ordinary shares. For example, our articles of association:

- permit our board of directors to issue one or more series of preferred shares with rights and preferences designated by our board of directors;
- impose advance notice requirements for shareholder proposals and nominations of directors to be considered at shareholder meetings;

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- permit our board of directors to issue one or more series of preferred shares with rights and preferences designated by our board of directors;
- impose advance notice requirements for shareholder proposals and nominations of directors to be considered at shareholder meetings;
stagger the terms of our board of directors into three classes; and
require the approval of a supermajority of the voting power of the shares of our share capital entitled to vote generally at a meeting of shareholders to amend or repeal our articles of association.

In addition, several mandatory provisions of Irish law could prevent or delay an acquisition of us. For example, Irish law does not permit shareholders of an Irish public limited company to take action by written consent with less than unanimous consent. We are also subject to various provisions of Irish law relating to mandatory bids, voluntary bids, requirements to make a cash offer and minimum price requirements, as well as substantial acquisition rules and rules requiring the disclosure of interests in our ordinary shares in certain circumstances.

These provisions may discourage potential takeover attempts, discourage bids for our ordinary shares at a premium over the market price or adversely affect the market price of, and the voting and other rights of the holders of, our ordinary shares. These provisions could also discourage proxy contests and make it more difficult for you and our other shareholders to elect directors other than the candidates nominated by our board of directors, and could depress the market price of our ordinary shares.

A transfer of our ordinary shares may be subject to Irish stamp duty.

In certain circumstances, the transfer of shares in an Irish incorporated company will be subject to Irish stamp duty, which is a legal obligation of the buyer. This duty is currently charged at the rate of 1.0 percent of the price paid or the market value of the shares acquired, if higher. Because our ordinary shares are traded on a recognized stock exchange in the United States, an exemption from this stamp duty is available to transferees of shares held by shareholders of our ordinary shares directly in their own names. However, a transfer by or to a record holder who holds ordinary shares directly in his, her or its own name could be subject to this stamp duty. We, in our absolute discretion and insofar as the Companies Acts or any other applicable law permit, may, or may provide that one of our subsidiaries will pay Irish stamp duty arising on a transfer of our ordinary shares on behalf of the transferee of such ordinary shares. If stamp duty resulting from the transfer of ordinary shares which would otherwise be payable by the transferee is paid by us or any of our subsidiaries on behalf of the transferee, then in those circumstances, we will, on our behalf or on behalf of such subsidiary (as the case may be), be entitled to (i) seek reimbursement of the stamp duty from the transferee, (ii) set-off the stamp duty against any dividends payable to the transferee of those ordinary shares and (iii) claim a first and permanent lien on the ordinary shares on which stamp duty has been paid by us or any subsidiary for the amount of stamp duty paid. Our lien shall extend to all dividends paid on those ordinary shares.

Dividends paid by us may be subject to Irish dividend withholding tax.

In certain circumstances, as an Irish tax resident company, we will be required to deduct Irish dividend withholding tax (currently at the rate of 20%) from dividends paid to our shareholders. Shareholders that are resident in the United States, EU countries (other than Ireland) or other countries with which Ireland has signed a tax treaty (whether the treaty has been ratified or not) generally should not be subject to Irish withholding tax so long as the shareholder has provided its broker, for onward transmission to our qualifying intermediary or other designated agent (in the case of shares held beneficially), or our or its transfer agent (in the case of shares held directly), with all the necessary documentation by the appropriate due date prior to payment of the dividend. However, some shareholders may be subject to withholding tax, which could adversely affect the price of our ordinary shares.

If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our share price and trading volume could decline.

The trading market for our ordinary shares will depend in part on the research and reports that securities or industry analysts publish about us or our business. If one or more of the analysts who cover us downgrade our rating or publish inaccurate or unfavorable research about our business, our share price could decline. If one or more of these analysts cease coverage of our company or fail to publish reports on our company regularly, demand for our ordinary shares could decrease, which might cause our share price and trading volume to decline.
We may become involved in securities class action litigation that could divert our management’s attention and harm our business and could subject us to significant liabilities.

The stock markets have from time to time experienced significant price and volume fluctuations that have affected the market prices for the equity securities of pharmaceutical companies. These broad market fluctuations may cause the market price of our ordinary shares to decline. 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 biopharmaceutical companies have experienced significant stock price volatility in recent years. We may become involved in this type of litigation in the future. Even if we are successful in defending against any such claims, litigation could result in substantial costs and may be a distraction to our management, and may result in unfavorable results that could adversely impact our financial condition and prospects.

Item 1B. Unresolved Staff Comments

None

Item 2. Properties

<table>
<thead>
<tr>
<th>Location</th>
<th>Approximate Square Footage</th>
<th>Lease Expiry Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dublin, Ireland</td>
<td>18,900</td>
<td>November 4, 2029</td>
</tr>
<tr>
<td>Lake Forest, Illinois (1)</td>
<td>160,000</td>
<td>March 31, 2024</td>
</tr>
<tr>
<td>Deerfield, Illinois (2)</td>
<td>53,500</td>
<td>June 30, 2018</td>
</tr>
<tr>
<td>Brisbane, California (3)</td>
<td>20,100</td>
<td>November 30, 2019</td>
</tr>
<tr>
<td>Mannheim, Germany</td>
<td>9,500</td>
<td>December 31, 2016</td>
</tr>
<tr>
<td>Chicago, Illinois</td>
<td>6,500</td>
<td>December 31, 2018</td>
</tr>
<tr>
<td>Roswell, Georgia</td>
<td>6,200</td>
<td>October 31, 2018</td>
</tr>
<tr>
<td>Reinach, Switzerland</td>
<td>3,500</td>
<td>May 31, 2020</td>
</tr>
</tbody>
</table>

(1) We have two separate lease agreements in place for this property. The first lease, consisting of approximately 15,000 square feet, was assumed by us as a result of our acquisition of Crealta in January 2016 and will expire on October 31, 2017.

(2) We vacated the premises in Deerfield, Illinois, and began occupying the premises in Lake Forest, Illinois, in January 2016.

(3) We vacated the premises in Brisbane, California in December 2015 and entered into a sublease agreement for the property with a third party.

Item 3. Legal Proceedings

For a description of our legal proceedings, see Note 17, Legal Proceedings, of the Notes to Consolidated Financial Statements, included in Item 15 of this Annual Report on Form 10-K.

Item 4. Mine Safety Disclosures

None.
PART II

Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information

As a result of the Vidara Merger, all of the shares of Horizon Pharma, Inc. common stock issued and outstanding immediately prior to the effective time of the Vidara Merger were canceled and automatically converted into and became the right to receive our ordinary shares on a one-for-one basis and Horizon Pharma, Inc. became a wholly-owned subsidiary of Horizon Pharma plc.

Our ordinary shares began trading on The NASDAQ Global Market under the trading symbol “HZNP” on September 19, 2014. Previously, from July 28, 2011 until September 18, 2014, the common stock of Horizon Pharma, Inc. was traded on The NASDAQ Global Market also under the trading symbol “HZNP”. The following table sets forth the high and low sales prices per share of our ordinary shares (and for periods prior to September 19, 2014, the common stock of Horizon Pharma, Inc.) as reported on The NASDAQ Global Market for the periods indicated.

<table>
<thead>
<tr>
<th>Year</th>
<th>Quarter</th>
<th>High</th>
<th>Low</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>First quarter</td>
<td>$26.46</td>
<td>$12.64</td>
</tr>
<tr>
<td></td>
<td>Second quarter</td>
<td>34.99</td>
<td>25.26</td>
</tr>
<tr>
<td></td>
<td>Third quarter</td>
<td>39.49</td>
<td>16.22</td>
</tr>
<tr>
<td></td>
<td>Fourth quarter</td>
<td>23.70</td>
<td>12.86</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Quarter</th>
<th>High</th>
<th>Low</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>First quarter</td>
<td>$18.30</td>
<td>$7.40</td>
</tr>
<tr>
<td></td>
<td>Second quarter</td>
<td>16.72</td>
<td>11.50</td>
</tr>
<tr>
<td></td>
<td>Third quarter</td>
<td>16.56</td>
<td>7.85</td>
</tr>
<tr>
<td></td>
<td>Fourth quarter</td>
<td>13.55</td>
<td>10.15</td>
</tr>
</tbody>
</table>

Holders of Record

The closing price of our ordinary shares on February 23, 2016 was $18.28. As of February 23, 2016, there were approximately 16 holders of record of our ordinary shares.
Performance Graph

The following graph shows a comparison from July 28, 2011 (the date the common stock of Horizon Pharma, Inc. commenced trading on The NASDAQ Global Market) through December 31, 2015 of the cumulative total return for (i) our ordinary shares, (ii) the NASDAQ US Benchmark TR Index and (iii) NASDAQ Pharmaceuticals.

Information set forth in the graph below represents the performance of the Horizon Pharma, Inc. common stock from July 28, 2011 until September 18, 2014, the day before the consummation of the Vidara Merger, and the performance of our ordinary shares from September 19, 2014 through December 31, 2015. Our ordinary shares trade on the same exchange, the NASDAQ Global Market, and under the same trading symbol, “HZNP”, as the Horizon Pharma, Inc. common stock prior to the Vidara Merger. The graph assumes an initial investment of $100 on July 28, 2011. The comparisons in the graph are required by the Securities and Exchange Commission and are not intended to forecast or be indicative of possible future performance of our ordinary shares.

The foregoing graph and table are furnished solely with this report, and are not filed with this report, and shall not be deemed incorporated by reference into any other filing under the Securities Act of 1933, as amended, or the Securities Act, or the Securities Exchange Act of 1934, as amended, whether made by us before or after the date hereof, regardless of any general incorporation language in any such filing, except to the extent we specifically incorporate this material by reference into any such filing.

Cumulative Returns

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<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Horizon Pharma Plc</td>
<td>100.00</td>
<td>43.72</td>
<td>25.46</td>
<td>83.28</td>
<td>140.87</td>
<td>236.83</td>
</tr>
<tr>
<td>NASDAQ Pharmaceuticals</td>
<td>100.00</td>
<td>108.69</td>
<td>124.25</td>
<td>160.59</td>
<td>205.37</td>
<td>216.53</td>
</tr>
<tr>
<td>NASDAQ US Benchmark TR Index</td>
<td>100.00</td>
<td>97.06</td>
<td>113.01</td>
<td>150.85</td>
<td>169.95</td>
<td>170.46</td>
</tr>
</tbody>
</table>

The foregoing graph and table are furnished solely with this report, and are not filed with this report, and shall not be deemed incorporated by reference into any other filing under the Securities Act of 1933, as amended, or the Securities Act, or the Securities Exchange Act of 1934, as amended, whether made by us before or after the date hereof, regardless of any general incorporation language in any such filing, except to the extent we specifically incorporate this material by reference into any such filing.

Dividend Policy

No cash dividends have ever been declared or paid on the common equity to date by Horizon Pharma, Inc. or us. We currently intend to retain all available funds and any future earnings to support operations and finance the growth and development of our business and do not intend to pay cash dividends on our ordinary shares for the foreseeable future. Under Irish law, dividends may only be paid, and share repurchases and redemptions must generally be funded only out of, “distributable reserves.” In addition, our ability to pay cash dividends is currently prohibited by the terms of our 2015 Senior Secured Credit Facility so long as we owe any amounts to the lenders under the credit agreement, subject to customary exceptions. Any future determination as to the payment of dividends will, subject to Irish legal requirements, be at the sole discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements and other factors our board of directors deems relevant.
Securities Authorized for Issuance under Equity Compensation Plans

See Item 12 of Part III of this Annual Report on Form 10-K regarding information about securities authorized for issuance under our equity compensation plans.

Recent Sales of Unregistered Securities

We completed the following issuances of unregistered securities during the year ended December 31, 2015 which were not previously reported in a Quarterly Report on Form 10-Q or in a Current Report on Form 8-K:

- In December 2015, we issued an aggregate of 200 ordinary shares to Pylon Capital upon the cash exercise of warrants and we received proceeds of $914 representing the aggregate exercise price of such warrants.

The offers, sales and issuances of the securities described above were deemed to be exempt from registration under the Securities Act of 1933, as amended, in reliance on Rule 506 of Regulation D in that each issuance of securities was to an accredited investor under Rule 501 of Regulation D and did not involve a public offering. The recipients of securities in each of these transactions acquired the securities for investment only and not with a view to or for sale in connection with any distribution thereof and where appropriate, legends were affixed to the securities issued in these transactions.

Issuer Repurchases of Equity Securities

None.

Irish Law Matters

See Irish Law Matters included in Item 1 of Part I of this Annual Report on Form 10-K.

Item 6. Selected Financial Data

The selected statement of comprehensive income (loss) data and selected statement of cash flows data for the years ended December 31, 2015, 2014 and 2013, and the balance sheet data as of December 31, 2015 and 2014 have been derived from our audited financial statements included elsewhere in this Annual Report on Form 10-K. The selected statement of comprehensive income (loss) data and selected statement of cash flows data for the years ended December 31, 2012 and 2011, and the balance sheet data as of December 31, 2013, 2012 and 2011 have been derived from audited financial statements which are not included in this Annual Report on Form 10-K.

The following selected financial data also reflects the 1-for-2.374 reverse stock split of the outstanding shares of common stock of Horizon Pharma, Inc. effected in July 2011.

Our historical results are not necessarily indicative of future results. The selected financial data should be read in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our financial statements and related notes included elsewhere in this Annual Report on Form 10-K. The selected financial data for periods prior to the year ended December 31, 2014 is that of Horizon Pharma, Inc., our predecessor, while the selected financial data for the years ended December 31, 2015 and 2014 is that of Horizon Pharma plc.

<table>
<thead>
<tr>
<th>Selected Balance Sheet Data</th>
<th>As of December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 859,616</td>
</tr>
<tr>
<td>Working capital</td>
<td>748,595</td>
</tr>
<tr>
<td>Total assets</td>
<td>3,066,947</td>
</tr>
<tr>
<td>Total debt, net of debt discount</td>
<td>1,145,115</td>
</tr>
<tr>
<td>Total shareholders' equity (deficit)</td>
<td>1,313,145</td>
</tr>
</tbody>
</table>

88
### Selected Statement of Comprehensive Income (Loss)

<table>
<thead>
<tr>
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<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Net sales</strong></td>
<td>$757,044</td>
<td>$296,955</td>
<td>$74,016</td>
<td>$18,844</td>
<td>$6,927</td>
</tr>
<tr>
<td><strong>Cost of goods sold</strong></td>
<td>219,502</td>
<td>78,753</td>
<td>14,625</td>
<td>11,875</td>
<td>7,267</td>
</tr>
<tr>
<td><strong>Gross profit (loss)</strong></td>
<td>537,542</td>
<td>218,202</td>
<td>59,391</td>
<td>6,969</td>
<td>(340)</td>
</tr>
<tr>
<td><strong>Loss before benefit for income taxes</strong></td>
<td>(132,712)</td>
<td>(269,687)</td>
<td>(150,126)</td>
<td>(92,965)</td>
<td>(127,948)</td>
</tr>
<tr>
<td><strong>Net income (loss)</strong></td>
<td>39,532</td>
<td>(263,603)</td>
<td>(149,005)</td>
<td>(87,794)</td>
<td>(113,265)</td>
</tr>
<tr>
<td><strong>Net income (loss) per share - basic</strong></td>
<td>0.27</td>
<td>(3.15)</td>
<td>(2.34)</td>
<td>(2.26)</td>
<td>(12.56)</td>
</tr>
<tr>
<td><strong>Net income (loss) per share - diluted</strong></td>
<td>0.25</td>
<td>(3.15)</td>
<td>(2.34)</td>
<td>(2.26)</td>
<td>(12.56)</td>
</tr>
</tbody>
</table>

### Selected Statement of Cash Flows Data

<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net cash provided by (used in) operating activities</strong></td>
<td>$194,166</td>
<td>$27,549</td>
<td>$(54,287)</td>
<td>$(76,641)</td>
<td>$(41,540)</td>
</tr>
<tr>
<td><strong>Net cash used in investing activities</strong></td>
<td>$(995,048)</td>
<td>$(227,720)</td>
<td>$(36,135)</td>
<td>$(1,386)</td>
<td>$(2,154)</td>
</tr>
<tr>
<td><strong>Net cash provided by financing activities</strong></td>
<td>1,442,481</td>
<td>338,285</td>
<td>66,716</td>
<td>164,308</td>
<td>55,152</td>
</tr>
<tr>
<td><strong>Payments for acquisitions, net of cash acquired</strong></td>
<td>$(1,022,361)</td>
<td>$(224,220)</td>
<td>$(35,000)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Net proceeds from the issuance of common stock</strong></td>
<td>500,454</td>
<td>41,934</td>
<td>6,637</td>
<td>128,518</td>
<td>44,678</td>
</tr>
<tr>
<td><strong>Net proceeds from the issuance of debt</strong></td>
<td>1,241,027</td>
<td>286,966</td>
<td>143,598</td>
<td>55,578</td>
<td>23,417</td>
</tr>
<tr>
<td><strong>Repayment of debt</strong></td>
<td>299,000</td>
<td>—</td>
<td>64,884</td>
<td>19,788</td>
<td>13,067</td>
</tr>
</tbody>
</table>
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

You should read the following discussion and analysis of our financial condition and results of operations together with our consolidated financial statements and the related notes appearing at the end of this Annual Report on Form 10-K. Some of the information contained in this discussion and analysis or set forth elsewhere in this Annual Report on Form 10-K, including information with respect to our plans and strategy for our business and related financing, includes forward-looking statements that involve risks and uncertainties. You should read the “Risk Factors” section of this Annual Report on Form 10-K for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

The discussion below contains “forward-looking statements,” as defined in Section 21E of the Securities Exchange Act of 1934, as amended, that reflect our current expectations regarding our future growth, results of operations, cash flows, performance and business prospects and opportunities, as well as assumptions made by, and information currently available to, our management. We have tried to identify forward-looking statements by using words such as “anticipate,” “believe,” “plan,” “expect,” “intend,” “will,” and similar expressions, but these words are not the exclusive means of identifying forward-looking statements. These statements are based on information currently available to us and are subject to various risks, uncertainties, and other factors, including, but not limited to, those matters discussed in Item 1A. “Risk Factors” in Part I of this Annual Report on Form 10-K, that could cause our actual growth, results of operations, cash flows, performance and business prospects and opportunities to differ materially from those expressed in, or implied by, these statements. Except as expressly required by the federal securities laws, we undertake no obligation to update such factors or to publicly announce the results of any of the forward-looking statements contained herein to reflect future events, developments, or changed circumstances, or for any other reason.

OVERVIEW

Unless otherwise indicated or the context otherwise requires, references to the “Company”, “we”, “us” and “our” refer to Horizon Pharma plc and its consolidated subsidiaries, including its predecessor, Horizon Pharma, Inc., or HPI. All references to “Vidara” are references to Horizon Pharma plc (formerly known as Vidara Therapeutics International Public Limited Company) and its consolidated subsidiaries prior to the effective time of the merger of the businesses of Horizon Pharma plc, unless noted as being the business of Vidara prior to the Vidara Merger, pertain to the business of HPI prior to the Vidara Merger.

Our Business

We are a biopharmaceutical company focused on improving patients’ lives by identifying, developing, acquiring and commercializing differentiated and accessible medicines that address unmet medical needs. We market nine medicines through our orphan, primary care and rheumatology business units. Our marketed medicines are ACTIMMUNE® (interferon gamma-1b), BUPHENYL® (sodium phenylbutyrate) Tablets and Powder, DUEXIS® (ibuprofen/famotidine), KRYSTEXXA® (pegloticase), MIGERGOT® (ergotamine tartrate & caffeine suppositories), PENNSAID® (diclofenac sodium topical solution) 2% w/w, or PENNSAID 2%, RAVICTI® (glycerol phenylbutyrate) Oral Liquid, RAYOS® (prednisone) delayed-release tablets and VIMOVO® (naproxen/esomeprazole magnesium).

We developed DUEXIS and RAYOS, known as LODOTRA® outside the United States, acquired the U.S. rights to VIMOVO from AstraZeneca AB, or AstraZeneca, in November 2013, acquired certain rights to ACTIMMUNE as a result of the Vidara Merger in September 2014, acquired the U.S. rights to PENNSAID 2% from Nuvo Research Inc., or Nuvo, in October 2014, acquired RAVICTI and BUPHENYL, known as AMMONAPS® in Europe, as a result of our acquisition of Hyperion Therapeutics Inc., or Hyperion, in May 2015, and acquired KRYSTEXXA and MIGERGOT as a result of our acquisition of Crealta Holdings LLC., or Crealta, in January 2016.
Our medicines are distributed by retail and specialty pharmacies. Part of our commercial strategy for our primary care and rheumatology business units is to offer physicians the opportunity to have their patients fill prescriptions through pharmacies participating in our HorizonCares patient access program. This program does not involve us in the prescribing of medicines. The purpose of this program is solely to assist in ensuring that, when physicians determine one of our medicines offers a potential clinical benefit to their patients and prescribe the medicine for an eligible patient, financial assistance may be available to reduce the commercial patient’s out-of-pocket costs. In 2015, this resulted in 96 percent of commercial patients having co-pay amounts of $10 or less when filling prescriptions for our medicines utilizing our patient access program. For commercial patients who were prescribed our primary care or rheumatology medicines, the HorizonCares program offers co-pay assistance when a third-party payor covers a prescription but requires an eligible patient to pay a co-pay or deductible, and offers full subsidization when a third-party payor rejects coverage for an eligible patient. For patients prescribed our orphan medicines, our patient access programs provide reimbursement support, a clinical nurse program, co-pay and other patient assistance. The aggregate commercial value of our patient access programs for the year ended December 31, 2015 was approximately $1,020 million. All pharmacies that fill prescriptions for our medicines are fully independent, including those that participate in HorizonCares. We do not own or possess any option to purchase an ownership stake in any pharmacy that distributes our medicines, and our relationship with each pharmacy is non-exclusive and arm’s length. All of our sales are processed through pharmacies independent of our business. As of December 31, 2015, approximately 25 independent pharmacies participated in the HorizonCares program for our primary care and rheumatology medicines.

We have a compliance program in place to address adherence with various laws and regulations relating to the selling, marketing, and manufacturing of our medicines, as well as certain third-party relationships, including pharmacies. Specifically with respect to pharmacies, the compliance program utilizes a variety of methods and tools to monitor and audit pharmacies, including those that participate in our access programs, to confirm their activities, adjudication and practices are consistent with our compliance policies and guidance.

We market our medicines in the United States through our field sales force, which numbered approximately 395 representatives as of December 31, 2015. Our strategy is to use the commercial strength and infrastructure we have established in creating a global biopharmaceutical company to continue the successful commercialization of our existing medicine portfolio while also expanding and leveraging these capabilities by identifying, developing, acquiring and commercializing additional differentiated and accessible medicines that address unmet medical needs.

On November 30, 2015, we announced the European Commission, or EC, has adopted a binding decision to approve RAVICTI for use as an adjunctive therapy for chronic management of adult and pediatric patients two months of age and older with six subtypes of urea cycle disorders, or UCDs. This decision follows the Positive Opinion previously adopted on September 24, 2015 by the Committee for Medicinal Products for Human Use of the European Medicines Agency, or EMA. The approval authorizes us to market RAVICTI in all 28 Member States of the European Union, or EU, and the centralized marketing authorization will form the basis for recognition by the Member States of the European Economic Area, namely Norway, Iceland and Liechtenstein, for the medicine to be placed on the market.

On January 13, 2016, we completed our acquisition of Crealta for approximately $510 million in cash. Crealta is a specialty pharmaceutical company focused on innovative therapeutics designed to improve patient outcomes, and marketed KRYSSTEXXA and MIGERGOT.

**Research and Development**

We devote significant resources to research and development activities associated with our current branded medicines. For the years ended December 31, 2015, 2014 and 2013, we recorded $41.9 million, $17.5 million and $10.1 million, respectively, in research and development expenses.

For further details regarding these activities, see Research and Development in Item 1, Business, of this Annual Report on Form 10-K.
## RESULTS OF OPERATIONS

### Year Ended December 31, 2015 Compared to Year Ended December 31, 2014

<table>
<thead>
<tr>
<th></th>
<th>For the Years Ended December 31,</th>
<th>Increase / (Decrease)</th>
<th>Change %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
<td>2014</td>
<td></td>
</tr>
<tr>
<td>Net sales</td>
<td>$757,044</td>
<td>$296,955</td>
<td>$460,089</td>
</tr>
<tr>
<td>Cost of goods sold</td>
<td>219,502</td>
<td>78,753</td>
<td>140,749</td>
</tr>
<tr>
<td>Gross profit</td>
<td>537,542</td>
<td>218,202</td>
<td>319,340</td>
</tr>
<tr>
<td>Operating expenses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>41,865</td>
<td>17,460</td>
<td>24,405</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>220,444</td>
<td>120,276</td>
<td>100,168</td>
</tr>
<tr>
<td>General and administrative</td>
<td>219,861</td>
<td>88,957</td>
<td>130,904</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>482,170</td>
<td>226,693</td>
<td>255,477</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>55,372</td>
<td>(8,491)</td>
<td>63,863</td>
</tr>
<tr>
<td>Other income (expense), net:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>(69,900)</td>
<td>(23,826)</td>
<td>46,074</td>
</tr>
<tr>
<td>Foreign exchange loss</td>
<td>(1,237)</td>
<td>(3,905)</td>
<td>2,668</td>
</tr>
<tr>
<td>Loss on derivative fair value</td>
<td>—</td>
<td>(214,995)</td>
<td>(214,995)</td>
</tr>
<tr>
<td>Loss on induced conversion of debt and debt extinguishment</td>
<td>(77,624)</td>
<td>(29,390)</td>
<td>48,234</td>
</tr>
<tr>
<td>Loss on sale of long-term investments</td>
<td>(29,032)</td>
<td>—</td>
<td>29,032</td>
</tr>
<tr>
<td>Bargain purchase gain</td>
<td></td>
<td>22,171</td>
<td>22,171</td>
</tr>
<tr>
<td>Other expense, net</td>
<td>(10,291)</td>
<td>(11,251)</td>
<td>(960)</td>
</tr>
<tr>
<td>Total other expense, net</td>
<td>(188,084)</td>
<td>(261,196)</td>
<td>(73,112)</td>
</tr>
<tr>
<td>Loss before benefit for income taxes</td>
<td>(132,712)</td>
<td>(269,687)</td>
<td>(136,975)</td>
</tr>
<tr>
<td>Benefit for income taxes</td>
<td>(172,244)</td>
<td>(6,084)</td>
<td>166,160</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$39,532</td>
<td>$263,603</td>
<td>$303,135</td>
</tr>
</tbody>
</table>

**Net sales.** Net sales increased $460.1 million, or 155%, to $757.0 million during the year ended December 31, 2015, from $296.9 million during the year ended December 31, 2014.

The following table presents a summary of total net sales attributed to geographic sources for the years ended December 31, 2015, and 2014 (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31, 2015</th>
<th>Year Ended December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Amount</td>
<td>% of Total Net Sales</td>
</tr>
<tr>
<td>United States</td>
<td>$744,036</td>
<td>98%</td>
</tr>
<tr>
<td>Rest of world</td>
<td>13,008</td>
<td>2%</td>
</tr>
<tr>
<td>Total net sales</td>
<td>$757,044</td>
<td>$296,955</td>
</tr>
</tbody>
</table>
The following table reflects the components of net sales for the years ended December 31, 2015 and 2014:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
<th>Change</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
<td>2014</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DUEXIS</strong></td>
<td>$190,357</td>
<td>$83,243</td>
<td>$107,114</td>
</tr>
<tr>
<td><strong>VIMOVO</strong></td>
<td>$166,672</td>
<td>$162,954</td>
<td>3,718</td>
</tr>
<tr>
<td><strong>PENNSAID 2%</strong></td>
<td>$147,010</td>
<td>—</td>
<td>147,010</td>
</tr>
<tr>
<td><strong>ACTIMMUNE</strong></td>
<td>$107,444</td>
<td>$25,251</td>
<td>82,193</td>
</tr>
<tr>
<td><strong>RAVICTI</strong></td>
<td>$86,875</td>
<td>—</td>
<td>86,875</td>
</tr>
<tr>
<td><strong>RAYOS</strong></td>
<td>$40,329</td>
<td>$19,020</td>
<td>21,309</td>
</tr>
<tr>
<td><strong>BUPHENYL</strong></td>
<td>$13,458</td>
<td>—</td>
<td>13,458</td>
</tr>
<tr>
<td><strong>LODOTRA</strong></td>
<td>$4,899</td>
<td>$6,487</td>
<td>(1,588)</td>
</tr>
<tr>
<td><strong>Total net sales</strong></td>
<td>$757,044</td>
<td>$296,955</td>
<td>$460,089</td>
</tr>
</tbody>
</table>

* Percentage change is not meaningful.

The increase in net sales during the year ended December 31, 2015 was primarily due to the recognition of PENNSAID 2% sales beginning in January 2015 following our acquisition of the U.S. rights to PENNSAID 2% from Nuvo in October 2014, the growth in sales of DUEXIS, the recognition of RAVICTI and BUPHENYL sales following the acquisition of Hyperion in May 2015, full-period recognition of ACTIMMUNE sales during the year ended December 31, 2015 compared with partial-period recognition during the year ended December 31, 2014, following the Vidara Merger on September 19, 2014, and the growth of RAYOS sales.

**DUEXIS.** Net sales increased $107.1 million, or 129%, to $190.4 million during the year ended December 31, 2015, from $83.3 million during the year ended December 31, 2014. DUEXIS net sales increased $58.0 million as a result of prescription volume growth driven by the expansion of our field sales force and increased $49.1 million due to higher net pricing resulting from wholesale acquisition cost, or WAC, price increases partially offset by additional patient co-pay reimbursements.

**VIMOVO.** Net sales increased $3.7 million, or 2%, to $166.7 million during the year ended December 31, 2015, from $163.0 million during the year ended December 31, 2014. VIMOVO net sales increased $23.5 million resulting from prescription volume growth, offset by a decrease of $19.8 million due to lower net pricing. While we have increased the WAC price for VIMOVO over the last 12 months, the increases were more than offset by additional patient co-pay reimbursements.

**PENNSAID 2%.** Net sales were $147.0 million during the year ended December 31, 2015. We began recognizing PENNSAID 2% sales in January 2015 following our acquisition of the U.S. rights to PENNSAID 2% from Nuvo in October 2014.

**ACTIMMUNE.** Net sales increased $82.2 million, or 326%, to $107.5 million during the year ended December 31, 2015, from $25.3 million during the year ended December 31, 2014. We began recognizing ACTIMMUNE sales following the closing of the Vidara Merger on September 19, 2014, therefore only a partial period of ACTIMMUNE sales were recognized during the year ended December 31, 2014, compared with full-period recognition of sales during the year ended December 31, 2015.

**RAVICTI.** Net sales were $86.9 million during the year ended December 31, 2015. We began recognizing RAVICTI sales following the acquisition of Hyperion in May 2015.

**RAYOS.** Net sales increased $21.3 million, or 112%, to $40.3 million during the year ended December 31, 2015, from $19.0 million during the year ended December 31, 2014. The increase was primarily due to prescription growth and net price increases resulting in higher net sales of approximately $20.2 million and $1.1 million, respectively.

**BUPHENYL.** Net sales were $13.5 million during the year ended December 31, 2015. We began recognizing BUPHENYL sales following the acquisition of Hyperion in May 2015.
LODOTRA. Net sales decreased $1.6 million, or 25%, to $4.9 million during the year ended December 31, 2015, from $6.5 million during the year ended December 31, 2014. The decrease was due to fewer shipments to our European distribution partner, Mundipharma International Corporation Limited, or Mundipharma. LODOTRA sales to Mundipharma occur at the time we ship, based on Mundipharma’s estimated requirements. Accordingly, LODOTRA sales are not linear or directly tied to Mundipharma’s in-market sales and can therefore fluctuate significantly.

The table below reconciles our gross sales to net sales for the years ended December 31, 2015 and 2014 (in millions):

<table>
<thead>
<tr>
<th>Year Ended December 31, 2015</th>
<th>Year Ended December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount</td>
<td>% of Gross Sales</td>
</tr>
<tr>
<td>Gross sales</td>
<td>$2,057.3</td>
</tr>
<tr>
<td>Adjustments to gross sales:</td>
<td></td>
</tr>
<tr>
<td>Prompt pay discounts</td>
<td>(41.3) (2.0%)</td>
</tr>
<tr>
<td>Product returns</td>
<td>(14.4) (0.7%)</td>
</tr>
<tr>
<td>Co-pay and other patient assistance</td>
<td>(1,020.2) (49.6%)</td>
</tr>
<tr>
<td>Wholesaler fees and commercial rebates</td>
<td>(66.1) (3.2%)</td>
</tr>
<tr>
<td>Government rebates and chargebacks</td>
<td>(158.3) (7.7%)</td>
</tr>
<tr>
<td>Total adjustments</td>
<td>(1,300.3) (63.2%)</td>
</tr>
<tr>
<td>Net sales</td>
<td>$757.0</td>
</tr>
</tbody>
</table>

During the year ended December 31, 2015, co-pay and other patient assistance, as a percentage of gross sales, increased to 49.6% from 23.1% during the year ended December 31, 2014. The increase was primarily due to the rollout of our HorizonCares program to all sales territories during 2015 which helped ensure patient access to our medicines in the face of exclusionary actions by certain pharmacy benefit managers, or PBMs. During the year ended December 31, 2015, wholesaler fees and commercial rebates, as a percentage of gross sales, decreased to 3.2% from 17.0% during the year ended December 31, 2014, primarily due to a decrease in our managed care rebates following the termination of our agreements with Caremark and Express Scripts Inc. in 2014.

Effective January 1, 2015, two significant PBMs placed DUEXIS and VIMOVO on their exclusion lists, which resulted in a loss of reimbursement for patients whose healthcare plans have adopted these PBM exclusion lists. However, this action did not negatively impact sales volume for either medicine. In fact, with successful adoption of our HorizonCares program by physicians, we are seeing increases in sales volume for both medicines. During the year ended December 31, 2015, DUEXIS sales volumes have increased by 70% and VIMOVO sales volumes have increased by 14%, each, when compared to the year ended December 31, 2014.

We have expanded and plan to continue expanding our sales force to support existing and newly acquired medicines. As of December 31, 2015, as result of the Hyperion acquisition, Vidara Merger and acquisition of PENNSAID 2%, we have expanded our sales force to approximately 395 sales representatives, consisting of approximately 15 orphan disease sales representatives, 340 primary care sales representatives and 40 rheumatology sales specialists, from 375 sales representatives on December 31, 2014.

Cost of Goods Sold. Cost of goods sold increased $140.7 million to $219.5 million during the year ended December 31, 2015, from $78.8 million during the year ended December 31, 2014. As a percentage of net sales, cost of goods sold was 29.0% during the year ended December 31, 2015 compared to 26.5% during the year ended December 31, 2014. The increase in cost of goods sold was primarily attributable to an increase in intangible amortization expense of $100.0 million, a $19.1 million increase in product costs associated with higher sales, higher royalty accretion expense of $11.1 million and a $10.5 million increase in charges relating to the remeasurement of contingent royalty liabilities.

The increase in intangible amortization of $100.0 million during the year ended December 31, 2015 compared to the prior year was primarily due to increases in intangible amortization expense of $62.2 million in relation to RAVICTI and BUPHENYL (acquired on May 7, 2015), $31.1 million relating to ACTIMMUNE developed technology (acquired on September 19, 2014) and $7.3 million relating to PENNSAID 2% (U.S. rights acquired in October 2014).
Research and Development Expenses. Research and development expenses increased $24.4 million to $41.9 million during the year ended December 31, 2015, from $17.5 million during the year ended December 31, 2014. The increase in research and development expenses during the year ended December 31, 2015 was primarily associated with $17.1 million in research and development expenses for ACTIMMUNE, RAVICTI and BUPHENYL, which included $4.0 million related to the Phase 3 trial for ACTIMMUNE in FA. We also recorded an increase of $5.1 million in share-based compensation expense during the year ended December 31, 2015 compared to the year ended December 31, 2014 as a result of the increase in the number of employees involved in research and development activities following the Vidara Merger and Hyperion acquisition.

Sales and Marketing Expenses. Sales and marketing expenses increased $100.1 million to $220.4 million during the year ended December 31, 2015, from $120.3 million during the year ended December 31, 2014. The increase in sales and marketing expenses reflects the growth in revenue and increase in the number of sales representatives over the same period, and was primarily attributable to an increase of $58.5 million in employee costs, including $18.9 million related to share-based compensation, resulting from the increased staffing of our field sales force and the expansion of our HorizonCares support team. We also recorded an increase of $22.0 million in marketing and commercialization expenses and an increase of $6.8 million in medicine samples distributed.

General and Administrative Expenses. General and administrative expenses increased $130.9 million to $219.9 million during the year ended December 31, 2015, from $89.0 million during the year ended December 31, 2014. The increase in general and administrative expenses was primarily attributable to an increase of $48.6 million in share-based compensation expense, $18.4 million in acquisition-related general and administrative expenses, and $63.9 million related to our growth in headcount, facilities, finance fees, legal fees and information technology expenses following the Vidara Merger and Hyperion acquisition.

Interest Expense, Net. Interest expense, net, increased $46.1 million to $69.9 million during the year ended December 31, 2015, from $23.8 million during the year ended December 31, 2014. The increased interest expense, net, was due to a full year of interest expense in 2015 on borrowings to fund the Vidara Merger in September 2014 and interest on additional borrowings to partially fund the acquisition of Hyperion in May 2015, including the $475.0 million aggregate principal amount of 6.625% Senior Notes due 2023, or the 2023 Senior Notes, the six-year $400.0 million term loan facility, or the 2015 Term Loan Facility, and the $400.0 million aggregate principal amount of 2.50% Exchangeable Senior Notes due 2022, or the Exchangeable Senior Notes, as compared to our prior year borrowings under the 5.00% Convertible Senior Notes due 2018, or Convertible Senior Notes, and the prior five-year $300.0 million term loan facility, or 2014 Term Loan Facility.

Foreign Exchange Loss. During the year ended December 31, 2015, we reported a foreign exchange loss of $1.2 million.

Loss on Derivative Revaluation. During the year ended December 31, 2014, we recorded a $215.0 million non-cash charge related to the increase in the fair value of the embedded derivative associated with our Convertible Senior Notes. The loss on the derivative revaluation was primarily due to an increase in the market value of HPI's common stock during the period from January 1, 2014 until June 27, 2014, the date HPI's stockholders approved the issuance of in excess of 13,164,951 shares of HPI's common stock upon conversion of the Convertible Senior Notes. The derivative liability was re-measured to a final fair value and the entire fair value of the derivative liability of $324.4 million was reclassified to additional paid-in capital. As such, there was no derivative revaluation subsequent to June 2014.

Loss on Induced Conversion of Debt and Debt Extinguishment. The loss on induced conversion of debt and debt extinguishment during the year ended December 31, 2015 was composed of $20.7 million related to the induced conversions of Convertible Senior Notes, including $10.0 million for cash inducement payments, a $10.1 million charge for the extinguishment of debt and $0.6 million of expenses, and $56.9 million related to the extinguishment of the 2014 Term Loan Facility, consisting of a $45.4 million early redemption premium and a $11.5 million charge for the extinguishment of debt. The loss on induced conversion and debt extinguishment during the year ended December 31, 2014 of $29.4 million was a result of the Convertible Senior Notes induced conversions in the fourth quarter of 2014, which consisted of $16.7 million of loss on induced conversion for cash inducement payments, a $11.7 million charge for the extinguishment of debt and $1.0 million of expenses related to the induced debt conversions.
Loss on Sale of Long-Term Investments. The loss on sale of long-term investments during the year ended December 31, 2015 was $29.0 million. During the third quarter of 2015, we purchased 2,250,000 shares of common stock of Depomed, Inc., or Depomed, representing 3.75% of Depomed’s then outstanding common stock. The shares were acquired at a cost of $71.8 million. During the fourth quarter of 2015, following our decision to withdraw our offer to acquire Depomed, we sold all of our shares in Depomed, receiving sales proceeds of $42.8 million and recognized a realized loss of $29.0 million in the consolidated statement of comprehensive income (loss).

Bargain Purchase Gain. During the year ended December 31, 2014, we recorded a bargain purchase gain of $22.2 million in connection with the Vidara Merger, representing the excess of the estimated fair values of net assets acquired over the acquisition consideration paid.

Other Expense, net. Other expense, net, during the year ended December 31, 2015 totaled $10.3 million, which primarily included the fees related to the Hyperion acquisition financing commitment. Other expense during the year ended December 31, 2014 totaled $11.3 million, representing $5.0 million of commitment fees incurred on the bridge financing in place prior to executing the 2014 Term Loan Facility in June 2014, $3.2 million of commitment fees incurred on the 2014 Term Loan Facility prior to its funding on September 19, 2014 and $2.9 million secondary offering expense fees incurred in the November 2014 underwritten public offering.

Benefit for Income Taxes. During the year ended December 31, 2015, we recorded an income tax benefit of $172.2 million compared to $6.1 million during the year ended December 31, 2014. The recognition of income tax benefit during the year ended December 31, 2015 was primarily attributable to the release of $103.1 million in valuation allowances in the U.S. tax consolidation group due to the recognition of significant deferred tax liabilities as a result of the Hyperion acquisition as well as the ability to recognize a tax benefit on losses incurred in the United States.

Net Income. Net income increased $303.1 million to $39.5 million during the year ended December 31, 2015, from a net loss of $263.6 million during the year ended December 31, 2014, primarily as a result of an increase in net sales during the year ended December 31, 2015, the increase in income tax benefit recognized during the year ended December 31, 2015, and the loss on derivative revaluation of $215.0 million recorded during the year ended December 31, 2014.

### Year Ended December 31, 2014 Compared to Year Ended December 31, 2013

<table>
<thead>
<tr>
<th></th>
<th>For the Years Ended December 31,</th>
<th>Increase / Decrease</th>
<th>Change %</th>
</tr>
</thead>
<tbody>
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<td>2014 (in thousands)</td>
<td>2013</td>
<td></td>
</tr>
<tr>
<td>Net sales</td>
<td>$296,955</td>
<td>$74,016</td>
<td>$222,939</td>
</tr>
<tr>
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<td>78,753</td>
<td>14,625</td>
<td>64,128</td>
</tr>
<tr>
<td>Gross profit</td>
<td>218,202</td>
<td>59,391</td>
<td>158,811</td>
</tr>
<tr>
<td>Operating expenses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>17,460</td>
<td>10,084</td>
<td>7,376</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>120,276</td>
<td>68,595</td>
<td>51,681</td>
</tr>
<tr>
<td>General and administrative</td>
<td>88,957</td>
<td>23,566</td>
<td>65,391</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>226,693</td>
<td>102,245</td>
<td>124,448</td>
</tr>
<tr>
<td>Operating loss</td>
<td>(8,491)</td>
<td>(42,854)</td>
<td>34,363</td>
</tr>
<tr>
<td>Other income (expense), net:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>(23,826)</td>
<td>(12,774)</td>
<td>11,052</td>
</tr>
<tr>
<td>Foreign exchange (loss) gain</td>
<td>(3,905)</td>
<td>1,206</td>
<td>5,111</td>
</tr>
<tr>
<td>Loss on derivative fair value</td>
<td>(214,995)</td>
<td>(69,300)</td>
<td>145,695</td>
</tr>
<tr>
<td>Loss on induced conversion and debt extinguishment</td>
<td>(29,390)</td>
<td>(26,404)</td>
<td>2,986</td>
</tr>
<tr>
<td>Bargain purchase gain</td>
<td>22,171</td>
<td>—</td>
<td>22,171</td>
</tr>
<tr>
<td>Other expense</td>
<td>(11,251)</td>
<td>—</td>
<td>11,251</td>
</tr>
<tr>
<td>Total other expense, net</td>
<td>(261,196)</td>
<td>(107,272)</td>
<td>153,924</td>
</tr>
<tr>
<td>Loss before benefit for income taxes</td>
<td>(269,697)</td>
<td>(150,126)</td>
<td>119,561</td>
</tr>
<tr>
<td>Benefit for income taxes</td>
<td>(6,084)</td>
<td>(1,121)</td>
<td>4,963</td>
</tr>
<tr>
<td>Net loss</td>
<td>$ (263,603)</td>
<td>$ (149,005)</td>
<td>$ 114,598</td>
</tr>
</tbody>
</table>
Net sales. Net sales increased $222.9 million, or 301%, to $297.0 million during the year ended December 31, 2014, from $74.1 million during the year ended December 31, 2013.

The following table presents a summary of total net sales attributed to geographic sources for the years ended December 31, 2014 and 2013 (in thousands):

<table>
<thead>
<tr>
<th>Year Ended December 31, 2014</th>
<th>Year Ended December 31, 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount</td>
<td>% of Total Net Sales</td>
</tr>
<tr>
<td>United States</td>
<td>$290,396</td>
</tr>
<tr>
<td>Rest of world</td>
<td>6,559</td>
</tr>
<tr>
<td>Total net sales</td>
<td>$296,955</td>
</tr>
</tbody>
</table>

The following table reflects the components of net sales for the years ended December 31, 2014 and 2013:

<table>
<thead>
<tr>
<th>Year Ended December 31, 2014</th>
<th>Change</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>VIMOVO</td>
<td>$162,954</td>
<td>$161,988</td>
</tr>
<tr>
<td>DUEXIS</td>
<td>83,243</td>
<td>58,972</td>
</tr>
<tr>
<td>ACTIMMUNE</td>
<td>25,251</td>
<td>—</td>
</tr>
<tr>
<td>RAYOS</td>
<td>19,020</td>
<td>5,841</td>
</tr>
<tr>
<td>LODOTRA</td>
<td>6,487</td>
<td>8,237</td>
</tr>
<tr>
<td>Total net sales</td>
<td>$296,955</td>
<td>$74,016</td>
</tr>
</tbody>
</table>

* Percentage change is not meaningful.

The increase in net sales during the year ended December 31, 2014 was primarily due to our initiation of VIMOVO sales in January 2014, growth in net sales of DUEXIS, our recognition of ACTIMMUNE sales following the acquisition of Vidara in September 2014 and growth in net sales of RAYOS.

VIMOVO. Net sales increased $162.0 million to $163.0 million during the year ended December 31, 2014, from $1.0 million during the year ended December 31, 2013. We began marketing of VIMOVO with our sales force in November 2013 and began selling Horizon-labeled VIMOVO in January 2014.

DUEXIS. Net sales increased $24.3 million, or 41%, to $83.2 million during the year ended December 31, 2014, from $59.0 million during the year ended December 31, 2013. In 2014, DUEXIS net sales increased approximately $39.2 million as the result of prescription volume growth driven by the expansion of our field sales force and the continued rollout of our HorizonCares program, partially offset by $15.1 million due to lower net pricing. Although DUEXIS WAC prices increased, the higher selling prices were offset by increased rebates and patient co-pay reimbursements as a result of our HorizonCares program.

ACTIMMUNE. Net sales were $25.3 million during the year ended December 31, 2014 compared to no net sales during the year ended December 31, 2013. Our 2014 net sales represent sales during the period following the Vidara Merger on September 19, 2014.

RAYOS. Net sales increased $13.2 million, or 226%, to $19.0 million during the year ended December 31, 2014, from $5.8 million during the year ended December 31, 2013. Approximately $9.0 million of the increase in RAYOS net sales was the result of net price increases and $4.2 million was due to prescription volume growth driven by the expansion of our sales force and the continued rollout of our HorizonCares program.

LODOTRA. Net sales decreased $1.7 million, or 21%, to $6.5 million during the year ended December 31, 2014, from $8.2 million during the year ended December 31, 2013. The decrease was the result of $1.5 million from reduced medicine shipments to our European distribution partner, Mundipharma, and $0.2 million in lower amortization of milestone payments. LODOTRA shipments to Mundipharma are not linear or directly tied to Mundipharma’s in-market sales and can therefore fluctuate significantly from quarter to quarter.
Cost of Goods Sold. Cost of goods sold increased $64.1 million to $78.8 million during the year ended December 31, 2014, from $14.6 million during the year ended December 31, 2013. As a percentage of net sales, cost of goods sold was 26.5% in 2014 compared to 19.8% in 2013. The increase in cost of goods sold was primarily attributable to a $9.1 million increase in product costs due to higher DUEXIS and VIMOVO sales, an increase in intangible amortization expense of $24.2 million, an $11.1 million charge to recognize additional cost of goods sold on the stepped up market value of ACTIMMUNE inventory as of the date of the Vidara Merger, a $10.7 million net charge associated with the contingent VIMOVO and ACTIMMUNE royalty liabilities and higher royalty accretion costs of $9.0 million during the year ended December 31, 2014.

During the year ended December 31, 2014, based on adjusted expectations for future VIMOVO sales, we recorded a net charge of $9.4 million to cost of goods sold to increase the amount of the estimated contingent royalty liability to reflect updated net sales projections.

During the fourth quarter of 2014, as the result of a price increase for ACTIMMUNE approved to take effect on January 1, 2015, we reassessed the value of our estimated royalty liability and recorded a charge of $1.3 million to cost of goods sold to increase the carrying value of the contingent royalties to reflect the updated net sales projections.

Intangible amortization increased $24.2 million during the year ended December 31, 2014, compared to the prior year period as a result of an increase of $11.8 million of which was attributable to a full year of intangible amortization expense related to VIMOVO developed technology and $12.2 million of which was related to amortization of developed technology for ACTIMMUNE as a result of the Vidara Merger.

Research and Development Expenses. Research and development expenses increased $7.4 million to $17.5 million during the year ended December 31, 2014, from $10.1 million during the year ended December 31, 2013. The increase in research and development expenses during the year ended December 31, 2014, was primarily associated with $2.3 million in research and development expenses for ACTIMMUNE, $2.1 million in higher salaries and benefits expense, $1.7 million in increased clinical expenses and $1.2 million in higher consulting fees.

Sales and Marketing Expenses. Sales and marketing expenses increased $51.7 million to $120.3 million during the year ended December 31, 2014, from $68.6 million during the year ended December 31, 2013. The increase in sales and marketing expenses was primarily attributable to an increase of $34.5 million in salaries and benefits expenses associated with increased staffing of our field sales force, $13.2 million in higher marketing and commercialization expenses primarily related to ACTIMUNE and VIMOVO, $2.5 million in higher facility expenses and $1.1 million in higher consulting fees.

General and Administrative Expenses. General and administrative expenses increased $65.4 million to $89.0 million during the year ended December 31, 2014, from $23.6 million during the year ended December 31, 2013. The increase in general and administrative expenses was primarily attributable to a $40.2 million increase in legal, consulting and investment advisory fees and other costs associated with the Vidara Merger and related financing transactions, a $20.3 million increase in salaries and benefits expense as a result of increased staffing of our administrative and finance functions and a $2.9 million increase in related facilities expenses.

Interest Expense, Net. Interest expense, net increased $11.1 million to $23.8 million during the year ended December 31, 2014, from $12.8 million during the year ended December 31, 2013. The increased interest expense, net was primarily due to higher borrowings under our Convertible Senior Notes and our $300.0 million five-year senior secured credit facility entered into in June 2014, or 2014 Senior Secured Credit Facility, during the year ended December 31, 2014, as compared to our prior borrowings under our $60.0 million senior secured loan, or Senior Secured Loan.

Foreign Exchange (Loss) Gain. During the year ended December 31, 2014, we reported a foreign exchange loss of $3.9 million compared to a foreign exchange gain of $1.2 million during the year ended December 31, 2013. The foreign exchange loss during the year ended December 31, 2014 was primarily attributable to a weakening of the Euro against the U.S. dollar which impacted our Swiss subsidiary, Horizon Pharma Switzerland GmbH, whose functional currency is in Euros, yet has intercompany balances and intercompany transactions as well as third-party transactions that are denominated in U.S. dollars.
**Loss on Derivative Revaluation.** During the year ended December 31, 2014, we recorded a $215.0 million non-cash charge compared to $69.3 million non-cash charge recorded during the year ended December 31, 2013. The increase in non-cash charges during the year ended December 31, 2014 was a result of the increase in the fair value of the embedded derivative associated with our Convertible Senior Notes. The increase in loss on the derivative revaluation was primarily due to an increase in the market value of HPI’s common stock during the period from January 1, 2014 through June 27, 2014, the date HPI’s stockholders approved the issue of common equity in excess of 13,164,951 shares upon conversion of the Convertible Senior Notes. The non-cash loss on derivative revaluation is a permanent tax difference and is not deductible for income tax reporting purposes.

**Loss on Induced Conversion and Debt Extinguishment.** The loss on induced conversion and debt extinguishment during the year ended December 31, 2014 of $29.4 million was a result of the Convertible Senior Notes induced conversions in the fourth quarter of 2014, which consisted of $16.7 million of loss on induced conversion for cash inducement payments, a $11.7 million charge for the extinguishment of debt and $1.0 million of expenses related to the induced debt conversions. The loss on induced conversion and debt extinguishment during the year ended December 31, 2013 of $26.4 million was related to the extinguishment of our Senior Secured Loan in November 2013.

**Bargain Purchase Gain.** During the year ended December 31, 2014, we recorded a bargain purchase gain of $22.2 million in connection with the Vidara Merger, representing the excess of the estimated fair values of net assets acquired over the acquisition consideration paid.

**Other Expense.** Other expense during the year ended December 31, 2014 totaled $11.3 million, which represented $5.0 million of commitment fees incurred on a bridge loan commitment prior to executing the 2014 Senior Secured Credit Facility in June 2014, $3.2 million of commitment fees incurred on the 2014 Senior Secured Credit Facility prior to its funding on September 19, 2014 and $2.9 million of secondary offering expense fees incurred in the November 2014 underwritten public offering.

**Benefit for Income Taxes.** During the years ended December 31, 2014 and 2013, we recorded a benefit for income taxes of $6.1 million and $1.1 million, respectively. The $6.1 million increase in the income tax benefit during the year ended December 31, 2014 related primarily to the recognition of the effect of the Vidara acquisition liabilities recorded in the third quarter of 2014 for $3.0 million and the elimination of the deferred tax liability due to the intercompany sale of intellectual property in the fourth quarter of 2014 for $3.0 million.

**Net Loss.** Net loss increased $114.6 million to $263.6 million during the year ended December 31, 2014, from $149.0 million during the year ended December 31, 2013, primarily as a result of the loss on derivative revaluation during the year ended December 31, 2014.

**Non-GAAP Financial Measures**

Earnings before interest, taxes, depreciation and amortization, or EBITDA, and adjusted EBITDA are used and provided by us as non-GAAP financial measures. We also provide certain other financial measures such as adjusted non-GAAP net income and adjusted non-GAAP net income per share, which include adjustments to GAAP figures. Adjustments to our GAAP figures as well as EBITDA exclude transaction-related expenses, loss on debt extinguishment and loss on sale of long-term investments, as well as non-cash items such as share-based compensation, depreciation and amortization, royalty accrual, non-cash interest expense, and other non-cash adjustments. Certain other special items or substantive events may also be included in the non-GAAP adjustments periodically when their magnitude is significant within the periods incurred. We believe that these non-GAAP financial measures, when considered together with the GAAP figures, can enhance an overall understanding of our financial performance. The non-GAAP financial measures are included with the intent of providing investors with an additional understanding of our historical financial results and trends. In addition, these non-GAAP financial measures are among the indicators our management uses for planning and forecasting purposes and measuring our performance. These non-GAAP financial measures should be considered in addition to, and not as a substitute for, or superior to, financial measures calculated in accordance with GAAP. The non-GAAP financial measures used by us may be calculated differently from, and therefore may not be comparable to, non-GAAP financial measures used by other companies.
Reconciliations of reported GAAP net income (loss) to adjusted non-GAAP net income, and the related per share amounts, are as follows (in thousands, except per share amounts):

<table>
<thead>
<tr>
<th></th>
<th>For the Year Ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td><strong>GAAP net income (loss)</strong></td>
<td>$39,532</td>
</tr>
</tbody>
</table>

**Non-GAAP Adjustments:**

<table>
<thead>
<tr>
<th>Description</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remeasurement of royalties for products acquired through business combinations (1)</td>
<td>21,151</td>
<td>10,660</td>
<td>—</td>
</tr>
<tr>
<td>Acquisition-related costs</td>
<td>72,221</td>
<td>48,835</td>
<td>—</td>
</tr>
<tr>
<td>Loss on sale of long-term investments</td>
<td>29,032</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Loss on derivative revaluation</td>
<td>—</td>
<td>214,995</td>
<td>69,300</td>
</tr>
<tr>
<td>Loss on induced conversion of debt and debt extinguishment</td>
<td>77,624</td>
<td>29,390</td>
<td>26,404</td>
</tr>
<tr>
<td>Bargain purchase gain</td>
<td>—</td>
<td>(22,171)</td>
<td>—</td>
</tr>
<tr>
<td>Secondary offering costs</td>
<td>—</td>
<td>2,857</td>
<td>—</td>
</tr>
<tr>
<td><strong>Amortization and accretion:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intangible amortization expense</td>
<td>132,923</td>
<td>32,306</td>
<td>8,136</td>
</tr>
<tr>
<td>Amortization of debt discount and deferred financing costs</td>
<td>18,810</td>
<td>9,273</td>
<td>4,364</td>
</tr>
<tr>
<td>Amortization of royalty liabilities</td>
<td>20,088</td>
<td>9,020</td>
<td>—</td>
</tr>
<tr>
<td>Amortization of inventory step-up adjustment</td>
<td>11,495</td>
<td>11,065</td>
<td>—</td>
</tr>
<tr>
<td>Share-based compensation</td>
<td>85,786</td>
<td>13,198</td>
<td>5,014</td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>5,420</td>
<td>1,702</td>
<td>1,174</td>
</tr>
<tr>
<td><strong>Royalties for products acquired through business combinations (1)</strong></td>
<td>(29,834)</td>
<td>(18,264)</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total of pre-tax non-GAAP adjustments</strong></td>
<td>444,716</td>
<td>342,866</td>
<td>114,392</td>
</tr>
<tr>
<td><strong>Income tax adjustments (2)</strong></td>
<td>(178,395)</td>
<td>(7,143)</td>
<td>(1,121)</td>
</tr>
<tr>
<td><strong>Total of non-GAAP adjustments</strong></td>
<td>266,321</td>
<td>335,723</td>
<td>113,271</td>
</tr>
<tr>
<td><strong>Adjusted non-GAAP net income (loss)</strong></td>
<td>305,853</td>
<td>72,120</td>
<td>(35,734)</td>
</tr>
</tbody>
</table>

**Adjusted non-GAAP earnings per share:**

<table>
<thead>
<tr>
<th>Description</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Weighted average shares – Basic</strong></td>
<td>148,788,020</td>
<td>83,751,129</td>
<td>63,657,924</td>
</tr>
<tr>
<td><strong>Adjusted non-GAAP earnings per share – Basic</strong></td>
<td>$0.27</td>
<td>$(0.15)</td>
<td>$(2.34)</td>
</tr>
<tr>
<td><strong>Non-GAAP adjustments</strong></td>
<td>1.79</td>
<td>4.01</td>
<td>1.78</td>
</tr>
<tr>
<td><strong>Adjusted non-GAAP earnings (loss) per share – Basic</strong></td>
<td>$2.06</td>
<td>$0.86</td>
<td>$(0.56)</td>
</tr>
</tbody>
</table>

**Weighted average shares – Diluted**

<table>
<thead>
<tr>
<th>Description</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Weighted average shares – Basic</strong></td>
<td>148,788,020</td>
<td>83,751,129</td>
<td>63,657,924</td>
</tr>
<tr>
<td><strong>Ordinary share equivalents</strong></td>
<td>7,135,231</td>
<td>20,737,726</td>
<td>—</td>
</tr>
<tr>
<td><strong>Weighted average shares – Diluted</strong></td>
<td>155,923,251</td>
<td>104,488,855</td>
<td>63,657,924</td>
</tr>
<tr>
<td><strong>Adjusted non-GAAP net income – Diluted</strong></td>
<td>$305,853</td>
<td>$78,954</td>
<td>$(35,734)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Add: Convertible debt interest expense, net of taxes</strong></td>
<td>—</td>
<td>6,834</td>
<td>—</td>
</tr>
<tr>
<td><strong>Adjusted non-GAAP net income (loss) – Diluted</strong></td>
<td>$305,853</td>
<td>$85,786</td>
<td>$(35,734)</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GAAP earnings (loss) per share – Diluted</strong></td>
<td>$0.25</td>
<td>$(0.15)</td>
<td>$(2.34)</td>
</tr>
<tr>
<td><strong>Non-GAAP adjustments</strong></td>
<td>1.71</td>
<td>4.01</td>
<td>1.78</td>
</tr>
<tr>
<td><strong>Diluted earnings per share effect of ordinary share equivalents</strong></td>
<td>—</td>
<td>(0.10)</td>
<td>—</td>
</tr>
<tr>
<td><strong>Adjusted non-GAAP earnings (loss) per share – Diluted</strong></td>
<td>$1.96</td>
<td>$0.76</td>
<td>$(0.56)</td>
</tr>
</tbody>
</table>
Royalties for products acquired through business combinations relate to VIMOVO, ACTIMMUNE, RAVICTI, and BUPHENYL.

Adjustments to convert the income tax benefit to the estimated amount of taxes that are payable in cash.

The following table reconciles our reported GAAP net income (loss) to adjusted EBITDA for the year ended December 31, 2015 and 2014 (in thousands):

<table>
<thead>
<tr>
<th>For the Year Ended December 31</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GAAP net income (loss)</strong></td>
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<td>$(149,005)</td>
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<td></td>
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<tr>
<td>Intangible amortization expense</td>
<td>132,923</td>
<td>32,306</td>
<td>8,136</td>
</tr>
<tr>
<td>Amortization of deferred revenue</td>
<td>(962)</td>
<td>(644)</td>
<td>(930)</td>
</tr>
<tr>
<td>Accretion of royalty liabilities</td>
<td>20,088</td>
<td>9,020</td>
<td>—</td>
</tr>
<tr>
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<td>11,065</td>
<td>—</td>
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<tr>
<td>Interest expense, net (including amortization of debt discount and deferred financing costs)</td>
<td>69,900</td>
<td>23,826</td>
<td>12,774</td>
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<td>(172,244)</td>
<td>(6,084)</td>
<td>(1,121)</td>
</tr>
<tr>
<td><strong>EBITDA</strong></td>
<td>106,152</td>
<td>(192,412)</td>
<td>(128,972)</td>
</tr>
<tr>
<td>Non-GAAP adjustments:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
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</tr>
<tr>
<td><strong>Total of non-GAAP adjustments</strong></td>
<td>255,980</td>
<td>279,500</td>
<td>100,718</td>
</tr>
<tr>
<td><strong>Adjusted EBITDA</strong></td>
<td>$362,132</td>
<td>$87,088</td>
<td>$(28,254)</td>
</tr>
</tbody>
</table>

(1) Royalties for products acquired through business combinations relate to VIMOVO, ACTIMMUNE, RAVICTI, and BUPHENYL.

**Liquidity and Capital Resources**

We have incurred losses since our inception in June 2005 and, as of December 31, 2015, we had an accumulated deficit of $681.2 million. We expect that our sales and marketing expenses will continue to increase as a result of our commercialization of our medicines, but we believe these cost increases will be more than offset by higher net sales and gross profits. We achieved operating profitability in the year ended December 31, 2015, and we expect our current operations to continue to achieve operating profitability in 2016, absent unusual or non-recurring items.
We have financed our operations to date through equity financings, debt financings and the issuance of convertible notes, along with cash flows from operations during the last several quarters. As of December 31, 2015, we had $859.6 million in cash and cash equivalents and total debt with a book value of $1,145.1 million and face value of $1,273.0 million. Our cash position does not reflect our use of approximately $510.0 million to fund our acquisition of Crealta in January 2016. We believe our existing cash and cash equivalents and our expected cash flows from our operations will be sufficient to fund our business needs for at least the next 12 months. Part of our strategy is to expand and leverage our commercial capabilities by identifying, developing, acquiring and commercializing differentiated and accessible medicines that address unmet medical needs. To the extent we enter into transactions to acquire medicines or businesses in the future, we will most likely need to finance a significant portion of those acquisitions through additional debt, equity or convertible debt financings.

In March 2015, April 2015 and June 2015, we entered into separate, privately negotiated conversion agreements with certain holders of the Convertible Senior Notes which were on substantially the same terms as prior conversion agreements entered into by us. Under these conversion agreements, the applicable holders agreed to convert an aggregate principal amount of $61.0 million of Convertible Senior Notes held by them and we agreed to settle such conversions by issuing an aggregate of 11,368,921 ordinary shares. In addition, pursuant to such conversion agreements, we made an aggregate cash payment of $10.0 million to the applicable holders for additional exchange consideration and $0.9 million for accrued and unpaid interest. Following these conversions, there were no Convertible Senior Notes remaining outstanding.

On March 13, 2015, Horizon Pharma Investment Limited, a wholly-owned subsidiary of Horizon Pharma plc, or, Horizon Investment, completed a private placement of $400.0 million aggregate principal amount of Exchangeable Senior Notes to several investment banks acting as initial purchasers who subsequently resold the Exchangeable Senior Notes to qualified institutional buyers as defined in Rule 144A under the Securities Act of 1933, as amended, or the Securities Act. The net proceeds from the offering of the Exchangeable Senior Notes were approximately $387.2 million, after deducting the initial purchasers’ discount and offering expenses payable by Horizon Investment.

We have fully and unconditionally guaranteed the Exchangeable Senior Notes, on a senior unsecured basis, referred to as the Guarantee. The Exchangeable Senior Notes and the Guarantee are Horizon Investment’s and our senior unsecured obligations. The Exchangeable Senior Notes accrue interest at an annual rate of 2.50% payable semiannually in arrears on March 15 and September 15 of each year, beginning on September 15, 2015. The Exchangeable Senior Notes will mature on March 15, 2022, unless earlier exchanged, repurchased or redeemed. The initial exchange rate is 34.8979 of our ordinary shares per $1,000 principal amount of the Exchangeable Senior Notes (equivalent to an initial exchange price of approximately $28.66 per ordinary share).

On April 21, 2015, we closed an underwritten public offering of 17,652,500 of our ordinary shares at a price to the public of $28.25 per share, referred to as the 2015 Offering. The net proceeds to us from the 2015 Offering were approximately $475.7 million, after deducting underwriting discounts and other offering expenses payable by us.

On April 29, 2015, Horizon Pharma Financing Inc., or Horizon Financing, our wholly-owned subsidiary, completed a private placement of $475.0 million aggregate principal amount of 2023 Senior Notes to certain investment banks acting as initial purchasers who subsequently resold the 2023 Senior Notes to qualified institutional buyers as defined in Rule 144A under the Securities Act and in offshore transactions to non-U.S. Persons in reliance on Regulation S under the Securities Act. The net proceeds from the 2023 Senior Notes were approximately $462.3 million.

In connection with the closing of the Hyperion acquisition on May 7, 2015, Horizon Financing merged with and into HPI and, as a result, the 2023 Senior Notes became HPI’s general unsecured senior obligations and we and all of our direct and indirect subsidiaries that are guarantors under the 2015 Senior Secured Credit Facility (as described below) fully and unconditionally guaranteed on a senior unsecured basis HPI’s obligations under the 2023 Senior Notes.

The 2023 Senior Notes accrue interest at an annual rate of 6.625% payable semiannually in arrears on May 1 and November 1 of each year, beginning on November 1, 2015. The 2023 Senior Notes will mature on May 1, 2023, unless earlier exchanged, repurchased or redeemed.
Except as described below, the 2023 Senior Notes may not be redeemed before May 1, 2018. Thereafter, some or all of the 2023 Senior Notes may be redeemed at any time at specified redemption prices, plus accrued and unpaid interest to the redemption date. At any time prior to May 1, 2018, some or all of the 2023 Senior Notes may be redeemed at a price equal to 100% of the aggregate principal amount thereof, plus a make-whole premium and accrued and unpaid interest to, but not including the redemption date. Also prior to May 1, 2018, up to 35% of the aggregate principal amount of the 2023 Senior Notes may be redeemed at a redemption price of 106.625% of the aggregate principal amount thereof, plus accrued and unpaid interest, with the net proceeds of certain equity offerings; provided that: (1) at least 65% of the aggregate principal amount of notes originally issued under the indenture (excluding notes held by the parent and its subsidiaries) remains outstanding immediately after the occurrence of such redemption; and (2) the redemption occurs with 180 days of the date of closing such equity offering. In addition, the 2023 Senior Notes may be redeemed in whole but not in part at a redemption price equal to 100% of the principal amount plus accrued and unpaid interest and additional amounts, if any, to, but excluding, the redemption date, if on the next date on which any amount would be payable in respect of the 2023 Senior Notes, HPI or any guarantor is or would be required to pay additional amounts as a result of certain tax related events.

If we undergo a change of control, HPI will be required to make an offer to purchase all of the 2023 Senior Notes at a price in cash equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest to, but not including, the repurchase date. If we or certain of our subsidiaries engage in certain asset sales, HPI will be required under certain circumstances to make an offer to purchase the 2023 Senior Notes at 100% of the principal amount thereof, plus accrued and unpaid interest to the repurchase date.

On May 7, 2015, we, HPI, and certain of our subsidiaries entered into a credit agreement with Citibank N.A., as administrative agent and collateral agent, and the lenders from time to time party thereto providing for (i) the six-year $400.0 million 2015 Term Loan Facility; (ii) an uncommitted accordion facility subject to the satisfaction of certain financial and other conditions; and (iii) one or more uncommitted refinancing loan facilities with respect to loans thereunder. This is referred to as the 2015 Senior Secured Credit Facility. The initial borrower under the 2015 Term Loan Facility is HPI. The credit agreement allows for us and certain of our other subsidiaries to become borrowers under the accordion or refinancing facilities. Loans under the 2015 Term Loan Facility bear interest, at each borrower’s option, at a rate equal to either the London Inter-Bank Offer Rate, or LIBOR, plus an applicable margin of 3.5% per year (subject to a 1.0% LIBOR floor), or the adjusted base rate plus 2.5%. The adjusted base rate is defined as the greater of (a) LIBOR (using one-month interest period) plus 1%, (b) prime rate, (c) fed funds plus ½ of 1% and (d) 2%. We borrowed the full $400.0 million available under the 2015 Term Loan Facility on May 7, 2015 as a LIBOR-based borrowing. The net proceeds from the 2015 Term Loan Facility were approximately $391.5 million.

The obligations under the credit agreement and any swap obligations and cash management obligations owing to a lender (or an affiliate of a lender) thereunder are and will be guaranteed by our and each of our existing and subsequently acquired or organized direct and indirect subsidiaries (other than certain immaterial subsidiaries, subsidiaries whose guarantee would result in material adverse tax consequences and subsidiaries whose guarantee is prohibited by applicable law). The obligations under the credit agreement and any such swap and cash management obligations are secured, subject to customary permitted liens and other agreed upon exceptions, by a perfected security interest in (i) all tangible and intangible assets of the borrowers and the guarantors, except for certain customary excluded assets, and (ii) all of the capital stock owned by the borrowers and guarantors thereunder (limited, in the case of the stock of certain non-U.S. subsidiaries of the borrowers, to 65% of the capital stock of such subsidiaries).

We are permitted to make voluntary prepayments at any time without payment of a premium. We are required to make mandatory prepayments of loans under the 2015 Term Loan Facility (without payment of a premium) with (a) net cash proceeds from certain non-ordinary course asset sales (subject to reinvestment rights and other exceptions), (b) casualty proceeds and condemnation awards (subject to reinvestment rights and other exceptions), (c) net cash proceeds from issuances of debt (other than certain permitted debt), and (d) beginning with the fiscal year ending December 31, 2016, 50% of our excess cash flow (subject to decrease to 25% or 0% if our first lien leverage ratio is less than 2.25:1 and 1.75:1, respectively). The loans under the 2015 Term Loan Facility will amortize in equal quarterly installments in an aggregate annual amount equal to 1% of the original principal amount thereof, with any remaining balance payable on the final maturity date of the loans under the 2015 Term Loan Facility.

We used the net proceeds from the 2015 Offering, the offering of the 2023 Senior Notes, borrowings under the 2015 Term Loan Facility and existing cash to fund our acquisition of Hyperion, repay the $300 million outstanding amounts under the 2014 Term Loan Facility plus the related $45.4 million make-whole fee, and pay prepayment premiums, fees and expenses in connection with the foregoing.
We have a significant amount of debt outstanding on a consolidated basis. This substantial level of debt could have important consequences to our business, including, but not limited to: making it more difficult for us to satisfy our obligations; requiring a substantial portion of our cash flows from operations to be dedicated to the payment of principal and interest on our indebtedness, therefore reducing our ability to use our cash flows to fund acquisitions, capital expenditures, and future business opportunities; limiting our ability to obtain additional financing, including borrowing additional funds; increasing our vulnerability to, and reducing our flexibility to respond to, general adverse economic and industry conditions; limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate; and placing us at a disadvantage as compared to our competitors, to the extent that they are not as highly leveraged. We may not be able to generate sufficient cash to service all of our indebtedness and may be forced to take other actions to satisfy our obligations under our indebtedness.

In addition, the indenture governing the 2023 Senior Notes and the credit agreement related to the 2015 Senior Secured Credit Facility impose various covenants that limit our ability and/or our restricted subsidiaries’ ability to, among other things, pay dividends or distributions, repurchase equity, prepay junior debt and make certain investments, incur additional debt and issue certain preferred stock, incur liens on assets, engage in certain asset sales or merger transactions, enter into transactions with affiliates, designate subsidiaries as unrestricted subsidiaries; and allow to exist certain restrictions on the ability of restricted subsidiaries to pay dividends or make other payments to us.

During the year ended December 31, 2015, we received proceeds of $18.1 million in connection with our issuance of an aggregate of 4,872,709 of our ordinary shares upon the exercise of warrants. Additionally, we issued an aggregate of 846,022 ordinary shares in connection with the exercise of stock options and received $5.2 million in proceeds.

During the year ended December 31, 2015, we issued an aggregate of 591,277 ordinary shares pursuant to employee stock purchase plans and received $4.5 million in proceeds.

During the year ended December 31, 2015, we issued an aggregate of 311,612 ordinary shares in net settlement of vested restricted stock units and made payments for employee withholding taxes relating to share-based awards of $3.0 million.

Sources and Uses of Cash

The following table provides a summary of our cash position and cash flows for the years ended December 31, 2015, 2014 and 2013 (in thousands):

<table>
<thead>
<tr>
<th>For the Years Ended December 31,</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$859,616</td>
<td>$218,807</td>
<td>$80,480</td>
</tr>
<tr>
<td>Cash provided by (used in):</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating activities</td>
<td>194,166</td>
<td>27,549</td>
<td>(54,287)</td>
</tr>
<tr>
<td>Investing activities</td>
<td>(995,048)</td>
<td>(227,720)</td>
<td>(36,135)</td>
</tr>
<tr>
<td>Financing activities</td>
<td>1,442,481</td>
<td>338,285</td>
<td>66,716</td>
</tr>
</tbody>
</table>

Net Cash Provided by (Used in) Operating Activities

During the years ended December 31, 2015, 2014 and 2013, net cash provided by (used in) operating activities was $194.2 million, $27.5 million and $(54.3) million, respectively.

Net cash provided by operating activities during 2015 was primarily attributable to cash collections from net sales. Cash provided by operating activities was negatively impacted during the year ended December 31, 2015 due to cash payments of $68.2 million for acquisition-related expenses, including the payment in April 2015 of approximately $11.2 million of employee and director excise taxes due to the Vidara Merger. Cash payments during the year ended December 31, 2015 also included a $45.4 million early redemption premium related to the 2014 Term Loan Facility, $42.0 million of interest payments made on our 2014 Term Loan Facility, 2015 Term Loan Facility, 2023 Senior Notes and Exchangeable Senior Notes, and $10.0 million of cash payments related to induced debt conversions.
Net cash provided by operating activities during 2014 was primarily attributable to cash collections from net sales, partially offset by cash outlays for related expenses. Cash provided by operating activities during 2014 was negatively impacted by $48.9 million in transaction costs related to the Vidara Merger, $2.9 million relating to the secondary offering of ordinary shares by certain stockholders in November 2014, and $16.7 million of cash payments related to induced debt conversions.

Net cash used in operating activities during 2013 was primarily attributable to cash flows from net sales and gross margins of DUEXIS and RAYOS, which was partially offset by cash used in operating activities related to increases in our working capital requirements, such as for accounts receivable and inventories due to our increased product sales.

Net Cash Used in Investing Activities
During the years ended December 31, 2015, 2014 and 2013, net cash used in investing activities was $995.0 million, $227.7 million and $36.1 million, respectively.

Net cash used in investing activities during 2015 was primarily associated with $1,022.4 million that we paid to acquire Hyperion, net of cash acquired, and payments of $71.8 million made in relation to the purchase of 2,250,000 shares of common stock of Depomed. This was offset by proceeds of $42.8 million from the sale of such Depomed shares and proceeds from the liquidation of available-for-sale investments of $64.6 million.

Net cash used in investing activities during 2014 was primarily associated with the net cash paid for the Vidara Merger of $179.2 million and the acquisition of PENNSAID 2% of $45.0 million.

Net cash used in investing activities during 2013 was primarily attributable to our asset purchase of U.S. rights to VIMOVO for $35.0 million from AstraZeneca in November 2013.

Net Cash Provided by Financing Activities
During the years ended December 31, 2015, 2014 and 2013, net cash provided by financing activities was $1,442.5 million, $338.3 million and $66.7 million, respectively.

Net cash provided by financing activities during 2015 was primarily attributable to $387.2 million of net proceeds received from borrowings under the Exchangeable Senior Notes, $391.5 million net proceeds from the 2015 Term Loan Facility, $462.3 million net proceeds from the 2023 Senior Notes and $475.7 million of net proceeds from the issuance of 17,652,500 ordinary shares in the 2015 Offering, partially offset by the repayment of the 2014 Term Loan Facility and a partial repayment of the 2015 Term Loan Facility, which resulted in a financing outflow of $299.0 million.

Net cash provided by financing activities during 2014 was primarily attributable to $287.0 million of net proceeds received under the 2014 Senior Secured Credit Facility in connection with the Vidara Merger in September 2014. In addition, during 2014, we received proceeds of $38.5 million in connection with the exercise of warrants to purchase 8,990,120 ordinary shares, and received $9.4 million of cash proceeds from the settlement of the capped call termination in September 2014.

Net cash provided by financing activities during 2013 was primarily attributable to proceeds from the Convertible Senior Notes, net of issuance costs, partially offset by principal debt payments and the extinguishment of our Senior Secured Loan. In connection with our acquisition of the U.S. rights to VIMOVO, we issued $150.0 million aggregate principal amount of Convertible Senior Notes and received net proceeds of $143.6 million from the sale of the Convertible Senior Notes, after deducting fees and expenses of approximately $6.4 million. In addition, we used $18.7 million of the net proceeds to purchase capped calls and used $64.9 million of the net proceeds to repay all obligations under our Senior Secured Loan. During the year ended December 31, 2013, we sold 2,448,575 shares of HPI common stock through at-the-market offerings for gross proceeds of $6.2 million and net proceeds of $6.0 million, after $0.2 million in commissions and other issuance costs.
**Contractual Obligations**

As of December 31, 2015, minimum future cash payments due under contractual obligations, including, among others, our debt agreements, minimum purchase agreements and non-cancelable operating lease agreements, were as follows (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021 &amp;</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt agreements – principal (1)</td>
<td>$4,000</td>
<td>$4,000</td>
<td>$4,000</td>
<td>$4,000</td>
<td>$4,000</td>
<td>$1,253,000</td>
<td>$1,273,000</td>
</tr>
<tr>
<td>Debt agreements - interest (1)</td>
<td>59,784</td>
<td>59,402</td>
<td>59,220</td>
<td>59,037</td>
<td>58,902</td>
<td>102,076</td>
<td>398,421</td>
</tr>
<tr>
<td>Purchase commitments (2)</td>
<td>24,204</td>
<td>5,271</td>
<td>5,271</td>
<td>4,273</td>
<td>2,136</td>
<td>—</td>
<td>41,155</td>
</tr>
<tr>
<td>Operating lease obligations (3)</td>
<td>4,047</td>
<td>5,343</td>
<td>4,961</td>
<td>4,119</td>
<td>3,415</td>
<td>18,378</td>
<td>40,263</td>
</tr>
<tr>
<td>Total contractual cash obligations</td>
<td>$92,035</td>
<td>$74,016</td>
<td>$73,452</td>
<td>$71,429</td>
<td>$68,453</td>
<td>$1,373,454</td>
<td>$1,752,839</td>
</tr>
</tbody>
</table>

(1) Represents the minimum contractual obligation due under the following debt agreements:
- $400.0 million 2015 Senior Secured Credit Facility, which includes quarterly interest payments and quarterly payments of 0.25% of the principal, and repayment of the remaining principal in May 2021.
- $475.0 million 2023 Senior Notes, which includes bi-annual interest payments and repayment of the principal in May 2023.
- $400.0 million Exchangeable Senior Notes, which includes bi-annual interest payments and repayment of the principal in March 2022.

(2) These amounts reflect the following purchase commitments with our third-party manufacturers:
- Minimum purchase commitment for RAYOS/LODOTRA tablets from Jagotec AG through April 2018 (the end of the minimum term), which is the firm commitment term under the contract.
- Purchase commitment for final packaged DUEXIS tablets from Sanofi-Aventis U.S. through March 2016.
- Minimum purchase commitment for VIMOVO tablets from Patheon Pharmaceuticals Inc. through April 2016.
- Minimum annual order quantities required to be placed with Boehringer Ingelheim RCV GmbH & Co. KG, or Boehringer Ingelheim, for final packaged ACTIMMUNE through July 2020.
- Purchase commitment for final packaged PENNSAID 2% from Nuvo through April 2016.
- Minimum purchase commitment for RAVICTI/BUPHENYL through 2016.
- Annual maintenance fee for KRYSTEXXA through 2018.

(3) These amounts reflect payments due under our operating leases, which are principally for our facilities. For further details regarding these properties, see Item 2 of Part I, *Properties*, of this Annual Report on Form 10-K.

As of December 31, 2015, our liability for uncertain tax positions amounted to $9.8 million (excluding interest and penalties). Due to the nature and timing of the ultimate outcome of these uncertain tax positions, we cannot make a reasonably reliable estimate of the amount and period of related future payments, if any. Therefore, our liability has been excluded from the above contractual obligations table. We do not expect a significant tax payment related to these obligations within the next year.

In addition to the obligations set out in the above table, we have assumed material obligations to pay royalties to certain third parties on net sales of certain of our medicines as outlined below.
Under the license agreement with Pozen Inc., or Pozen, we are required to pay Pozen a flat 10% royalty on net sales of VIMOVO and such other medicines sold by us, our affiliates or sublicensees during the royalty term, subject to minimum annual royalty obligations of $5.0 million in 2014 and $7.5 million each year thereafter, which minimum royalty obligations will continue for each year during which one of Pozen’s patents covers such medicines in the United States and there are no competing medicines in the United States. The royalty rate may be reduced to a mid-single digit royalty rate as a result of loss of market share to competing medicines. Our obligation to pay royalties to Pozen will expire upon the later of (a) expiration of the last-to-expire of certain patents covering such medicines in the United States, and (b) ten years after the first commercial sale of such medicines in the United States. In addition, we are obligated to reimburse Pozen for costs, including attorneys’ fees, incurred by Pozen in connection with VIMOVO patent litigation moving forward, subject to agreed caps.

Under the terms of a license agreement, as amended, with Genentech Inc., or Genentech, who was the original developer of ACTIMMUNE, we are or were obligated to pay royalties to Genentech on our net sales of ACTIMMUNE as follows:

- Through November 25, 2014, we were obligated to pay a royalty of 45% of the first $3.7 million in net sales achieved in a calendar year, and 10% on all additional net sales in that year;
- For the period from November 26, 2014 through May 5, 2018, the royalty payments will be reduced to a 20%-30% range for the first tier in net sales and in the 1%-9% range for the second tier; and
- From May 6, 2018 and for so long as we continue to commercially sell ACTIMMUNE, we will be obligated to pay an annual royalty in the low single digits as a percentage of annual net sales.

Under the terms of an assignment and option agreement with Connetics Corporation (which was the predecessor parent company to InterMune Pharmaceuticals Inc. and is now part of GlaxoSmithKline), or Connetics, we are obligated to pay royalties to Connetics on our net sales of ACTIMMUNE as follows:

- 0.25% of net sales of ACTIMMUNE, rising to 0.5% once cumulative net sales of ACTIMMUNE in the United States surpass $1.0 billion; and
- In the event we develop and receive regulatory approval for ACTIMMUNE in the indication of scleroderma, we will be obligated to pay a royalty of 4% on all net sales of ACTIMMUNE recorded for use in that indication.

Under the terms of an asset purchase agreement with Ucyclyd Pharma, Inc., or Ucyclyd, we are obligated to pay to Ucyclyd tiered mid to high single-digit royalties on our global net sales of RAVICTI.

Under the terms of an amended and restated collaboration agreement with Ucyclyd, we are obligated to pay to Ucyclyd tiered mid to high single-digit royalties on our net sales in the United States of BUPHENYL to UCD patients outside of the U.S. Food and Drug Administration, or FDA, approved labeled age range for RAVICTI.

Under the terms of a license agreement with Saul W. Brusilow, M.D. and Brusilow Enterprises, Inc., or Brusilow, we are obligated to pay low single-digit royalties to Brusilow on net sales of RAVICTI that are covered by a valid claim of a licensed patent.

Under the terms of a license agreement with Duke University, or Duke, and Mountain View Pharmaceuticals, or MVP, we are obligated to pay Duke a mid-single digit royalty on our global net sales of KRYSTEXXA and a low-double digit royalty on any global sublicense revenue. We are also obligated to pay MVP a mid-single digit royalty on our net sales of KRYSTEXXA outside of the United States and a low-double digit to royalty on any sublicense revenue outside of the United States.

Off-Balance Sheet Arrangements

Since our inception, we have not engaged in any off-balance sheet arrangements, including the use of structured finance, special purpose entities or variable interest entities, other than the indemnification agreements discussed in Note 16, “Commitments and Contingencies” in the notes to our consolidated financial statements included in this report.
Critical Accounting Policies and Significant Judgments and Estimates

The methods, estimates and judgments that we use in applying our critical accounting policies have a significant impact on the results that we report in our financial statements. Some of our accounting policies require us to make difficult and subjective judgments, often as a result of the need to make estimates regarding matters that are inherently uncertain.

We have identified the accounting policies and estimates listed below as those that we believe require management’s most subjective and complex judgments in estimating the effect of inherent uncertainties. This section should also be read in conjunction with Note 2, “Summary of Significant Accounting Policies,” in the notes to our consolidated financial statements included in this report, which includes a discussion of these and other significant accounting policies.

Revenue Recognition

Revenue is recognized when all of the following criteria are met: persuasive evidence of an arrangement exists; delivery has occurred or services have been rendered; the price is fixed or determinable; and collectability is reasonably assured. Some of our agreements contain multiple elements and in accordance with these agreements, we may be eligible for upfront license fees, marketing or commercial milestones and payment for medicine deliveries.

Revenue From Medicine Deliveries

We recognize revenue from the sale of our medicines when delivery has occurred, title has transferred, the selling price is fixed or determinable, the right of return no longer exists (which is the earlier of medicine being dispensed through patient prescriptions or the expiration of the right of return) or product returns can be reasonably estimated, collectability is reasonably assured and we have no further performance obligations. Due to our ability to reasonably estimate and determine allowances for co-pay and other patient assistance, product returns, rebates and discounts based on our own internal data for DUEXIS and RAYOS or data relating to prior sales of our acquired medicines which was received in connection with the acquisition of those medicines, we recognize revenue at the point of sale to wholesale pharmaceutical distributors and retail chains for all currently distributed medicines.

Revenue From Upfront License Fees

We recognize revenues from the receipt of non-refundable, upfront license fees. In situations where the licensee is able to obtain stand-alone value from the license and no further performance obligations exist on our part, revenues are recognized on the earlier of when payments are received or collection is assured. Where continuing involvement by us is required in the form of technology transfer, medicine manufacturing or technical support, revenues are deferred and recognized over the term of the agreement.

Revenue From Milestone Receipts

Milestone payments are recognized as revenue based on achievement of the associated milestones, as defined in the relevant agreements. Revenue from a milestone achievement is recognized when earned, as evidenced by acknowledgment from our partner, provided that (1) the milestone event is substantive and its achievability was not reasonably assured at the inception of the agreement, (2) the milestone represents the culmination of an earnings process and (3) the milestone payment is non-refundable. If any of these criteria are not met, revenue from the milestone achievement is recognized over the remaining minimum period of our performance obligations under the agreement.

Product Sales Discounts and Allowances

We record allowances for product returns, rebates and discounts at the time of sale to wholesale pharmaceutical distributors and retail chains. We are also required to make significant judgments and estimates in determining some of these allowances. If actual results differ from our estimates, we will be required to make adjustments to these allowances in the future.

Product Launch Discounts

We have offered additional discounts to wholesale distributors for product purchased at the time of product launch. We have recorded these discounts as an allowance against accounts receivable and a reduction of revenue when the sale is recorded.
Commercial Rebates
We participate in certain commercial rebate programs. Under these rebate programs, we pay a rebate to the commercial entity or third-party administrator of the program. We accrue estimated rebates based on contract prices, estimated percentages of product sold to qualified patients and estimated levels of inventory in the distribution channel and record the rebate as a reduction of revenue.

Distribution Service Fees
We include distribution service fees paid to our wholesalers for distribution and inventory management services as a reduction to revenue. We accrue estimated fees based on contractually determined amounts, typically as a percentage of revenue, as a reduction of revenue.

Patient Access Programs
We offer discount card and other programs such as our HorizonCares program to patients under which the patient receives a discount on his or her prescription. In certain circumstances when a patient’s prescription is rejected by a managed care vendor, we will pay for the full cost of the prescription. We reimburse pharmacies for this discount through third-party vendors. We reduce gross sales by the amount of actual co-pay assistance in the period based on the invoices received. We also record an accrual to reduce gross sales for estimated co-pay assistance on units sold to distributors that have not yet been prescribed/dispensed to a patient. The estimate is based on contract prices, estimated percentages of product that will be prescribed to qualified patients, average assistance paid based on reporting from the third-party vendors and estimated levels of inventory in the distribution channel. Patient assistance programs include both co-pay assistance and fully bought down prescriptions.

Sales Returns
Consistent with industry practice, we maintain a return policy that allows customers to return product within a specified period prior to and subsequent to the product expiration date. Generally, product may be returned for a period beginning six months prior to its expiration date and up to one year after its expiration date. The right of return expires on the earlier of one year after the product expiration date or the time that the product is dispensed to the patient. The majority of our product returns are the result of product dating, which falls within the range set by our policy, and are settled through the issuance of a credit to the customer. Our estimate of the provision for returns is based upon our historical experience with actual returns, which is applied to the level of sales for the period that corresponds to the period during which our customer may return product. This period is known to us based on the shelf lives of our medicines at the time of shipment. We record sales returns as an allowance against accounts receivable and a reduction of revenue.

Prompt Pay Discounts
As an incentive for prompt payment, we offer a 2% cash discount to customers. We expect that all customers will comply with the contractual terms to earn the discount. We record the discount as an allowance against accounts receivable and a reduction of revenue.

Government Rebates
We participate in certain federal government rebate programs, such as Medicare and Medicaid. We accrue estimated rebates based on estimated percentages of product sold to qualified patients, estimated rebate percentages and estimated levels of inventory in the distribution channel that will be sold to qualified patients and record the rebates as a reduction of revenue.

Government Chargebacks
We provide discounts to federal government qualified entities with whom we have contracted. These federal entities purchase products from the wholesale pharmaceutical distributors at a discounted price, and the wholesale pharmaceutical distributors then charge back to us the difference between the current retail price and the contracted price that the federal entities paid for the product. We accrue estimated chargebacks based on contract prices and sell-through sales data obtained from third party information and record the chargeback as a reduction of revenue.
Customer-Related Accruals and Allowances

Customer-related accruals and allowances as of December 31, 2015 and 2014 consisted of the following (in thousands):

<table>
<thead>
<tr>
<th>Unit</th>
<th>2015</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accrued wholesaler fees and commercial rebates</td>
<td>$21,112</td>
<td>$30,748</td>
</tr>
<tr>
<td>Accrued co-pay and other patient assistance</td>
<td>114,201</td>
<td>24,930</td>
</tr>
<tr>
<td>Accrued government rebates and chargebacks</td>
<td>48,456</td>
<td>20,437</td>
</tr>
<tr>
<td>Accrued trade discounts and rebates</td>
<td>$183,769</td>
<td>$76,115</td>
</tr>
<tr>
<td>Invoiced wholesaler fees and commercial rebates, co-pay and other patient assistance, and government rebates and chargebacks in accounts payable</td>
<td>—</td>
<td>5,221</td>
</tr>
<tr>
<td>Total customer-related accruals and allowances</td>
<td>$183,769</td>
<td>$81,336</td>
</tr>
</tbody>
</table>

The following table summarizes changes in our customer-related accruals and allowances from December 31, 2014 to December 31, 2015 (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Wholesaler Fees and Commercial Rebates</th>
<th>Co-Pay and Other Patient Assistance</th>
<th>Government Rebates and Chargebacks</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at December 31, 2013</td>
<td>$4,459</td>
<td>$2,257</td>
<td>$1,407</td>
<td>$8,123</td>
</tr>
<tr>
<td>Current provisions relating to sales in the year ended December 31, 2014</td>
<td>103,539</td>
<td>138,552</td>
<td>45,301</td>
<td>287,392</td>
</tr>
<tr>
<td>Adjustments relating to prior year sales</td>
<td>(1,576)</td>
<td>(194)</td>
<td>—</td>
<td>(1,770)</td>
</tr>
<tr>
<td>Payments relating to sales in the year ended December 31, 2014</td>
<td>(73,263)</td>
<td>(108,505)</td>
<td>(38,492)</td>
<td>(220,260)</td>
</tr>
<tr>
<td>Payments relating to sales in prior years</td>
<td>(2,779)</td>
<td>(2,063)</td>
<td>(1,307)</td>
<td>(6,149)</td>
</tr>
<tr>
<td>Vidara Merger on September 19, 2014</td>
<td>472</td>
<td>—</td>
<td>13,528</td>
<td>14,000</td>
</tr>
<tr>
<td>Balance at December 31, 2014</td>
<td>$30,852</td>
<td>$30,047</td>
<td>$20,437</td>
<td>$81,336</td>
</tr>
<tr>
<td>Current provisions relating to sales in the year ended December 31, 2015</td>
<td>67,762</td>
<td>1,020,327</td>
<td>162,157</td>
<td>1,250,246</td>
</tr>
<tr>
<td>Adjustments relating to prior year sales</td>
<td>(1,657)</td>
<td>(121)</td>
<td>(3,842)</td>
<td>(5,620)</td>
</tr>
<tr>
<td>Payments relating to sales in the year ended December 31, 2015</td>
<td>(47,848)</td>
<td>(906,126)</td>
<td>(123,299)</td>
<td>(1,077,273)</td>
</tr>
<tr>
<td>Payments relating to sales in prior years</td>
<td>(26,241)</td>
<td>(29,926)</td>
<td>(16,545)</td>
<td>(74,712)</td>
</tr>
<tr>
<td>Hyperion acquisition on May 7, 2015</td>
<td>244</td>
<td>—</td>
<td>9,548</td>
<td>9,792</td>
</tr>
<tr>
<td>Balance at December 31, 2015</td>
<td>$21,112</td>
<td>$114,201</td>
<td>$48,456</td>
<td>$183,769</td>
</tr>
</tbody>
</table>

Cost of Goods Sold

We recognize cost of goods sold in connection with our sales of each of our distributed medicines. Cost of goods sold includes all costs directly related to the acquisition of our medicines from our third-party manufacturers, including freight charges and other direct expenses such as insurance, distribution service fees, supply chain costs, amortization of intellectual property as described in the intangible assets and goodwill accounting policy below, amortization of stepped up inventory, royalty payments to third parties or royalty accretion expense, and any changes in estimate associated with the contingent royalty liability as described in the accrued contingent royalty accounting policy below.
Intangible Assets

Definite-lived intangible assets are amortized over their estimated useful lives. We review our intangible assets when events or circumstances may indicate that the carrying value of these assets exceeds their fair value. We measure fair value based on the estimated future discounted cash flows associated with our assets in addition to other assumptions and projections that we deem to be reasonable and supportable. The estimated useful lives for all identified intangible assets that are subject to amortization were as follows as of December 31, 2015:

<table>
<thead>
<tr>
<th>Intangible Asset</th>
<th>Estimated Useful Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACTIMMUNE developed technology</td>
<td>13 years</td>
</tr>
<tr>
<td>BUPHENYL developed technology</td>
<td>7 years</td>
</tr>
<tr>
<td>Customer relationships</td>
<td>10 years</td>
</tr>
<tr>
<td>LODOTRA and RAYOS developed technology</td>
<td>12 years</td>
</tr>
<tr>
<td>PENNSAID 2% developed technology</td>
<td>6 years</td>
</tr>
<tr>
<td>RAVICTI developed technology</td>
<td>11 years</td>
</tr>
<tr>
<td>VIMOVO developed technology</td>
<td>5 years</td>
</tr>
</tbody>
</table>

Indefinite-lived intangible assets consist of capitalized in-process research and development, or IPR&D. IPR&D assets represent capitalized incomplete research projects that we acquired through business combinations. Such assets are initially measured at their acquisition date fair values and are tested for impairment, until completion or abandonment of research and development efforts associated with the projects. An IPR&D asset is considered abandoned when research and development efforts associated with the asset have ceased, and there are no plans to sell or license the asset or derive value from the asset. At that point, the asset is considered to be disposed of and is written off. Upon successful completion of each project, we will make a determination about the then remaining useful life of the intangible asset and begin amortization. We test our indefinite-lived intangibles, including IPR&D assets, for impairment annually during the fourth quarter and more frequently if events or changes in circumstances indicate that it is more likely than not that the asset is impaired. We determined that no impairment existed as of December 31, 2015.

Goodwill

Goodwill represents the excess of the purchase price of acquired businesses over the estimated fair value of the identifiable net assets acquired. Goodwill is not amortized but is tested for impairment at least annually at the reporting unit level or more frequently if events or changes in circumstances indicate that the asset might be impaired. Impairment loss, if any, is recognized based on a comparison of the fair value of the asset to its carrying value, without consideration of any recoverability. We test goodwill for impairment annually during the fourth quarter and whenever indicators of impairment exist by first assessing qualitative factors to determine whether it is more likely than not that the fair value is less than its carrying amount. If we conclude it is more likely than not that the fair value of a reporting unit is less than its carrying amount, a quantitative impairment test is performed. Based upon our most recent annual impairment test performed in the fourth quarter of 2015, we concluded goodwill was not impaired.

Business Combinations

We account for business combinations in accordance with the pronouncement guidance in ASC 805, Business Combinations, in which acquired assets and liabilities are measured at their respective estimated fair values as of the acquisition date. We may be required, as in the case of intangible assets or contingent royalties, to determine the fair value associated with these amounts by estimating the fair value using an income approach under the discounted cash flow method, which may include revenue projections and other assumptions made by us to determine the fair value. During the year ended December 31, 2014 we recorded a bargain purchase gain of $22.2 million in connection with the Vidara Merger, representing the excess of the estimated fair value of net assets acquired over the acquisition consideration paid, and during the year ended December 31, 2015 we recorded goodwill of $253.8 million in connection with the acquisition of Hyperion.
**Provision for Income Taxes**

We account for income taxes based upon an asset and liability approach. Deferred tax assets and liabilities represent the future tax consequences of the differences between the financial statement carrying amounts of assets and liabilities versus the tax basis of assets and liabilities. Under this method, deferred tax assets are recognized for deductible temporary differences, and operating loss and tax credit carryforwards. Deferred tax liabilities are recognized for taxable temporary differences. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. The impact of tax rate changes on deferred tax assets and liabilities is recognized in the year that the change is enacted. We also account for the uncertainty in income taxes by utilizing a comprehensive model for the recognition, measurement, presentation and disclosure in financial statements of any uncertain tax positions that have been taken or are expected to be taken on an income tax return.

**Stock-Based Compensation**

We account for employee stock-based compensation by measuring and recognizing compensation expense for all stock-based payments based on estimated grant date fair values. We use the straight-line method to allocate compensation cost to reporting periods over each optionee’s requisite service period, which is generally the vesting period.

**Accrued Contingent Royalties**

Our accrued contingent royalties consist of the contingent royalty obligations assumed by us related to our acquisitions of the U.S. rights to VIMOVO, Vidara (related to ACTIMMUNE) and Hyperion (related to RAVICTI and BUPHENYL). At the time of each acquisition, we assigned a fair value to the liability for royalties. The royalty liability was based on anticipated revenue streams utilizing the income approach under the discounted cash flow method. The estimated liability for royalties is increased over time to reflect the change in its present value, and accretion expense is recorded as part of cost of goods sold. We evaluate the adequacy of the estimated contingent royalty liability at least annually, or whenever events or changes in circumstances indicate that an evaluation of the estimate is necessary. As part of any evaluation, we adjust the carrying value of the liability to the present value of the revised estimated cash flows using the original discount rate.

Any decrease or increase to the liability is recorded as an increase or reduction in cost of goods sold. The royalty liability is included in current and long-term accrued royalties on the consolidated balance sheets.

During the year ended December 31, 2015, based on higher sales of ACTIMMUNE and VIMOVO versus our previous expectations and expectations for future ACTIMMUNE and VIMOVO sales, we recorded a total charge of $21.5 million to cost of goods sold ($16.7 million related to VIMOVO and $4.8 million related to ACTIMMUNE). We also recorded a reduction of $0.3 million in cost of goods sold related to RAVICTI as a result of an adjustment to the carrying value of the contingent royalties to reflect updated estimates of future RAVICTI sales.

**Fair Value of Financial Instruments**

The carrying amounts of our financial instruments, including cash and cash equivalents, restricted cash, accounts receivable, accounts payable and accrued expenses, approximate their fair values due to their short maturities.

At December 31, 2013 and at the final measurement on June 27, 2014, the estimated fair value of our derivative liability related to the convertible portion of our Convertible Senior Notes was derived utilizing the binomial lattice approach for the valuation of convertible instruments. Assumptions used in the calculation included, among others, determining the appropriate credit spread using benchmarking analysis and solving for the implied credit spread, calculating the fair value of the stock component using a discounted risk free rate and borrowing cost and calculating the fair value of the note component using a discounted credit adjusted discount rate. Based on the assumptions used to determine the fair value of the derivative liability associated with the Convertible Senior Notes, we concluded that these inputs were Level 3 inputs.

**New Accounting Pronouncements Impacting Critical Accounting Policies**

Refer to Note 2, “Summary of Significant Accounting Policies,” in the notes to our consolidated financial statements included in this report, which includes a discussion of the new accounting pronouncements impacting critical accounting policies.
Item 7A. Quantitative and Qualitative Disclosures about Market Risk

We are exposed to various market risks, which include potential losses arising from adverse changes in market rates and prices, such as interest rates and foreign exchange fluctuations. We do not enter into derivatives or other financial instruments for trading or speculative purposes.

**Interest Rate Risk.** We are subject to interest rate fluctuation exposure through our borrowings under the 2015 Term Loan Facility and our investment in money market accounts which bear a variable interest rate. Loans under the 2015 Term Loan Facility bear interest, at our option, at a rate equal to either the LIBOR rate, plus an applicable margin of 3.5% per annum (subject to a 1.00% LIBOR floor), or the adjusted base rate plus 2.5%. The adjusted base rate is defined as the greater of (a) LIBOR (using one-month interest period) plus 1%, (b) prime rate, (c) fed funds plus ½ of 1% and (d) 2%. Since drawing the full $400.0 million available in May 2015, our borrowings have been based on LIBOR. Since current LIBOR rates are below the 1.0% LIBOR floor, the interest rate on our borrowings has been 4.5% per annum. An increase in the LIBOR of 100 basis points above the 1.0% LIBOR floor would increase our interest expense by $4.0 million per year.

The goals of our investment policy are associated with the preservation of capital, fulfillment of liquidity needs and fiduciary control of cash. To achieve our goal of maximizing income without assuming significant market risk, we maintain our excess cash and cash equivalents in money market funds. Because of the short-term maturities of our cash equivalents, we do not believe that a decrease in interest rates would have any material negative impact on the fair value of our cash equivalents.

**Foreign Currency Risk.** Our purchase cost of ACTIMMUNE under our contract with Boehringer Ingelheim as well as our sales contracts relating to LODOTRA are principally denominated in Euros and are subject to foreign currency risk. We also incur certain operating expenses in currencies other than the U.S. dollar in relation to our Ireland operations and foreign subsidiaries, including Horizon Pharma Switzerland GmbH; therefore, we are subject to volatility in cash flows due to fluctuations in foreign currency exchange rates, particularly changes in the Euro. To date, we have not entered into any hedging contracts since exchange rate fluctuations have had minimal impact on our results of operations and cash flows.

**Inflation Risk.** We do not believe that inflation has had a material impact on our business or results of operations during the periods for which the consolidated financial statements are presented in this report.

**Credit Risk.** Historically, our accounts receivable balances have been highly concentrated with a select number of customers, consisting primarily of large wholesale pharmaceutical distributors who, in turn, sell the medicines to pharmacies, hospitals and other customers. For the year ended December 31, 2015, our top five customers, McKesson Corporation, Rochester Drug Company, American Specialty Pharmacy, Inc., Cardinal Health, Inc., and AmerisourceBergen accounted for approximately 88% of total consolidated gross sales. For the year ended December 31, 2014, our same top five customers accounted for approximately 86% of total consolidated gross sales. For the year ended December 31, 2013, our top five customers, AmerisourceBergen, Cardinal Health, Inc., McKesson Corporation, Mundipharma and Rochester Drug Company, accounted for approximately 89% of total consolidated gross sales.

In addition, these same top five customers accounted for approximately 95% and 80% of our total outstanding accounts receivable balances as of December 31, 2015 and December 31, 2014, respectively. As of December 31, 2013, AmerisourceBergen, Cardinal Health, Inc., Halsted Pharmacy, McKesson Corporation and Rochester Drug Company, accounted for approximately 85% of our total outstanding accounts receivable balances.

Item 8. Financial Statements and Supplementary Data

The financial information required by Item 8 is contained in Part IV, Item 15 of this Annual Report on Form 10-K.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.
Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our Chief Executive Officer and Chief Financial Officer, after evaluating the effectiveness of our “disclosure controls and procedures” (as defined in Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended, or the Exchange Act), have concluded that, as of December 31, 2015, our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer’s management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Management Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Our internal control system was designed to provide reasonable assurance to management and our board of directors regarding the preparation and fair presentation of published financial statements. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2015. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control – Integrated Framework (2013). Management’s assessment included an evaluation of the design of our internal control over financial reporting and testing of the operational effectiveness of our internal control over financial reporting. Based on management’s assessment, management believes that, as of December 31, 2015, our internal control over financial reporting was effective based on those criteria.

The effectiveness of our internal control over financial reporting as of December 31, 2015 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which appears herein.

Changes in Internal Control Over Financial Reporting

During the quarter ended December 31, 2015, there have been no material changes to our internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f), that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

None

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information required by this item is incorporated herein by reference from our definitive Proxy Statement to be filed in connection with our 2016 Annual General Meeting of Shareholders, or our 2016 Proxy Statement, which will be filed with the Securities and Exchange Commission within 120 days after December 31, 2015.

Item 11. Executive Compensation

The information required by this item is incorporated herein by reference from our 2016 Proxy Statement.


The information required by this item is incorporated herein by reference from our 2016 Proxy Statement.
Item 13. Certain Relationships and Related Transactions, and Director Independence
The information required by this item is incorporated herein by reference from our 2016 Proxy Statement.

Item 14. Principal Accounting Fees and Services
The information required by this item is incorporated herein by reference from our 2016 Proxy Statement.

PART IV
Item 15. Exhibits, Financial Statement Schedules
(a) Documents filed as part of this report.
1. Financial Statements
   The financial statements listed on the Index to Financial Statements F-1 to F-56 are filed as part of this Annual Report on Form 10-K.

2. Financial Statement Schedules
   Schedule II – Valuation and Qualifying Accounts and Reserves for each of the three fiscal years ended December 31, 2015, 2014 and 2013. Other financial statement schedules have been omitted because the required information is included in the consolidated financial statements or notes thereto or because they are not applicable or not required.

3. Exhibits
   The exhibits listed on the Index to Exhibits are filed as part of this Annual Report on Form 10-K.
SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities and Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

HORIZON PHARMA PLC

Dated: February 29, 2016

By: /s/ TIMOTHY P. WALBERT
    Timothy P. Walbert
    President, Chief Executive Officer and Chairman of the Board

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Timothy P. Walbert and Paul W. Hoelscher, and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this report, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<table>
<thead>
<tr>
<th>SIGNATURE</th>
<th>TITLE</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>/s/ TIMOTHY P. WALBERT</td>
<td>President, Chief Executive Officer and Chairman of the Board (Principal Executive Officer)</td>
<td>February 29, 2016</td>
</tr>
<tr>
<td>Timothy P. Walbert</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ PAUL W. HOELSCHER</td>
<td>Executive Vice President and Chief Financial Officer (Principal Financial Officer)</td>
<td>February 29, 2016</td>
</tr>
<tr>
<td>Paul W. Hoelscher</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ MILES W. MCHUGH</td>
<td>Senior Vice President and Chief Accounting Officer (Principal Accounting Officer)</td>
<td>February 29, 2016</td>
</tr>
<tr>
<td>Miles W. McHugh</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ MICHAEL GREY</td>
<td>Director</td>
<td>February 29, 2016</td>
</tr>
<tr>
<td>Michael Grey</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ LIAM DANIEL</td>
<td>Director</td>
<td>February 29, 2016</td>
</tr>
<tr>
<td>Liam Daniel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ JEFF HIMAWAN</td>
<td>Director</td>
<td>February 29, 2016</td>
</tr>
<tr>
<td>Jeff Himawan, Ph.D.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ VIRINDER NOHRIA</td>
<td>Director</td>
<td>February 29, 2016</td>
</tr>
<tr>
<td>Virinder Nohria, M.D., Ph.D.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ RONALD PAULI</td>
<td>Director</td>
<td>February 29, 2016</td>
</tr>
<tr>
<td>Ronald Pauli</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ GINO SANTINI</td>
<td>Director</td>
<td>February 29, 2016</td>
</tr>
<tr>
<td>Gino Santini</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ H. THOMAS WATKINS</td>
<td>Director</td>
<td>February 29, 2016</td>
</tr>
<tr>
<td>H. Thomas Watkins</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>Report of Independent Registered Public Accounting Firm</td>
<td>F-2</td>
<td></td>
</tr>
<tr>
<td>Consolidated Balance Sheets as of December 31, 2015 and 2014</td>
<td>F-3</td>
<td></td>
</tr>
<tr>
<td>Consolidated Statements of Comprehensive Income (Loss) for the Years</td>
<td>F-4</td>
<td></td>
</tr>
<tr>
<td>Ended December 31, 2015, 2014 and 2013</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consolidated Statements of Shareholders’ Equity (Deficit) for the Years</td>
<td>F-5</td>
<td></td>
</tr>
<tr>
<td>Ended December 31, 2015, 2014 and 2013</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consolidated Statements of Cash Flows for the Years Ended December</td>
<td>F-6</td>
<td></td>
</tr>
<tr>
<td>31, 2015, 2014 and 2013</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notes to Consolidated Financial Statements</td>
<td>F-7</td>
<td></td>
</tr>
</tbody>
</table>
REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of Horizon Pharma plc

In our opinion, the consolidated financial statements listed in the index appearing under Item 15(a)(1) present fairly, in all material respects, the financial position of Horizon Pharma plc and its subsidiaries at December 31, 2015 and 2014, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2015 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the index appearing under Item 15(a)(2) presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2015, based on criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company’s management is responsible for these financial statements and financial statement schedule, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management’s Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on these financial statements, on the financial statement schedule and on the Company’s internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

As discussed in Note 2 to the consolidated financial statements, the Company changed the manner in which it accounts for the classification of deferred income tax balances in 2015 and 2014.

A company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers LLP

Chicago, Illinois
February 29, 2016
# Horizon Pharma PLC

## Consolidated Balance Sheets

(In thousands, except share data)

<table>
<thead>
<tr>
<th></th>
<th>As of December 31, 2015</th>
<th>As of December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSETS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CURRENT ASSETS:</strong></td>
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<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 859,616</td>
<td>$ 218,807</td>
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<td>Restricted cash</td>
<td>1,860</td>
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<td>Accounts receivable, net</td>
<td>210,437</td>
<td>73,915</td>
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<td>Inventories, net</td>
<td>18,376</td>
<td>16,865</td>
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<td>Prepaid expenses and other current assets</td>
<td>15,858</td>
<td>14,370</td>
</tr>
<tr>
<td>Total current assets</td>
<td>1,106,147</td>
<td>324,695</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>14,020</td>
<td>7,241</td>
</tr>
<tr>
<td>Developed technology, net</td>
<td>1,609,049</td>
<td>696,963</td>
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<tr>
<td>In-process research and development</td>
<td>66,000</td>
<td>66,000</td>
</tr>
<tr>
<td>Other intangible assets, net</td>
<td>7,061</td>
<td>7,870</td>
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<tr>
<td>Goodwill</td>
<td>253,811</td>
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<tr>
<td>Deferred tax assets, net, non-current</td>
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</tr>
<tr>
<td>Other assets</td>
<td>8,581</td>
<td>11,564</td>
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<td><strong>TOTAL ASSETS</strong></td>
<td>$ 3,066,947</td>
<td>$ 1,114,333</td>
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<tr>
<td><strong>LIABILITIES AND SHAREHOLDERS’ EQUITY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CURRENT LIABILITIES:</strong></td>
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<td></td>
</tr>
<tr>
<td>Convertible debt, net</td>
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<td>$ 48,334</td>
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<td>Long-term debt—current portion</td>
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<td>Accounts payable</td>
<td>16,590</td>
<td>21,011</td>
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<td>Accrued expenses</td>
<td>100,046</td>
<td>46,625</td>
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<tr>
<td>Accrued trade discounts and rebates</td>
<td>183,769</td>
<td>76,115</td>
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<td>Accrued royalties—current portion</td>
<td>51,700</td>
<td>25,325</td>
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<tr>
<td>Deferred revenues—current portion</td>
<td>1,447</td>
<td>1,261</td>
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<tr>
<td>Total current liabilities</td>
<td>357,552</td>
<td>218,671</td>
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<tr>
<td><strong>LONG-TERM LIABILITIES:</strong></td>
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<tr>
<td>Exchangeable notes, net</td>
<td>$ 283,675</td>
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<tr>
<td>Long-term debt, net, net of current</td>
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<tr>
<td>Accrued royalties, net of current</td>
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<td>48,887</td>
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<td>Deferred revenues, net of current</td>
<td>8,785</td>
<td>8,144</td>
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<td>Deferred tax liabilities, net, non-current</td>
<td>113,400</td>
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<td>Other long-term liabilities</td>
<td>9,431</td>
<td>1,258</td>
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<td>Total long-term liabilities</td>
<td>1,396,250</td>
<td>355,458</td>
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<td><strong>COMMITMENTS AND CONTINGENCIES</strong></td>
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<tr>
<td><strong>SHAREHOLDERS’ EQUITY:</strong></td>
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<td></td>
</tr>
<tr>
<td>Ordinary shares, $0.0001 nominal value; 300,000,000 shares authorized; 160,069,067 and 124,425,853 shares issued at December 31, 2015 and December 31, 2014, respectively, and 159,684,701 and 124,041,487 shares outstanding at December 31, 2015 and December 31, 2014, respectively</td>
<td>16</td>
<td>13</td>
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<tr>
<td>Treasury stock, 384,366 ordinary shares at December 31, 2015 and December 31, 2014</td>
<td>(4,585)</td>
<td>(4,585)</td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>2,001,552</td>
<td>1,269,858</td>
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<tr>
<td>Accumulated other comprehensive loss</td>
<td>(2,651)</td>
<td>(4,363)</td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(681,187)</td>
<td>(720,719)</td>
</tr>
<tr>
<td>Total shareholders’ equity</td>
<td>1,313,145</td>
<td>540,204</td>
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<tr>
<td><strong>TOTAL LIABILITIES AND SHAREHOLDERS’ EQUITY</strong></td>
<td>$ 3,066,947</td>
<td>$ 1,114,333</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.

F-3
<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net sales</strong></td>
<td>$ 757,044</td>
<td>$ 296,955</td>
<td>$ 74,016</td>
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<tr>
<td><strong>Cost of goods sold</strong></td>
<td>219,502</td>
<td>78,753</td>
<td>14,625</td>
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<tr>
<td><strong>Gross profit</strong></td>
<td>537,542</td>
<td>218,202</td>
<td>59,391</td>
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<tr>
<td><strong>OPERATING EXPENSES:</strong></td>
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<td></td>
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<tr>
<td>Research and development</td>
<td>41,865</td>
<td>17,460</td>
<td>10,084</td>
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<tr>
<td>Sales and marketing</td>
<td>220,444</td>
<td>120,276</td>
<td>68,595</td>
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<tr>
<td>General and administrative</td>
<td>219,861</td>
<td>88,957</td>
<td>23,566</td>
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<tr>
<td>Total operating expenses</td>
<td>482,170</td>
<td>226,693</td>
<td>102,245</td>
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<tr>
<td><strong>Operating income (loss)</strong></td>
<td>55,372</td>
<td>(8,491)</td>
<td>(42,854)</td>
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<tr>
<td><strong>OTHER (EXPENSE) INCOME, NET:</strong></td>
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<td></td>
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<tr>
<td>Interest expense, net</td>
<td>(69,900)</td>
<td>(23,826)</td>
<td>(12,774)</td>
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<tr>
<td>Foreign exchange (loss) gain</td>
<td>(1,237)</td>
<td>(3,905)</td>
<td>1,206</td>
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<tr>
<td>Bargain purchase gain</td>
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<td>22,171</td>
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<tr>
<td>Loss on derivative fair value</td>
<td></td>
<td>(214,995)</td>
<td>(69,300)</td>
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<tr>
<td>Loss on induced conversion of debt and debt extinguishment</td>
<td>(77,624)</td>
<td>(29,390)</td>
<td>(26,404)</td>
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<tr>
<td>Loss on sale of long-term investments</td>
<td>(29,032)</td>
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<tr>
<td>Other expense, net</td>
<td>(10,291)</td>
<td>(11,251)</td>
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<tr>
<td>Total other expense, net</td>
<td>(188,084)</td>
<td>(261,196)</td>
<td>(107,272)</td>
</tr>
<tr>
<td><strong>Loss before benefit for income taxes</strong></td>
<td>(132,712)</td>
<td>(269,687)</td>
<td>(150,126)</td>
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<tr>
<td><strong>BENEFIT FOR INCOME TAXES</strong></td>
<td>(172,244)</td>
<td>(6,084)</td>
<td>(1,121)</td>
</tr>
<tr>
<td><strong>NET INCOME (LOSS)</strong></td>
<td>$ 39,532</td>
<td>$ (263,603)</td>
<td>$ (149,005)</td>
</tr>
<tr>
<td><strong>NET INCOME (LOSS) PER ORDINARY SHARE—Basic</strong></td>
<td>$ 0.27</td>
<td>$(3.15)</td>
<td>$(2.34)</td>
</tr>
<tr>
<td><strong>WEIGHTED AVERAGE ORDINARY SHARES OUTSTANDING—Basic</strong></td>
<td>148,788,020</td>
<td>83,751,129</td>
<td>63,657,924</td>
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<tr>
<td><strong>NET INCOME (LOSS) PER ORDINARY SHARE—Diluted</strong></td>
<td>$ 0.25</td>
<td>$(3.15)</td>
<td>$(2.34)</td>
</tr>
<tr>
<td><strong>WEIGHTED AVERAGE ORDINARY SHARES OUTSTANDING—Diluted</strong></td>
<td>155,923,251</td>
<td>83,751,129</td>
<td>63,657,924</td>
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<tr>
<td><strong>OTHER COMPREHENSIVE INCOME (LOSS), NET OF TAX</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Foreign currency translation adjustments</td>
<td>1,712</td>
<td>(1,060)</td>
<td>969</td>
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<tr>
<td>Other comprehensive income (loss)</td>
<td>1,712</td>
<td>(1,960)</td>
<td>969</td>
</tr>
<tr>
<td><strong>COMPREHENSIVE INCOME (LOSS)</strong></td>
<td>$ 41,244</td>
<td>$ (265,563)</td>
<td>$ (148,036)</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
<table>
<thead>
<tr>
<th>Date of Balances</th>
<th>Shares</th>
<th>Amount</th>
<th>Shares</th>
<th>Amount</th>
<th>Additional Paid-in Capital</th>
<th>Other Comprehensive Loss</th>
<th>Accumulated Deficit</th>
<th>Total Stockholders’ Equity (Deficit)</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 31, 2012</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$1,313,145</td>
<td>(3,372)</td>
<td>(308,111)</td>
<td>$105,978</td>
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<td>Issuance of ordinary shares in conjunction with ATM equity financing offerings, net of issuance costs</td>
<td>2,448,575</td>
<td>4,872,709</td>
<td>1,157,807</td>
<td>836</td>
<td>4,452</td>
<td>836</td>
<td>5,998</td>
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<tr>
<td>Currency translation adjustment</td>
<td>1,360,746</td>
<td>16,594,793</td>
<td>2,448,575</td>
<td>340,029</td>
<td>161</td>
<td>161</td>
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<tr>
<td>Issuance of ordinary shares in conjunction with ESPP purchases</td>
<td>225,820</td>
<td>864,780</td>
<td>18,124</td>
<td>13,970</td>
<td>13,197</td>
<td>13,197</td>
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<tr>
<td>Issuance of ordinary shares in conjunction with warrant exercises</td>
<td>1,360,746</td>
<td>16,594,793</td>
<td>7,800</td>
<td>387,196</td>
<td>78,437</td>
<td>78,437</td>
<td>78,437</td>
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<tr>
<td>Purchase of capped calls</td>
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<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
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<td>Currency translation adjustment</td>
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<td>—</td>
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<td>Net loss</td>
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<td>—</td>
<td>—</td>
<td>(149,005)</td>
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<td>December 31, 2013</td>
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<td>123</td>
<td>123</td>
<td>1,157,807</td>
<td>836</td>
<td>387,196</td>
<td>324,405</td>
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<td>Issuance of ordinary shares in connection with Vidara merger</td>
<td>31,350,000</td>
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<td>5,014</td>
<td>4,452</td>
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<tr>
<td>Issuance of ordinary shares in conjunction with issuance of convertible notes</td>
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<td>13,197</td>
<td>13,197</td>
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<td>Redeployment of derivative liability</td>
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<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
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<tr>
<td>Issuance of ordinary shares in conjunction with vesting of restricted stock units and stock option exercises</td>
<td>864,780</td>
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<td>5,997</td>
<td>5,997</td>
<td>5,997</td>
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</tr>
<tr>
<td>Ordinary shares withheld for payment of employees’ withholding tax</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
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<td>Issuance of ordinary shares in conjunction with ESPP purchases</td>
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<tr>
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<td>—</td>
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<td>Issuance of ordinary shares in conjunction with warrant exercises</td>
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<td>Proceeds from capped call transactions</td>
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<td>(1,960)</td>
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<td>(263,603)</td>
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<tr>
<td>Issuance of ordinary shares in conjunction with vesting of restricted stock units and stock option exercises</td>
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<td>5,997</td>
<td>5,997</td>
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<tr>
<td>Ordinary shares withheld for payment of employees’ withholding tax liability</td>
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<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
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<tr>
<td>Issuance of ordinary shares in conjunction with issuance of convertible notes</td>
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<td>57,544</td>
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<tr>
<td>Issuance of ordinary shares in conjunction with ESPP purchases</td>
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<td>4,452</td>
<td>4,452</td>
<td>4,452</td>
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<tr>
<td>Share-based compensation</td>
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<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
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<tr>
<td>Issuance of ordinary shares in conjunction with warrant exercises</td>
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</tr>
<tr>
<td>Deferred tax on Exchangeable Senior Notes</td>
<td>—</td>
<td>—</td>
<td>(29,770)</td>
<td>(29,770)</td>
<td>(29,770)</td>
<td>(29,770)</td>
<td>(29,770)</td>
<td></td>
</tr>
<tr>
<td>Deferred tax on capped call transactions</td>
<td>—</td>
<td>—</td>
<td>836</td>
<td>836</td>
<td>836</td>
<td>836</td>
<td>836</td>
<td></td>
</tr>
<tr>
<td>Currency translation adjustment</td>
<td>—</td>
<td>—</td>
<td>1,712</td>
<td>1,712</td>
<td>1,712</td>
<td>1,712</td>
<td>1,712</td>
<td></td>
</tr>
<tr>
<td>Net income</td>
<td>—</td>
<td>—</td>
<td>39,532</td>
<td>39,532</td>
<td>39,532</td>
<td>39,532</td>
<td>39,532</td>
<td></td>
</tr>
<tr>
<td>December 31, 2015</td>
<td>160,669,967</td>
<td>384,366</td>
<td>2,001,552</td>
<td>2,001,552</td>
<td>1,313,145</td>
<td>(681,187)</td>
<td>(681,187)</td>
<td></td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

(In thousands)

For the Years Ended December 31,

<table>
<thead>
<tr>
<th>Year</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net income (loss)</td>
<td>$39,532</td>
<td>$(263,603)</td>
<td>$(149,005)</td>
</tr>
<tr>
<td>Adjustments to reconcile net income (loss) to net cash provided by operating activities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization expense</td>
<td>138,343</td>
<td>34,009</td>
<td>9,310</td>
</tr>
<tr>
<td>Share-based compensation</td>
<td>83,533</td>
<td>13,198</td>
<td>5,014</td>
</tr>
<tr>
<td>Royalty accrual</td>
<td>20,088</td>
<td>9,020</td>
<td>—</td>
</tr>
<tr>
<td>Royalty liability remeasurement</td>
<td>21,151</td>
<td>10,860</td>
<td>—</td>
</tr>
<tr>
<td>Bargain purchase gain</td>
<td>—</td>
<td>$(22,171)</td>
<td>—</td>
</tr>
<tr>
<td>Loss on derivative valuation</td>
<td>—</td>
<td>214,995</td>
<td>69,300</td>
</tr>
<tr>
<td>Paid-in-kind interest expense</td>
<td>—</td>
<td>—</td>
<td>2,225</td>
</tr>
<tr>
<td>Loss on induced conversions of debt and debt extinguishment</td>
<td>21,581</td>
<td>11,709</td>
<td>12,881</td>
</tr>
<tr>
<td>Amortization of debt discount and deferred financing costs</td>
<td>18,810</td>
<td>9,273</td>
<td>4,364</td>
</tr>
<tr>
<td>Net loss on sale of long-term investments</td>
<td>29,032</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Foreign exchange loss</td>
<td>1,237</td>
<td>3,905</td>
<td>(1,206)</td>
</tr>
<tr>
<td>Other</td>
<td>458</td>
<td>11</td>
<td>—</td>
</tr>
<tr>
<td>Changes in operating assets and liabilities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>$(124,766)</td>
<td>$(46,183)</td>
<td>$(12,491)</td>
</tr>
<tr>
<td>Inventories</td>
<td>12,216</td>
<td>7,173</td>
<td>(3,426)</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>1,014</td>
<td>(9,208)</td>
<td>(12,480)</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>(8,362)</td>
<td>9,383</td>
<td>3,908</td>
</tr>
<tr>
<td>Accrued trade discounts and rebates</td>
<td>94,046</td>
<td>54,000</td>
<td>69,662</td>
</tr>
<tr>
<td>Accrued expenses and accrued royalties</td>
<td>20,169</td>
<td>(1,270)</td>
<td>980</td>
</tr>
<tr>
<td>Deferred revenues</td>
<td>1,693</td>
<td>(562)</td>
<td>(1,145)</td>
</tr>
<tr>
<td>Deferred income taxes</td>
<td>(180,949)</td>
<td>(7,516)</td>
<td>(1,186)</td>
</tr>
<tr>
<td>Change in restricted cash</td>
<td>(1,122)</td>
<td>—</td>
<td>63</td>
</tr>
<tr>
<td>Change in restricted cash</td>
<td>—</td>
<td>—</td>
<td>(36,135)</td>
</tr>
<tr>
<td>Net cash provided used in operating activities</td>
<td>194,566</td>
<td>27,549</td>
<td>(54,287)</td>
</tr>
<tr>
<td>CASH FLOWS FROM INVESTING ACTIVITIES:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payments for acquisitions, net of cash acquired</td>
<td>$(1,022,361)</td>
<td>$(224,220)</td>
<td>$(35,000)</td>
</tr>
<tr>
<td>Proceeds from liquidation of available-for-sale investments</td>
<td>64,623</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Purchases of long-term investments</td>
<td>$(7,813)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Proceeds from sale of long-term investments</td>
<td>42,781</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Purchases of property and equipment</td>
<td>$(7,154)</td>
<td>$(3,500)</td>
<td>(13,198)</td>
</tr>
<tr>
<td>Change in restricted cash</td>
<td>(1,122)</td>
<td>—</td>
<td>63</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>$(995,048)</td>
<td>$(227,720)</td>
<td>$(36,135)</td>
</tr>
<tr>
<td>CASH FLOWS FROM FINANCING ACTIVITIES:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net proceeds from issuance of Exchangeable Senior Notes</td>
<td>387,181</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Net proceeds from issuance of 2023 Senior Notes</td>
<td>462,340</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Net proceeds from the 2015 Term Loan Facility</td>
<td>391,506</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Repayment of the 2015 Term Loan Facility</td>
<td>29,032</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Change in restricted cash</td>
<td>(1,122)</td>
<td>—</td>
<td>63</td>
</tr>
<tr>
<td>Net cash provided used in financing activities</td>
<td>1,442,481</td>
<td>338,285</td>
<td>143,598</td>
</tr>
<tr>
<td>Effect of foreign exchange rate changes on cash</td>
<td>(759)</td>
<td>—</td>
<td>867,716</td>
</tr>
<tr>
<td>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</td>
<td>640,809</td>
<td>138,357</td>
<td>(23,067)</td>
</tr>
<tr>
<td>CASH AND CASH EQUIVALENTS, beginning of the year</td>
<td>218,807</td>
<td>80,480</td>
<td>104,087</td>
</tr>
<tr>
<td>CASH AND CASH EQUIVALENTS, end of the year</td>
<td>$859,616</td>
<td>$258,187</td>
<td>$80,480</td>
</tr>
</tbody>
</table>

**Supplemental cash flow information:**

- **Cash paid for interest:** $42,021, $14,109, $8,573
- **Cash paid for income taxes:** $1,880, $37, $44
- **Cash paid for debt commitments:** $9,000, $8,222, $—
- **Cash paid for induced conversions:** $10,005, $16,690, $12,152
- **Cash paid for debt extinguishment:** $45,867, $—, $—

**Supplemental non-cash flow information:**

- **Conversion of Convertible Senior Notes to ordinary shares:** $60,985, $89,015, $—
- **Goodwill and other intangible assets acquired in acquisitions:** $1,303,765, $679,100, $67,705
- **Contingent liabilities assumed in acquisitions:** $89,800, $33,600, $32,992
- **Acquired capital expenditures:** $4,940, $1,463, $—

The accompanying notes are an integral part of these consolidated financial statements.
NOTE 1 – BASIS OF PRESENTATION

On September 19, 2014, the businesses of Horizon Pharma, Inc. (“HPI”) and Vidara Therapeutics International Public Limited Company (“Vidara”) were combined in a merger transaction (the “Vidara Merger”), accounted for as a reverse acquisition under the acquisition method of accounting for business combinations, with HPI treated as the acquiring company in the Vidara Merger for accounting purposes. As part of the Vidara Merger, a wholly-owned subsidiary of Vidara merged with and into HPI, with HPI surviving the Vidara Merger as a wholly-owned subsidiary of Vidara. Prior to the Vidara Merger, Vidara changed its name to Horizon Pharma plc (“New Horizon” or the “Company”). Upon the consummation of the Vidara Merger, the historical financial statements of HPI became the Company’s historical financial statements. Accordingly, the historical financial statements of HPI are included in the comparative prior periods. The consolidated financial statements presented herein include the accounts of the Company and its wholly-owned subsidiaries. All inter-company transactions and balances have been eliminated.

Unless otherwise indicated or the context otherwise requires, references to the “Company”, “New Horizon”, “we”, “us” and “our” refer to Horizon Pharma plc and its consolidated subsidiaries, including its predecessor, HPI. All references to “Vidara” are references to Horizon Pharma plc (formerly known as Vidara Therapeutics International Public Limited Company) and its consolidated subsidiaries prior to the effective time of the Vidara Merger on September 19, 2014. The disclosures in this report relating to the pre-Vidara Merger business of Horizon Pharma plc, unless noted as being the business of Vidara prior to the Vidara Merger, pertain to the business of HPI prior to the Vidara Merger.

On May 7, 2015, the Company completed its acquisition of Hyperion Therapeutics Inc. (“Hyperion”) in which the Company acquired all of the issued and outstanding shares of Hyperion’s common stock for $46.00 per share in cash or approximately $1.1 billion on a fully-diluted basis. Following the completion of the acquisition, Hyperion became a wholly-owned subsidiary of the Company and was renamed as Horizon Therapeutics, Inc. The consolidated financial statements presented herein include the results of operations of the acquired business from the date of acquisition. See Note 4 for further details of business acquisitions.

Overview

The Company is a biopharmaceutical company focused on improving patients’ lives by identifying, developing, acquiring and commercializing differentiated and accessible medicines that address unmet medical needs. The Company markets nine medicines through its orphan, primary care and rheumatology business units. The Company’s marketed medicines are ACTIMMUNE® (interferon gamma-1b), BUPHENYL® (sodium phenylbutyrate) Tablets and Powder, DUEXIS® (ibuprofen/famotidine), KRYSTEXXA® (pegloticase), MIGERGOT® (ergotamine tartrate and caffeine suppositories), PENNSAID® (diclofenac sodium topical solution) 2% w/w (“PENNSAID 2%”), RAVICTI® (glycerol phenylbutyrate) Oral Liquid, RAYOS® (prednisone) delayed-release tablets and VIMOVO® (naproxen/esomeprazole magnesium).

The Company developed DUEXIS and RAYOS, known as LODOTRA® outside the United States, acquired the U.S. rights to VIMOVO from AstraZeneca AB (“AstraZeneca”) in November 2013, acquired certain rights to ACTIMMUNE as a result of the Vidara Merger in September 2014, acquired the U.S. rights to PENNSAID 2% from Nuvo Research Inc. (“Nuvo”) in October 2014, acquired RAVICTI and BUPHENYL, known as AMMONAPS® in Europe, as a result of the acquisition of Hyperion in May 2015, and acquired KRYSTEXXA and MIGERGOT as a result of the acquisition of Crealta Holdings LLC (“Crealta”) in January 2016.

The Company’s medicines are distributed by retail and specialty pharmacies. Part of the Company’s commercial strategy for its primary care and rheumatology business units is to offer physicians the opportunity to have their patients fill prescriptions through pharmacies that participate in the Company’s patient access programs, such as its HorizonCares patient access program.

On January 13, 2016, the Company completed its acquisition of Crealta for approximately $510 million in cash. Crealta is a specialty pharmaceutical company focused on innovative therapeutics designed to improve patient outcomes, and marketed KRYSTEXXA and MIGERGOT.
The Company

The Company is a public limited company formed under the laws of Ireland. The Company operates through a number of international and U.S. subsidiaries with principal business purposes to either hold intellectual property assets, perform research and development or manufacturing operations, serve as distributors of the Company’s medicines, or provide services and financial support to the Company.

The Company markets its medicines in the United States through a combined field sales force, which numbered approximately 395 representatives as of December 31, 2015. The Company’s strategy is to use the commercial strength and infrastructure it has established in creating a global biopharmaceutical company to continue the successful commercialization of its existing medicine portfolio while also expanding and leveraging these capabilities by identifying, developing, acquiring and commercializing additional differentiated and accessible medicines that address unmet medical needs.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying consolidated financial statements have been prepared in accordance with the accounting principles generally accepted in the United States of America (“GAAP”) and in accordance with the instructions for Form 10-K and Article 3 of Regulation S-X. The consolidated financial statements include the accounts of the Company and its wholly-owned consolidated subsidiaries.

Principles of Consolidation

The consolidated financial statements include the Company’s accounts and those of its wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated. Additionally, certain reclassifications have been made to prior period financial statements to conform to the current period presentation.

Segment Information

The Company operates as one segment. Management does not segment its business for internal reporting.

Use of Estimates

The preparation of the accompanying consolidated financial statements in conformity with GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Foreign Currency Translation and Transactions

The reporting currency of the Company and its subsidiaries is the U.S. dollar.

The U.S. dollar is the functional currency for the Company’s U.S. based businesses and the majority of its subsidiaries. Other foreign subsidiaries have the following functional currencies: Euro, Israeli New Shekel and the British Pound. Foreign currency-denominated assets and liabilities of these subsidiaries are translated into U.S. dollars based on exchange rates prevailing at the end of the period, revenues and expenses are translated at average exchange rates prevailing during the corresponding period, and shareholders’ equity (deficit) accounts are translated at historical exchange rates as of the date of any equity transaction. The effects of foreign exchange gains and losses arising from the translation of assets and liabilities of those entities where the functional currency is not the U.S. dollar are included as a component of accumulated other comprehensive income (loss).

Gains and losses resulting from foreign currency transactions are reflected within the Company’s results of operations. During the year ended December 31, 2015, the Company recorded a foreign exchange loss of $1.2 million, compared to a foreign exchange loss during the year ended December 31, 2014 of $3.9 million. The Company does not currently utilize and has not in the past utilized any foreign currency hedging strategies to mitigate the effect of its foreign currency exposure.
Revenue Recognition

Revenue is recognized when all of the following criteria are met: persuasive evidence of an arrangement exists; delivery has occurred or services have been rendered; the price is fixed or determinable; and collectability is reasonably assured. Some of the Company’s agreements contain multiple elements and in accordance with these agreements, the Company may be eligible for upfront license fees, marketing or commercial milestones and payment for product deliveries.

Revenue From Medicine Deliveries

The Company recognizes revenue from the sale of its products when delivery has occurred, title has transferred, the selling price is fixed or determinable, collectability is reasonably assured and the Company has no further performance obligations. In addition, revenue is only recognized when the right of return no longer exists (which is the earlier of the product being dispensed through patient prescriptions or the expiration of the right of return) or when product returns can be reasonably estimated. Due to the Company’s ability to reasonably estimate and determine allowances for co-pay and other patient assistance, product returns, rebates and discounts based on its own internal data for DUEXIS and RAYOS or data relating to prior sales of its acquired products which was received in connection with the acquisition of those medicines, the Company recognizes revenue at the point of sale to wholesale pharmaceutical distributors and retail chains for all currently distributed products.

Revenue From Upfront License Fees

The Company recognizes revenues from the receipt of non-refundable, upfront license fees. In situations where the licensee is able to obtain stand-alone value from the license and no further performance obligations exist on the Company’s part, revenues are recognized on the earlier of when payments are received or collection is reasonably assured. Where continuing involvement by the Company is required in the form of technology transfer, product manufacturing or technical support, revenues are deferred and recognized over the term of the agreement.

Revenue From Milestone Receipts

Milestone payments are recognized as revenue based on achievement of the associated milestones, as defined in the relevant agreements. Revenue from a milestone achievement is recognized when earned, as evidenced by acknowledgment from the Company’s partner, provided that (1) the milestone event is substantive and its achievability was not reasonably assured at the inception of the agreement, (2) the milestone represents the culmination of an earnings process and (3) the milestone payment is non-refundable. If any of these criteria are not met, revenue from the milestone achievement is recognized over the remaining minimum period of the Company’s performance obligations under the agreement. As of December 31, 2015 and 2014, deferred revenues related to milestone and upfront payments received were $10.2 million and $9.4 million, respectively.

Product Sales Discounts and Allowances

The Company records allowances for product returns, rebates and discounts at the time of sale to wholesale pharmaceutical distributors and retail chains. The Company is required to make significant judgments and estimates in determining some of these allowances. If actual results differ from its estimates, the Company will be required to make adjustments to these allowances in the future.

Product Launch Discounts

The Company has offered additional discounts to wholesale distributors for product purchased at the time of product launch. The Company has recorded these discounts as an allowance against accounts receivable and a reduction of revenue when the sale is recorded.

Commercial Rebates

The Company participates in certain commercial rebate programs. Under these rebate programs, the Company pays a rebate to the commercial entity or third-party administrator of the program. The Company accrues estimated rebates based on contract prices, estimated percentages of product sold to qualified patients and estimated levels of inventory in the distribution channel and records the rebate as a reduction of revenue.
Distribution Service Fees

The Company includes distribution service fees paid to its wholesalers for distribution and inventory management services as a reduction to revenue. The Company accrues estimated fees based on contractually determined amounts, typically as a percentage of revenue, as a reduction of revenue.

Patient Access Programs

The Company offers discount card and other programs such as its HorizonCares program to patients under which the patient receives a discount on his or her prescription. In certain circumstances when a patient’s prescription is rejected by a managed care vendor, the Company will pay for the full cost of the prescription. The Company reimburses pharmacies for this discount through third-party vendors. The Company reduces gross sales by the amount of actual co-pay and other patient assistance in the period based on the invoices received. The Company also records an accrual to reduce gross sales for estimated co-pay and other patient assistance on units sold to distributors that have not yet been prescribed/dispensed to a patient. The estimate is based on contract prices, estimated percentages of product that will be prescribed to qualified patients, average assistance paid based on reporting from the third-party vendors and estimated levels of inventory in the distribution channel. Patient assistance programs include both co-pay assistance and fully bought down prescriptions.

Sales Returns

Consistent with industry practice, the Company maintains a return policy that allows customers to return product within a specified period prior to and subsequent to the product expiration date. Generally, product may be returned for a period beginning six months prior to its expiration date and up to one year after its expiration date. The right of return expires on the earlier of one year after the product expiration date or the time that the product is dispensed to the patient. The majority of product returns result from product dating, which falls within the range set by the Company’s policy, and are settled through the issuance of a credit to the customer. The estimate of the provision for returns is based upon the Company’s historical experience with actual returns, which is applied to the level of sales for the period that corresponds to the period during which the customer may return product. This period is known to the Company based on the shelf life of products at the time of shipment. The Company records sales returns as an allowance against accounts receivable and a reduction of revenue.

Prompt Pay Discounts

As an incentive for prompt payment, the Company offers a 2% cash discount to customers. The Company expects that all customers will comply with the contractual terms to earn the discount. The Company records the discount as an allowance against accounts receivable and a reduction of revenue.

Government Rebates

The Company participates in certain federal government rebate programs, such as Medicare and Medicaid. The Company accrues estimated rebates based on percentages of product sold to qualified patients, estimated rebate percentages and estimated levels of inventory in the distribution channel that will be sold to qualified patients and records the rebates as a reduction of revenue.

Government Chargebacks

The Company provides discounts to federal government qualified entities with whom the Company has contracted. These federal entities purchase products from the wholesale pharmaceutical distributors at a discounted price, and the wholesale pharmaceutical distributors then charge back to the Company the difference between the current retail price and the contracted price that the federal entities paid for the products. The Company accrues estimated chargebacks based on contract prices and sell-through sales data obtained from third party information and records the chargeback as a reduction of revenue.
Bad Debt Expense

The Company’s medicines are sold to wholesale pharmaceutical distributors and retail chains. The Company monitors its accounts receivable balances to determine the impact, if any, of such factors as changes in customer concentration, credit risk and the realizability of its accounts receivable, and records a bad debt reserve when applicable. The Company had established an immaterial reserve for bad debt expense for the year ended December 31, 2015. For the years ended December 31, 2014 and 2013, the Company did not record a bad debt expense related to its accounts receivable balances.

Cost of Goods Sold

The Company recognizes cost of goods sold in connection with its sales of each of its distributed medicines. Cost of goods sold includes all costs directly related to the acquisition of the Company’s medicines from its third-party manufacturers, including freight charges and other direct expenses such as insurance, distribution service fees, supply chain costs, amortization of intellectual property as described in the intangible assets and goodwill accounting policy below, amortization of stepped up inventory, royalty payments to third parties or royalty accretion expense, and any changes in estimate associated with the contingent royalty liability as described in the accrued contingent royalty accounting policy below.

Inventories

Inventories are stated at the lower of cost or market value, using the first-in, first-out convention. Inventories consist of raw materials, work-in-process and finished goods. The Company has entered into manufacturing and supply agreements for the manufacture or purchase of raw materials and production supplies. The Company’s inventories include the direct purchase cost of materials and supplies and manufacturing overhead costs. As of December 31, 2015 and 2014, the Company had inventories of $18.4 million and $16.9 million, respectively.

Inventories exclude medicine sample inventory, which is included in other current assets and is expensed as a component of sales and marketing expense when shipped to sales representatives. As of December 31, 2015 and 2014, the Company had medicine sample inventory of $4.7 million and $4.0 million, respectively.

Preclinical Studies and Clinical Trial Accruals

The Company’s preclinical studies and clinical trials have historically been conducted by third-party contract research organizations and other vendors. Preclinical study and clinical trial expenses are based on the services received from these contract research organizations and vendors. Payments depend on factors such as the milestones accomplished, successful enrollment of certain numbers of patients and site initiation. In accruing service fees, the Company estimates the time period over which services will be performed and the level of effort to be expended in each period. If the actual timing of the performance of services or the level of effort varies from the estimate, the Company adjusts the accrual accordingly. To date, the Company has had no significant adjustments to accrued clinical expenses. As of December 31, 2015 and December 31, 2014, the Company had preclinical study and clinical trial accruals of $4.7 million and $0.6 million, respectively.

Net Income (Loss) Per Share

Basic net income (loss) per share is computed by dividing net income (loss) by the weighted-average number of ordinary shares outstanding during the period. Diluted earnings per share (“EPS”) reflects the potential dilution beyond shares for basic EPS that could occur if securities or other contracts to issue ordinary shares were exercised, converted into ordinary shares, or resulted in the issuance of ordinary shares that would have shared in the Company’s earnings.

Cash and Cash Equivalents

We consider all highly liquid investments, readily convertible to cash, that mature within three months or less from date of purchase to be cash equivalents. Cash and cash equivalents primarily consist of cash balances and money market funds. Cash and cash equivalents were $859.6 million and $218.8 million as of December 31, 2015 and 2014, respectively. The Company generally invests excess cash in money market funds and other financial instruments with short-term durations, based upon operating requirements.
Restricted Cash

Restricted cash consists primarily of balances in interest-bearing money market accounts required by a vendor for the Company’s sponsored employee business credit card program. As of December 31, 2015 and 2014, the Company had restricted cash of $1.9 million and $0.7 million, respectively.

Fair Value of Financial Instruments

The carrying amounts of the Company’s financial instruments, including cash and cash equivalents, restricted cash, accounts receivable, accounts payable and accrued expenses, approximate their fair values due to their short maturities.

At December 31, 2013 and at the final measurement date of June 27, 2014, the estimated fair value of the Company’s derivative liability related to the convertible portion of the 5.00% Convertible Senior Notes due 2018 (the “Convertible Senior Notes”) was derived utilizing the binomial lattice approach for the valuation of convertible instruments. Assumptions used in the calculation included, among others, determining the appropriate credit spread using benchmarking analysis and solving for the implied credit spread, calculating the fair value of the stock component using a discounted risk free rate and borrowing cost and calculating the fair value of the note component using a discounted credit adjusted discount rate. Based on the assumptions used to determine the fair value of the derivative liability associated with the Convertible Senior Notes, the Company concluded that these inputs were Level 3 inputs.

Business Combinations

The Company accounts for business combinations in accordance with the pronouncement guidance in ASC 805, Business Combinations, in which acquired assets and liabilities are measured at their respective estimated fair values as of the acquisition date. The Company may be required, as in the case of intangible assets, contingent royalties or derivatives, to determine the fair value associated with these amounts by estimating the fair value using an income approach under the discounted cash flow method, which may include revenue projections and other assumptions made by the Company to determine the fair value.

Property and Equipment, Net

Property and equipment are stated at cost less accumulated depreciation. Depreciation is recognized using the straight-line method over the estimated useful lives of the related assets for financial reporting purposes and an accelerated method for income tax reporting purposes. Upon retirement or sale of an asset, the cost and related accumulated depreciation and amortization are removed from the balance sheet and the resulting gain or loss is reflected in operations. Repair and maintenance costs are charged to expenses as incurred and improvements are capitalized.

Leasehold improvements are amortized on a straight-line basis over the term of the applicable lease, or the useful life of the assets, whichever is shorter.

Depreciation and amortization periods for the Company’s property and equipment are as follows:

<table>
<thead>
<tr>
<th>Asset Type</th>
<th>Depreciation Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Machinery and equipment</td>
<td>5-7 years</td>
</tr>
<tr>
<td>Furniture and fixtures</td>
<td>3-5 years</td>
</tr>
<tr>
<td>Computer equipment</td>
<td>3 years</td>
</tr>
<tr>
<td>Software</td>
<td>3 years</td>
</tr>
<tr>
<td>Trade show equipment</td>
<td>3 years</td>
</tr>
</tbody>
</table>

The Company capitalizes software development costs associated with internal use software, including external direct costs of materials and services and payroll costs for employees devoting time to a software project. Costs incurred during the preliminary project stage, as well as costs for maintenance and training, are expensed as incurred.

Software includes internal-use software acquired and modified to meet the Company’s internal requirements. Amortization commences when the software is ready for its intended use.
Intangible Assets

Definite-lived intangible assets are amortized over their estimated useful lives. The Company reviews its intangible assets when events or circumstances may indicate that the carrying value of these assets exceeds their fair value. The Company measures fair value based on the estimated future discounted cash flows associated with these assets in addition to other assumptions and projections that the Company deems to be reasonable and supportable. The estimated useful lives for all identified intangible assets that are subject to amortization are as follows:

<table>
<thead>
<tr>
<th>Intangible Asset</th>
<th>Estimated Useful Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACTIMMUNE developed technology</td>
<td>13 years</td>
</tr>
<tr>
<td>BUPHENYL developed technology</td>
<td>7 years</td>
</tr>
<tr>
<td>Customer relationships</td>
<td>10 years</td>
</tr>
<tr>
<td>LODOTRA and RAYOS developed technology</td>
<td>12 years</td>
</tr>
<tr>
<td>PENNSAID 2% developed technology</td>
<td>6 years</td>
</tr>
<tr>
<td>RAVICTI developed technology</td>
<td>11 years</td>
</tr>
<tr>
<td>VIMOVO developed technology</td>
<td>5 years</td>
</tr>
</tbody>
</table>

 indefinite-lived intangible assets consist of capitalized in-process research and development (“IPR&D”). IPR&D assets represent capitalized incomplete research projects that the Company acquired through business combinations. Such assets are initially measured at their acquisition date fair values and are tested for impairment, until completion or abandonment of research and development efforts associated with the projects. An IPR&D asset is considered abandoned when research and development efforts associated with the asset have ceased, and there are no plans to sell or license the asset or derive value from the asset. At that point, the asset is considered to be disposed of and is written off. Upon successful completion of each project, the Company will make a determination about the remaining useful life of the intangible asset and begin amortization. The Company tests IPR&D assets for impairment annually during the fourth quarter and whenever indicators of impairment exist. The Company determined that no impairment existed as of December 31, 2015.

Goodwill

Goodwill represents the excess of the purchase price of acquired businesses over the estimated fair value of the identifiable net assets acquired. Goodwill is not amortized but is tested for impairment at least annually at the reporting unit level or more frequently if events or changes in circumstances indicate that the asset might be impaired. Impairment loss, if any, is recognized based on a comparison of the fair value of the asset to its carrying value, without consideration of any recoverability. The Company tests goodwill for impairment annually during the fourth quarter and whenever indicators of impairment exist by first assessing qualitative factors to determine whether it is more likely than not that the fair value is less than its carrying amount. If the Company concludes it is more likely than not that the fair value of a reporting unit is less than its carrying amount, a quantitative impairment test is performed. Based upon the Company’s most recent annual impairment test performed in the fourth quarter of 2015, the Company concluded goodwill was not impaired.

Research and Development Expenses

Research and development expenses include, but are not limited to, payroll and other personnel expenses, consultant expenses, expenses incurred under agreements with contract research organizations to conduct clinical trials and expenses incurred to manufacture clinical trial materials.

Sales and Marketing Expenses

Sales and marketing expenses consist principally of payroll of sales representatives and marketing and support staff, travel and other personnel-related expenses, marketing materials and distributed sample inventories. In addition, sales and marketing expenses include the Company’s medical affairs expenses, which consist of expenses related to scientific publications, health outcomes, biostatistics, medical education and information, and medical communications.

Deferred Financing Costs

Costs incurred in connection with debt financings have been capitalized to “Other assets” in our consolidated balance sheets as deferred financing costs, and are charged to interest expense using the effective interest method over the terms of the related debt agreements. These costs include document preparation costs, commissions, fees and expenses of investment bankers and underwriters, and accounting and legal fees.
Concentration of Credit Risk and Other Risks and Uncertainties

Financial instruments that may potentially subject the Company to significant concentrations of credit risk consist of cash and cash equivalents. The Company’s cash and cash equivalents are invested in deposits with various banks in the United States, Ireland, Bermuda, Switzerland, Luxembourg and Germany that management believes are creditworthy. At times, deposits in these banks may exceed the amount of insurance provided on such deposits. To date, the Company has not experienced any losses on its deposits of cash and cash equivalents.

The purchase cost of ACTIMMUNE under a contract with Boehringer Ingelheim RCV GmbH & Co. KG (“Boehringer Ingelheim”) as well as sales contracts relating to LODOTRA are principally denominated in Euros and are subject to foreign currency risk. The Company also incurs certain operating expenses in currencies other than the U.S. dollar in relation to its Ireland operations and other foreign subsidiaries, including Horizon Pharma Switzerland GmbH; therefore, the Company is subject to volatility in cash flows due to fluctuations in foreign currency exchange rates, particularly changes in the Euro. To date, the Company has not entered into any hedging contracts since exchange rate fluctuations have had minimal impact on its results of operations and cash flows.

Historically, the Company’s accounts receivable balances have been highly concentrated with a select number of customers, consisting primarily of large wholesale pharmaceutical distributors who, in turn, sell the medicines to pharmacies, hospitals and other customers. For the year ended December 31, 2015, the Company’s top five customers, McKesson Corporation, Rochester Drug Company, American Specialty Pharmacy, Inc., Cardinal Health, Inc., and AmerisourceBergen accounted for approximately 88% of total consolidated gross sales. For the year ended December 31, 2014, the Company’s same top five customers accounted for approximately 86% of total consolidated gross sales. In addition, these same top five customers accounted for approximately 95% and 80% of the Company’s total outstanding accounts receivable balances as of December 31, 2015 and December 31, 2014, respectively.

For the year ended December 31, 2013, the Company’s top five customers, AmerisourceBergen, Cardinal Health, Inc., McKesson Corporation, Mundipharma and Rochester Drug Company, accounted for approximately 89% of total consolidated gross sales. As of December 31, 2013, AmerisourceBergen, Cardinal Health, Inc., Halsted Pharmacy, McKesson Corporation and Rochester Drug Company, accounted for approximately 85% of the Company’s total outstanding accounts receivable balances.

We depend on single source suppliers and manufacturers for certain of our medicines, medicine candidates and their active pharmaceutical ingredients.

Comprehensive Income (Loss)

Comprehensive income (loss) is composed of net income (loss) and other comprehensive income (loss) (“OCI”). OCI includes certain changes in shareholders’ equity that are excluded from net income (loss), which consist of foreign currency translation adjustments. The Company reports the effect of significant reclassifications out of accumulated OCI on the respective line items in net income if the amount being reclassified is required under GAAP to be reclassified in its entirety to net income. For other amounts that are not required under GAAP to be reclassified in their entirety to net income in the same reporting period, the Company cross-references other disclosures required under GAAP that provide additional detail about those amounts. As of December 31, 2015 and 2014, accumulated other comprehensive loss was $2.7 million and $4.4 million, respectively.

Share-Based Compensation

The Company accounts for employee share-based compensation by measuring and recognizing compensation expense for all share-based payments based on estimated grant date fair values. The Company uses the straight-line method to allocate compensation cost to reporting periods over each awardee’s requisite service period, which is generally the vesting period.
Accrued Contingent Royalties

The Company’s accrued contingent royalties consist of the contingent royalty obligations assumed by the Company related to the Company’s acquisitions of rights to VIMOVO, ACTIMMUNE, RAVICTI and BUPHENYL. At the time of each acquisition, the Company assigned an estimated fair value to its contingent liability for royalties. The estimated royalty liability is based on anticipated revenue streams utilizing the income approach under the discounted cash flow method. The estimated liability for royalties is increased over time to reflect the change in its present value and accretion expense is recorded as part of cost of goods sold. The Company evaluates the adequacy of the estimated contingent royalty liability at least annually, or whenever events or changes in circumstances indicate that an evaluation of the estimate is necessary. As part of any evaluation, the Company adjusts the carrying value of the liability to the present value of the revised estimated cash flows using the original discount rate. Any decrease or increase to the liability is recorded as an increase or reduction in cost of goods sold. The royalty liability is included in current and long-term accrued royalties on the consolidated balance sheets.

During the year ended December 31, 2015, based on higher sales of ACTIMMUNE and VIMOVO versus the Company’s previous expectations and expectations for future ACTIMMUNE and VIMOVO sales, the Company recorded a total charge of $21.5 million to cost of goods sold ($16.7 million related to VIMOVO and $4.8 million related to ACTIMMUNE). The Company also recorded a reduction of $0.3 million in cost of goods sold related to RAVICTI as a result of an adjustment to carrying value of the contingent royalties to reflect updated estimates of future RAVICTI sales.

Contingencies

From time to time, the Company may become involved in claims and other legal matters arising in the ordinary course of business. The Company records accruals for loss contingencies to the extent that it concludes that it is probable that a liability has been incurred and the amount of the related loss can be reasonably estimated. Legal fees and other expenses related to litigation are expensed as incurred and included in selling, general and administrative expenses.

New Accounting Pronouncements

From time to time, the Company adopts, as of the specified effective date, new accounting pronouncements issued by the FASB or other standard setting bodies. Unless otherwise discussed, the Company believes that the impact of recently issued standards that are not yet effective will not have a material impact on the Company’s financial position or results of operations upon adoption.

In May 2014, the FASB issued Accounting Standards Update (“ASU”) No. 2014-09, Revenue from Contracts with Customers (Subtopic 606). The new standard aims to achieve a consistent application of revenue recognition within the United States, resulting in a single revenue model to be applied by reporting companies under GAAP. Under the new model, recognition of revenue occurs when a customer obtains control of promised goods or services in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. In addition, the new standard requires that reporting companies disclose the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers. On July 9, 2015, the FASB agreed to delay the effective date by one year. In accordance with the agreed upon delay, the new standard is effective for the Company beginning in the first quarter of 2018. Early adoption is permitted, but not before the original effective date of the standard. The new standard is required to be applied retrospectively to each prior reporting period presented or retrospectively with the cumulative effect of initially applying it recognized at the date of initial application. The Company has not yet selected a transition method nor has it determined the impact of the new standard on its consolidated financial statements.

In August 2014, the FASB issued ASU No. 2014-15, Presentation of Financial Statements — Going Concern (Subtopic 205-40). Disclosure of Uncertainties about an Entity’s Ability to Continue as a Going Concern. ASU No. 2014-15 is intended to define management’s responsibility to evaluate whether there is substantial doubt about an organization’s ability to continue as a going concern and to provide related footnote disclosures. Substantial doubt about an entity’s ability to continue as a going concern exists when relevant conditions and events, considered in the aggregate, indicate that it is probable that the entity will be unable to meet its obligations as they become due within one year after the date that the financial statements are issued (or available to be issued). ASU No. 2014-15 provides guidance to an organization’s management, with principles and definitions that are intended to reduce diversity in the timing and content of disclosures that are commonly provided by organizations in the financial statement footnotes. ASU No. 2014-15 is effective for annual reporting periods ending after December 15, 2016 and to annual and interim periods thereafter. Early adoption is permitted. The Company is currently in the process of evaluating the impact of adoption of ASU No. 2014-15 to its consolidated financial statements and related disclosures.
On April 7, 2015, the FASB issued ASU No. 2015-03, Interest–Imputation of Interest (Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs. The amendments in this ASU require that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. The amendments in this ASU are effective for the financial statements issued for fiscal years beginning after December 15, 2015, and interim periods within the fiscal years beginning after December 15, 2016. Early adoption is permitted for financial statements that have not been previously issued. This guidance is not expected to have a material impact on the Company’s balance sheet or statement of consolidated income, and for the year ended December 31, 2015, the impact of this guidance on the Company’s financial statements would be a reclassification of $8.4 million of deferred financing costs from other assets to long-term debt, net, net of current.

On April 15, 2015, the FASB issued ASU 2015-05: Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Fees Paid in a Cloud Computing Arrangement which provides guidance on a customer’s accounting for fees paid in a cloud computing arrangement. Under the new standard, customers will apply the same criteria as vendors to determine whether a cloud computing arrangement contains a software license or is solely a service contract. The amendments in this ASU, which may be applied prospectively or retrospectively, are effective for annual and interim periods beginning after December 15, 2015. Early adoption is permitted. The Company is currently in the process of evaluating the impact of adoption of ASU No. 2015-05 to its consolidated financial statements and related disclosures.

In July 2015, the FASB issued ASU No. 2015-11, Inventory (Topic 330): Simplifying the Measurement of Inventory. Under this new guidance, entities that measure inventory using any method other than last-in, first-out or the retail inventory method will be required to measure inventory at the lower of cost and net realizable value. The amendments in this ASU, which should be applied prospectively, are effective for annual and interim periods beginning after December 15, 2015. Early adoption is permitted. The Company is currently in the process of evaluating the impact of adoption of ASU No. 2015-11 to its consolidated financial statements and related disclosures.

In September 2015, the FASB issued ASU No. 2015-16, Business Combinations (Topic 805): Simplifying the Accounting for Measurement-Period Adjustments (“ASC 805”). Under this guidance, an acquirer is required to recognize adjustments to provisional amounts that are identified during the measurement period in the reporting period in which the adjustment amounts are determined. The amendments in this ASU require that the acquirer record, in the same period’s financial statements, the effect on earnings of changes in depreciation, amortization, or other income effects, if any, as a result of the change to the provisional amounts, calculated as if the accounting had been completed at the acquisition date. The amendments in this ASU require an entity to present separately on the face of the income statement or disclose in the notes the portion of the amount recorded in current-period earnings by line item that would have been recorded in previous reporting periods if the adjustment to the provisional amounts had been recognized as of the acquisition date. The amendments in this ASU, which should be applied prospectively, are effective for annual and interim periods beginning after December 15, 2015. Earlier application is permitted for financial statements that have not been previously issued. The Company is currently in the process of evaluating the impact of adoption of ASC 805 to its consolidated financial statements and related disclosures.

In November 2015, the FASB issued ASU No. 2015-17, Balance Sheet Classification of Deferred Taxes. This accounting standard requires deferred tax assets and liabilities, along with related valuation allowances, to be classified as non-current in a classified statement of financial position. As a result, each tax jurisdiction will now only have one net non-current deferred tax asset or liability. The new guidance does not change the existing requirement that prohibits offsetting deferred tax liabilities from one jurisdiction against deferred tax assets of another jurisdiction. During the fourth quarter of 2015, the Company elected to early-adopt this guidance retrospectively. The following table summarizes the adjustments made to conform prior period classifications as a result of the new guidance (in thousands):

<table>
<thead>
<tr>
<th>Classification</th>
<th>As Filed</th>
<th>Reclassification</th>
<th>As Adjusted (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred tax assets, current</td>
<td>$1,530</td>
<td>$(1,530)</td>
<td>$—</td>
</tr>
<tr>
<td>Deferred tax assets, net, non-current</td>
<td>18,761</td>
<td>1,530</td>
<td>20,291</td>
</tr>
<tr>
<td>Deferred tax liabilities, net</td>
<td>$(721)</td>
<td>$(721)</td>
<td>$(721)</td>
</tr>
<tr>
<td>Deferred tax liabilities, net, non-current</td>
<td>(19,570)</td>
<td>(721)</td>
<td>(20,291)</td>
</tr>
</tbody>
</table>

(1) Amounts have been netted in the consolidated balance sheet as of December 31, 2014, as presented.
NOTE 3 – NET INCOME (LOSS) PER SHARE

The following table presents basic net income (loss) per share for the years ended December 31, 2015, 2014 and 2013 (in thousands, except share and per share data):

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic earnings per share calculation:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$39,532</td>
<td>$(263,603)</td>
<td>$(149,005)</td>
</tr>
<tr>
<td>Weighted average of ordinary shares outstanding</td>
<td>148,788,020</td>
<td>83,751,129</td>
<td>63,657,924</td>
</tr>
<tr>
<td>Basic net income (loss) per share</td>
<td>$0.27</td>
<td>$(3.15)</td>
<td>$(2.34)</td>
</tr>
</tbody>
</table>

The following table presents diluted net income (loss) per share for the years ended December 31, 2015, 2014 and 2013 (in thousands, except share and per share data):

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diluted earnings per share calculation:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$39,532</td>
<td>$(263,603)</td>
<td>$(149,005)</td>
</tr>
<tr>
<td>Weighted average of ordinary shares outstanding</td>
<td>155,923,251</td>
<td>83,751,129</td>
<td>63,657,924</td>
</tr>
<tr>
<td>Diluted net income (loss) per share</td>
<td>$0.25</td>
<td>$(3.15)</td>
<td>$(2.34)</td>
</tr>
</tbody>
</table>

Basic net income (loss) per share is computed by dividing net income (loss) by the weighted-average number of ordinary shares outstanding during the period. Diluted EPS reflects the potential dilution beyond shares for basic EPS that could occur if securities or other contracts to issue ordinary shares were exercised, converted into ordinary shares, or resulted in the issuance of ordinary shares that would have shared in our earnings.

The outstanding securities listed in the table below were excluded from the computation of diluted loss per share for the years ended December 31, 2015, 2014 and 2013 due to being anti-dilutive:

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stock options</td>
<td>2,853,821</td>
<td>7,027,683</td>
<td>4,411,080</td>
</tr>
<tr>
<td>Restricted stock units</td>
<td>817,168</td>
<td>1,618,502</td>
<td>934,005</td>
</tr>
<tr>
<td>Performance stock units</td>
<td>1,074</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Employee stock purchase plans</td>
<td>1,046,275</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Warrants</td>
<td>2,416,894</td>
<td>6,683,811</td>
<td>16,114,746</td>
</tr>
<tr>
<td>Convertible Senior Notes</td>
<td>11,369,398</td>
<td>13,164,951</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>$7,135,232</td>
<td>$26,699,394</td>
<td>$34,624,782</td>
</tr>
</tbody>
</table>

The potentially dilutive impact of the Horizon Pharma Investment Limited ("Horizon Investment"), a wholly-owned subsidiary of the Company, March 2015 private placement of $400.0 million aggregate principal amount of 2.50% Exchangeable Senior Notes due 2022 (the "Exchangeable Senior Notes") is determined using a method similar to the treasury stock method. Under this method, no numerator or denominator adjustments arise from the principal and interest components of the Exchangeable Senior Notes because the Company has the intent and ability to settle the Exchangeable Senior Notes’ principal and interest in cash. Instead, the Company is required to increase the diluted EPS denominator by the variable number of shares that would be issued upon conversion if it settled the conversion spread obligation with shares. For diluted EPS purposes, the conversion spread obligation is calculated based on whether the average market price of the Company's ordinary shares over the reporting period is in excess of the exchange price of the Exchangeable Senior Notes. There was no calculated spread added to the denominator for the year ended December 31, 2015.
NOTE 4 – BUSINESS ACQUISITIONS

Crealta Acquisition

On January 13, 2016, the Company completed its acquisition of Crealta for approximately $510.0 million in cash. Crealta is a specialty pharmaceutical company focused on innovative therapeutics designed to improve patient outcomes, and marketed KRYSTEXXA and MIGERGOT. In connection with the Crealta acquisition, the Company incurred $1.9 million of transaction fees for legal, advisory and other fees during the year ended December 31, 2015. The final determination of the purchase price allocation is expected to be completed as soon as practicable. Due to the limited time between the acquisition date and the filing of this Annual Report on Form 10-K, it is not practicable for the Company to disclose: (i) the allocation of purchase price to assets acquired and liabilities assumed as of the date of close, and (ii) pro forma revenues and earnings of the combined company for the year ended December 31, 2015.

Hyperion Acquisition

On March 29, 2015, the Company, Ghrian Acquisition Inc. (“Purchaser”), a Delaware corporation and a wholly-owned subsidiary of the Company, and Hyperion entered into a definitive Agreement and Plan of Merger providing for the acquisition by the Company of all the issued and outstanding shares of Hyperion’s common stock for $46.00 per share. The acquisition was completed on May 7, 2015. The acquisition added two important medicines, RAVICTI and BUPHENYL, to the Company’s medicine portfolio. Through the acquisition, the Company leveraged as well as expanded the existing infrastructure of its orphan disease business. The total consideration for the acquisition was approximately $1.1 billion and was composed of the following (in thousands):

| Fully diluted equity value (21,425,909 shares at $46.00 per share) | $985,592 |
| Net settlements on the exercise of stock options, restricted stock and performance stock units | 89,806 |
| **Total consideration** | **$1,075,398** |

During the year ended December 31, 2015, the Company incurred $53.7 million in Hyperion acquisition-related costs including advisory, legal, accounting, valuation, severance, retention bonuses, and other professional and consulting fees and $40.6 million, $10.0 million and $3.1 million were accounted for as “General and administrative”, “Other, net” and “Research and development” expenses, respectively, in the consolidated statement of comprehensive income (loss). No further significant acquisition-related costs are expected to be incurred in relation to the Hyperion acquisition, and the Company anticipates that the significant amount of acquisition-related cash payments will be complete by the end of the second quarter of 2016.

Pursuant to ASC 805, the Company accounted for the Hyperion acquisition as a business combination using the acquisition method of accounting. Identifiable assets and liabilities of Hyperion, including identifiable intangible assets, were recorded based on their estimated fair values as of the date of the closing of the acquisition. The excess of the purchase price over the fair value of the net assets acquired was recorded as goodwill. Significant judgment was required in determining the estimated fair values of developed technology intangible assets and certain other assets and liabilities. Such a preliminary valuation required estimates and assumptions including, but not limited to, estimating future cash flows and direct costs in addition to developing the appropriate discount rates and current market profit margins. The Company’s management believes the fair values recognized for the assets acquired and the liabilities assumed are based on reasonable estimates and assumptions. Accordingly, the purchase price adjustments are preliminary and are subject to further adjustments as additional information becomes available and as additional analyses are performed, and such further adjustments may be material.

During the year ended December 31, 2015, the Company recorded measurement period adjustments related to deferred tax liabilities, other liabilities, accrued trade discounts and rebates, accounts receivable and inventory, which resulted in a net reduction in goodwill of $5.8 million. The measurement period adjustments were the result of a review of balance sheet accruals and estimates, and the alignment of Hyperion revenue recognition policies to those of the Company.

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The following table summarizes the preliminary fair values assigned to the assets acquired and the liabilities assumed by the Company, along with the resulting goodwill before and after the measurement period adjustments (in thousands):

<table>
<thead>
<tr>
<th>(Liabilities assumed) and assets acquired:</th>
<th>Before</th>
<th>Adjustments</th>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred tax liability, net</td>
<td>$ (264,866)</td>
<td>$ 2,134</td>
<td>$ (262,732)</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>(502)</td>
<td>502</td>
<td>—</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>(2,439)</td>
<td>—</td>
<td>(2,439)</td>
</tr>
<tr>
<td>Accrued trade discounts and rebates</td>
<td>(13,178)</td>
<td>3,386</td>
<td>(9,792)</td>
</tr>
<tr>
<td>Accrued expenses</td>
<td>(7,566)</td>
<td>—</td>
<td>(7,566)</td>
</tr>
<tr>
<td>Contingent royalties</td>
<td>(86,800)</td>
<td>—</td>
<td>(86,800)</td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>53,037</td>
<td>53,037</td>
<td>—</td>
</tr>
<tr>
<td>Short-term investments</td>
<td>39,049</td>
<td>39,049</td>
<td>—</td>
</tr>
<tr>
<td>Long-term investments</td>
<td>25,574</td>
<td>25,574</td>
<td>—</td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>11,683</td>
<td>175</td>
<td>11,858</td>
</tr>
<tr>
<td>Inventory</td>
<td>13,941</td>
<td>(443)</td>
<td>13,498</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>2,533</td>
<td>2,533</td>
<td>—</td>
</tr>
<tr>
<td>Property and equipment</td>
<td>1,044</td>
<td>1,044</td>
<td>—</td>
</tr>
<tr>
<td>Other non-current assets</td>
<td>123</td>
<td>123</td>
<td>—</td>
</tr>
<tr>
<td>Developed technology</td>
<td>1,044,200</td>
<td>—</td>
<td>1,044,200</td>
</tr>
<tr>
<td>Goodwill</td>
<td>259,565</td>
<td>(5,754)</td>
<td>253,811</td>
</tr>
<tr>
<td>Fair value of consideration paid</td>
<td>$ 1,075,398</td>
<td>$</td>
<td>$ 1,075,398</td>
</tr>
</tbody>
</table>

Inventories acquired included raw materials and finished goods. Inventories were recorded at their current fair values. The fair value of finished goods has been determined based on the estimated selling price, net of selling costs and a margin on the selling costs. The fair value of raw materials was estimated to equal the replacement cost. A step up in the value of inventory of $8.7 million was recorded in connection with the acquisition. During the year ended December 31, 2015, the Company amortized $6.6 million and $1.8 million, respectively, of RAVICTI and BUPHENYL inventory step-up. Finished goods at December 31, 2015 included $0.3 million of stepped-up BUPHENYL inventory. RAVICTI step-up had been fully recognized in the consolidated statement of comprehensive income (loss) during the year ended December 31, 2015.

Other tangible assets and liabilities were valued at their respective carrying amounts as management believes that these amounts approximated their acquisition date fair values.

Identifiable intangible assets and liabilities acquired include developed technology and contingent royalties. The preliminary fair values of the developed technology and contingent royalties represent preliminary valuations performed with the assistance of an independent appraisal firm based on management’s estimates, forecasted financial information and reasonable and supportable assumptions.

Developed technology intangible assets reflect the estimated value of Hyperion’s rights to its currently marketed medicines, RAVICTI and BUPHENYL. The fair value of developed technology was determined using an income approach. The income approach explicitly recognizes that the fair value of an asset is premised upon the expected receipt of future economic benefits such as earnings and cash inflows based on current sales projections and estimated direct costs for Hyperion’s medicines. Indications of value were developed by discounting these benefits to their acquisition-date worth at a discount rate of 8.5% that reflected the then-current return requirements of the market. The fair value of the RAVICTI and BUPHENYL developed technologies were capitalized as of the Hyperion acquisition date and are subsequently being amortized over 11 and 7 years, respectively, which are the periods in which over 90% of the estimated cash flows are expected to be realized.

The Company has assigned a preliminary fair value to a contingent liability for royalties potentially payable under previously existing agreements related to RAVICTI and BUPHENYL. The royalties are payable under the terms of an asset purchase agreement and an amended and restated collaboration agreement with Ucyclyd Pharma, Inc. (“Ucyclyd”) and a license agreement with Saul W. Brusilow, M.D. and Brusilow Enterprises Inc. (“Brusilow”). See Note 16 for details of the percentages payable under such agreements. The initial fair value of this liability was $86.8 million and was determined using a discounted cash flow analysis incorporating the estimated future cash flows of royalty payments resulting from future sales. The discount rate used was the same as for the fair value of the developed technology. See Note 2 for details of the Company’s accounting policies for accrued contingent royalties.
Deferred tax assets and liabilities arise from acquisition accounting adjustments where book values of certain assets and liabilities differ from their tax bases. Deferred tax assets and liabilities are recorded at the currently enacted rates which will be in effect at the time when the temporary differences are expected to reverse in the country where the underlying assets and liabilities are located. Hyperion’s developed technology as of the acquisition date was located primarily in the United States where a U.S. tax rate of 39% is being utilized and a significant deferred tax liability is recorded. Upon consummation of the Hyperion acquisition, Hyperion became a member of the Company’s U.S. tax consolidation group. As such, its tax assets and liabilities were considered in determining the appropriate amount (if any) of valuation allowances that should be recognized in assessing the realizability of the group’s deferred tax assets. The Hyperion acquisition adjustments resulted in the recognition of significant net deferred tax liabilities. Per ASC Topic 740, *Accounting for Uncertainty in Income Taxes*, (“ASC 740”) future reversals of existing taxable temporary differences provide objectively verifiable evidence that should be considered as a source of taxable income to realize a tax benefit for deductible temporary differences and carryforwards. Generally, the existence of sufficient taxable temporary differences will enable the use of the tax benefit of existing deferred tax assets. As of the first quarter of 2015, the Company had significant U.S. federal and state valuation allowances. These valuation allowances were released in the second quarter of 2015 to reflect the recognition of Hyperion’s deferred tax liabilities that will provide taxable temporary differences that will be realized within the carryforward period of the Company’s U.S. tax consolidation group’s available net operating losses and other deferred tax assets. Accordingly, the Company recorded an income tax benefit of $105.1 million in the second quarter of 2015 relating to the release of existing U.S. federal and state valuation allowances.

Short-term and long-term investments included in the table above represent available-for-sale securities that were reported in short-term investments or long-term investments based on maturity dates and whether such assets are reasonably expected to be realized in cash or sold or consumed during the normal cycle of business. Available-for-sale investments were recorded at fair value and were liquidated shortly after the acquisition.

Goodwill represents the excess of the preliminary acquisition consideration over the estimated fair value of net assets acquired and was recorded in the consolidated balance sheet as of the acquisition date. We do not expect any portion of this goodwill to be deductible for tax purposes.

**PENNSAID 2% Acquisition**

On October 17, 2014, the Company acquired the U.S. rights to PENNSAID 2% from Nuvo for $45.0 million in cash. PENNSAID 2% is approved in the United States for the treatment of the pain of osteoarthritis of the knee. The Company began marketing PENNSAID 2% in January 2015, and as such no sales or cost of goods sold were recognized in 2014.

As part of the acquisition, the Company entered into an exclusive supply agreement with Nuvo, which was amended in February 2016, to manufacture and supply PENNSAID 2% to the Company. The term of the supply agreement is through December 31, 2029, but the agreement may be terminated earlier by either party for any uncured material breach by the other party or its obligations under the supply agreement or upon the bankruptcy or similar proceeding of the other party.

Pursuant to ASC 805, the Company accounted for the acquisition of the U.S. rights to PENNSAID 2% under the acquisition method of accounting, in which the Company recognized and accounted for the acquisition of the U.S. rights to PENNSAID 2% as a business combination. Using this methodology, the Company allocated the entire purchase price of $45.0 million to a developed technology intangible asset. The valuation of the developed technology intangible asset was based on management’s estimates, forecasted financial information and reasonable and supportable assumptions. The allocation was generally based on the Company’s estimated fair value of the rights to payments with respect to U.S. revenue associated with PENNSAID 2% which were acquired in the transaction. This estimated fair value was determined using the income approach under the discounted cash flow method. Significant assumptions used in valuing the developed technology intangible asset included revenue projections through 2021 based on assumptions relating to pricing and reimbursement rates, market size and market penetration rates and cost of goods sold based on current manufacturing experience, general and administrative expenses, sales and marketing expenses, and research and development expenses for clinical and regulatory support. The calculated value of the PENNSAID 2% developed technology intangible asset is amortized using the straight-line method over an estimated useful life of six years, which is the period in which the majority of the benefits from such developed technology will be recognized.

F-20
Vidara Acquisition

On March 18, 2014, HPI, Vidara Therapeutics Holdings LLC, a Delaware limited liability company ("Vidara Holdings"), Vidara, Hamilton Holdings (USA), Inc., a Delaware corporation and an indirect wholly-owned subsidiary of Vidara ("U.S. HoldCo") and Hamilton Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of U.S. HoldCo ("Merger Sub"), entered into a Transaction Agreement and Plan of Merger (the "Merger Agreement"). The Merger Agreement provided for the merger of Merger Sub with and into HPI, with HPI continuing as the surviving corporation and as a wholly-owned, indirect subsidiary of Vidara, with Vidara converting to a public limited company and changing its name to Horizon Pharma plc.

At the effective time of the Vidara Merger on September 19, 2014 (the "Effective Time"), (i) each share of HPI's common stock issued and outstanding was converted into one ordinary share of New Horizon; (ii) each equity plan of HPI was assumed by New Horizon and each outstanding option under HPI's equity plans was converted into an option to acquire the number of ordinary shares of New Horizon equal to the number of common stock underlying such option immediately prior to the Effective Time at the same exercise price per share as such option of HPI, and each other stock award that was outstanding under HPI's equity plans was converted into a right to receive, on substantially the same terms and conditions as were applicable to such equity award before the Effective Time, the number of ordinary shares of New Horizon equal to the number of shares of HPI's common stock subject to such stock award immediately prior to the Effective Time; (iii) each warrant to acquire HPI's common stock outstanding immediately prior to the Effective Time was converted into a warrant to acquire, on substantially the same terms and conditions as were applicable under such warrant before the Effective Time, the number of ordinary shares of New Horizon equal to the number of shares of HPI's common stock underlying such warrant immediately prior to the Effective Time; and (iv) the Convertible Senior Notes of HPI remained outstanding and, pursuant to a supplemental indenture entered into effective as of the Effective Time, became convertible into the same number of ordinary shares of New Horizon at the same conversion rate in effect immediately prior to the Effective Time. Vidara Holdings retained ownership of 31,350,000 ordinary shares of New Horizon at the Effective Time. Vidara Holdings retained ownership of 31,350,000 ordinary shares of New Horizon at the Effective Time. Upon consummation of the Vidara Merger (the "Closing"), the security holders of HPI (excluding the holders of HPI's Convertible Senior Notes) owned approximately 74% of New Horizon and Vidara Holdings owned approximately 26% of New Horizon. At the Closing, New Horizon made a cash payment of $210.9 million to Vidara Holdings and $2.7 million to Citibank N.A. as escrow agent under an escrow agreement associated with the Vidara Merger.

The total consideration for the acquisition of Vidara was $601.4 million, representing the $387.8 million market value of the 31,350,000 New Horizon ordinary shares that were held by prior Vidara shareholders immediately following the Closing plus the cash consideration of $213.6 million. The value of the New Horizon ordinary shares of $387.8 million was based on the September 18, 2014 closing stock price of HPI common stock of $12.37, the last closing price prior to the Effective Time.

F-21
Pursuant to ASC 805, the Company accounted for the Vidara Merger as a reverse acquisition under the acquisition method of accounting, with HPI treated as the acquiring company for accounting purposes. Identifiable assets and liabilities of Vidara, including identifiable intangible assets, were recorded based on their estimated fair values as of the date of the Closing. The excess of the fair value of the net assets acquired over the value of consideration was recorded as a bargain purchase gain. The following table summarizes the fair values assigned to the assets acquired and the liabilities assumed by the Company pursuant to the Vidara Merger, along with the resulting bargain purchase gain (in thousands):

<table>
<thead>
<tr>
<th>Allocation</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>34,401</td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>11,838</td>
</tr>
<tr>
<td>Inventories</td>
<td>15,422</td>
</tr>
<tr>
<td>Other receivable—net working capital adjustment</td>
<td>195</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>138</td>
</tr>
<tr>
<td>Property and equipment</td>
<td>289</td>
</tr>
<tr>
<td>Deferred tax assets</td>
<td>2,907</td>
</tr>
<tr>
<td>Customer relationships</td>
<td>8,100</td>
</tr>
<tr>
<td>In-process research and development</td>
<td>66,000</td>
</tr>
<tr>
<td>Developed technology</td>
<td>560,000</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>(1,781)</td>
</tr>
<tr>
<td>Accrued expenses and other current liabilities</td>
<td>(32,372)</td>
</tr>
<tr>
<td>Contingent royalties</td>
<td>(33,600)</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>(775)</td>
</tr>
<tr>
<td>Deferred tax liabilities</td>
<td>(7,170)</td>
</tr>
<tr>
<td>Bargain purchase gain</td>
<td>(22,171)</td>
</tr>
<tr>
<td>Fair value of consideration paid</td>
<td>601,421</td>
</tr>
</tbody>
</table>
IPR&D is related to one research and development project for the application of ACTIMMUNE in the treatment of Friedreich’s ataxia (“FA”), which was incomplete at the time of the Vidara Merger. IPR&D is considered separable from the business as the project could be sold to a third-party. The fair value of IPR&D was determined using an income approach. The income approach explicitly recognizes that the fair value of an asset is premised upon the expected receipt of future economic benefits such as earnings and cash inflows based on sales projections and estimated direct costs. Indications of value are developed by discounting these benefits to their present value at a discount rate of 33% that reflects the return requirements of the market. The fair value of the IPR&D was recorded as an indefinite-lived intangible asset and will be tested for impairment until completion or abandonment of research and development efforts associated with the project. In June 2015, the Company initiated the Phase 3 Safety, Tolerability and Efficacy of ACTIMMUNE Dose Escalation in Friedreich’s Ataxia Study of ACTIMMUNE for the treatment of people with FA. Approximately 90 patients will be enrolled at four sites in the United States. The Company expects to complete enrollment in the second quarter of 2016, with top-line data anticipated to become available by the end of 2016. Assuming positive data from the trial, the Company would plan to submit a supplemental biologies license application in the first quarter of 2017, and given the fast-track designation of ACTIMMUNE for this potential indication, the Company would request priority review, which, if awarded, would allow the Company to potentially receive a decision from the U.S. Food and Drug Administration (the “FDA”) within six months of submission, in the third quarter of 2017.

Customer relationships intangible assets reflect the estimated value of Vidara’s customer base for ACTIMMUNE. Vidara’s customers as of the acquisition date were predominantly a small group of retail pharmacies with demand for ACTIMMUNE. As such, a significant portion of revenue growth was expected to be generated from existing customers as of the acquisition date. Management assessed the historical customer trends to identify the anticipated attrition. The fair value of customer relationships was recorded as an intangible asset as of the acquisition date and is subsequently being amortized over an estimated remaining life of 10 years.

The Company has assigned a fair value to a contingent liability for royalties potentially payable under previously existing royalty and licensing agreements related to ACTIMMUNE. The royalties are payable under the terms of a license agreement with Genentech Inc. (“Genentech”), which was the original developer of ACTIMMUNE and under the terms of its agreement, as amended, with Connetics Corporation (who was the predecessor parent company to InterMune Pharmaceuticals Inc. and is now part of GlaxoSmithKline) (“Connetics”). See Note 16 for details of the percentages payable under both license agreements. The initial fair value of this liability of $33.6 million was determined using a discounted cash flow analysis incorporating the estimated future cash flows of royalty payments resulting from future sales. The discount rates used were the same as for the fair value of the intangible assets. The estimated liability for royalties will be increased over time to reflect the change in its present value and accretion expense will be recorded as part of cost of goods sold. The estimated liability will be periodically assessed based on events and circumstances and any change will be recorded in the Company’s consolidated statement of comprehensive income (loss). During the year ended December 31, 2015, based on fluctuating sales of ACTIMMUNE versus the Company’s previous expectations and the Company’s adjusted expectations for future ACTIMMUNE sales, the Company recorded a charge of $4.8 million to cost of goods sold to increase the carrying value of the contingent royalties to reflect the updated estimates.

Deferred tax assets and liabilities arise from acquisition accounting where book values of certain assets and liabilities differ from their tax bases. Deferred tax assets and liabilities are recorded at the currently enacted rates which will be in effect at the time when the temporary differences are expected to reverse in the country where the underlying assets and liabilities are located (United States or Bermuda). Customer relationships intangible assets are located in the United States where a U.S. tax rate of 37.9% is being utilized and a deferred tax liability is recorded. Developed technology and IPR&D assets are located in Bermuda which does not levy corporate income taxes; accordingly, no deferred tax liabilities were recorded related to these intangible assets.

The excess of the estimated fair values of net assets acquired over the acquisition consideration paid was recorded as a bargain purchase gain in the consolidated statement of comprehensive income (loss) during the year ended December 31, 2014. As previously stated, the total consideration included a fixed number of New Horizon ordinary shares. The bargain purchase gain of $22.2 million was primarily the result of the decrease in the market value of our ordinary shares from the time that the Merger Agreement was signed to the Effective Time of the Vidara Merger.
**Pro Forma Information**

The following table represents the consolidated financial information for the Company on a pro forma basis, assuming that the Vidara Merger and the Hyperion acquisition occurred as of January 1, 2014. The Vidara Merger has already been reflected in the as reported figures for the full year ended December 31, 2015 and for the period from September 19, 2014 to December 31, 2014, as the Vidara Merger was completed in September 2014. The results of Hyperion from May 7, 2015 to December 31, 2015 are also included in the 2015 as reported figures. The historical financial information has been adjusted to give effect to pro forma items that are directly attributable to the Vidara Merger and the Hyperion acquisition, and are expected to have a continuing impact on the consolidated results. These items include, among others, adjustments to record the amortization of definite-lived intangible assets, interest expense, debt discount and deferred financing costs associated with the debt in connection with the acquisitions. Additionally, the following table sets forth unaudited financial information and has been compiled from historical financial statements and other information, but is not necessarily indicative of the results that actually would have been achieved had the transactions occurred on the dates indicated or that may be achieved in the future (in thousands, except per share data):

<table>
<thead>
<tr>
<th></th>
<th>For the Year Ended December 31,</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2015</td>
<td></td>
<td>2014</td>
<td></td>
<td>2014</td>
<td></td>
</tr>
<tr>
<td></td>
<td>As reported</td>
<td>Pro-forma adjustments (Unaudited)</td>
<td>Pro-forma adjustments (Unaudited)</td>
<td>As reported</td>
<td>Pro-forma adjustments (Unaudited)</td>
<td>Pro-forma adjustments (Unaudited)</td>
<td></td>
</tr>
<tr>
<td>Net sales</td>
<td>$ 757,044</td>
<td>$39,473</td>
<td>$796,517</td>
<td>$296,955</td>
<td>$164,149</td>
<td>$461,104</td>
<td></td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>39,532</td>
<td>(25,703)</td>
<td>13,829</td>
<td>(263,603)</td>
<td>(70,803)</td>
<td>(334,406)</td>
<td></td>
</tr>
<tr>
<td>Basic net income (loss) per share</td>
<td>$ 0.27</td>
<td>(0.18)</td>
<td>0.09</td>
<td>(3.15)</td>
<td>(0.15)</td>
<td>3.30</td>
<td></td>
</tr>
<tr>
<td>Diluted net income (loss) per share</td>
<td>$ 0.25</td>
<td>(0.16)</td>
<td>0.09</td>
<td>(3.15)</td>
<td>(0.15)</td>
<td>3.30</td>
<td></td>
</tr>
</tbody>
</table>

The Company’s consolidated statements of comprehensive income for the year ended December 31, 2015 include RAVICTI and BUPHENYL net sales as a result of the acquisition of Hyperion in May 2015 of $86.9 million and $13.5 million, respectively. The Company’s consolidated statements of comprehensive income also include net sales of ACTIMMUNE of $107.4 million for the year ended December 31, 2015 and $25.3 million for the year ended December 31, 2014 following the Vidara Merger on September 19, 2014. Hyperion and Vidara have been fully integrated into the Company’s business and as a result of these integration efforts, the Company cannot distinguish between these operations and those of the Company’s legacy business.

The 2014 pro forma information excludes the PENNSAID 2% acquisition as it was impracticable to include because it would require significant estimates of third-party sales amounts. In addition, prior to the Company’s acquisition of PENNSAID 2%, PENNSAID 2% did not have a significant amount of sales in 2014.

**NOTE 5 – INVENTORIES**

Inventories are stated at the lower of cost or market value. Inventories consist of raw materials, work-in-process and finished goods. The Company has entered into manufacturing and supply agreements for the manufacture or purchase of raw materials and production supplies. The Company’s inventories include the direct purchase cost of materials and supplies and manufacturing overhead costs.

The components of inventories as of December 31, 2015 and 2014 consisted of the following (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>As of December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Raw materials</td>
<td>$6,232</td>
</tr>
<tr>
<td>Work-in-process</td>
<td>631</td>
</tr>
<tr>
<td>Finished goods</td>
<td>11,513</td>
</tr>
<tr>
<td>Inventories, net</td>
<td>18,376</td>
</tr>
</tbody>
</table>

Finished goods at December 31, 2014 included $3.2 million of stepped-up ACTIMMUNE inventory which was fully amortized in January 2015.

Finished goods at December 31, 2015 included $0.3 million of stepped-up BUPHENYL inventory. During the year ended December 31, 2015, the Company amortized $8.4 million of RAVICTI and BUPHENYL inventory step-up.
NOTE 6 – PREPAID EXPENSES AND OTHER CURRENT ASSETS

Prepaid expenses and other current assets as of December 31, 2015 and 2014 consisted of the following (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>As of December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Medicine samples inventory</td>
<td>$4,697</td>
</tr>
<tr>
<td>Prepaid co-pay expenses</td>
<td>1,881</td>
</tr>
<tr>
<td>Prepaid software license fees</td>
<td>1,638</td>
</tr>
<tr>
<td>Other prepaid expenses</td>
<td>7,642</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>$15,858</td>
</tr>
</tbody>
</table>

NOTE 7 – PROPERTY AND EQUIPMENT

Property and equipment as of December 31, 2015 and 2014 consisted of the following (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>As of December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Machinery and equipment</td>
<td>$2,946</td>
</tr>
<tr>
<td>Furniture and fixtures</td>
<td>57</td>
</tr>
<tr>
<td>Computer equipment</td>
<td>2,514</td>
</tr>
<tr>
<td>Software</td>
<td>1,360</td>
</tr>
<tr>
<td>Trade show equipment</td>
<td>219</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>1,966</td>
</tr>
<tr>
<td>Less accumulated depreciation</td>
<td>(3,791)</td>
</tr>
<tr>
<td>Construction in process</td>
<td>3,492</td>
</tr>
<tr>
<td>Software implementation in process</td>
<td>5,257</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>$14,020</td>
</tr>
</tbody>
</table>

The Company capitalizes development costs associated with internal use software, including external direct costs of materials and services and payroll costs for employees devoting time to a software project. Costs incurred during the preliminary project stage, as well as costs for maintenance and training, are expensed as incurred.

Software implementation at December 31, 2015 is related to new enterprise resource planning software license being implemented by the Company. The software did not enter service until January 2016 and as such, depreciation had not yet begun as of December 31, 2015.

Depreciation expense for the years ended December 31, 2015, 2014 and 2013 was $5.4 million, $1.7 million and $1.2 million, respectively.

NOTE 8 – GOODWILL AND INTANGIBLE ASSETS

Goodwill

The gross carrying amount of goodwill as of December 31, 2015 was as follows (in thousands):

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at December 31, 2014</td>
<td>$</td>
</tr>
<tr>
<td>Acquired during period</td>
<td>253,811</td>
</tr>
<tr>
<td>Balance at December 31, 2015</td>
<td>$253,811</td>
</tr>
</tbody>
</table>

In May 2015, the Company recognized goodwill with a preliminary value of $259.6 million in connection with the Hyperion acquisition, which represented the excess of the purchase price over the fair value of the net assets acquired. During the year ended December 31, 2015, the Company recorded measurement period adjustments that resulted in a net reduction in goodwill of $5.8 million, resulting in goodwill after the measurement period adjustments of $253.8 million (see Note 4 for details). As of December 31, 2015, there were no accumulated goodwill impairment losses.
**Intangible Assets**

The Company's intangible assets consist of developed technology related to ACTIMMUNE, PENNSAID 2%, RAYOS, VIMOVO, RAVICTI and BUPHENYL in the United States, and LODOTRA and AMMONAPS in Europe, as well as IPR&D and customer relationships for ACTIMMUNE.

On September 19, 2014, in connection with the Vidara Merger, the Company capitalized $560.0 million of developed technology, $66.0 million of IPR&D and $8.1 million of customer relationships related to ACTIMMUNE.

On October 17, 2014, in connection with the Company's acquisition of the U.S. rights to PENNSAID 2%, the Company capitalized $45.0 million for the U.S. rights to developed technology of PENNSAID 2%.

On May 7, 2015, in connection with the acquisition of Hyperion, the Company capitalized $1,021.6 million of developed technology related to RAVICTI and $22.6 million of developed technology related to BUPHENYL.

The Company tests its intangible assets for impairment when events or circumstances may indicate that the carrying value of these assets exceeds their fair value. The Company does not believe there have been any circumstances or events that would indicate that the carrying value of any of its intangible assets was impaired at December 31, 2015 or December 31, 2014.

As of December 31, 2015 and December 31, 2014, amortizable intangible assets consisted of the following (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2015</th>
<th>December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cost Basis</td>
<td>Accumulated Amortization</td>
</tr>
<tr>
<td>Developed technology</td>
<td>$1,792,495</td>
<td>$183,446</td>
</tr>
<tr>
<td>Customer relationships</td>
<td>8,100</td>
<td>(1,039)</td>
</tr>
<tr>
<td>Amortizable intangible assets</td>
<td>$1,800,595</td>
<td>$184,485</td>
</tr>
</tbody>
</table>

Amortization expense for the years ended December 31, 2015, 2014 and 2013 was $132.9 million, $32.3 million and $8.1 million, respectively. As of December 31, 2015, estimated future amortization expense was as follows (in thousands):

- 2016: $166,826
- 2017: $166,826
- 2018: $166,826
- 2019: $153,833
- 2020: $153,815
- Thereafter: $808,184
- Total: $1,616,110

**NOTE 9 – OTHER ASSETS**

Other assets as of December 31, 2015 and December 31, 2014 consisted of the following (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>As of December 31, 2015</th>
<th>As of December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred financing costs</td>
<td>$8,359</td>
<td>$11,491</td>
</tr>
<tr>
<td>Other</td>
<td>222</td>
<td>73</td>
</tr>
<tr>
<td>Other assets</td>
<td>$8,581</td>
<td>$11,564</td>
</tr>
</tbody>
</table>
NOTE 10 – ACCRUED TRADE DISCOUNTS AND REBATES

Accrued trade discounts and rebates as of December 31, 2015 and December 31, 2014 consisted of the following (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>As of December 31,</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
<td>2014</td>
</tr>
<tr>
<td>Accrued wholesaler fees and commercial rebates</td>
<td>$21,112</td>
<td>$30,748</td>
</tr>
<tr>
<td>Accrued co-pay and other patient assistance</td>
<td>114,201</td>
<td>24,930</td>
</tr>
<tr>
<td>Accrued government rebates and chargebacks</td>
<td>48,456</td>
<td>20,437</td>
</tr>
<tr>
<td><strong>Accrued trade discounts and rebates</strong></td>
<td><strong>$183,769</strong></td>
<td><strong>$76,115</strong></td>
</tr>
<tr>
<td>Invoiced wholesaler fees and commercial rebates, co-pay and other patient assistance, and government rebates and chargebacks in accounts payable</td>
<td>—</td>
<td>5,221</td>
</tr>
<tr>
<td><strong>Total customer-related accruals and allowances</strong></td>
<td>$183,769</td>
<td>$81,336</td>
</tr>
</tbody>
</table>

The following table summarizes changes in the Company’s customer-related accruals and allowances from December 31, 2014 to December 31, 2015 (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Wholesaler Fees and Commercial Rebates</th>
<th>Co-Pay and Other Patient Assistance</th>
<th>Government Rebates and Chargebacks</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balance at December 31, 2013</strong></td>
<td>$4,459</td>
<td>$2,257</td>
<td>$1,407</td>
<td><strong>$8,123</strong></td>
</tr>
<tr>
<td><strong>Current provisions relating to sales in the year ended December 31, 2014</strong></td>
<td>103,539</td>
<td>138,552</td>
<td>45,301</td>
<td>287,392</td>
</tr>
<tr>
<td><strong>Adjustments relating to prior year sales</strong></td>
<td>(1,576)</td>
<td>(194)</td>
<td></td>
<td>(1,770)</td>
</tr>
<tr>
<td><strong>Payments relating to sales in in the year ended December 31, 2014</strong></td>
<td>(73,263)</td>
<td>(108,505)</td>
<td>(38,492)</td>
<td>(220,260)</td>
</tr>
<tr>
<td><strong>Payments relating to sales in prior years</strong></td>
<td>(2,779)</td>
<td>(2,063)</td>
<td>(1,307)</td>
<td>(6,149)</td>
</tr>
<tr>
<td>Vidara Merger on September 19, 2014</td>
<td>472</td>
<td></td>
<td>13,528</td>
<td>14,000</td>
</tr>
<tr>
<td><strong>Balance at December 31, 2014</strong></td>
<td>$30,852</td>
<td>$30,047</td>
<td>$20,437</td>
<td><strong>$81,336</strong></td>
</tr>
<tr>
<td><strong>Current provisions relating to sales in the year ended December 31, 2015</strong></td>
<td>67,762</td>
<td>1,020,327</td>
<td>162,157</td>
<td>1,250,246</td>
</tr>
<tr>
<td><strong>Adjustments relating to prior year sales</strong></td>
<td>(1,657)</td>
<td>(121)</td>
<td>(3,842)</td>
<td>(5,620)</td>
</tr>
<tr>
<td><strong>Payments relating to sales in the year ended December 31, 2015</strong></td>
<td>(47,848)</td>
<td>(906,126)</td>
<td>(123,299)</td>
<td>(1,077,273)</td>
</tr>
<tr>
<td><strong>Payments relating to sales in prior years</strong></td>
<td>(28,241)</td>
<td>(29,926)</td>
<td>(16,545)</td>
<td>(74,712)</td>
</tr>
<tr>
<td>Hyperion acquisition on May 7, 2015</td>
<td>244</td>
<td></td>
<td>9,548</td>
<td>9,792</td>
</tr>
<tr>
<td><strong>Balance at December 31, 2015</strong></td>
<td><strong>$21,112</strong></td>
<td><strong>$114,201</strong></td>
<td><strong>48,456</strong></td>
<td><strong>$183,769</strong></td>
</tr>
</tbody>
</table>

NOTE 11 – ACCRUED EXPENSES

Accrued expenses as of December 31, 2015 and 2014 consisted of the following (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>As of December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Payroll-related expenses</td>
<td>$47,205</td>
</tr>
<tr>
<td>Consulting and professional services</td>
<td>17,160</td>
</tr>
<tr>
<td>Accrued interest</td>
<td>10,637</td>
</tr>
<tr>
<td>Accrued other</td>
<td>25,044</td>
</tr>
<tr>
<td>Accrued excise tax</td>
<td>11,243</td>
</tr>
<tr>
<td><strong>Accrued expenses</strong></td>
<td><strong>$100,046</strong></td>
</tr>
</tbody>
</table>

Accrued payroll-related expenses at December 31, 2015 include $8.5 million of severance and related employee costs as a result of the Hyperion acquisition. The Company anticipates that the significant amount of Hyperion acquisition-related cash payments will be completed by the end of the second quarter of 2016.
NOTE 12 – ACCRUED ROYALTIES

Changes in the liability for royalties during the years ended December 31, 2015 and 2014 consisted of the following (in thousands):

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance as of December 31, 2013</td>
<td>$32,992</td>
</tr>
<tr>
<td>Assumed ACTIMMUNE accrued royalty</td>
<td>3,429</td>
</tr>
<tr>
<td>Assumed ACTIMMUNE contingent royalty liabilities</td>
<td>33,600</td>
</tr>
<tr>
<td>Remeasurement of royalty liabilities</td>
<td>10,660</td>
</tr>
<tr>
<td>Royalty payments</td>
<td>(15,489)</td>
</tr>
<tr>
<td>Accretion expense</td>
<td>9,020</td>
</tr>
<tr>
<td><strong>Balance as of December 31, 2014</strong></td>
<td>$74,212</td>
</tr>
<tr>
<td>Assumed RAVICTI and BUPHENYL contingent royalty liabilities</td>
<td>86,800</td>
</tr>
<tr>
<td>Assumed RAVICTI and BUPHENYL accrued royalties</td>
<td>5,790</td>
</tr>
<tr>
<td>Remeasurement of royalty liabilities</td>
<td>21,151</td>
</tr>
<tr>
<td>Royalty payments</td>
<td>(27,611)</td>
</tr>
<tr>
<td>Accretion expense</td>
<td>20,088</td>
</tr>
<tr>
<td><strong>Balance as of December 31, 2015</strong></td>
<td>175,219</td>
</tr>
<tr>
<td>Less: Current portion</td>
<td>51,700</td>
</tr>
<tr>
<td><strong>Accrued royalties, net of current</strong></td>
<td>$123,519</td>
</tr>
</tbody>
</table>

During the year ended December 31, 2015, based on higher sales of ACTIMMUNE and VIMOVO versus the Company’s previous expectations and expectations for future ACTIMMUNE and VIMOVO sales, the Company recorded a total charge of $21.5 million to cost of goods sold ($16.7 million related to VIMOVO and $4.8 million related to ACTIMMUNE). The Company also recorded a release of $0.3 million to cost of goods sold related to RAVICTI to adjust the carrying value of the contingent royalties to reflect updated estimates of future RAVICTI sales.

During the year ended December 31, 2014, the Company recorded a net charge of $10.7 million to cost of goods sold ($9.4 million related to VIMOVO and $1.3 million related to ACTIMMUNE) to increase the amount of the contingent royalty liability.

NOTE 13 – LONG-TERM INVESTMENTS

During the third quarter of 2015, the Company purchased 2,250,000 shares of common stock of Depomed, Inc. (“Depomed”), representing 3.75% of Depomed’s then outstanding common stock. The shares were acquired at a cost of $71.8 million. Unrealized losses of $29.4 million were recorded in accumulated other comprehensive loss relating to this investment during the third quarter of 2015, following an evaluation of the near-term prospects of Depomed. During the fourth quarter of 2015, following the Company’s decision to withdraw its offer to acquire Depomed, the Company sold all of its shares in Depomed, receiving sales proceeds of $42.8 million and the Company recognized a realized loss of $29.0 million in the consolidated statement of comprehensive income (loss).

There were no gains or losses on long-term investments during the years ended December 31, 2014 and 2013.

NOTE 14 – SEGMENT AND OTHER INFORMATION

The Company has determined that it operates in one business segment, which is the identification, development, acquisition and commercialization of differentiated and accessible medicines that address unmet medical needs. The Company’s operating segment is reported in a manner consistent with the internal reporting provided to the chief operating decision maker or, CODM. The Company’s CODM has been identified as its chief executive officer.
The following table presents a summary of total net revenues by medicine (in thousands):

<table>
<thead>
<tr>
<th>Medicine</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>DUEXIS</td>
<td>$190,357</td>
<td>$83,243</td>
<td>$58,972</td>
</tr>
<tr>
<td>VIMOVO</td>
<td>166,672</td>
<td>162,954</td>
<td>966</td>
</tr>
<tr>
<td>PENNSAID 2%</td>
<td>147,010</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>ACTIMMUNE</td>
<td>107,444</td>
<td>25,251</td>
<td>—</td>
</tr>
<tr>
<td>RAVICTI</td>
<td>86,875</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>RAYOS</td>
<td>40,329</td>
<td>19,020</td>
<td>5,841</td>
</tr>
<tr>
<td>BUPHENYL</td>
<td>13,458</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>LODOTRA</td>
<td>4,899</td>
<td>6,487</td>
<td>8,237</td>
</tr>
<tr>
<td><strong>Total net revenues</strong></td>
<td><strong>$757,044</strong></td>
<td><strong>$296,955</strong></td>
<td><strong>$74,016</strong></td>
</tr>
</tbody>
</table>

The following table presents a summary of total net revenues by geography (in thousands):

<table>
<thead>
<tr>
<th>Geography</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>$744,036</td>
<td>$290,396</td>
<td>$65,779</td>
</tr>
<tr>
<td>Rest of world</td>
<td>13,008</td>
<td>6,559</td>
<td>8,237</td>
</tr>
<tr>
<td><strong>Total net revenues</strong></td>
<td><strong>$757,044</strong></td>
<td><strong>$296,955</strong></td>
<td><strong>$74,016</strong></td>
</tr>
</tbody>
</table>

The following table presents total tangible long-lived assets by location (in thousands):

<table>
<thead>
<tr>
<th>Location</th>
<th>2015</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>$11,734</td>
<td>$6,025</td>
</tr>
<tr>
<td>Ireland</td>
<td>1,985</td>
<td>666</td>
</tr>
<tr>
<td>Switzerland</td>
<td>250</td>
<td>513</td>
</tr>
<tr>
<td>Other</td>
<td>51</td>
<td>37</td>
</tr>
<tr>
<td><strong>Total long-lived assets</strong></td>
<td><strong>$14,020</strong></td>
<td><strong>$7,241</strong></td>
</tr>
</tbody>
</table>

**NOTE 15 – FAIR VALUE MEASUREMENTS**

The following tables and paragraphs set forth the Company’s financial instruments that are measured at fair value on a recurring basis within the fair value hierarchy. Assets and liabilities measured at fair value are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. The Company’s assessment of the significance of a particular input to the fair value measurement in its entirety requires management to make judgments and consider factors specific to the asset or liability. The following describes three levels of inputs that may be used to measure fair value:

- **Level 1**—Observable inputs such as quoted prices in active markets for identical assets or liabilities.
- **Level 2**—Observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- **Level 3**—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The Company utilizes the market approach to measure fair value for its money market funds. The market approach uses prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities.
As of December 31, 2015, the Company’s restricted cash included bank time deposits which were measured at fair value using Level 2 inputs and their carrying values were approximately equal to their fair values. Level 2 inputs, obtained from various third-party data providers, represent quoted prices for similar assets in active markets, or these inputs were derived from observable market data, or if not directly observable, were derived from or corroborated by other observable market data. There were no transfers between the different levels of the fair value hierarchy in 2015 or in 2014.

**Assets and liabilities measured at fair value on a recurring basis**

The following table sets forth the Company’s financial assets and liabilities at fair value on a recurring basis as of December 31, 2015 and December 31, 2014 (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2015</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Level 1</td>
<td>Level 2</td>
<td>Level 3</td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>Bank time deposits</td>
<td>$ —</td>
<td>$ 1,000</td>
<td>$ —</td>
<td>$ 1,000</td>
<td></td>
</tr>
<tr>
<td>Money market funds</td>
<td>280,053</td>
<td>—</td>
<td>—</td>
<td>280,053</td>
<td></td>
</tr>
<tr>
<td>Total assets at fair value</td>
<td>$ 280,053</td>
<td>$ 1,000</td>
<td>—</td>
<td>$ 281,053</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2014</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Level 1</td>
<td>Level 2</td>
<td>Level 3</td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>Money market funds</td>
<td>$ 111,581</td>
<td>—</td>
<td>—</td>
<td>$ 111,581</td>
<td></td>
</tr>
<tr>
<td>Total assets at fair value</td>
<td>$ 111,581</td>
<td>—</td>
<td>—</td>
<td>$ 111,581</td>
<td></td>
</tr>
</tbody>
</table>

In accordance with the pronouncement guidance in ASC Topic 815 “Derivatives and Hedging”, the conversion option included within the Convertible Senior Notes was deemed to include an embedded derivative, which required the Company to bifurcate and separately account for the embedded derivative as a separate liability on its consolidated balance sheets. The estimated fair value was derived utilizing the binomial lattice approach for the valuation of convertible instruments. Assumptions used in the calculation included, among others, determining the appropriate credit spread using benchmarking analysis and solving for the implied credit spread, calculating the fair value of the stock component using a discounted risk free rate and borrowing cost and calculating the fair value of the note component using a discounted credit adjusted discount rate. Based on the assumptions used to determine the fair value of the derivative liability associated with the Convertible Senior Notes, the Company concluded that these inputs were Level 3 inputs.

The following table presents the assumptions used by the Company to determine the fair value of the conversion option embedded in the Convertible Senior Notes as of June 27, 2014, the date the HPI stockholders approved the issuance of in excess of 13,164,951 shares of HPI’s common stock upon conversion of the Convertible Senior Notes:

<table>
<thead>
<tr>
<th>June 27, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stock price</td>
</tr>
<tr>
<td>Risk free rate</td>
</tr>
<tr>
<td>Borrowing cost</td>
</tr>
<tr>
<td>Credit spread (in basis points)</td>
</tr>
<tr>
<td>Volatility</td>
</tr>
<tr>
<td>Initial conversion price</td>
</tr>
<tr>
<td>Remaining time to maturity (in years)</td>
</tr>
</tbody>
</table>

On June 27, 2014, the Company conducted a fair value assessment to reflect the market value adjustments for the embedded derivative due to the increase in HPI’s common stock value and for changes in the fair value assumptions, and the Company recorded a $215.0 million loss in its results of operations for the three and six months ended June 30, 2014, respectively. The entire fair value of the derivative liability of $324.4 million was reclassified to additional paid-in capital on June 27, 2014.
NOTE 16 – COMMITMENTS AND CONTINGENCIES

Lease Obligations

The Company has the following lease agreements in place for real properties:

<table>
<thead>
<tr>
<th>Location</th>
<th>Approximate Square Footage</th>
<th>Lease Expiry Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dublin, Ireland</td>
<td>18,900</td>
<td>November 4, 2029</td>
</tr>
<tr>
<td>Lake Forest, Illinois (1)</td>
<td>160,000</td>
<td>March 31, 2024</td>
</tr>
<tr>
<td>Deerfield, Illinois (2)</td>
<td>53,500</td>
<td>June 30, 2018</td>
</tr>
<tr>
<td>Brisbane, California (3)</td>
<td>20,100</td>
<td>November 30, 2019</td>
</tr>
<tr>
<td>Mannheim, Germany</td>
<td>9,500</td>
<td>December 31, 2016</td>
</tr>
<tr>
<td>Chicago, Illinois</td>
<td>6,500</td>
<td>December 31, 2018</td>
</tr>
<tr>
<td>Roswell, Georgia</td>
<td>6,200</td>
<td>October 31, 2018</td>
</tr>
<tr>
<td>Reinach, Switzerland</td>
<td>3,500</td>
<td>May 31, 2020</td>
</tr>
</tbody>
</table>

(1) In connection with the Lake Forest lease, the Company has provided a $2.0 million letter of credit to the landlord, through a commercial bank. The Company has two separate lease agreements in place for this property. The first lease, consisting of approximately 15,000 square feet, was assumed by the Company as a result of its acquisition of Crealta in January 2016 and will expire on October 31, 2017.


(3) The Company vacated the premises in Brisbane, California in December 2015 and entered into a sublease agreement for the property with a third party.

The Company recognizes rent expense on a monthly basis over the lease term based on a straight-line method. Rent expense was $2.5 million, $0.6 million and $0.5 million for the years ended December 31, 2015, 2014 and 2013, respectively.

As of December 31, 2015, minimum future cash payments due under lease obligations were as follows (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021 &amp; Thereafter</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating lease obligations</td>
<td>4,047</td>
<td>5,343</td>
<td>4,961</td>
<td>4,119</td>
<td>3,415</td>
<td>18,378</td>
<td>40,263</td>
</tr>
</tbody>
</table>

Annual Purchase Commitments

In August 2007, the Company entered into a manufacturing and supply agreement with Jagotec AG (“Jagotec”). Under the agreement, Jagotec or its affiliates are required to manufacture and supply RAYOS/LODOTRA exclusively to the Company in bulk. The Company committed to a minimum purchase of RAYOS/LODOTRA tablets from Jagotec for five years from the date of first launch of RAYOS/LODOTRA in a major country, as defined in the agreement, which was April 2009. Thereafter, the agreement automatically renews on a yearly basis until either party provides two years advance written notice of termination. In April 2015 the agreement automatically renewed, therefore the earliest the agreement can expire according to this advance notice procedure is April 15, 2018, and the minimum purchase commitment is in force until April 2018. At December 31, 2015, the minimum purchase commitment based on tablet pricing in effect under the agreement was $3.0 million through April 2018.

In May 2011, the Company entered into a manufacturing and supply agreement with Sanofi-Aventis U.S. LLC (“Sanofi-Aventis U.S.”), and amended the agreement effective as of September 25, 2013. Pursuant to the agreement, as amended, Sanofi-Aventis U.S. is obligated to manufacture and supply DUEXIS to the Company in final, packaged form, and the Company is obligated to purchase DUEXIS exclusively from Sanofi-Aventis U.S. for the commercial requirements of DUEXIS in North America, South America and certain countries and territories in Europe, including the European Union (“EU”) member states and Scandinavia. At December 31, 2015, the Company had a binding purchase commitment to Sanofi-Aventis U.S. for DUEXIS of $8.3 million, which is to be delivered through March 2016.

F-31
In July 2013, Vidara and Boehringer Ingelheim entered into an exclusive supply agreement, which the Company assumed as a result of the Vidara Merger. Under the agreement, Boehringer Ingelheim is required to manufacture and supply interferon gamma-1 b (ACTIMMUNE) to the Company. The Company is required to purchase minimum quantities of finished medicine per annum through July 2020. As of December 31, 2015, the minimum binding purchase commitment to Boehringer Ingelheim was $19.2 million (converted using a Dollar-to-Euro exchange rate of 1.0861) through July 2020.

In November 2013, the Company entered into a long-term master manufacturing services and product agreement with Patheon Pharmaceuticals Inc. (“Patheon”) pursuant to which Patheon is obligated to manufacture VIMOVO for the Company through December 31, 2019. The Company agreed to purchase a specified percentage of VIMOVO requirements for the United States from Patheon. The Company must pay an agreed price for final, packaged VIMOVO supplied by Patheon as set forth in the Patheon manufacturing agreement, subject to adjustments, including certain unilateral adjustments by Patheon, such as annual adjustments for inflation and adjustments to account for certain increases in the cost of components of VIMOVO other than active materials. The Company issues 12-month forecasts of the volume of VIMOVO that the Company expects to order. The first six months of the forecast are considered binding firm orders. At December 31, 2015, the Company had a binding purchase commitment with Patheon for VIMOVO of $2.9 million through April 2016.

In October 2014, in connection with the acquisition of the U.S. rights to PENNSAID 2% from Nuvo, the Company and Nuvo entered into an exclusive supply agreement. Under the supply agreement, Nuvo is obligated to manufacture and supply PENNSAID 2% to the Company. The initial term of the supply agreement is through December 31, 2022, but the agreement may be terminated earlier by either party for any uncured material breach by the other party of its obligations under the supply agreement or upon the bankruptcy or similar proceeding of the other party. At least 90 days prior to the first day of each calendar month during the term of the supply agreement, the Company submits a binding written purchase order to Nuvo for PENNSAID 2% in minimum batch quantities. At December 31, 2015, the Company had a binding purchase commitment with Nuvo for PENNSAID 2% of $5.6 million through April 2016.

Purchase orders relating to the manufacture of RAVICTI and BUPHENYL of $1.8 million were outstanding at December 31, 2015. In addition to these purchase orders, the Company’s manufacturing agreement with Lyne Laboratories Inc. in relation to RAVICTI provides for a minimum purchase amount of $0.5 million for 2016.

Royalty Agreements

RAYOS/LODOTRA

In connection with an August 2004 development and license agreement with SkyePharma AG (“SkyePharma”) and Jagotec, a wholly-owned subsidiary of SkyePharma, regarding certain proprietary technology and know-how owned by SkyePharma, Jagotec is entitled to receive a single digit percentage royalty on net sales of RAYOS/LODOTRA and on any sub-licensing income, which includes any payments not calculated based on the net sales of RAYOS/LODOTRA, such as license fees, lump sum and milestone payments.

VIMOVO

The Company entered into a license agreement with Pozen Inc. (“Pozen”) who subsequently entered into a business combination with Tribute Pharmaceuticals Canada Inc. to become known as Aralez Pharmaceuticals Inc. Under this agreement, the Company is required to pay Pozen a flat 10% royalty on net sales of VIMOVO and other medicines sold by the Company, its affiliates or sublicensees during the royalty term that contain gastroprotective agents in a single fixed combination oral solid dosage form with NSAIDs, subject to minimum annual royalty obligations of $7.5 million. These minimum royalty obligations will continue for each year during which one of Pozen’s patents covers such medicines in the United States and there are no competing medicines in the United States. The royalty rate may be reduced to a mid-single digit royalty rate as a result of loss of market share to competing medicines. The Company’s obligation to pay royalties to Pozen will expire upon the later of (a) expiration of the last-to-expire of certain patents covering such medicines in the United States, and (b) ten years after the first commercial sale of such medicines in the United States.
ACTIMMUNE

Under a license agreement, as amended, with Genentech, who was the original developer of ACTIMMUNE, the Company is or was obligated to pay royalties to Genentech on its net sales of ACTIMMUNE as follows:

- Through November 25, 2014, a royalty of 45% of the first $3.7 million in net sales achieved in a calendar year, and 10% on all additional net sales in that year;
- For the period from November 26, 2014 through May 5, 2018, a royalty in the 20% to 30% range for the first tier in net sales and in the 1% to 9% range for the second tier; and
- From May 6, 2018 and for so long as the Company continues to commercially sell ACTIMMUNE, an annual royalty in the low single digits as a percentage of annual net sales.

Under the terms of an assignment and option agreement with Connetics, the Company is obligated to pay royalties to Connetics on the Company’s net sales of ACTIMMUNE as follows:

- 0.25% of net sales of ACTIMMUNE, rising to 0.5% once cumulative net sales of ACTIMMUNE in the United States surpass $1.0 billion; and
- in the event the Company develops and receives regulatory approval for ACTIMMUNE in the indication of scleroderma, the Company will be obligated to pay a royalty of 4% on all net sales of ACTIMMUNE recorded for use in that indication.

RAVICTI

Under the terms of an assignment and option agreement with Connetics, the Company is obligated to pay royalties to Connetics on the Company’s net sales of ACTIMMUNE as follows:

- 0.25% of net sales of ACTIMMUNE, rising to 0.5% once cumulative net sales of ACTIMMUNE in the United States surpass $1.0 billion; and
- in the event the Company develops and receives regulatory approval for ACTIMMUNE in the indication of scleroderma, the Company will be obligated to pay a royalty of 4% on all net sales of ACTIMMUNE recorded for use in that indication.

RAVICTI

Under the terms of an asset purchase agreement with Ucyclyd, the Company is obligated to pay to Ucyclyd tiered mid to high single-digit royalties on its global net sales of RAVICTI. Under the terms of a license agreement with Saul W. Brusilow, M.D. and Brusilow, the Company is obligated to pay low single-digit royalties to Brusilow on net sales of RAVICTI that are covered by a valid claim of a licensed patent.

BUPHENYL

Under the terms of an amended and restated collaboration agreement with Ucyclyd, the Company is obligated to pay to Ucyclyd tiered mid to high single-digit royalties on its net sales in the United States of BUPHENYL to urea cycle disorder patients outside of the FDA-approved labeled age range for RAVICTI.

KRYSTEXXA

Under the terms of a license agreement with Duke University (“Duke”) and Mountain View Pharmaceuticals (“MVP”), the Company is obligated to pay Duke a mid-single digit royalty on its global net sales of KRYSTEXXA and a low-double digit royalty on any global sublicense revenue. The Company is also obligated to pay MVP a mid-single digit royalty on its net sales of KRYSTEXXA outside of the United States and a low-double digit to royalty on any sublicense revenue outside of the United States.

The royalty obligations for VIMOVO, ACTIMMUNE, RAVICTI and BUPHENYL are included in accrued royalties on the Company’s consolidated balance sheets.

Total royalty-related expense (including royalty accretion expense and royalty liability remeasurement expense) recognized in cost of goods sold for the year ended December 31, 2015 and 2014 was $45.5 million and $21.4 million, respectively.

Contingencies

The Company is subject to claims and assessments from time to time in the ordinary course of business. The Company’s management does not believe that any such matters, individually or in the aggregate, will have a material adverse effect on the Company’s business, financial condition, results of operations or cash flows. In addition, the Company from time to time has billing disputes with vendors in which amounts invoiced are not in accordance with the terms of their contracts.
On November 9, 2015, Express Scripts, Inc. ("Express Scripts") filed suit against the Company in Delaware Superior Court, Newcastle County, asserting claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and declaratory relief arising from the parties’ 2012 Preferred Savings Grid Rebate Program Agreement. In its complaint, Express Scripts seeks damages of $139.9 million for alleged unpaid rebates and administrative fees as of December 1, 2015, additional potential rebates and administrative fees through the end of 2015, late fees, interest, and attorneys’ fees and costs. On January 11, 2016, the Company answered the complaint, denying Express Scripts’ claims and denying that it owes Express Scripts any damages or other relief. The Company also filed a counter-claim against Express Scripts for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief arising from Express Scripts’ breach of the rebate agreement. Consistent with FAS 5, Accounting for Contingencies, the Company did not establish a reserve in relation to the above suit as the Company currently believes that a loss is not probable nor reasonably estimable.

In November 2015, the Company received a subpoena from the U.S. Attorney’s Office for the Southern District of New York requesting documents and information related to its patient assistance programs and other aspects of its marketing and commercialization activities. The Company is unable to predict how long this investigation will continue or its outcome, but it anticipates that it may incur significant costs in connection with the investigation, regardless of the outcome. The Company may also become subject to similar investigations by other governmental agencies. The investigation by the U.S. Attorney’s Office and any additional investigations of the Company’s patient assistance programs may result in damages, fines, penalties or other administrative sanctions against the Company.

Indemnification

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnifications. The Company’s exposure under these agreements is unknown because it involves claims that may be made against the Company in the future, but have not yet been made. To date, the Company has not paid any claims or been required to defend any action related to its indemnification obligations. However, the Company may record charges in the future as a result of these indemnification obligations.

In accordance with its memorandum and articles of association, the Company has indemnification obligations to its officers and directors for certain events or occurrences, subject to certain limits, while they are serving at the Company’s request in such capacity. Additionally, the Company has entered, and intends to continue to enter, into separate indemnification agreements with its directors and executive officers. These agreements, among other things, require the Company to indemnify its directors and executive officers for certain expenses, including attorneys’ fees, judgments, fines and settlement amounts incurred by a director or executive officer in any action or proceeding arising out of their services as one of the Company’s directors or executive officers, or any of the Company’s subsidiaries or any other company or enterprise to which the person provides services at the Company’s request. There have been no claims to date and the Company has a director and officer insurance policy that enables it to recover a portion of any amounts paid for future potential claims. Certain of the Company’s officers and directors have also entered into separate indemnification agreements with HPI prior to the Vidara Merger.

NOTE 17 – LEGAL PROCEEDINGS

On July 15, 2013, the Company received a Paragraph IV Patent Certification from Watson Laboratories, Inc.—Florida, known as Actavis Laboratories FL, Inc. ("Actavis FL"), advising that Actavis FL had filed an Abbreviated New Drug Application ("ANDA") with the FDA for a generic version of RAYOS, containing up to 5 mg of prednisone. On August 26, 2013, the Company, together with Jagotec, filed suit in the United States District Court for the District of New Jersey against Actavis FL, Actavis Pharma, Inc., Andrx Corp., and Actavis, Inc. seeking an injunction to prevent the approval of the ANDA.

On October 1, 2015, the Company’s subsidiary Horizon Pharma Switzerland GmbH, as well as Jagotec, entered into a License and Settlement Agreement (the “Actavis Settlement Agreement”) with Actavis FL relating to the Company’s and Jagotec’s on-going patent infringement litigation. In accordance with legal requirements, the Company, Jagotec and Actavis FL have agreed to submit the Actavis Settlement Agreement to the U.S. Federal Trade Commission and the U.S. Department of Justice for review. The parties have submitted the Actavis Settlement Agreement to the U.S. Federal Trade Commission and the U.S. Department of Justice for review and no issues were raised by either. The parties agreed to file stipulations of dismissal with the court regarding the litigation and the court entered the stipulation and closed the case on December 4, 2015. The Actavis Settlement Agreement provides for a full settlement and release by each party of all claims that relate to the litigation or under the patents with respect to Actavis FL’s generic version of RAYOS tablets.
Under the Actavis Settlement Agreement, the Company and Jagotec granted Actavis FL a non-exclusive license to manufacture and commercialize Actavis FL’s generic version of RAYOS tablets in the United States after the generic entry date (as defined below) and to take steps necessary to develop inventory of, and prepare to commercialize, Actavis FL’s generic version of RAYOS tablets during certain limited periods prior to the generic entry date. The Company and Jagotec also agreed that during the 180 days after the Generic Entry Date, the license granted to Actavis FL would be exclusive with respect to any third-party generic version of RAYOS tablets.

Under the Actavis Settlement Agreement, the generic entry date is December 23, 2022; however, Actavis FL may be able to enter the market earlier under certain circumstances. Such events relate to the resolution of any other third-party RAYOS patent litigation, the entry of other generic versions of RAYOS tablets or certain substantial reductions in RAYOS prescriptions over specified periods of time.

The Company and Jagotec also agreed not to sue or assert any claim against Actavis FL for infringement of any patent or patent application owned or controlled by the Company or Jagotec during the term of the Actavis Settlement Agreement based on Actavis FL’s generic version of RAYOS tablets in the United States. In turn, Actavis FL agreed not to challenge the validity or enforceability of the licensed patents.

If the Company or Jagotec enter into any similar agreements with other parties with respect to generic versions of RAYOS tablets, they agreed to amend the Actavis Settlement Agreement to provide Actavis FL with terms that are no less favorable than those provided to the other parties with respect to the license terms, generic entry date, permitted pre-market activities and notice provisions.

On November 13, 2014, the Company received a Paragraph IV Patent Certification from Actavis FL advising that Actavis FL had filed an ANDA with the FDA for a generic version of PENNSAID 2%. Actavis FL has not advised the Company as to the timing or status of the FDA’s review of its filing. On December 23, 2014, the Company filed suit in the United States District Court for the District of New Jersey against Actavis FL, Actavis, Inc., and Actavis plc (collectively “Actavis”) seeking an injunction to prevent the approval of the ANDA. The lawsuit alleges that Actavis has infringed U.S. Patent Nos. 8,217,078, 8,252,838, 8,546,450, 8,563,613, 8,618,164, and 8,871,809 by filing an ANDA seeking approval from the FDA to market generic versions of PENNSAID 2% prior to the expiration of the patents. The subject patents are listed in the FDA’s Orange Book (“Orange Book”). The commencement of the patent infringement lawsuit stays, or bars, FDA approval of Actavis’ ANDA for 30 months or until an earlier district court decision that the subject patents are not infringed or are invalid. The court has not yet set a trial date for the Actavis action.

On June 30, 2015, the Company filed suit in the United States District Court for the District of New Jersey against Actavis for patent infringement of U.S. Patent No. 9,066,913. On August 11, 2015, the Company filed suit in the United States District Court for the District of New Jersey against Actavis for patent infringement of U.S. Patent No. 9,101,591. On September 17, 2015, the Company filed suit in the United States District Court for the District of New Jersey against Actavis for patent infringement of U.S. Patent No. 9,132,110. All three patents, U.S. Patent Nos. 9,066,913, 9,101,591, and 9,132,110 are listed in the Orange Book and have claims that cover PENNSAID 2%. These three cases have since been consolidated with the case filed against Actavis on December 23, 2014.

On December 2, 2014, the Company received a Paragraph IV Patent Certification against Orange Book listed U.S. Patent Nos. 8,217,078, 8,252,838, 8,546,450, 8,563,613, 8,618,164, and 8,741,956 from Paddock Laboratories, LLC (“Paddock”) advising that Paddock had filed an ANDA with the FDA for a generic version of PENNSAID 2%. On January 9, 2015, the Company received from Paddock another Paragraph IV Patent Certification against newly Orange Book listed U.S. Patent No. 8,871,809. On January 13, 2015 and January 14, 2015, the Company filed suits in the United States District Court for the District of New Jersey and the United States District Court for the District of Delaware, respectively, against Paddock seeking an injunction to prevent the approval of the ANDA. The lawsuits alleged that Paddock has infringed U.S. Patent Nos. 8,217,078, 8,252,838, 8,546,450, 8,563,613, 8,618,164, and 8,871,809 by filing an ANDA seeking approval from the FDA to market generic versions of PENNSAID 2% prior to the expiration of the patents.

On May 6, 2015, the Company entered into a settlement and license agreement (the “Perrigo settlement agreement”) with Perrigo Company plc and its subsidiary Paddock (collectively, “Perrigo”), relating to the Company’s on-going patent infringement litigation. The Perrigo settlement agreement provides for a full settlement and release by both the Company and Perrigo of all claims that were or could have been asserted in the litigation and that arise out of the issues that were the subject of the litigation or Perrigo’s generic version of PENNSAID 2%.

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Under the Perrigo settlement agreement, the Company granted Perrigo a non-exclusive license to manufacture and commercialize Perrigo’s generic version of PENNSAID 2% in the United States after the license effective date (as defined below) and to take steps necessary to develop inventory of, and prepare to commercialize, Perrigo’s generic version of PENNSAID 2% during certain limited periods prior to the license effective date.

Under the Perrigo settlement agreement, the license effective date is January 10, 2029; however, Perrigo may be able to enter the market earlier under certain circumstances. Such events relate to the resolution of any other third-party PENNSAID 2% patent litigation, the entry of other third-party generic versions of PENNSAID 2% or certain substantial reductions in the Company’s PENNSAID 2% shipments over specified periods of time.

Under the Perrigo settlement agreement, the Company also agreed not to sue or assert any claim against Perrigo for infringement of any patent or patent application owned or controlled by the Company during the term of the Perrigo settlement agreement based on the manufacture, use, sale, offer for sale, or importation of Perrigo’s generic version of PENNSAID 2% in the United States.

In certain circumstances following the entry of other third-party generic versions of PENNSAID 2%, the Company may be required to supply Perrigo PENNSAID 2% as its authorized distributor of generic PENNSAID 2%, with the Company receiving specified percentages of any net sales by Perrigo. The Company also agreed that if it enters into any similar agreements with other parties with respect to generic versions of PENNSAID 2%, the Company will amend the Perrigo settlement agreement to provide Perrigo with terms that are no less favorable than those provided to the other parties.

Currently, patent litigation is pending in the United States District Court for the District of New Jersey against four generic companies intending to market VIMOVO before the expiration of patents listed in the Orange Book. These cases are in the United States District Court for the District of New Jersey. They are collectively known as the VIMOVO cases, and involve the following sets of defendants: (i) Dr. Reddy’s Laboratories Inc. and Dr. Reddy’s Laboratories Ltd. (collectively, “Dr. Reddy’s”); (ii) Lupin Limited and Lupin Pharmaceuticals Inc. (collectively, “Lupin”); (iii) Mylan Pharmaceuticals Inc., Mylan Laboratories Limited, and Mylan Inc. (collectively, “Mylan”); and (iv) Watson Laboratories, Inc.—Florida, known as Actavis Laboratories FL, Inc. and Actavis Pharma, Inc. (collectively, “Actavis Pharma”). Patent litigation in the United States District Court for the District of New Jersey against a fifth generic company, Anchen Pharmaceuticals Inc. (“Anchen”), was dismissed on June 9, 2014 after Anchen recertified under Paragraph III. The Company understands that Dr. Reddy’s has entered into a settlement with AstraZeneca with respect to patent rights directed to Nexium for the commercialization of VIMOVO, and that according to the settlement agreement, Dr. Reddy’s is now able to commercialize VIMOVO under AstraZeneca’s Nexium patent rights.

The settlement agreement, however, has no effect on the Pozen VIMOVO patents, which are still the subject of patent litigations. As part of the Company’s acquisition of the U.S. rights to VIMOVO, the Company has taken over and is responsible for the patent litigations that include the Pozen patents licensed to the Company under the amended and restated collaboration and license agreement for the United States with Pozen.


The cases asserting U.S. Patent Nos. 8,557,285 and 6,926,907 have been consolidated for discovery. The court has issued a claims construction order for these cases and has set a pretrial schedule, but has not yet set a trial date.

The cases asserting U.S. Patent Nos. 8,852,636, 8,858,996, and 8,865,190 have been consolidated for discovery. The court has not issued a claims construction order or set a pretrial schedule.

The Company understands the cases arise from Paragraph IV Notice Letters providing notice of the filing of ANDAs with the FDA seeking regulatory approval to market generic versions of VIMOVO before the expiration of the patents-in-suit. The Company understands the Dr. Reddy’s notice letters were dated March 11, 2011, November 20, 2012 and April 20, 2015; the Lupin notice letters were dated June 10, 2011 and March 12, 2014; the Mylan notice letters were dated May 16, 2013 and February 9, 2015; the Actavis Pharma notice letters were dated March 29, 2013 November 5, 2013 and October 9, 2015; and the Anchen notice letter was dated September 16, 2011.

On February 24, 2015, Dr. Reddy’s Laboratories, Inc. filed a Petition for inter partes Review (“IPR”) of U.S. Patent No. 8,557,285, one of the patents in litigation in the above referenced VIMOVO cases. On October 9, 2015, the United States Patent and Trademark Office denied such Petition for IPR.
On May 21, 2015, the Coalition for Affordable Drugs VII LLC (“Coalition for Affordable Drugs”) filed an IPR Petition of U.S. Patent No. 6,926,907, one of the patents in litigation in the above referenced VIMOVO cases. On December 8, 2015, the United States Patent and Trademark Office denied such Petition for IPR.

On June 5, 2015, the Coalition for Affordable Drugs filed another Petition for IPR of U.S. Patent No. 8,858,996, one of the patents in litigation in the above referenced VIMOVO cases. On December 17, 2015, the United States Patent and Trademark Office denied such Petition for IPR.

On August 7, 2015, the Coalition for Affordable Drugs filed another Petition for IPR of U.S. Patent No. 8,852,636, one of the patents in litigation in the above referenced VIMOVO cases. On February 11, 2016, the United States Patent and Trademark office denied such Petition for IPR.

On August 12, 2015, the Coalition for Affordable Drugs filed another Petition for IPR of U.S. Patent No. 8,945,621, one of the patents in litigation in the above referenced VIMOVO cases. The Patent Trial and Appeal Board has not yet issued a decision with regard to whether such IPR will be instituted.

On August 19, 2015, Lupin filed Petitions for IPRs of U.S. Patent Nos. 8,858,996, 8,852,636, and 8,865,190, all patents in litigation in the above referenced VIMOVO cases. The Patent Trial and Appeal Board has not yet issued decisions with regard to whether or not such IPRs will be instituted.

On February 2, 2015, the Company received a Paragraph IV Patent Certification against Orange Book listed U.S. Patent Nos. 8,217,078, 8,252,838, 8,546,450, 8,563,613, 8,618,164, 8,741,956, and 8,871,809 from Taro Pharmaceuticals USA, Inc. and Taro Pharmaceutical Industries, Ltd. (collectively, “Taro”) advising that Taro had filed an ANDA with the FDA for a generic version of PENNSAID 2%. On March 13, 2015, the Company filed suit in the United States District Court for the District of New Jersey against Taro seeking an injunction to prevent the approval of the ANDA.

On September 9, 2015, certain subsidiaries of the Company (the “Horizon Subsidiaries”) entered into a settlement and license agreement (the “Taro Settlement Agreement”), with Taro relating to our on-going patent infringement litigation. In accordance with legal requirements, the Horizon Subsidiaries and Taro have agreed to submit the Taro Settlement Agreement to the U.S. Federal Trade Commission and the U.S. Department of Justice for review. The Horizon Subsidiaries and Taro have also agreed to file stipulations of dismissal with the courts regarding the litigation. The Taro Settlement Agreement provides for a full settlement and release by both us and Taro of all claims that were or could have been asserted in the Litigation and that arise out of the issues that were subject of the litigation or Taro’s generic version of PENNSAID 2%.

Under the Taro Settlement Agreement, the Horizon Subsidiaries granted Taro a non-exclusive license to manufacture and commercialize Taro’s generic version of PENNSAID 2% in the United States after the license effective date and to take steps necessary to develop inventory of, and prepare to commercialize, Taro’s generic version of PENNSAID 2% during certain limited periods prior to the license effective date.

Under the Taro Settlement Agreement, the license effective date is January 10, 2029; however, Taro may be able to enter the market earlier under certain circumstances. Such events related to the resolution of any other third-party PENNSAID 2% patent litigation, the entry of other third-party generic versions of PENNSAID 2% or certain substantial reductions in Horizon’s PENNSAID 2% shipments over specified periods of time.

Under the Taro Settlement Agreement, the Horizon Subsidiaries also agreed not to sue or assert any claim against Taro for infringement of any patent or patent application owned or controlled by the Horizon Subsidiaries during the term of the Taro Settlement Agreement based on the manufacture, use, sale, offer for sale, or importation of Taro’s generic version of PENNSAID 2% in the United States.

The Horizon Subsidiaries also agreed that if they enter into any similar agreements with other parties with respect to generic versions of PENNSAID 2%, they will amend the Taro Settlement Agreement to provide Taro with terms that are no less favorable than those provided to the other parties.
On March 18, 2015, the Company received a Paragraph IV Patent Certification against Orange Book listed U.S. Patent Nos. 8,217,078, 8,252,838, 8,546,450, 8,563,613, 8,618,164, 8,741,956, and 8,871,809 from Lupin Limited advising that Lupin Limited had filed an ANDA with the FDA for a generic version of PENNSAID 2%. Lupin Limited has not advised the Company as to the timing or status of the FDA’s review of its filing. On April 30, 2015, the Company filed suit in the United States District Court for the District of New Jersey against Lupin, seeking an injunction to prevent the approval of the ANDA. The lawsuit alleges that Lupin has infringed U.S. Patent Nos. 8,217,078, 8,252,838, 8,546,450, 8,563,613, 8,618,164, and 8,871,809 by filing an ANDA seeking approval from the FDA to market generic versions of PENNSAID 2% prior to the expiration of the patents. The subject patents are listed in the FDA’s Orange Book. The commencement of the patent infringement lawsuit stays, or bars, FDA approval of Lupin’s ANDA for 30 months or until an earlier district court decision that the subject patents are not infringed or are invalid. The court has not yet set a trial date for the Lupin action.

On June 30, 2015, the Company filed suit in the United States District Court for the District of New Jersey against Lupin for patent infringement of U.S. Patent No. 9,066,913. On August 11, 2015, the Company filed an amended complaint in the United States District Court for the District of New Jersey against Lupin that added U.S. Patent No. 9,101,591 to the litigation with respect to U.S. Patent No. 9,066,913. On September 17, 2015, the Company filed suit in the United States District Court for the District of New Jersey against Lupin for patent infringement of U.S. Patent No. 9,132,110. All three patents, U.S. Patent Nos. 9,066,913, 9,101,591, and 9,132,110 are listed in the Orange Book and have claims that cover PENNSAID 2%.

The Company received from IGI Laboratories, Inc. (“IGI”) a Paragraph IV Patent Certification dated March 24, 2015 against Orange Book listed U.S. Patent Nos. 8,217,078, 8,252,838, 8,546,450, 8,563,613, 8,618,164, 8,741,956, and 8,871,809 advising that IGI had filed an ANDA with the FDA for a generic version of PENNSAID 2%. IGI has not advised the Company as to the timing or status of the FDA’s review of its filing. On May 21, 2015, the Company filed suit in the United States District Court for the District of New Jersey against IGI seeking an injunction to prevent the approval of the ANDA. The lawsuit alleges that IGI has infringed U.S. Patent Nos. 8,217,078, 8,252,838, 8,546,450, 8,563,613, 8,618,164, and 8,871,809 by filing an ANDA seeking approval from the FDA to market generic versions of PENNSAID 2% prior to the expiration of the patents. The subject patents are listed in the FDA’s Orange Book. The commencement of the patent infringement lawsuit stays, or bars, FDA approval of IGI’s ANDA for 30 months or until an earlier district court decision that the subject patents are not infringed or are invalid. The court has not yet set a trial date for the IGI action.

On June 30, 2015, the Company filed suit in the United States District Court for the District of New Jersey against IGI for patent infringement of U.S. Patent No. 9,066,913. On August 11, 2015, the Company filed suit in the United States District Court for the District of New Jersey against IGI for patent infringement of U.S. Patent No. 9,101,591. On September 17, 2015, the Company filed suit in the United States District Court for the District of New Jersey against IGI for patent infringement of U.S. Patent No. 9,132,110. All three patents, U.S. Patent Nos. 9,066,913, 9,101,591, and 9,132,110 are listed in the Orange Book and have claims that cover PENNSAID 2%.

The Company received from Amneal Pharmaceuticals LLC (“Amneal”) a Paragraph IV Patent Certification dated April 2, 2015 against Orange Book listed U.S. Patent Nos. 8,217,078, 8,252,838, 8,546,450, 8,563,613, 8,618,164, 8,741,956, and 8,871,809 advising that Amneal had filed an ANDA with the FDA for a generic version of PENNSAID 2%. Amneal has not advised the Company as to the timing or status of the FDA’s review of its filing. On May 15, 2015, the Company filed suit in the United States District Court for the District of New Jersey against Amneal seeking an injunction to prevent the approval of the ANDA. The lawsuit alleges that Amneal has infringed U.S. Patent Nos. 8,217,078, 8,252,838, 8,546,450, 8,563,613, 8,618,164, and 8,871,809 by filing an ANDA seeking approval from the FDA to market generic versions of PENNSAID 2% prior to the expiration of the patents. The subject patents are listed in the FDA’s Orange Book. The commencement of the patent infringement lawsuit stays, or bars, FDA approval of Amneal’s ANDA for 30 months or until an earlier district court decision that the subject patents are not infringed or are invalid. The court has not yet set a trial date for the Amneal action.

On June 30, 2015, the Company filed suit in the United States District Court for the District of New Jersey against Amneal for patent infringement of U.S. Patent No. 9,066,913. On August 11, 2015, the Company filed suit in the United States District Court for the District of New Jersey against Amneal for patent infringement of U.S. Patent No. 9,101,591. On September 17, 2015, the Company filed suit in the United States District Court for the District of New Jersey against Amneal for patent infringement of U.S. Patent No. 9,132,110. All three patents, U.S. Patent Nos. 9,066,913, 9,101,591, and 9,132,110 are listed in the Orange Book and have claims that cover PENNSAID 2%.
On March 17, 2014, Hyperion received notice from Par Pharmaceutical, Inc. ("Par") that it had filed an ANDA with the FDA seeking approval for a generic version of the Company’s medicine RAVICTI. The ANDA contained a Paragraph IV Patent Certification alleging that two of the patents covering RAVICTI, U.S. Patent No. 8,404,215, titled “Methods of therapeutic monitoring of nitrogen scavenging drugs,” which expires in March 2032 (the “’215 patent”), and U.S. Patent No. 8,642,012, titled “Methods of treatment using ammonia scavenging drugs,” which expires in September 2030 (the “’012 patent”), are invalid and/or will not be infringed by Par’s manufacture, use or sale of the medicine for which the ANDA was submitted. Par did not challenge the validity, enforceability, or infringement of the Company’s primary composition of matter patent for RAVICTI, U.S. Patent No. 5,968,979 titled “Triglycerides and ethyl esters of phenylalkanoic acid and phenylalkanoic acid useful in treatment of various disorders,” which would have expired on February 7, 2015, but as to which Hyperion was granted an interim term of extension until February 7, 2016 to which the United States Patent and Trademark Office has granted a final term extension of 1,267 days. Hyperion filed suit in the United States District Court for the Eastern District of Texas, Marshall Division, against Par on April 23, 2014 seeking an injunction to prevent the approval of Par’s ANDA and/or to prevent Par from selling a generic version of RAVICTI, and the Company has taken over and is responsible for this patent litigation. On September 15, 2015, the Company received notice from Par that it had filed a Paragraph IV Patent Certification alleging that U.S. Patent No. 9,095,559 is invalid and/or will not be infringed by Par’s manufacture, use or sale of the medicine for which the ANDA was submitted.

On April 29, 2015, Par filed Petitions for IPRs of the ’215 patent and the ’012 patent. The Patent Trial and Appeal Board issued decisions instituting such IPRs on November 4, 2015.

The Company received from Lupin Limited a Paragraph IV Patent Certification dated September 4, 2015 against Orange Book listed U.S. Patent Nos. 8,404,215 and 8,642,012 advising that Lupin had filed an ANDA with the FDA for a generic version of RAVICTI. Lupin has not advised the Company as to the timing or status of the FDA’s review of its filing. On October 19, 2015 the Company filed suit in the United States District Court for the District of New Jersey against Lupin seeking an injunction to prevent the approval of the ANDA. The lawsuit alleges that Lupin has infringed U.S. Patent Nos. 8,404,215, 8,642,012, and 9,095,559 by filing an ANDA seeking approval from the FDA to market generic versions of RAVICTI prior to the expiration of the patents. The subject patents are listed in the FDA’s Orange Book. The commencement of the patent infringement lawsuit stays, or bars, FDA approval of Lupin’s ANDA for 30 months or until an earlier district court decision that the subject patents are not infringed or are invalid. The court has not yet set a trial date for the Lupin action.

On August 3, 2015, HPI filed a lawsuit in the Superior Court of the State of California, County of Santa Clara, naming as defendants Depomed and the members of its board of directors (the “Depomed Board”), Vicente J. Anido, Jr., Karen A. Dawes, Louis J. Lavigne, Jr., Samuel R. Saks, James A. Schoeneck, Peter D. Staple and David B. Zenoff. The lawsuit is captioned Horizon Pharma, Inc. v. Vicente J. Anido, Jr., et al., Case Number 1:15-cv-283835. The lawsuit alleges that the adoption by the Depomed Board of the Rights Agreement dated as of July 12, 2015 between Depomed and Continental Stock Transfer & Trust Company, as Rights Agent (the “Depomed Rights Agreement”), and Sections 2(b), 2(c), 2(d), and 5(d) of Depomed’s Amended and Restated Bylaws, effective July 12, 2015 (the “Depomed Bylaws”), violates the General Corporation Law of the California Corporations Code, constitutes ultra vires acts and breaches the fiduciary duties of the members of the Depomed Board. The lawsuit seeks, among other things, an order (i) declaring that the Depomed Rights Agreement and Sections 2(b), 2(c), and 2(d) of the Depomed Bylaws are invalid under California law, (ii) declaring that the members of the Depomed Board breached their fiduciary duties by enacting the Depomed Rights Agreement and Sections 2(b), 2(c), 2(d), and 5(d) of the Depomed Bylaws, (iii) enjoining the members of the Depomed Board from taking any improper action designed to impede, or which has the effect of impeding, the proposed combination with Depomed or the Company’s efforts to acquire control of Depomed and (v) compelling the members of the Depomed Board to redeem the Depomed Rights Agreement or to render it inapplicable to the Company. On November 20, 2015, following a hearing on HPI’s request for a preliminary injunction, the Superior Court denied HPI’s request for a preliminary injunction against the Depomed and the Depomed Board. The Superior Court has scheduled a Case Management Conference for March 25, 2016 for the purpose setting a discovery schedule and trial date.
On August 3, 2015, Depomed filed a Complaint in the Superior Court of the State of California, County of Santa Clara, against the Company. The lawsuit is captioned Depomed, Inc. v. Horizon Pharma plc and Horizon Pharma, Inc., Case Number 1:15-cv-283834. On September 15, 2015, Depomed filed an Amended Complaint, alleging Depomed obtained the rights to a confidentiality agreement that the Company previously executed with Janssen Pharmaceuticals Inc. (“Janssen”) following Depomed’s purchase of the U.S. rights to NUCYNTA® from Janssen. Depomed further alleges the Company breached the confidentiality agreement when developing offers for a merger with Depomed, and made fraudulent and materially misleading statements to Depomed’s shareholders. The lawsuit seeks, among other relief, an injunction (i) to prevent the Company from continuing its allegedly improper and unlawful use of confidential information relating to NUCYNTA and (ii) to prevent the Company from continuing to make and failing to correct its allegedly false and misleading statements in connection with the proposed combination with Depomed. On January 4, 2016, following a hearing on Depomed’s request for a preliminary injunction, the Superior Court entered a preliminary injunction enjoining the Company from making any further attempts to acquire Depomed or take any other action to facilitate taking control of Depomed pending final resolution of the litigation. The Company denies Depomed’s allegations, and will continue defending Depomed’s claims. The Superior Court has scheduled a Case Management Conference for March 25, 2016 for the purpose setting a discovery schedule and trial date.

On November 9, 2015, Express Scripts, Inc. filed suit against the Company in Delaware Superior Court, Newcastle County, asserting claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and declaratory relief arising from the parties’ 2012 Preferred Savings Grid Rebate Program Agreement. In its complaint, Express Scripts seeks damages of $139.9 million for alleged unpaid rebates and administrative fees as of October 1, 2015, additional potential rebates and administrative fees through the end of 2015, late fees, interest, and attorneys’ fees and costs. On January 11, 2016, the Company answered the complaint, denying Express Scripts’ claims and denying that it owes Express Scripts any damages or other relief. The Company also filed a counter-claim against Express Scripts for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief arising from Express Scripts’ breach of the rebate agreement.

**NOTE 18 – DEBT AGREEMENTS**

The Company’s outstanding debt balances as of December 31, 2015 and 2014 consisted of the following (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>As of December 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>2015 Term Loan Facility due 2021</td>
<td>$ 398,000</td>
</tr>
<tr>
<td>2023 Senior Notes</td>
<td>475,000</td>
</tr>
<tr>
<td>Exchangeable Senior Notes due 2022</td>
<td>400,000</td>
</tr>
<tr>
<td>2014 Term Loan Facility</td>
<td>—</td>
</tr>
<tr>
<td>Convertible Senior Notes</td>
<td>—</td>
</tr>
<tr>
<td>Total face value</td>
<td>1,273,000</td>
</tr>
<tr>
<td>Debt discount</td>
<td>(127,885)</td>
</tr>
<tr>
<td>Total long-term debt</td>
<td>1,145,115</td>
</tr>
<tr>
<td>Less: current maturities</td>
<td>4,000</td>
</tr>
<tr>
<td>Long-term debt, net of current maturities</td>
<td>$ 1,141,115</td>
</tr>
</tbody>
</table>

Scheduled maturities with respect to the Company’s long-term debt are as follows (in thousands):

<table>
<thead>
<tr>
<th>Year</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>Thereafter</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ 4,000</td>
<td>4,000</td>
<td>4,000</td>
<td>4,000</td>
<td>4,000</td>
<td>1,253,000</td>
<td>$ 1,273,000</td>
</tr>
</tbody>
</table>

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**2015 Senior Secured Credit Facility**

On May 7, 2015, HPI, the Company and certain of its subsidiaries entered into a credit agreement with Citibank, N.A., as administrative and collateral agent, and the lenders from time to time party thereto providing for (i) the six-year $400.0 million Term Loan Facility; (ii) an uncommitted accordion facility subject to the satisfaction of certain financial and other conditions; and (iii) one or more uncommitted refinancing loan facilities with respect to loans thereunder (the “2015 Senior Secured Credit Facility”). The initial borrower under the 2015 Term Loan Facility is HPI. The credit agreement allows for the Company and certain other subsidiaries of the Company to become borrowers under the accordion or refinancing facilities. Loans under the 2015 Term Loan Facility bear interest, at each borrower’s option, at a rate equal to either the London Inter-Bank Offer Rate (“LIBOR”), plus an applicable margin of 3.5% per year (subject to a 1.0% LIBOR Floor), or the adjusted base rate plus 2.5%. The adjusted base rate is defined as the greater of (a) LIBOR (using one-month interest period) plus 1%, (b) prime rate, (c) fed funds plus ½ of 1%, and (d) 2%. The Company borrowed the full $400.0 million available under the 2015 Term Loan Facility on May 7, 2015 as a LIBOR-based borrowing.

The obligations under the credit agreement and any swap obligations and cash management obligations owing to a lender (or an affiliate of a lender) thereunder are and will be guaranteed by the Company and each of the Company’s existing and subsequently acquired or organized direct and indirect subsidiaries (other than certain immaterial subsidiaries, subsidiaries whose guarantee would result in material adverse tax consequences and subsidiaries whose guarantee is prohibited by applicable law). The obligations under the credit agreement and any such swap and cash management obligations are secured, subject to customary permitted liens and other agreed upon exceptions, by a perfected security interest in (i) all tangible and intangible assets of the borrowers and the guarantors, except for certain customary excluded assets, and (ii) all of the capital stock owned by the borrowers and guarantors thereunder (limited, in the case of the stock of certain non-U.S. subsidiaries of the borrowers, to 65% of the capital stock of such subsidiaries).

The borrowers are permitted to make voluntary prepayments at any time without payment of a premium. HPI is required to make mandatory prepayments of loans under the 2015 Term Loan Facility (without payment of a premium) with (a) net cash proceeds from certain non-ordinary course asset sales (subject to reinvestment rights and other exceptions), (b) casualty proceeds and condemnation awards (subject to reinvestment rights and other exceptions), (c) net cash proceeds from issuances of debt (other than certain permitted debt), and (d) beginning with the fiscal year ending December 31, 2016, 50% of the Company’s excess cash flow (subject to decrease to 25% or 0% if the Company’s first lien leverage ratio is less than 2.25:1 and 1.75:1, respectively). The loans under the 2015 Term Loan Facility will amortize in equal quarterly installments in an aggregate annual amount equal to 1% of the original principal amount thereof, with any remaining balance payable on the final maturity date of the loans under the 2015 Term Loan Facility.

The credit agreement contains customary representations and warranties and customary affirmative and negative covenants, including, among other things, restrictions on indebtedness, liens, investments, mergers, dispositions, prepayment of other indebtedness and dividends and other distributions, and customary events of default.

The Company used the net proceeds from its April 2015 underwritten public offering of 17,652,500 of its ordinary shares at a price to the public of $28.25 per share (the “2015 Offering”), the offering of the 2023 Senior Notes, borrowings under the 2015 Term Loan Facility and existing cash to fund its acquisition of Hyperion, repay the outstanding amounts under the 2014 Term Loan Facility, and pay any prepayment premiums, fees and expenses in connection with the foregoing.

As of December 31, 2015, the fair value of the 2015 Term Loan Facility was approximately $376.1 million, categorized as a Level 2 instrument, as defined in Note 15.

**2023 Senior Notes**

On April 29, 2015, Horizon Financing, a wholly-owned subsidiary of the Company, completed a private placement of $475.0 million aggregate principal amount of the Senior Notes (the “2023 Senior Notes”), to certain investment banks acting as initial purchasers who subsequently resold the 2023 Senior Notes to qualified institutional buyers as defined in Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”), and in offshore transactions to non-U.S. persons in reliance on Regulation S under the Securities Act.

In connection with the closing of the Hyperion acquisition on May 7, 2015, Horizon Financing merged with and into HPI and, as a result, the 2023 Senior Notes became HPI’s general unsecured senior obligations and the Company and all of the Company’s direct and indirect subsidiaries that are guarantees under the 2015 Senior Secured Credit Facility (discussed below) fully and unconditionally guaranteed on a senior unsecured basis HPI’s obligations under the 2023 Senior Notes.
The 2023 Senior Notes accrue interest at an annual rate of 6.625% payable semiannually in arrears on May 1 and November 1 of each year, beginning on November 1, 2015. The 2023 Senior Notes will mature on May 1, 2023, unless earlier exchanged, repurchased or redeemed.

Except as described below, the 2023 Senior Notes may not be redeemed before May 1, 2018. Thereafter, some or all of the 2023 Senior Notes may be redeemed at any time at specified redemption prices, plus accrued and unpaid interest to the redemption date. At any time prior to May 1, 2018, some or all of the 2023 Senior Notes may be redeemed at a price equal to 100% of the aggregate principal amount thereof, plus a make-whole premium and accrued and unpaid interest to the redemption date. Also prior to May 1, 2018, up to 35% of the aggregate principal amount of the 2023 Senior Notes may be redeemed at a redemption price of 106.625% of the aggregate principal amount thereof, plus accrued and unpaid interest, with the net proceeds of certain equity offerings. In addition, the 2023 Senior Notes may be redeemed in whole but not in part at a redemption price equal to 100% of the principal amount plus accrued and unpaid interest and additional amounts, if any, to, but excluding, the redemption date, if on the next date on which any amount would be payable in respect of the 2023 Senior Notes, HPI or any guarantor is or would be required to pay additional amounts as a result of certain tax related events.

If the Company undergoes a change of control, HPI will be required to make an offer to purchase all of the 2023 Senior Notes at a price in cash equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest to, but not including, the repurchase date. If the Company or certain of its subsidiaries engages in certain asset sales, HPI will be required under certain circumstances to make an offer to purchase the 2023 Senior Notes at 100% of the principal amount thereof, plus accrued and unpaid interest to the repurchase date.

The indenture governing the 2023 Senior Notes contains covenants that limit the ability of the Company and its restricted subsidiaries to, among other things, pay dividends or distributions, repurchase equity, prepay junior debt and make certain investments, incur additional debt and issue certain preferred stock, incur liens on assets, engage in certain asset sales, merge, consolidate with or merge or sell all or substantially all of their assets, enter into transactions with affiliates, designate subsidiaries as unrestricted subsidiaries, and allow to exist certain restrictions on the ability of restricted subsidiaries to pay dividends or make other payments to the Company. Certain of the covenants will be suspended during any period in which the notes receive investment grade ratings. The indenture also includes customary events of default.

As of December 31, 2015, the fair value of the 2023 Senior Notes was approximately $420.4 million, categorized as a Level 2 instrument, as defined in Note 15.

Exchangeable Senior Notes

On March 13, 2015, Horizon Investment completed a private placement of $400.0 million aggregate principal amount of 2.50% Exchangeable Senior Notes due 2022 to several investment banks acting as initial purchasers who subsequently resold the Exchangeable Senior Notes to qualified institutional buyers as defined in Rule 144A under the Securities Act. The net proceeds from the offering of the Exchangeable Senior Notes were approximately $387.2 million, after deducting the initial purchasers’ discount and offering expenses payable by Horizon Investment.

The Exchangeable Senior Notes are fully and unconditionally guaranteed, on a senior unsecured basis, by the Company (the “Guarantee”). The Exchangeable Senior Notes and the Guarantee are Horizon Investment’s and the Company’s senior unsecured obligations. The Exchangeable Senior Notes accrue interest at an annual rate of 2.50% payable semiannually in arrears on March 15 and September 15 of each year, beginning on September 15, 2015. The Exchangeable Senior Notes will mature on March 15, 2022, unless earlier exchanged, repurchased or redeemed. The initial exchange rate is 34.8979 ordinary shares of the Company per $1,000 principal amount of the Exchangeable Senior Notes (equivalent to an initial exchange price of approximately $28.66 per ordinary share). The exchange rate will be subject to adjustment in some events but will not be adjusted for any accrued and unpaid interest. In addition, following certain corporate events that occur prior to the maturity date or upon a tax redemption, Horizon Investment will increase the exchange rate for a holder who elects to exchange its Exchangeable Senior Notes in connection with such a corporate event or a tax redemption in certain circumstances.

Other than as described below, the Exchangeable Senior Notes may not be redeemed by the Company.
Issuer Redemptions:

Optional Redemption for Changes in the Tax Laws of a Relevant Taxing Jurisdiction: Horizon Investment may redeem the Exchangeable Senior Notes at its option, prior to March 15, 2022, in whole but not in part, in connection with certain tax-related events.

Provisional Redemption on or After March 20, 2019: On or after March 20, 2019, Horizon Investment may redeem for cash all or a portion of the Exchangeable Senior Notes if the last reported sale price of ordinary shares of the Company has been at least 130% of the exchange price then in effect for at least 20 trading days whether or not consecutive) during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which Horizon Investment provide written notice of redemption. The redemption price will be equal to 100% of the principal amount of the Exchangeable Senior Notes to be redeemed, plus accrued and unpaid interest to, but not including, the redemption date; provided that if the redemption date occurs after a regular record date and on or prior to the corresponding interest payment date, Horizon Investment will pay the full amount of accrued and unpaid interest due on such interest payment date to the record holder of the Exchangeable Senior Notes on the regular record date corresponding to such interest payment date, and the redemption price payable to the holder who presents an Exchangeable Senior Note for redemption will be equal to 100% of the principal amount of such Exchangeable Senior Note.

Holder Exchange Rights:

Holders may exchange all or any portion of their Exchangeable Senior Notes at their option at any time prior to the close of business on the business day immediately preceding December 15, 2021 only upon satisfaction of one or more of the following conditions:

1. Exchange upon Satisfaction of Sale Price Condition – During any calendar quarter commencing after the calendar quarter ending on June 30, 2015 (and only during such calendar quarter), if the last reported sale price of ordinary shares of the Company for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the applicable exchange price on each applicable trading day.

2. Exchange upon Satisfaction of Trading Price Condition – During the five business day period after any ten consecutive trading day period in which the trading price per $1,000 principal amount of Exchangeable Senior Notes for each trading day of such period was less than 98% of the product of the last reported sale price of ordinary shares of the Company and the applicable exchange rate on such trading day.

3. Exchange upon Notice of Redemption – Prior to the close of business on the business day immediately preceding December 15, 2021, if Horizon Investment provides a notice of redemption, at any time prior to the close of business on the second scheduled trading day immediately preceding the redemption date.

As of December 31, 2015, none of the above conditions had been satisfied and no exchange of Exchangeable Senior Notes had been triggered.

On or after December 15, 2021, a holder may exchange all or any portion of its Exchangeable Senior Notes at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date regardless of the foregoing conditions.

Upon exchange, Horizon Investment will settle exchanges of the Exchangeable Senior Notes by paying or causing to be delivered, as the case may be, cash, ordinary shares or a combination of cash and ordinary shares, at its election.

The Company recorded the Exchangeable Senior Notes under the guidance in Topic ASC 470-20, Debt with Conversion and Other Options, and separated them into a liability component and equity component. The carrying amount of the liability component of $268.9 million was determined by measuring the fair value of a similar liability that does not have an associated equity component. The carrying amount of the equity component of $119.1 million represented by the embedded conversion option was determined by deducting the fair value of the liability component of $268.9 million from the initial proceeds of $387.2 million ascribed to the convertible debt instrument as a whole. The initial debt discount of $131.1 million is being charged to interest expense ratably over the life of the Exchangeable Senior Notes.

As of December 31, 2015, the fair value of the Exchangeable Senior Notes was approximately $399.2 million, categorized as a Level 2 instrument, as defined in Note 15.
2014 Senior Secured Credit Facility

On June 17, 2014, the Company entered into a credit agreement with a group of lenders and Citibank, N.A., as administrative and collateral agent to provide the Company with $300.0 million in financing through a five-year senior secured credit facility (the “2014 Senior Secured Credit Facility”). The 2014 Senior Secured Credit Facility provided for (i) the committed five-year $300.0 million 2014 Term Loan Facility with a portion of the proceeds used to effect the Vidara Merger and to pay fees and expenses in connection therewith, and with the balance being used for general corporate purposes; (ii) an uncommitted accordion facility subject to the satisfaction of certain financial and other conditions; and (iii) one or more uncommitted refinancing loan facilities with respect to loans thereunder. The initial borrower under the 2014 Term Loan Facility was U.S. HoldCo (renamed Horizon Pharma Holdings USA, Inc.). The credit agreement allowed for the Company and other subsidiaries of the Company to become borrowers under the accordion facility. Loans under the 2014 Term Loan Facility bore interest, at each borrower’s option, at a rate equal to either the LIBOR, plus an applicable margin of 8.0% per year (subject to a 1.0% LIBOR floor), or the prime lending rate, plus an applicable margin equal to 7.0% per year. The Company borrowed the full $300.0 million available on the 2014 Term Loan Facility on September 19, 2014 as a LIBOR-based borrowing. The Company paid a ticking fee to the applicable lenders of $3.2 million covering the period beginning on the date that was 31 days following the effective date of the 2014 Senior Secured Credit Facility and continued through the closing of the Vidara Merger.

On May 7, 2015, the Company repaid the entire $300 million outstanding amount under the 2014 Senior Secured Credit Facility in connection with the closing of the Hyperion acquisition and recognized a $56.8 million loss on debt extinguishment as a result of the early repayment.

Convertible Senior Notes

On November 22, 2013, the Company issued $150.0 million aggregate principal amount of Convertible Senior Notes and received net proceeds of $143.6 million, after deducting fees and expenses of $6.4 million.

Pursuant to a number of factors outlined in ASC Topic 815, Derivatives and Hedging, the conversion option in the Convertible Senior Notes was deemed to include an embedded derivative that required bifurcation and separate accounting. As such, the Company ascertained the value of the conversion option as if separate from the convertible issuance and appropriately recorded that value as a derivative liability. On November 22, 2013, a derivative liability and a corresponding debt discount in the amount of $40.1 million were recorded. The debt discount is being charged to interest expense ratably over the life of the convertible debt. The effective interest rate computed on the Convertible Senior Notes was 11.22%.

The derivative liability was subject to revaluation on a quarterly basis to reflect the market value change of the embedded conversion option. On June 27, 2014, HPI’s stockholders approved the issuance of shares of HPI’s common stock in excess of 13,164,951 shares upon conversion of the Convertible Senior Notes. As such, on the date of approval, the derivative liability was re-measured to a final fair value and the entire fair value of the derivative liability of $324.4 million was reclassified to additional paid-in capital and the Company recorded a $215.0 million loss in its results of operations from remeasurement of the derivative liability.

In the fourth quarter of 2014, the Company entered into separate, privately-negotiated conversion agreements with certain holders of the Convertible Senior Notes. Under the conversion agreements, the holders agreed to convert an aggregate principal amount of $89.0 million of Convertible Senior Notes held by them and the Company agreed to settle such conversions by issuing 16,594,793 ordinary shares. In addition, pursuant to the conversion agreements, the Company made an aggregate cash payment of $16.7 million to the holders for additional exchange consideration and $1.7 million of accrued and unpaid interest, and recognized a non-cash charge of $11.7 million related to the extinguishment of debt as a result of the note conversions.

In the first and second quarters of 2015, the Company entered into separate, privately-negotiated conversion agreements with certain holders of the Convertible Senior Notes (“2015 Conversions”) which were on substantially the same terms as prior conversion agreements entered into by the Company. Under the 2015 Conversions, the applicable holders agreed to convert an aggregate principal amount of $143.6 million of Convertible Senior Notes held by them and the Company agreed to settle such conversions by issuing an aggregate of 11,368,921 ordinary shares. In addition, pursuant to such conversion agreements, the Company made an aggregate cash payment of $10.0 million to the applicable holders for additional exchange consideration and $0.9 million for accrued and unpaid interest, and recognized a non-cash charge of $10.1 million related to the extinguishment of debt as a result of the note conversions. Following the closings under the 2015 Conversions, there were no Convertible Senior Notes remaining outstanding.

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NOTE 19 – SHAREHOLDERS’ EQUITY

On April 21, 2015, the Company closed the 2015 Offering of 17,652,500 of its ordinary shares at a price to the public of $28.25 per share. The net proceeds to the Company from the 2015 Offering were approximately $475.7 million, after deducting underwriting discounts and other offering expenses payable by the Company.

During the year ended December 31, 2015, the Company issued an aggregate of 3,985,150 ordinary shares upon the cash exercise of warrants and the Company received proceeds of $18.1 million representing the aggregate exercise price for such warrants. In addition, warrants to purchase an aggregate of 1,090,952 ordinary shares of the Company were exercised in cashless exercises, resulting in the issuance of 887,559 ordinary shares.

During the year ended December 31, 2015, the Company issued an aggregate of 846,022 ordinary shares in connection with the exercise of stock options and received $5.2 million in proceeds.

During the year ended December 31, 2015, in connection with the Convertible Senior Notes conversions, the Company issued an aggregate of 11,368,921 ordinary shares.

During the year ended December 31, 2015, the Company issued an aggregate of 591,277 ordinary shares pursuant to employee stock purchase plans and received $4.5 million in proceeds.

During the year ended December 31, 2015, the Company issued an aggregate of 311,612 ordinary shares in net settlement of vested restricted stock units.

NOTE 20 – EQUITY INCENTIVE PLANS

Employee Stock Purchase Plans

2011 Employee Stock Purchase Plan. In July 2010, HPI’s board of directors adopted the 2011 Employee Stock Purchase Plan (the “2011 ESPP”). In June 2011, HPI’s stockholders approved the 2011 ESPP, and it became effective upon the signing of the underwriting agreement related to HPI’s initial public offering in July 2011. Upon consummation of the Vidara Merger, the Company assumed the 2011 ESPP, and upon the effectiveness of the 2014 ESPP, no additional offerings were or will be commenced and no additional purchase rights were or will be granted under the 2011 ESPP, although all purchase rights outstanding under any offering that commenced under the 2011 ESPP prior to the Vidara Merger remain outstanding pursuant to their existing terms.

On December 1, 2015, the final purchase of shares was made under the 2011 ESPP, and no active offerings remain outstanding.

2014 Employee Stock Purchase Plan. On May 17, 2014, HPI’s board of directors adopted the 2014 Employee Stock Purchase Plan (the “2014 ESPP”). On September 18, 2014, at a special meeting of the stockholders of HPI (the “Special Meeting”), HPI’s stockholders approved the 2014 ESPP. Upon consummation of the Vidara Merger, the Company assumed the 2014 ESPP, which serves as the successor to the 2011 ESPP.

As of December 31, 2015, an aggregate of 9,338,059 ordinary shares were authorized and available for future issuance under the 2014 ESPP.

Share-Based Compensation Plans

2005 Stock Plan. In October 2005, HPI adopted the 2005 Stock Plan (the “2005 Plan”). Upon the signing of the underwriting agreement related to HPI’s initial public offering, on July 28, 2011, no further option grants were made under the 2005 Plan. All stock awards granted under the 2005 Plan prior to July 28, 2011 continue to be governed by the terms of the 2005 Plan. Upon consummation of the Vidara Merger, the Company assumed the 2005 Plan.

2011 Equity Incentive Plan. In July 2010, HPI’s board of directors adopted the 2011 Equity Incentive Plan (the “2011 EIP”). In June 2011, HPI’s stockholders approved the 2011 EIP, and it became effective upon the signing of the underwriting agreement related to HPI’s initial public offering on July 28, 2011. Upon consummation of the Vidara Merger, the Company assumed the 2011 EIP, and upon the effectiveness of the Horizon Pharma Public Limited Company 2014 Equity Incentive Plan (the “2014 EIP”), no additional stock awards were or will be made under the 2011 Plan, although all outstanding stock awards granted under the 2011 Plan continue to be governed by the terms of the 2011 Plan.
2014 Equity Incentive Plan and 2014 Non-Employee Equity Plan. On May 17, 2014, HPI’s board of directors adopted the 2014 EIP and the Horizon Pharma Public Limited Company 2014 Non-Employee Equity Plan (the “2014 Non-Employee Equity Plan”). At the Special Meeting, HPI’s stockholders approved the 2014 EIP and 2014 Non-Employee Equity Plan. Upon consummation of the Vidara Merger, the Company assumed the 2014 EIP and 2014 Non-Employee Equity Plan, which serve as successors to the 2011 EIP.

The 2014 EIP provides for the grant of incentive and nonstatutory stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance awards and other stock awards that may be settled in cash, shares or other property to the employees of the Company (or a subsidiary company). The number of ordinary shares of the Company that were initially authorized for issuance under the 2014 EIP was no more than 22,052,130, which number consisted of (i) 15,500,000 ordinary shares of the Company; plus (ii) the number of shares available for issuance pursuant to the grant of future awards under the 2011 EIP; plus (iii) any shares subject to outstanding stock awards granted under the 2011 EIP and the 2005 Plan that expire or terminate for any reason prior to exercise or settlement or are forfeited, redeemed or repurchased because of the failure to meet a contingency or condition required to vest such shares; less (iv) 10,000,000 shares, which is the additional number of shares which were previously approved as an increase to the share reserve of the 2011 EIP. On March 23, 2015, the compensation committee of the Company’s board of directors approved amending the 2014 EIP subject to shareholder approval to, among other things, increase the aggregate number of shares authorized for issuance under the 2014 EIP by 14,000,000 shares. On May 6, 2015, the shareholders of the Company approved the amendment to the 2014 EIP. The Company’s board of directors has authority to suspend or terminate the 2014 EIP at any time.

The 2014 Non-Employee Equity Plan provides for the grant of nonstatutory stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards and other forms of stock awards that may be settled in cash, shares or other property to the non-employee directors and consultants of the Company (or a subsidiary company). The total number of ordinary shares of the Company authorized for issuance under the 2014 Non-Employee Equity Plan is 2,500,000. The Company’s board of directors has authority to suspend or terminate the 2014 Non-Employee Equity Plan at any time.

As of December 31, 2015, an aggregate of 1,490,123 and 2,251,207 ordinary shares were authorized and available for future grants under the 2014 EIP and 2014 Non-Employee Equity Plan, respectively.

Stock Options

The following table summarizes stock option activity during the year ended December 31, 2015:

<table>
<thead>
<tr>
<th>Options</th>
<th>Weighted Average Exercise Price</th>
<th>Maximum Contractual Term (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding as of December 31, 2014</td>
<td>7,027,683</td>
<td>$8.95</td>
</tr>
<tr>
<td>Granted</td>
<td>8,010,638</td>
<td>$23.92</td>
</tr>
<tr>
<td>Exercised</td>
<td>(846,022)</td>
<td>$6.26</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(767,585)</td>
<td>$14.91</td>
</tr>
<tr>
<td>Expired</td>
<td>(38,923)</td>
<td>$13.41</td>
</tr>
<tr>
<td>Outstanding as of December 31, 2015</td>
<td>13,385,791</td>
<td>$17.73</td>
</tr>
<tr>
<td>Exercisable and fully vested as of December 31, 2015</td>
<td>3,640,965</td>
<td>$9.36</td>
</tr>
</tbody>
</table>

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The following table summarizes the Company’s outstanding stock options at December 31, 2015:

<table>
<thead>
<tr>
<th>Exercise Price Ranges</th>
<th>Options Outstanding</th>
<th>Options Exercisable and Fully Vested</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of options</td>
<td>Weighted Average Exercise Price</td>
</tr>
<tr>
<td>$1.36 - $3.97</td>
<td>1,159,310</td>
<td>$2.62</td>
</tr>
<tr>
<td>$4.10 - $7.55</td>
<td>885,422</td>
<td>$5.46</td>
</tr>
<tr>
<td>$7.61 - $11.93</td>
<td>1,625,325</td>
<td>$8.67</td>
</tr>
<tr>
<td>$12.15 - $17.22</td>
<td>2,143,633</td>
<td>$13.78</td>
</tr>
<tr>
<td>$18.57 - $21.30</td>
<td>915,615</td>
<td>$19.27</td>
</tr>
<tr>
<td>$22.14 - $27.43</td>
<td>3,930,450</td>
<td>$22.30</td>
</tr>
<tr>
<td>$28.53 - $35.17</td>
<td>2,726,036</td>
<td>$29.53</td>
</tr>
<tr>
<td></td>
<td>13,385,791</td>
<td>$17.73</td>
</tr>
</tbody>
</table>

During the years ended December 31, 2015, 2014 and 2013, the Company granted stock options to purchase an aggregate of 8,010,638, 3,902,836 and 2,158,950 ordinary shares (or prior to the Vidara Merger, shares of HPI common stock), respectively, with a weighted average grant date fair value of $23.92, $10.71 and $2.23, respectively.

The total intrinsic value of the options exercised during the years ended December 31, 2015, 2014 and 2013 was $15.6 million, $3.9 million, and $0.04 million, respectively. The total fair value of stock options vested during the years ended December 31, 2015, 2014 and 2013 was $11.4 million, $8.2 million, and $0.04 million, respectively.

The fair value of each stock option award is estimated on the date of grant using the Black-Scholes option pricing model. The determination of the fair value of each stock option is affected by the Company’s share price on the date of grant, as well as assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, the Company’s expected share price volatility over the expected life of the awards and actual and projected stock option exercise behavior. The weighted average fair value per share of stock option awards granted during the years ended December 31, 2015, 2014 and 2013, and assumptions used to value stock options, are as follows:

<table>
<thead>
<tr>
<th>For the Years Ended December 31,</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dividend yield</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Risk-free interest rate</td>
<td>1.3% - 2.2%</td>
<td>1.6% - 2.1%</td>
<td>1.8% - 1.9%</td>
</tr>
<tr>
<td>Weighted average volatility</td>
<td>77.1%</td>
<td>83.1%</td>
<td>86.7%</td>
</tr>
<tr>
<td>Expected life (in years)</td>
<td>6.07</td>
<td>6.11</td>
<td>5.98</td>
</tr>
<tr>
<td>Weighted average grant date fair value per share of options granted</td>
<td>$16.07</td>
<td>$8.88</td>
<td>$2.82</td>
</tr>
</tbody>
</table>

**Dividend yields**

The Company has never paid dividends and does not anticipate paying any dividends in the near future. Additionally, the 2015 Senior Secured Credit Facility (described in Note 18 above) contains covenants that restrict the Company from issuing dividends.

**Risk-Free Interest Rate**

The Company determined the risk-free interest rate by using a weighted average assumption equivalent to the expected term based on the U.S. Treasury constant maturity rate as of the date of grant.

**Volatility**

The Company used an average historical share price volatility of comparable companies to be representative of future share price volatility, as the Company did not have sufficient trading history for its ordinary shares.
**Expected Term**

Given the Company’s limited historical exercise behavior, the expected term of options granted was determined using the “simplified” method since the Company does not have sufficient historical exercise data to provide a reasonable basis upon which to estimate the expected term. Under this approach, the expected term is presumed to be the average of the vesting term and the contractual life of the option.

**Forfeitures**

As share-based compensation expense recognized in the consolidated statements of comprehensive income (loss) is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures based on actual forfeiture experience, analysis of employee turnover and other factors. ASC Topic 718, *Compensation-Stock Compensation* (“ASC 718”) requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

**Restricted Stock Units**

The following table summarizes restricted stock unit activity for the year ended December 31, 2015:

<table>
<thead>
<tr>
<th>Number of Units</th>
<th>Weighted Average Grant-Date Fair Value Per Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding as of December 31, 2014</td>
<td>1,593,502</td>
</tr>
<tr>
<td>Granted</td>
<td>2,361,948</td>
</tr>
<tr>
<td>Vested</td>
<td>(468,304)</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(125,400)</td>
</tr>
<tr>
<td>Outstanding as of December 31, 2015</td>
<td>3,361,746</td>
</tr>
</tbody>
</table>

During the years ended December 31, 2015, 2014 and 2013, the Company granted 2,361,948, 1,312,722 and 730,000 restricted stock units to acquire shares of the Company’s ordinary shares (or prior to the Vidara Merger, shares of HPI common stock) to its employees, respectively, with a weighted average grant date fair value of $23.36, $10.55 and $6.87, respectively. The restricted stock units vest over a four-year period on each anniversary of the vesting commencement date. The Company accounts for the restricted stock units as equity-settled awards in accordance with ASC 718. The total fair value of restricted stock units vested during the years ended December 31, 2015, 2014 and 2013 was $9.0 million, $3.4 million and $1.0 million, respectively.

**Performance Stock Unit Awards**

The following table summarizes performance stock unit awards (“PSUs”) activity for the year ended December 31, 2015:

<table>
<thead>
<tr>
<th>Number of Units</th>
<th>Weighted Average Grant-Date Fair Value Per Unit</th>
<th>Average Illiquidity Discount</th>
<th>Recorded Weighted Average Fair Value Per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding as of December 31, 2014</td>
<td>25,000</td>
<td>$ 12.36</td>
<td>N/A</td>
</tr>
<tr>
<td>Granted</td>
<td>13,376,000</td>
<td>$ 14.85</td>
<td>14.6%</td>
</tr>
<tr>
<td>Vested</td>
<td>—</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(372,000)</td>
<td>$ 14.39</td>
<td>7.3%</td>
</tr>
<tr>
<td>Outstanding as of December 31, 2015</td>
<td>13,029,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
In March 2015, the compensation committee of the Company’s board of directors (the “Committee”) approved the grant of 10,604,000 PSUs to certain members of the Company’s executive committee, senior leadership team and other key employees. 7,998,000 of these PSUs were granted subject to shareholder approval of certain amendments of the 2014 EIP, which occurred on May 6, 2015. In May 2015, the Committee granted 1,264,000 PSUs to new and promoted key employees. In the third quarter of 2015, the Committee granted 1,120,000 PSUs to a new member of the Company’s executive committee and key employees. The Committee granted a further 388,000 PSUs in the fourth quarter of 2015 to non-executive committee members.

The PSUs will vest if the Company’s total compounded annual shareholder rate of return (“TSR”) over three performance measurement periods summarized below equals or exceeds a minimum of 15%.

<table>
<thead>
<tr>
<th>Vesting Tranche</th>
<th>Percent of Total PSU Award</th>
<th>Beginning of Performance Measurement Period</th>
<th>End of Performance Measurement Period</th>
<th>Length of Performance Measurement Period (Years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tranche One</td>
<td>33.3%</td>
<td>March 23, 2015</td>
<td>December 22, 2017</td>
<td>2.75</td>
</tr>
<tr>
<td>Tranche Two</td>
<td>33.3%</td>
<td>March 23, 2015</td>
<td>March 22, 2018</td>
<td>3.00</td>
</tr>
<tr>
<td>Tranche Three</td>
<td>33.3%</td>
<td>March 23, 2015</td>
<td>June 22, 2018</td>
<td>3.25</td>
</tr>
</tbody>
</table>

The PSUs will vest in amounts ranging from 25% to 100% based on the achievement of the following TSR over the three performance periods:

<table>
<thead>
<tr>
<th>TSR Achieved</th>
<th>Vesting Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>15%</td>
<td>25%</td>
</tr>
<tr>
<td>30%</td>
<td>50%</td>
</tr>
<tr>
<td>45%</td>
<td>75%</td>
</tr>
<tr>
<td>60%</td>
<td>100%</td>
</tr>
</tbody>
</table>

The TSR will be based on the volume weighted average trading price (“VWAP”) of the Company’s ordinary shares over the 20 trading days ending on the last day of each of the three performance measurement periods versus the VWAP of the Company’s ordinary shares over the 20 trading days ended March 23, 2015 of $21.50. The PSUs are subject to a post vesting holding period of one year for 50% of the PSUs and two years for 50% of the PSUs for executive committee members and one year for 50% of the PSUs for non-executive committee members.

The Company accounts for the PSUs as equity-settled awards in accordance with ASC 718. Because the value of the PSUs is dependent upon the attainment of a level of TSR, it requires the impact of the market condition to be considered when estimating the fair value of the PSUs. As a result, the Monte Carlo model is applied. The average estimated fair value of each outstanding PSU granted under the 2014 EIP is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Number of Units</th>
<th>Weighted Average Fair Value Per Unit</th>
<th>Average Illiquidity Discount</th>
<th>Recorded Weighted Average Fair Value Per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive committee members</td>
<td>9,872,000</td>
<td>$15.12</td>
<td>17.1%</td>
<td>$12.54</td>
</tr>
<tr>
<td>Non-executive committee members</td>
<td>3,132,000</td>
<td>$14.06</td>
<td>7.3%</td>
<td>$13.04</td>
</tr>
<tr>
<td>Total</td>
<td>13,004,000</td>
<td>$14.87</td>
<td>14.8%</td>
<td>$12.66</td>
</tr>
</tbody>
</table>

For the year ended December 31, 2015, the Company recorded $37.7 million of expense related to PSUs.
Cash Long-Term Incentive Program

On November 5, 2014, the Committee approved a performance cash long-term incentive program for the members of the Company’s executive committee and executive leadership team, including its executive officers (the “Cash Bonus Program”). Participants in the Cash Bonus Program will be eligible for a specified cash bonus. The Cash Bonus Program pool funding of approximately $16.5 million was determined based on the Company’s actual TSR over the period from November 5, 2014 to May 6, 2015, and the bonus will be earned and payable only if the TSR for the period from November 5, 2014 to November 4, 2017 is greater than 15%. The portion of the total bonus pool payable to individual participants is based on allocations established by the Company’s compensation committee. Participants must remain employed by the Company through November 4, 2017 unless a participant’s earlier departure from employment is due to death, disability, termination without cause or a change in control transaction. Bonus payments under the Cash Bonus Program, if any, will be made after November 4, 2017.

The Company accounts for the Cash Bonus Program under the liability method in accordance with ASC 718. Because vesting of the bonus pool is dependent upon the attainment of a VWAP of $18.37 or higher over the 20 trading days ending November 4, 2017, the Cash Bonus Program will be considered to be subject to a “market condition” for the purposes of ASC 718. ASC 718 requires the impact of the market condition to be considered when estimating the fair value of the bonus pool. As a result, the Monte Carlo simulation model is applied and the fair value is revalued at each reporting period. As of December 31, 2015 and December 31, 2014, the estimated fair value was $6.0 million and $1.6 million, respectively. For the years ended December 31, 2015 and 2014, the Company recorded $2.2 million and $0.1 million, respectively, of expense related to the Cash Bonus Program. The most significant valuation assumptions used as of December 31, 2015 include:

- Valuation Date Stock Price - $21.67.
- Expected Volatility - The expected volatility assumption of 74.83% is based on the Company’s historical volatility over the 1.84 year period ending December 31, 2015, based upon daily stock price observations.
- Risk Free Rate – 1.00%, which is based upon the yield on U.S. Treasury Separate Trading of Registered Interest and Principal Securities with a remaining term of 1.84 years as of December 31, 2015.

Share-Based Compensation Expense

The following table summarizes share-based compensation expense included in the Company’s consolidated statements of operations for the years ended December 31, 2015, 2014 and 2013 (in thousands):

| Share-based compensation expense:        | For the Years Ended December 31, |
|                                         | 2015    | 2014    | 2013    |
| Research and development                | $6,590  | $1,515  | $1,054  |
| Sales and marketing                     | 23,062  | 4,174   | 1,465   |
| General and administrative              | 56,134  | 7,509   | 2,495   |
| Total share-based compensation expense  | $85,786 | $13,198 | $5,014  |

For the year ended December 31, 2015, no income tax benefit was recognized relating to share-based compensation expense. As of December 31, 2015, the Company estimates that pre-tax unrecognized compensation expense of $298.2 million for all unvested share-based awards, including both stock options and restricted stock units, will be recognized through the third quarter of 2019. The Company expects to satisfy the exercise of stock options and future distribution of shares for restricted stock units and PSUs by issuing new ordinary shares which have been reserved under the 2014 EIP.
### NOTE 21 – INCOME TAXES

The Company’s (loss) income before benefit for income taxes by jurisdiction for the years ended December 31, 2015, 2014 and 2013 is as follows (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>For the Years Ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$ (10,746)</td>
</tr>
<tr>
<td>United States</td>
<td>(198,442)</td>
</tr>
<tr>
<td>Other foreign</td>
<td>76,476</td>
</tr>
<tr>
<td>(Loss) income before benefit for income taxes</td>
<td>$ (132,712)</td>
</tr>
</tbody>
</table>

The components of the (benefit) provision for income taxes were as follows for the years ended December 31, 2015, 2014 and 2013 (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>For the Years Ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Current provision</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td>$ 1,924</td>
</tr>
<tr>
<td>U.S. - Federal and State</td>
<td>6,355</td>
</tr>
<tr>
<td>Other foreign</td>
<td>328</td>
</tr>
<tr>
<td>Total current provision</td>
<td>8,607</td>
</tr>
<tr>
<td>Deferred benefit</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td>$ (5,623)</td>
</tr>
<tr>
<td>U.S. - Federal and State</td>
<td>(175,228)</td>
</tr>
<tr>
<td>Other foreign</td>
<td>—</td>
</tr>
<tr>
<td>Total deferred benefit</td>
<td>(180,851)</td>
</tr>
<tr>
<td>Total (benefit) provision for income taxes</td>
<td>$ (172,244)</td>
</tr>
</tbody>
</table>

Total benefit for income taxes was $172.2 million, $6.1 million and $1.1 million for the years ended December 31, 2015, 2014 and 2013, respectively. The current tax provision of $8.6 million for the year ended December 31, 2015 was primarily attributable to U.S. state income tax liabilities, provisions for uncertain tax positions and the U.S. Federal alternative minimum tax. The deferred tax benefit of $180.9 million for the year ended December 31, 2015 resulted primarily from the release of valuation allowances in the United States in the second quarter of 2015 following the Company’s acquisition of Hyperion. In connection with that acquisition, the Company recorded significant purchase accounting deferred tax liabilities in the United States related to certain acquired intangible assets. These acquisition deferred tax liabilities exceeded the historical deferred tax asset position of the Company, which resulted in the release of the majority of the Company’s U.S. valuation allowances. Other drivers of the tax benefit were the foreign rate differential of pre-tax book income and permanent tax differences as well as the benefit realized on the notional interest deduction.
A reconciliation between the Irish rate for 2015 and 2014 and the U.S. federal statutory income tax rate for 2013, respectively, and the Company’s effective tax is as follows (in thousands):

<table>
<thead>
<tr>
<th>For the Years Ended December 31,</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Irish income tax statutory rate (12.5%)</td>
<td>$16,586</td>
<td>$33,711</td>
<td>$—</td>
</tr>
<tr>
<td>U.S. federal income tax at statutory rate (35.0%)</td>
<td>—</td>
<td>—</td>
<td>52,543</td>
</tr>
<tr>
<td>Bargain purchase gain</td>
<td>—</td>
<td>(5,542)</td>
<td>—</td>
</tr>
<tr>
<td>Transaction costs</td>
<td>3,109</td>
<td>5,402</td>
<td>—</td>
</tr>
<tr>
<td>Excise tax</td>
<td>—</td>
<td>3,911</td>
<td>—</td>
</tr>
<tr>
<td>Share-based compensation</td>
<td>3,776</td>
<td>1,460</td>
<td>1,107</td>
</tr>
<tr>
<td>Foreign tax rate differential</td>
<td>(30,348)</td>
<td>(64,675)</td>
<td>2,019</td>
</tr>
<tr>
<td>Change in valuation allowance</td>
<td>(106,834)</td>
<td>7,360</td>
<td>23,921</td>
</tr>
<tr>
<td>Derivative liability</td>
<td>—</td>
<td>75,248</td>
<td>24,255</td>
</tr>
<tr>
<td>Notional interest deduction</td>
<td>(22,848)</td>
<td>(2,149)</td>
<td>—</td>
</tr>
<tr>
<td>Interest expense on convertible debt inducements</td>
<td>(1,218)</td>
<td>(4,789)</td>
<td>—</td>
</tr>
<tr>
<td>Book loss on debt extinguishment</td>
<td>6,396</td>
<td>10,286</td>
<td>—</td>
</tr>
<tr>
<td>Uncertain tax positions</td>
<td>3,012</td>
<td>(491)</td>
<td>—</td>
</tr>
<tr>
<td>Change in U.S. state effective tax rate</td>
<td>(9,061)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Disallowed interest</td>
<td>2,139</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Disqualified compensation expense</td>
<td>3,949</td>
<td>30</td>
<td>—</td>
</tr>
<tr>
<td>Tax charges on intragroup profit</td>
<td>(9,955)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>U.S. state income taxes</td>
<td>1,002</td>
<td>272</td>
<td>—</td>
</tr>
<tr>
<td>Other, net</td>
<td>1,225</td>
<td>1,304</td>
<td>120</td>
</tr>
<tr>
<td>Benefit for income taxes</td>
<td>(172,244)</td>
<td>(6,084)</td>
<td>(1,121)</td>
</tr>
<tr>
<td>Effective income tax rate</td>
<td>129.8%</td>
<td>2.3%</td>
<td>0.7%</td>
</tr>
</tbody>
</table>

The overall effective tax rate benefit for 2015 of 129.8% was a higher benefit rate than the Irish statutory rate of 12.5% primarily due to the release of valuation allowances in the United States, the benefit realized on the foreign rate differential and the change in the notional interest deduction. During the year ended December 31, 2014, the Company released a portion of its valuation allowances as a result of the Vidara Merger. In connection with the Vidara Merger, the Company recorded additional deferred tax liabilities related to certain acquired assets. Accordingly, the Company recorded a net benefit for income taxes of $3.0 million for the release of its valuation allowances during the third quarter of 2014. In addition, the Company eliminated its deferred tax liability of $3.0 million at its Swiss subsidiary related to the intercompany sale of intellectual property in the fourth quarter of 2014. The increase in the effective tax rate benefit in 2015 compared to 2014 was largely attributable to the 2015 release of valuation allowances in the United States and the benefit realized on losses tax affected at a higher statutory rate than the Irish statutory rate of 12.5%.

The Company accounts for income taxes based upon an asset and liability approach. Deferred tax assets and liabilities represent the future tax consequences of the differences between the financial statement carrying amounts of assets and liabilities versus the tax basis of assets and liabilities. Under this method, deferred tax assets are recognized for future deductible temporary differences and operating loss and tax credit carryforwards. Deferred tax liabilities are recognized for future taxable temporary differences. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. The impact of tax rate changes on deferred tax assets and liabilities is recognized in the period in which the change is enacted.

In November 2015, the FASB issued ASU No. 2015-17, Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes. The new guidance requires that all deferred tax assets and liabilities, along with any related valuation allowance, be classified as non-current on the balance sheet. The guidance is effective for annual periods, and interim periods within those annual periods, beginning after December 15, 2016, with early adoption permitted. The new guidance has been adopted on a retrospective basis by the Company for the year ended December 31, 2015, as described in Note 2.
The tax effects of the temporary differences and net operating losses that give rise to significant portions of deferred tax assets and liabilities, before jurisdictional netting, are as follows (in thousands):

<table>
<thead>
<tr>
<th>Deferred tax assets:</th>
<th>As of December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Net operating loss carryforwards</td>
<td>$ 95,401</td>
</tr>
<tr>
<td>Capital loss carryforwards</td>
<td>14,843</td>
</tr>
<tr>
<td>Alternative minimum tax credit</td>
<td>3,157</td>
</tr>
<tr>
<td>U.S. federal and state credits</td>
<td>25,739</td>
</tr>
<tr>
<td>Accrued compensation</td>
<td>39,951</td>
</tr>
<tr>
<td>Accruals and reserves</td>
<td>5,829</td>
</tr>
<tr>
<td>Contingent royalties</td>
<td>41,544</td>
</tr>
<tr>
<td>Intercompany interest</td>
<td>51,919</td>
</tr>
<tr>
<td>Other</td>
<td>3,813</td>
</tr>
<tr>
<td>Total deferred tax assets</td>
<td>282,196</td>
</tr>
<tr>
<td>Valuation allowance</td>
<td>(31,310)</td>
</tr>
<tr>
<td>Deferred tax assets, net of valuation allowance</td>
<td>250,886</td>
</tr>
<tr>
<td>Deferred tax liabilities</td>
<td></td>
</tr>
<tr>
<td>Acquisition liabilities</td>
<td>$</td>
</tr>
<tr>
<td>Debt discount</td>
<td>26,424</td>
</tr>
<tr>
<td>Interest expense on convertible debt inducements</td>
<td>—</td>
</tr>
<tr>
<td>Intangible assets</td>
<td>335,584</td>
</tr>
<tr>
<td>Other</td>
<td>—</td>
</tr>
<tr>
<td>Total deferred tax liabilities</td>
<td>362,008</td>
</tr>
<tr>
<td>Net deferred income tax liability</td>
<td>$ 111,122</td>
</tr>
</tbody>
</table>

As of December 31, 2015, the Company had net operating loss carryforwards of approximately $200.8 million for U.S. federal, $274.9 million for various states and $96.6 million for non-U.S. losses. These are available to reduce future taxable income, if any, in the jurisdiction in which the net operating losses have been generated. Net operating loss carryforwards for U.S. federal income tax purposes have a 20-year carryforward life and the earliest layers will begin to expire in 2031. U.S. state net operating losses will begin to expire starting in 2016 for the earliest net operating loss layers. Swiss net operating loss carryovers have a 7-year carryforward life and the earliest layers will begin to expire in 2016 absent sufficient taxable income to fully utilize the losses carried forward. Irish net operating losses are carried forward indefinitely and therefore have no expiration. Utilization of the net operating loss carryforwards may be subject to annual limitations as prescribed by U.S. federal and state statutory provisions. The imposition of the annual limitations may result in the expiration of net operating loss carryforwards in acceleration of the carryforward period allowed under statute.

Utilization of certain net operating loss carryforwards in the United States is subject to an annual limitation due to ownership change limitations provided by Sections 382 and 383 of the Internal Revenue Code. The Company continues to carry forward the annual limitation established from the ownership change date of September 19, 2014 resulting from the Vidara Merger. The Company estimates an annual limitation of $89.5 million from the year 2016 until 2031. The Company also continues to be limited under the annual limitation of $19.6 million for 2016, $14.7 million for 2017 and $7.7 million from the year 2018 until 2028 on certain net operating losses generated before an August 2, 2012 ownership change date. The U.S. federal net operating loss carryforward limitation is cumulative such that any use of the carryforwards below the limitation in a particular tax year will result in a corresponding increase in the limitation for the subsequent tax year.

At December 31, 2015, the Company had $32.4 million and $1.6 million of U.S. federal and state income tax credits, respectively, to reduce future tax liabilities. The federal income tax credits consisted primarily of orphan drug credits, research and development credits and alternative minimum tax credits. The U.S. state income tax credits consisted primarily of California research and development credits and the Illinois Economic Development for a Growing Economy ("EDGE") tax credit. Both the U.S. federal orphan drug credits and research and development credits have a 20-year carryforward life. The U.S. federal orphan drug credits will begin to expire in 2029 and the U.S. federal research and development credits will begin to expire in 2027. The U.S. federal alternative minimum tax credit and California research and development credits have indefinite lives and therefore are not subject to expiration. The Illinois EDGE credit has a 5-year carryforward life following the year of generation and will therefore begin to expire in 2019.
For the year ended December 31, 2015, the Company had $19.0 million of excess tax benefits from share-based compensation. Under the with-and-without approach, there is no benefit recognized as a result of share-based compensation deductions and the tax benefit of the $19.0 million of excess tax benefit is not recognized in the balance sheet.

A reconciliation of the beginning and ending amounts of valuation allowances for the years ended December 31, 2015, 2014 and 2013 is as follows (in thousands):

<table>
<thead>
<tr>
<th>Description</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valuation allowances at December 31, 2012</td>
<td>($95,970)</td>
<td>($128,422)</td>
<td>($111,555)</td>
</tr>
<tr>
<td>Increase for 2013 activity</td>
<td></td>
<td>32,452</td>
<td></td>
</tr>
<tr>
<td>Decrease for 2014 activity</td>
<td></td>
<td>17,166</td>
<td></td>
</tr>
<tr>
<td>Release of valuation allowances</td>
<td></td>
<td>6,478</td>
<td></td>
</tr>
<tr>
<td>Additions to valuation allowances due to acquisitions</td>
<td></td>
<td>(6,777)</td>
<td></td>
</tr>
<tr>
<td>Valuation allowances at December 31, 2014</td>
<td>($111,555)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase for 2015 activity</td>
<td></td>
<td>37,569</td>
<td></td>
</tr>
<tr>
<td>Release of valuation allowances</td>
<td></td>
<td></td>
<td>117,814</td>
</tr>
<tr>
<td>Valuation allowances at December 31, 2015</td>
<td>($31,310)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Deferred tax valuation allowances decreased by $80.2 million and $16.9 million during the years ended December 31, 2015 and 2014, respectively, and increased by $32.5 million during the year ended December 31, 2013. For the year ended December 31, 2015, the increase in valuation allowances resulted from capital loss carryforwards generated by the restructuring of the Company’s Swiss subsidiary, and a capital loss recognized on the sale of long-term investments. As capital losses can only be offset by capital gains, and capital losses can only be carried forward for 5 years, the Company believes that the benefit of the capital losses may not be realized in the foreseeable future. The Company released valuation allowances as a result of the Hyperion acquisition in the second quarter of 2015, as discussed above.

No provision has been made for income taxes on undistributed earnings of subsidiaries because it is the Company’s intention to indefinitely reinvest undistributed earnings of its subsidiaries. In the event of the distribution of those earnings in the form of dividends, a sale of the subsidiaries, or certain other transactions, the Company may be liable for income taxes. The unremitted earnings of the Company as of December 31, 2015 were $279.6 million, and the Company estimates tax on unremitted earnings to be $48.0 million.

The Company is required to recognize the financial statement effects of a tax position when it is more likely than not, based on the technical merits, that the position will be sustained upon examination. The Company accounts for the uncertainty in income taxes by utilizing a comprehensive model for the recognition, measurement, presentation and disclosure in financial statements of any uncertain tax positions that have been taken, or are expected to be taken, on an income tax return. The changes in the Company's uncertain income tax positions for the years ended December 31, 2015, 2014 and 2013, excluding interest and penalties, consisted of the following (in thousands):

<table>
<thead>
<tr>
<th>For the Years Ended December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>Beginning balance – uncertain tax positions</td>
</tr>
<tr>
<td>Tax positions in the year:</td>
</tr>
<tr>
<td>Additions</td>
</tr>
<tr>
<td>Acquired uncertain tax positions</td>
</tr>
<tr>
<td>Tax positions related to prior years:</td>
</tr>
<tr>
<td>Reductions</td>
</tr>
<tr>
<td>Ending balance – uncertain tax positions</td>
</tr>
</tbody>
</table>

For the year ended December 31, 2015, the acquired uncertain tax positions were a result of the Hyperion acquisition. The additions to uncertain tax positions primarily resulted from the uncertainty around the utilization of Irish net operating losses. In the Company’s consolidated balance sheet, uncertain tax positions of $5.1 million were included in other long-term liabilities and an additional $5.1 million was offset against deferred tax assets, net, in accordance with ASC 740-10-25-16.
Penalties of $0.1 million and interest of $0.3 million are included in the balance of the uncertain tax positions at December 31, 2015, and there were no penalties or interest included in the balance of uncertain tax positions at December 31, 2014. The Company classifies interest and penalties with respect to income tax liabilities as a component of income tax expense. The Company assessed that its liability for uncertain tax positions will not significantly change within the next twelve months. If these uncertain tax positions are released, the impact on the Company’s tax provision would be a benefit of $10.2 million, including interest and penalties.

The Company files income tax returns in Ireland, in the United States for federal and various states, as well as in certain other non-U.S. jurisdictions. At December 31, 2015, all open tax years in U.S. federal and certain state jurisdictions date back to 2005 due to the taxing authorities’ ability to adjust operating loss carryforwards. In Ireland the statute of limitations expires 5 years from the end of the tax year or 4 years from the time a tax return is filed, whichever is later. Therefore the earliest open year subject to examination is 2011 with the lapse of statute occurring in 2016. No changes in settled tax years have occurred to date. The Company is not currently under any income tax examinations.

NOTE 22 – EMPLOYEE BENEFIT PLANS

The Company sponsors a defined contribution 401(k) retirement savings plan covering all of its U.S. employees, whereby an eligible employee may elect to contribute a portion of his or her salary on a pre-tax basis, subject to applicable federal limitations. The Company is not required to make any discretionary matching of employee contributions. Beginning in 2014, the Company made a matching contribution generally equal to 50% of each employee’s elective contribution to the plan of up to six percent of the employee’s eligible pay with a 20% graded vesting over five years. For the years ended December 31, 2015 and 2014, the Company recorded defined contribution expense of $2.1 million and $0.8 million, respectively. The Company did not record any expense under the plan for the year ended December 31, 2013.

The Company’s wholly-owned subsidiary, Horizon Pharma Switzerland GmbH, sponsors a defined benefit savings plan covering all of its employees in Switzerland. The Company’s wholly-owned subsidiary, Horizon Pharma GmbH, sponsors a defined contribution plan for its employees in Germany. For the years ended December 31, 2015, 2014 and 2013, the Company recognized expenses of $0.1 million each year, under these plans.

The Company’s wholly-owned subsidiary, Horizon Pharma Services Limited, sponsors a defined contribution plan covering all of its employees in Ireland. For the year ended December 31, 2015, the Company recognized expenses of $0.2 million, under this plan. No expense was recorded in 2014 and 2013, as the entity became part of the consolidated group as a result of the Vidara Merger in September 2014.

The Company has a non-qualified deferred compensation plan for executives, which was established in April 2015. The deferred compensation plan obligations are payable in cash upon retirement, termination of employment and/or certain other times in a lump-sum distribution or in installments, as elected by the participant in accordance with the plan. As of December 31, 2015, the deferred compensation plan liabilities totaled $0.8 million and are included in “other long-term liabilities” in the consolidated balance sheet. The Company held funds of approximately $0.8 million in an irrevocable grantor's rabbi trust as of December 31, 2015, related to this plan. Rabbi trust assets are classified as available-for-sale marketable securities and are included in “other current assets” in the consolidated balance sheets. Unrealized gains and losses on these marketable securities are included in “other income” in the consolidated statements of comprehensive income (loss).
### NOTE 23 – SELECTED QUARTERLY FINANCIAL INFORMATION (UNAUDITED)

The following table provides a summary of selected financial results of operations by quarter for the years ended December 31, 2015 and 2014 (in thousands, except per share data):

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>First</td>
<td>Second</td>
<td>Third</td>
<td>Fourth</td>
</tr>
<tr>
<td>Net sales</td>
<td>$113,141</td>
<td>$172,821</td>
<td>$226,544</td>
<td>$244,538</td>
</tr>
<tr>
<td>Gross profit</td>
<td>84,288</td>
<td>110,995</td>
<td>165,294</td>
<td>176,965</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>4,764</td>
<td>(33,173)</td>
<td>45,732</td>
<td>38,049</td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>(19,553)</td>
<td>31,814</td>
<td>3,277</td>
<td>23,994</td>
</tr>
<tr>
<td>Net (loss) income per ordinary share - basic</td>
<td>$ (0.16)</td>
<td>$ 0.21</td>
<td>$ 0.02</td>
<td>$ 0.15</td>
</tr>
<tr>
<td>Net (loss) income per ordinary share - diluted</td>
<td>$ (0.16)</td>
<td>$ 0.20</td>
<td>$ 0.02</td>
<td>$ 0.15</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>First</td>
<td>Second</td>
<td>Third</td>
<td>Fourth</td>
</tr>
<tr>
<td>Net sales</td>
<td>$51,926</td>
<td>$66,062</td>
<td>$75,126</td>
<td>$103,841</td>
</tr>
<tr>
<td>Gross profit</td>
<td>44,307</td>
<td>41,252</td>
<td>61,482</td>
<td>71,161</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>1,587</td>
<td>(7,100)</td>
<td>(11,961)</td>
<td>8,983</td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>(206,250)</td>
<td>(27,769)</td>
<td>2,063</td>
<td>(31,647)</td>
</tr>
<tr>
<td>Net (loss) income per ordinary share - basic and diluted</td>
<td>$ (3.07)</td>
<td>$ (0.38)</td>
<td>$ 0.03</td>
<td>$ (0.27)</td>
</tr>
</tbody>
</table>

### NOTE 24 – SUBSEQUENT EVENTS

On January 13, 2016, the Company completed its acquisition of Crealta for approximately $510 million in cash. Crealta is a specialty pharmaceutical company focused on innovative therapeutics designed to improve patient outcomes, and marketed KRYSTEXXA and MIGERGOT. In connection with the Crealta acquisition, the Company incurred $1.9 million of transaction fees for legal, advisory and other fees during the year ended December 31, 2015. The final determination of the purchase price allocation is expected to be completed as soon as practicable. Due to the limited time between the acquisition date and the filing of this Annual Report on Form 10-K, it is not practicable for the Company to disclose: (i) the allocation of purchase price to assets acquired and liabilities assumed as of the date of close, and (ii) pro forma revenues and earnings of the combined company for the year ended December 31, 2015.
HORIZON PHARMA PLC
SCHEDULE II – VALUATION AND QUALIFYING ACCOUNTS

For Each of the Three Fiscal Years Ended December 31, 2015, 2014 and 2013:

<table>
<thead>
<tr>
<th>Valuation and Qualifying Accounts (in thousands)</th>
<th>Balance at beginning of period</th>
<th>Additions Charged to costs and expenses</th>
<th>Deductions from reserves</th>
<th>Balance at end of period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allowance for discounts and returns $4,483</td>
<td>$236</td>
<td>$55,702</td>
<td>$(45,457)</td>
<td>$14,964</td>
</tr>
<tr>
<td>Allowance for slow moving and obsolete inventory</td>
<td>842</td>
<td>—</td>
<td>$(1,030)</td>
<td>1,001</td>
</tr>
<tr>
<td>Deferred tax asset valuation allowances</td>
<td>111,555</td>
<td>37,569</td>
<td>$(117,814)</td>
<td>31,310</td>
</tr>
</tbody>
</table>

Year ended December 31, 2014:
- Allowance for discounts and returns 431 18,254 (14,202) 4,483
- Allowance for slow moving and obsolete inventory 365 1,195 (718) 842
- Deferred tax asset valuation allowances 128,422 6,777 — (23,644) 111,555

Year ended December 31, 2013:
- Allowance for discounts and returns 77 3,270 (2,916) 431
- Allowance for slow moving and obsolete inventory 333 512 (480) 365
- Deferred tax asset valuation allowances 95,970 32,452 — 128,422
<table>
<thead>
<tr>
<th>Exhibit Number</th>
<th>Description of Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1 (15)</td>
<td>Transaction Agreement and Plan of Merger, dated March 18, 2014, by and among Horizon Pharma, Inc., Vidara Therapeutics Holdings LLC, Vidara Therapeutics International Ltd. (now known as Horizon Pharma Public Limited Company), Hamilton Holdings (USA), Inc. and Hamilton Merger Sub, Inc.</td>
</tr>
<tr>
<td>2.2 (17)</td>
<td>First Amendment to Transaction Agreement and Plan of Merger, dated June 12, 2014, by and between Horizon Pharma, Inc. and Vidara Therapeutics Holdings LLC.</td>
</tr>
<tr>
<td>2.3 (25)</td>
<td>Agreement and Plan of Merger, dated March 29, 2015, by and among Horizon Pharma, Inc., Ghrian Acquisition Inc. and Hyperion Therapeutics, Inc.</td>
</tr>
<tr>
<td>2.4 **</td>
<td>Agreement and Plan of Merger, dated December 10, 2015, by and among Horizon Pharma USA, Inc., HZNP Limited, Criostail LLC, Crealta Holdings LLC and the other parties thereto.</td>
</tr>
<tr>
<td>3.1 (20)</td>
<td>Memorandum and Articles of Association of Horizon Pharma Public Limited Company.</td>
</tr>
<tr>
<td>4.1 (3) ***</td>
<td>Form of Warrant issued by Horizon Pharma, Inc. pursuant to the Securities Purchase Agreement, dated February 28, 2012, by and among Horizon Pharma, Inc. and the Purchasers and Warrant Holders listed therein.</td>
</tr>
<tr>
<td>4.2 (6) ***</td>
<td>Form of Warrant issued by Horizon Pharma, Inc. in Public Offering of Units.</td>
</tr>
<tr>
<td>4.4 (24)</td>
<td>Form of 2.50% Exchangeable Senior Note due 2022 (included in Exhibit 4.3).</td>
</tr>
<tr>
<td>4.6 (19)</td>
<td>Form of 6.625% Senior Note due 2023 (included in Exhibit 4.5).</td>
</tr>
<tr>
<td>10.1 (20)</td>
<td>Form of Indemnification Agreement entered into by and between Horizon Pharma Public Limited Company and certain of its directors, officers and employees.</td>
</tr>
<tr>
<td>10.2 (20)</td>
<td>Form of Indemnification Agreement entered into by and between Horizon Pharma, Inc. and certain directors, officers and employees of Horizon Pharma Public Limited Company.</td>
</tr>
<tr>
<td>10.3 +</td>
<td>Horizon Pharma Public Limited Company Non-Employee Director Compensation Policy, as amended.</td>
</tr>
<tr>
<td>10.4 + (1) ***</td>
<td>Horizon Pharma, Inc. 2005 Stock Plan and Form of Stock Option Agreement thereunder.</td>
</tr>
<tr>
<td>10.5 + (11) ***</td>
<td>Horizon Pharma, Inc. 2011 Equity Incentive Plan, as amended, and Form of Option Agreement and Form of Stock Option Grant Notice thereunder.</td>
</tr>
<tr>
<td>10.6 + (1) ***</td>
<td>Horizon Pharma, Inc. 2011 Employee Stock Purchase Plan and Form of Offering Document thereunder.</td>
</tr>
<tr>
<td>10.7 + (7)</td>
<td>Horizon Pharma Public Limited Company Amended and Restated 2014 Equity Incentive Plan and Form of Option Agreement, Form of Stock Option Grant Notice, Form of Restricted Stock Unit Agreement and Form of Restricted Stock Unit Grant Notice thereunder.</td>
</tr>
<tr>
<td>10.8 + (21)</td>
<td>Horizon Pharma Public Limited Company 2014 Non-Employee Equity Plan and Form of Option Agreement, Form of Stock Option Grant Notice, Form of Restricted Stock Unit Agreement and Form of Restricted Stock Unit Grant Notice thereunder.</td>
</tr>
<tr>
<td>10.9 + (21)</td>
<td>Horizon Pharma Public Limited Company 2014 Employee Share Purchase Plan.</td>
</tr>
<tr>
<td>10.10 * (1)</td>
<td>Development and License Agreement, dated August 20, 2004, by and among Horizon Pharma Switzerland GmbH (formerly known as Horizon Pharma AG), Jagotec AG and SkyePharma AG.</td>
</tr>
<tr>
<td>Exhibit Number</td>
<td>Description of Document</td>
</tr>
<tr>
<td>----------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>10.11*(1)</td>
<td>Amendment to Development and License Agreement, dated August 3, 2007, by and among Horizon Pharma Switzerland GmbH (formerly known as Horizon Pharma AG), Jagotec AG and SkyePharma AG.</td>
</tr>
<tr>
<td>10.12*(1)</td>
<td>Manufacturing and Supply Agreement, dated August 3, 2007, by and between Horizon Pharma Switzerland GmbH (formerly known as Horizon Pharma AG) and Jagotec AG.</td>
</tr>
<tr>
<td>10.13*(1)</td>
<td>Form of Employee Proprietary Information and Inventions Agreement.</td>
</tr>
<tr>
<td>10.15*(1)</td>
<td>Amended and Restated Executive Employment Agreement, dated July 27, 2010, by and between Horizon Pharma, Inc., Horizon Pharma USA, Inc. and Jeffrey W. Sherman, M.D., FACP.</td>
</tr>
<tr>
<td>10.16*(1)</td>
<td>Amendment to Manufacturing and Supply Agreement, dated March 4, 2011, by and between Horizon Pharma Switzerland GmbH (formerly known as Horizon Pharma AG) and Jagotec AG.</td>
</tr>
<tr>
<td>10.17*(1)</td>
<td>Manufacturing and Supply Agreement, dated May 25, 2011, by and between Horizon Pharma USA, Inc. and Sanofi-Aventis U.S. LLC.</td>
</tr>
<tr>
<td>10.18*(1)</td>
<td>Sales Contract, dated July 1, 2010, by and between Horizon Pharma USA, Inc. and BASF Corporation.</td>
</tr>
<tr>
<td>10.19*(10)</td>
<td>Amendment to Manufacturing and Supply Agreement, effective as of September 25, 2013, by and between Horizon Pharma USA, Inc. and Sanofi-Aventis U.S. LLC.</td>
</tr>
<tr>
<td>10.22*(16)</td>
<td>License Agreement, dated November 22, 2013, by and between Horizon Pharma USA, Inc. and AstraZeneca AB.</td>
</tr>
<tr>
<td>10.23*(16)</td>
<td>Amended and Restated Collaboration and License Agreement for the United States, dated November 18, 2013, by and between Horizon Pharma USA, Inc. and POZEN Inc.</td>
</tr>
<tr>
<td>10.24*(14)</td>
<td>Amendment No. 1 to Amended and Restated Collaboration and License Agreement for the United States, dated November 18, 2013, by and between Horizon Pharma USA, Inc. and POZEN Inc.</td>
</tr>
<tr>
<td>10.25*(14)</td>
<td>Letter Agreement, dated November 18, 2013, by and among Horizon Pharma USA, Inc., AstraZeneca AB and POZEN Inc.</td>
</tr>
<tr>
<td>10.26*(16)</td>
<td>Master Manufacturing Services Agreement, dated October 31, 2013, by and between Horizon Pharma, Inc. and Patheon Pharmaceuticals, Inc.</td>
</tr>
<tr>
<td>10.28*(13)</td>
<td>First Amendment to Amended and Restated Executive Employment Agreement, dated January 16, 2014, by and among Horizon Pharma, Inc., Horizon Pharma USA, Inc. and Jeffrey W. Sherman, M.D., FACP.</td>
</tr>
<tr>
<td>10.29*(14)</td>
<td>Executive Employment Agreement, effective March 5, 2014, by and among Horizon Pharma, Inc., Horizon Pharma USA, Inc. and Robert F. Carey.</td>
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<td>10.31*(23)</td>
<td>Supply Agreement, dated October 17, 2014, by and between Horizon Pharma Ireland Limited and Nuvo Research Inc.</td>
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<td>10.33*(22)</td>
<td>Consolidated Supply Agreement, dated July 31, 2013, by and between Vidara Therapeutics Research Limited and Boehringer Ingelheim RCV GmbH &amp; Co KG.</td>
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<td>10.35(22)</td>
<td>Amendment No. 1 to License Agreement for Interferon Gamma, dated December 28, 1998, by and between Genentech, Inc. and Connetics Corporation.</td>
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<td>10.37*(22)</td>
<td>Amendment No. 3 to License Agreement for Interferon Gamma, dated April 27, 1999, by and between Genentech, Inc. and Connetics Corporation.</td>
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<td>10.38(22)</td>
<td>Consent to Assignment Agreement, dated June 23, 2000 (Amendment No. 4), by and among Genentech, Inc., Connetics Corporation and InterMune Pharmaceuticals, Inc.</td>
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<td>10.39(22)</td>
<td>Amendment No. 5 to License Agreement for Interferon Gamma, dated January 25, 2001, by and between Genentech, Inc. and InterMune Pharmaceuticals, Inc.</td>
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<td>10.40*(22)</td>
<td>Amendment No. 6 to License Agreement for Interferon Gamma, dated February 27, 2006, by and between Genentech, Inc. and InterMune, Inc.</td>
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<td>Consulting Agreement, dated March 18, 2014 between Horizon Pharma USA, Inc. and Virinder Nohria.</td>
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<td>10.43*(22)</td>
<td>Executive Employment Agreement, effective September 18, 2014, by and among Horizon Pharma, Inc., Horizon Pharma USA, Inc. and Barry Moze.</td>
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<tr>
<td>10.48*(2)</td>
<td>Executive Employment Agreement, dated May 7, 2015, by and among Horizon Pharma Inc., Horizon Pharma USA, Inc. and John Thomas.</td>
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<td>10.49(18)</td>
<td>Credit Agreement, dated May 7, 2015, by and among Horizon Pharma, Inc., as borrower, Horizon Pharma Public Limited Company, as Irish Holdco and a guarantor, the subsidiary guarantors party thereto, as subsidiary guarantors, the lenders party thereto and Citibank, N.A., as administrative agent and collateral agent.</td>
</tr>
<tr>
<td>10.50*(9)</td>
<td>Confidential Settlement and License Agreement, dated May 6, 2015, by and among Horizon Pharma Ireland Limited, HZNP Limited, Horizon Pharma USA, Inc., Perrigo Company and Paddock Laboratories, LLC.</td>
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<td>10.54(4)</td>
<td>Distribution Services Agreement, dated February 14, 2013, by and between Hyperion Therapeutics, Inc. and ASD Healthcare, a division of ASD Specialty Healthcare, Inc.</td>
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<td>10.55(4)</td>
<td>First Amendment to Distribution Services Agreement, effective as of June 1, 2013, by and between Hyperion Therapeutics, Inc. and ASD Healthcare, a division of ASD Specialty Healthcare, Inc.</td>
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<td>10.56(9)</td>
<td>Third Amendment to Distribution Services Agreement, effective as of February 14, 2015, by and between Hyperion Therapeutics, Inc. and ASD Healthcare, a division of ASD Specialty Healthcare, Inc.</td>
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<td>10.57(8)</td>
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<td>10.58(8)</td>
<td>Executive Employment Agreement, dated August 6, 2015, by and among Horizon Pharma Inc., Horizon Pharma USA, Inc. and George P. Hampton.</td>
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<td>10.59**(8)</td>
<td>Confidential Settlement and License Agreement, dated September 9, 2015, by and among Horizon Pharma Ireland Limited, HZNP Limited, Horizon Pharma USA, Inc., Taro Pharmaceuticals USA, Inc. and Taro Pharmaceuticals Industries, Ltd.</td>
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<td>10.60**</td>
<td>License and Settlement Agreement, dated October 1, 2015, by and among Horizon Pharma Switzerland GmbH (formerly known as Horizon Pharma AG), Jagotec AG and Actavis Laboratories FL, Inc. (formerly known as Watson Laboratories, Inc.).</td>
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<td>10.63**</td>
<td>Supply Agreement, dated August 3, 2015, by and between NOF Corporation and Crealta Pharmaceuticals LLC.</td>
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<td>Sublease, dated August 21, 2015, by and between Solo Cup Operating Corporation and Horizon Pharma USA, Inc. and Sublease Consent and Recognition Agreement, dated October 2, 2015, by and among Lake Forest Landmark II, LLC, Solo Cup Operating Corporation and Horizon Pharma USA, Inc.</td>
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<td>10.65*(12)</td>
<td>Asset Purchase Agreement, dated March 22, 2012, by and between Hyperion Therapeutics, Inc. and Ucyclyd Pharma, Inc.</td>
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<td>10.66**</td>
<td>Amendment No. 1 to Supply Agreement, dated February 4, 2016, by and between Horizon Pharma Ireland Limited and Nuvo Research Inc.</td>
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<td>10.67+</td>
<td>Executive Employment Agreement, effective as of January 1, 2016, by and between Horizon Pharma Services Limited and David G. Kelly.</td>
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<td>10.68**</td>
<td>Commercial Supply Agreement, dated October 16, 2008, by and between Sigma-Tau PharmaSource, Inc. (as successor in interest to Enzon Pharmaceuticals, Inc.) and Crealta Pharmaceuticals LLC (as successor in interest to Savient Pharmaceuticals, Inc.), as amended October 5, 2009, October 22, 2009 and July 29, 2014.</td>
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<td>Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm.</td>
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<td>Power of Attorney. Reference is made to the signature page hereto.</td>
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† Indicates management contract or compensatory plan.
† Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. Horizon Pharma Public Limited Company undertakes to furnish supplemental copies of any of the omitted schedules upon request by the Securities and Exchange Commission.
†† Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. Horizon Pharma Public Limited Company undertakes to furnish supplemental copies of any of the omitted schedules upon request by the Securities and Exchange Commission; provided, however, that Horizon Pharma Public Limited Company may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, for any schedule so furnished.
* Confidential treatment has been granted with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.
** Confidential treatment has been requested with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.
*** Indicating an instrument, agreement or compensatory arrangement or plan assumed by Horizon Pharma Public Limited Company in the merger and no longer binding on Horizon Pharma, Inc.
(1) Incorporated by reference to Horizon Pharma, Inc.’s Registration Statement on Form S-1 (No. 333-168504), as amended.
(2) Incorporated by reference to Horizon Pharma Public Limited Company’s Quarterly Report on Form 10-Q, filed on May 8, 2015.
(3) Incorporated by reference to Horizon Pharma, Inc.’s Current Report on Form 8-K, filed on March 1, 2012.
(4) Incorporated by reference to Horizon Pharma Public Limited Company’s Amendment No. 1 to Quarterly Report on Form 10-Q, filed on November 6, 2015.
(8) Incorporated by reference to Horizon Pharma Public Limited Company’s Quarterly Report on Form 10-Q, filed on November 6, 2015.
(9) Incorporated by reference to Horizon Pharma Public Limited Company’s Quarterly Report on Form 10-Q, filed on August 7, 2015.
(10) Incorporated by reference to Horizon Pharma, Inc.’s Quarterly Report on Form 10-Q, filed on November 8, 2013.
(12) Incorporated by reference to Hyperion Therapeutics, Inc.’s Amendment No. 1 to the Registration Statement on Form S-1, filed on May 24, 2012.
(16) Incorporated by reference to Horizon Pharma, Inc.’s Amendment No.1 to Annual Report on Form 10-K, filed on May 23, 2014.
(17) Incorporated by reference to Horizon Pharma, Inc.’s Current Report on Form 8-K, filed on June 18, 2014.
(21) Incorporated by reference to Horizon Pharma Public Limited Company’s Registration Statement on Form S-8, filed on September 22, 2014.
(22) Incorporated by reference to Horizon Pharma Public Limited Company’s Annual Report on Form 10-K, filed on February 27, 2015.
(23) Incorporated by reference to Horizon Pharma Public Limited Company’s Amendment No. 2 to Annual Report on Form 10-K, filed on April 10, 2015.
(25) Incorporated by reference to Horizon Pharma Public Limited Company’s Amendment No. 1 to Current Report on Form 8-K, filed on April 9, 2015.
AGREEMENT AND PLAN OF MERGER

by and among

HORIZON PHARMA USA, INC.,
HZNP LIMITED,
CRIOSTAIL LLC,
CREALTA HOLDINGS LLC,

[...***…]

and

THE REPRESENTATIVE NAMED HEREIN

December 10, 2015
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Terminated Affiliated Transactions Schedule

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THIS AGREEMENT AND PLAN OF MERGER (this “Agreement”), dated as of December 10, 2015, is made by and among Crealta Holdings LLC, a Delaware limited liability company (the “Company”), Horizon Pharma USA, Inc., a Delaware corporation (“[…]***…”), HZNP Limited, a private company limited by shares organized under the laws of Ireland (the “Purchaser,” and together with […]***…, the “Purchasers”), Criostail LLC, a Delaware limited liability company and wholly owned subsidiary of the Purchaser (the “Merger Sub”), […]***…, and GTCR Fund X/B LP, a Delaware limited partnership, solely in its capacity as representative (the “Representative”) for […]***… and the Company’s Unitholders and Optionholders (all of whom are listed on the attached Sellers Schedule, collectively, the “Sellers”). Capitalized terms used and not otherwise defined herein have the meanings set forth in Article XI below.

WHEREAS, the Purchasers desire to acquire 100% of the membership interests of the Company through […]***… a reverse subsidiary merger transaction pursuant to which the Merger Sub will merge with and into the Company, with the Company surviving as a wholly owned subsidiary of the Purchaser […]***…, on the terms and subject to the conditions set forth herein (the “Merger” and, together with the Stock Purchase, the “Transaction”);

WHEREAS, the respective boards of directors or managers (or the equivalent governing bodies) of the Purchasers, the Merger Sub, […]***… and the Company have approved this Agreement, the Merger and/or the Stock Purchase (as applicable) and the related transactions contemplated hereby, upon the terms and subject to the conditions set forth herein; and

WHEREAS, concurrent with the execution and delivery of this Agreement, as a material inducement to Purchasers’ and Merger Sub’s willingness to enter into this Agreement, each Seller listed on Schedule A has executed and delivered to the Purchaser a Joinder Agreement.

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

ARTICLE I

THE MERGER AND THE STOCK PURCHASE

1.01 The Merger.

(a) Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, the Merger Sub shall merge with and into the Company in accordance with the Delaware Limited Liability Company Act (as amended, “Delaware LLC Law”), ***Confidential Treatment Requested
whereupon the separate existence of the Merger Sub shall cease and the Company shall be the surviving limited liability company (the “Surviving Company”) and a wholly owned subsidiary of the Purchaser [...***…].

(b) At the Closing, the Company and the Merger Sub shall cause a certificate of merger substantially in the form of Exhibit A hereto (the “Certificate of Merger”) to be executed, acknowledged and filed with the Secretary of State of the State of Delaware and shall make all other filings or recordings required by Delaware LLC Law in connection with the Merger. The Merger shall become effective at such time (the “Effective Time”) as the Certificate of Merger is duly filed with the Secretary of State of the State of Delaware in accordance with the Delaware LLC Law or at such later time as the Purchaser and the Company mutually agree and specify in the Certificate of Merger.

(c) From and after the Effective Time, the Surviving Company shall succeed to all the assets, rights, privileges, powers and franchises and be subject to all of the liabilities, restrictions, disabilities and duties of the Company and the Merger Sub, all as provided under Delaware LLC Law.

1.02 Conversion of Units.

At the Effective Time, by virtue of the Merger and without any action on the part of any party:

(a) Each Unit (and the membership interests represented thereby) issued and outstanding immediately prior to the Effective Time (other than (i) any Units (and the membership interests represented thereby) which are held by any wholly owned Subsidiary of the Company or in the treasury of the Company or by the Purchasers or the Merger Sub, all of which shall cease to be outstanding and be canceled for no consideration and none of which shall receive any payment with respect thereto, and (ii) any Units (and the membership interests represented thereby) which are held by [...***…], all of which shall be cancelled for no consideration and converted, without [...***…] receiving any payment with respect thereto, into membership interests in the Surviving Company with a fair market value equal to the fair market value of such Units held by [...***…], as such membership interests are provided for by the Surviving Company LLC Agreement) and all rights in respect thereof shall, by virtue of the Merger and without any action on the part of the holder thereof, shall cease to exist and shall be converted into and represent solely the right to receive an amount in cash, without interest, equal to (A) the Allocable Portion of the Closing Merger Consideration attributable to such Unit less the portion of the Representative Holdback Amount attributable to such Unit, plus (B) any Additional Merger Consideration attributable to each such Unit (as set forth in the Closing Payment Schedule), plus (C) any Escrow Distribution attributable to such Unit (as set forth in the Closing Payment Schedule). No further transfer of any Units shall be made on the Unit Ownership Ledger after the Effective Time. If, after the Effective Time, a valid certificate previously representing any Units is presented to the Surviving Company, the Purchaser or the Paying Agent (in accordance with Section 1.04), such certificate shall be cancelled and shall be exchanged as provided in this Section 1.02.

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(b) Each membership interest of the Merger Sub (a “Merger Sub Interest”) issued and outstanding immediately prior to the Effective Time shall be converted into membership interests in the Surviving Company, as such common units are provided for by the Surviving Company LLC Agreement. As of the Effective Time, the Merger Sub Interests shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and the holder or holders of such membership interests shall cease to have any rights with respect thereto, except the right to receive membership interests in the Surviving Company to be issued in consideration therefor as provided herein, without interest. As of the Effective Time, the Purchaser and […***…] shall be the holders of all the issued and outstanding units of the Surviving Company.

1.03 Merger Consideration.

(a) At least […***…] Business Days prior to the Closing Date, the Company shall prepare and deliver to the Purchaser a written statement, signed by the Company’s Chief Financial Officer (the “Pre-Closing Statement”), containing its good faith calculation of its estimate of (i) Closing Date Cash (the “Estimated Cash”), (ii) Closing Date Indebtedness (the “Estimated Indebtedness”), (iii) Net Working Capital (the “Estimated Net Working Capital Amount”), and (iv) Transaction Expenses (the “Estimated Transaction Expenses”). During the period beginning on the date of delivery of the Pre-Closing Statement by the Company until the Closing Date, as reasonably requested by the Purchaser, the Company shall consult with the Purchaser (including by giving the Purchaser an opportunity to provide comments to the Pre-Closing Statement), shall work in good faith to resolve any differences the Company and the Purchaser may have with respect to any of the amounts or calculations set forth in the Pre-Closing Statement, and the Company will make available to the Purchaser and its representatives the work papers and other books and records used in preparing the Pre-Closing Statement and afford the Purchaser and its representatives reasonable access to the relevant personnel and its external representatives of the Company to verify the accuracy of such amounts to the extent deemed reasonably necessary by the Purchaser.

(b) Prior to the Closing Date, the Company shall prepare and deliver to the Purchaser a spreadsheet (the “Closing Payment Schedule”), duly certified by the Chief Financial Officer of the Company setting forth:

(i) the calculation of the Closing Merger Consideration;

(ii) with respect to each holder of Units immediately prior to the Effective Time: (A) the name of such holder, (B) whether such holder is a current or former employee of the Company or any of its Subsidiaries, (C) the total number of Units held by such holder as of immediately prior to the Effective Time, with separate indication of the number of Allocated Units and the number of Unallocated Units (D) the portion of the Closing Merger Consideration that such holder is entitled to receive in respect of such Units pursuant to Section 1.02(a), with separate indication of the Closing Merger Consideration attributable to Allocated Units and Unallocated Units, (E) the portion of such holder’s proceeds referenced in the preceding clause (D) that are to be delivered by the Purchasers to the Representative to fund the Representative Holdback Amount under Section 1.08, with separate indication of the portion attributable to

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Allocated Units and Unallocated Units, (F) such holder’s Residual Percentage, (G) whether any Taxes are required to be withheld from any portion of the consideration payable to such holder on account of the performance of services, and (H) if such holder held any Unallocated Units as of immediately prior to the Effective Time, (1) the Unallocated Unit Vesting Reporting Amount for such holder, (2) whether the Unallocated Unit Vesting Reporting Amount is properly reported on IRS Schedule K-1, IRS Form W-2, IRS Form 1099-MISC, or IRS Form 1042-S, and (3) if the Unallocated Unit Vesting Reporting Amount is not properly reported on IRS Schedule K-1, the Unallocated Unit Company Closing Payment Amount for such holder;

(iii) with respect to each holder of Options immediately prior to the Effective Time: (A) the name of such Optionholder, (B) whether such holder is an employee of the Company or any of its Subsidiaries, (C) the number of Units underlying such Option immediately prior to the Effective Time, (D) the portion of the Closing Merger Consideration that such holder is entitled to receive in respect of such Options pursuant to Section 1.05, (E) the portion of such holder’s proceeds referenced in the preceding clause (D) that are to be delivered by the Purchaser to the Representative to fund the Representative Holdback Amount under Section 1.08, (F) such holder’s Residual Percentage and (G) whether any Taxes are required to be withheld from any portion of the consideration payable to such holder in respect of such Options on account of the performance of services; and

(iv) [...***…]

(c) The calculations of Estimated Cash, Estimated Indebtedness, Estimated Net Working Capital and Estimated Transaction Expenses on the Pre-Closing Statement will be prepared and will be determined, on a consolidated basis, in accordance with the terms of Section 2.01 regarding the preparation of the Preliminary Statement.

(d) For purposes of this Agreement, the term “Closing Merger Consideration” means (i) $510,000,000 (the “Base Consideration”), minus (ii) the amount of the Estimated Indebtedness, plus (iii) the amount, if any, by which the Estimated Net Working Capital Amount exceeds the Target Net Working Capital Amount, minus (iv) the amount, if any, by which the Target Net Working Capital Amount exceeds the Estimated Net Working Capital Amount, plus (v) the amount of Estimated Cash, minus (vi) the Escrow Amount, minus (vii) the amount of the Estimated Transaction Expenses, plus (viii) the aggregate exercise price of the Options that are outstanding immediately prior to the Effective Time.

(e) For purposes of this Agreement, the term “Final Merger Consideration” means (i) the Base Consideration, minus (ii) the amount of Closing Date Indebtedness as finally determined pursuant to Article II, plus (iii) the amount, if any, by which the Net Working Capital as finally determined pursuant to Article II exceeds the Target Net Working Capital Amount, minus (iv) the amount, if any, by which the Target Net Working Capital Amount exceeds the Net

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Working Capital as finally determined pursuant to Article II, plus (v) the amount of Closing Date Cash as finally determined pursuant to Article II, minus (vi) the Escrow Amount, minus (vii) the amount of Transaction Expenses as finally determined pursuant to Article II, plus (viii) the aggregate exercise price of the Options that are outstanding immediately prior to the Effective Time.

1.04 Unit Exchange.

(a) The Purchaser shall cause a paying agent appointed by the Purchaser, and reasonably acceptable to the Representative (the “Paying Agent”), to effect the exchange of cash for the Units which are entitled to payment pursuant to Section 1.02. After the Effective Time, each Unitholder who has surrendered his, her or its Units (together with a certificate or certificates that immediately prior to the Effective Time represented such Units) pursuant to a duly executed and completed letter of transmittal, substantially in the form of Exhibit B attached hereto (each, a “Letter of Transmittal”), to the Paying Agent, shall be entitled to receive from the Paying Agent in exchange therefor the portion of the Closing Merger Consideration into which such Unitholder’s Units shall have been converted as a result of the Merger (less the portion of the Representative Holdback Amount attributable to such Units) as determined pursuant to Section 1.02 (it being agreed that any Unitholder that delivers a duly executed and completed Letter of Transmittal to the Paying Agent in accordance with this Section 1.04 at least [...***...] Business Days prior to the Closing shall be paid such consideration by the Paying Agent as promptly as reasonably practicable and, in any event, within [...***...] Business Days of the Closing) and thereafter, as, when and if any Additional Merger Consideration and/or Escrow Distribution is payable in accordance with the terms of this Agreement, such Unitholder shall be entitled to be paid the Additional Merger Consideration and/or Escrow Distribution into which such Unitholder’s Units shall have been converted as a result of the Merger as determined pursuant to Section 1.02. Notwithstanding the foregoing, the Closing Merger Consideration with respect to Unallocated Units (less the portion of the Representative Holdback Amount attributable to such Units) that is payable to holders who are not partners of the Company for U.S. federal income Tax purposes prior to the date of this Agreement shall be paid through the payroll system of the Surviving Company and/or its Subsidiaries in accordance with Section 3.02(d). Until so surrendered and exchanged, each Unit shall represent solely the right to receive the Allocable Portion of the Closing Merger Consideration attributable to such Unit (less the portion of the Representative Holdback Amount attributable to such Unit), and any Additional Merger Consideration and/or Escrow Distribution into which it was converted pursuant to Section 1.02. Notwithstanding the foregoing, if any certificate representing such Units shall have been lost, stolen or destroyed, then, upon the making of an affidavit of such fact by the Person claiming such certificate to be lost, stolen or destroyed (which may include an indemnity or bond in customary form), the Paying Agent and/or the Surviving Company, as applicable, shall issue, in exchange for such lost, stolen or destroyed certificate, the Allocable Portion of the Closing Merger Consideration (less the applicable portion of the Representative Holdback Amount) and any Additional Merger Consideration and/or Escrow Distribution to be paid in respect of the Units represented by such certificate, as contemplated by this Article I.

(b) Any amount remaining with the Paying Agent after the [...***...] anniversary of the Closing Date may, at the Purchaser’s request, be remitted to the Surviving Company and thereafter any Unitholder shall direct any claims for payment hereunder to the **Confidential Treatment Requested**
Surviving Company as a general creditor thereof. Any such amounts remaining unclaimed by any Unitholder immediately prior to such time when such amounts would otherwise escheat to or become the property of any Governmental Entity, shall, to the extent permitted by applicable Laws, become the property of the Purchaser, free and clear of all claims or interest of any Person previously entitled thereto. Notwithstanding anything to the contrary in this Section 1.04, none of the Paying Agent, the Purchaser, the Surviving Company or any party hereto shall be liable for any amount properly paid to a public official in compliance with any applicable abandoned property, escheat or similar Law.

1.05 Options. The Company shall, as of the Effective Time, cause all Options, whether or not then vested or exercisable, to be canceled and extinguished, no longer be outstanding and cease to represent the right to acquire Units, and in consideration therefor, the Optionholders shall be entitled to receive with respect to each Option: (i) reasonably promptly following the Effective Time an amount in cash, without interest and subject to withholding pursuant to Section 3.03 below, equal to the product of (A) the excess, if any, of the Allocable Portion of the Closing Merger Consideration attributable to each Unit that is subject to such Option over the exercise price per Unit payable upon exercise of such Option, multiplied by (B) the number of Units that would be issued upon exercise of such Option if such holder had exercised such Option in full immediately prior to the Effective Time (the “Closing Option Consideration”), plus (ii) any Additional Merger Consideration attributable to the Common Units underlying such Option to the extent payable in accordance with the terms of this Agreement (as set forth in the Closing Payment Schedule), plus (iii) any Escrow Distribution attributable to the Common Units underlying such Option to the extent payable in accordance with the terms of this Agreement (as set forth in the Closing Payment Schedule).

1.06 Organizational Documents of the Surviving Company.

(a) At the Effective Time and without any further action on the part of the Company or the Merger Sub, the certificate of formation of the Company, as in effect immediately prior to the Effective Time, shall be the certificate of formation of the Surviving Company as of the Effective Time, until duly amended in accordance with applicable Law.

(b) At the Effective Time and without any further action on the part of the Company or the Merger Sub, the limited liability company agreement of the Company, as in effect immediately prior to the Effective Time, shall be amended and restated to read in its entirety as provided by Exhibit C and, commencing as of the Effective Time, shall be the limited liability company agreement of the Surviving Company (the “Surviving Company LLC Agreement”), until thereafter amended as provided therein and by applicable Law.

1.07 Directors and Officers of the Surviving Company.

(a) At the Effective Time, the Company’s board of managers shall resign and the managers of the Merger Sub immediately prior to the Effective Time shall become the managers of the Surviving Company and shall hold office subject to the applicable provisions of the Surviving Company LLC Agreement.
At the Effective Time, the officers of the Merger Sub immediately prior to the Effective Time shall be the officers of the Surviving Company and shall hold office subject to the applicable provisions of the Surviving Company LLC Agreement.

1.08 Representative Holdback. A portion of the proceeds otherwise to be received by the Sellers pursuant to Article I in an aggregate amount equal to $[…***…] (such initial deposit, as it may be decreased at any time in accordance with this Agreement, the “Representative Holdback Amount”) shall be delivered by the Purchasers to the Representative at the Closing, on behalf of the Sellers, by wire transfer of immediately available funds to a segregated account designated by the Representative (which account shall be used only to hold the Representative Holdback Amount and to pay any payments, fees, costs and expenses of the Representative payable by the Representative pursuant to the terms of this Agreement). The portion of the Representative Holdback Amount delivered to, and held by, the Representative on behalf of each such Seller shall be determined pro rata based upon each Seller’s Residual Percentage. The Representative is entitled to pay on behalf of the Sellers, and to the extent paid by the Representative from its own funds, obtain reimbursement for, any reasonable out-of-pocket fees, costs and expenses incurred by the Representative in the performance of its duties hereunder (“Representative Expenses”) from the Representative Holdback Amount, and the Representative shall not use any portion of the Representative Holdback Amount for any other purpose. For all purposes of this Agreement, any and all amounts paid by the Purchasers to the Representative pursuant to this Section 1.08 or otherwise in respect of the Representative Holdback Amount shall be deemed to have been paid to the Sellers and in no event shall the Purchasers or any of their Affiliates have any further obligation or Liability to any Seller in respect thereof. For the avoidance of doubt, any amounts paid by the Purchasers to the Representative in respect of the Representative Holdback Amount shall be treated for Tax purposes as having been received and voluntarily set aside by the Sellers at the time of payment by the Purchasers, and any Tax withholding with respect to such deemed contribution by any Seller shall be satisfied from such Seller’s share of other funds payable to such Seller at such time and shall not reduce the Representative Holdback Amount.

1.09 No Dissenter’s Rights or Appraisal Rights. No holder of Units or Options shall be entitled to any “dissenter’s rights,” “appraisal rights” or any similar remedies under Delaware LLC Law or any other applicable Law. Following the Effective Time, each holder of any Units and/or Options shall be entitled only to the right to receive the appropriate portion of the Closing Merger Consideration, the Additional Merger Consideration (if any) and the Escrow Distribution (if any) payable in respect of such Units and/or Options, as applicable, pursuant to the terms and conditions of this Agreement.

1.10 Stock Purchase.

(a) Sale and Purchase of Shares. At the Closing, upon the terms and subject to the conditions set forth in this Agreement, […***…] agrees to sell, assign, transfer and deliver to […***…], free and clear of any Liens (other than those imposed by federal or state securities laws), and […] agrees that it shall purchase and accept delivery from […] of, the Shares, free and clear of any Liens (other than those imposed by federal or state securities laws).

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(b) Consideration. At the Closing, [...***...], as consideration for the Shares, an aggregate amount equal to the Allocable Portion of the Closing Merger Consideration attributable to the Units [...***...] (assuming for purposes of calculating such amount that such Units are outstanding at the Effective Time). Additionally, to the extent the Sellers are entitled to receive any Additional Merger Consideration and/or Escrow Distribution, then [...***...] shall be entitled to receive, as consideration for the Shares, [...***...] Residual Percentage of such Additional Merger Consideration and/or Escrow Distribution in accordance with the terms of this Agreement.

ARTICLE II

MERGER CONSIDERATION ADJUSTMENT

2.01 Final Closing Balance Sheet Calculation. As promptly as possible, but in any event within [...***...], days after the Closing Date, the Purchasers will deliver to the Representative unaudited consolidated balance sheets of [...***...] and of the Company and its Subsidiaries as of immediately prior to the Closing (the “Closing Balance Sheets”) and a statement showing the calculation of Closing Date Cash, Closing Date Indebtedness and Net Working Capital derived from the Closing Balance Sheets and the Transaction Expenses (together with the Closing Balance Sheets, the “Preliminary Statement”). The calculation of Net Working Capital in the Preliminary Statement shall be prepared in accordance with (i) GAAP, and shall not include any changes in assets or liabilities as a result of purchase accounting adjustments or other changes arising from or resulting as a consequence of the transactions contemplated hereby and (ii) to the extent not inconsistent with clause (i), the accounting methods, policies, categorizations, definitions, principles, assets recognition bases, practices, techniques and procedures (including in respect of management’s exercise of judgment) adopted in connection with the latest balance sheet included in the Audited Financial Statements. The parties agree that the purpose of preparing the Closing Balance Sheets and determining Closing Date Cash, Closing Date Indebtedness and Net Working Capital and the related purchase price adjustment contemplated by this Section 2.01 is to (A) measure the amount of Closing Date Cash and Closing Date Indebtedness and (B) measure changes in Net Working Capital against the Target Net Working Capital Amount, and such processes are not intended to permit the introduction of different judgments, accounting methods, policies, principles, practices, procedures, classifications or estimation methodologies for the purpose of preparing the Closing Balance Sheets or determining Closing Date Cash, Closing Date Indebtedness or Net Working Capital; provided, in each case, that the judgments, accounting methods, policies, principles, practices, procedures, classifications and estimation methodologies used in preparing the Pre-Closing Statement and determining Estimated Cash, Estimated Indebtedness and Estimated Net Working Capital were consistent with the requirements set forth in clauses “(i)” and “(ii)” above. The Representative and its accountants and other representatives shall be permitted reasonable access during normal business hours upon reasonable advance notice to review [...***...] the Company’s and its Subsidiaries’ books and records and any work papers related to the preparation of the Preliminary Statement and the adjustments contemplated hereby; provided, that such access does not unreasonably interfere with the business operations of the Purchasers, the Surviving Company or any of their respective Affiliates and that the Persons

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provided such access shall treat any confidential or proprietary information of [***] the Surviving Company or any of their respective Subsidiaries received in connection therewith as confidential and shall not disclose such information to any third party. The Representative and its accountants and other representatives may make reasonable inquiries of the Purchasers, the Surviving Company and their respective accountants regarding questions or disagreements, and the Purchasers shall use their, and shall cause the Surviving Company and its Subsidiaries to use their, commercially reasonable efforts to cause any such accountants to reasonably cooperate with and respond to such inquiries. If the Representative objects in good faith to any item on the Preliminary Statement, the Representative shall deliver to the Purchasers a statement setting forth its objections thereto (an "Objections Statement"). If an Objections Statement is not delivered to the Purchaser within [***] days after delivery of the Preliminary Statement to the Representative, the Preliminary Statement shall be final, binding and non-appealable by the parties hereto. The Objections Statement must set forth in reasonable detail (A) any item on the Preliminary Statement which the Representative reasonably believes has not been prepared in accordance with the terms of this Agreement and the Representative’s determination of the amount of such item and (B) the Representative’s alternative calculation of the Closing Date Cash, the Closing Date Indebtedness, the Transaction Expenses and/or the Net Working Capital, as the case may be, together with all relevant supporting documentation. Any item or amount that the Representative does not dispute in the Objections Notice within such [***] day period shall be final, binding and conclusive for all purposes hereunder. If an Objections Statement is timely delivered, the Representative and the Purchasers shall negotiate in good faith to resolve any such objections set forth therein, but if they do not reach a final resolution within [***] days after the delivery of the Objections Statement, the Representative and the Purchaser shall submit such dispute to [***] (the “Accounting Firm”). Any further submissions to the Accounting Firm must be written and delivered to each party to the dispute. The Accounting Firm shall make a final determination of Closing Date Cash, Closing Date Indebtedness, Net Working Capital and Transaction Expenses, and the resulting Final Merger Consideration calculated with reference to such amounts to the extent such amounts are in dispute (and have been reflected on an Objections Statement), in accordance with the guidelines and procedures set forth in this Agreement and on Exhibit D. The parties will use commercially reasonable efforts to cooperate with the Accounting Firm during the term of its engagement. If an Objections Statement is delivered to the Accounting Firm for resolution, the determination of Closing Date Cash, Closing Date Indebtedness, Net Working Capital and/or Transaction Expenses, as the case may be, and the resulting Final Merger Consideration calculated with reference thereto, shall become final and binding on the parties on the date the Accounting Firm delivers its final resolution in writing to the parties.

2.02 Post-Closing Adjustment Payment. If the Final Merger Consideration is greater than the Closing Merger Consideration, (a) the Representative shall deliver to the Purchasers an updated Closing Payment Schedule (which need not be certified by an officer of the Company) setting forth the portion of such excess amount payable to each Seller and (b) the Purchasers shall promptly (but in any event within [***] Business Days after the final determination of the Final Merger Consideration and receipt of the updated Closing Payment Schedule) pay, or cause to be paid, to the Paying Agent (for further payment to the Sellers other than Optionholders) and the Surviving Company (for further payment to the Optionholders in accordance with Section 3.02(k)), on a pro rata basis according to each Seller’s Residual Percentage, the amount of such excess in accordance with the Closing Payment Schedule, by

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wire transfer of immediately available funds to the account or accounts designated by the Paying Agent and the Surviving Company. If the Final Merger Consideration is less than the Closing Merger Consideration, the Representative shall promptly (but in any event within […] Business Days after the final determination of the Final Merger Consideration) pay on behalf of the Sellers (on a pro rata basis according to each Seller’s Residual Percentage) to the Purchasers the absolute value of such difference by wire transfer of immediately available funds to one or more accounts designated in writing by the Purchasers.

ARTICLE III

THE CLOSING

3.01 The Closing. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Kirkland & Ellis LLP located at 300 North LaSalle Street, Chicago, Illinois, 60654 at 10:00 a.m. local time on the […] Business Day following full satisfaction or due waiver of all of the closing conditions set forth in Article IV hereof (other than those to be satisfied at the Closing itself) or on such other date as is mutually agreeable to the Purchaser and the Representative. The date of the Closing is referred to herein as the “Closing Date.”

3.02 The Closing Transactions. Subject to the terms and conditions set forth in this Agreement, the parties hereto shall consummate the following transactions on the Closing Date:

(a) the Company and the Merger Sub shall cause the Certificate of Merger to be executed, acknowledged and filed with the Secretary of State of the State of Delaware;

(b) the Purchasers shall deposit with the Paying Agent, for prompt distribution by the Paying Agent in accordance with Section 1.04 and Section 1.10, an amount equal to (i) the Closing Merger Consideration, less (ii) the aggregate Closing Option Consideration (excluding the portion of the Representative Holdback Amount attributable to Options), less (iii) the Representative Holdback Amount, less (iv) the aggregate exercise price of the Options that are outstanding immediately prior to the Effective Time, less (v) the aggregate Unallocated Unit Company Closing Payment Amount;

(c) the Purchasers shall repay, or cause to be repaid, on behalf of the Company and its Subsidiaries, all amounts necessary to discharge fully the then outstanding balance of all of the Estimated Indebtedness set forth in the Pre-Closing Statement and which are set forth on the Indebtedness Schedule, by wire transfer of immediately available funds to the account(s) designated by the holders of such Estimated Indebtedness in the applicable Payoff Letter;

(d) subject to Section 3.03, the Purchasers shall deliver or cause the Surviving Company to deliver to each holder of Unallocated Units who is not a partner of the Company for U.S. federal income Tax purposes prior to the date of this Agreement, as soon as practicable (but in any event within two payroll periods following the Effective Time), the Allocable Portion of the Closing Merger Consideration attributable to such Unallocated Units less the portion of the

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Representative Holdback Amount attributable to such Unallocated Units (such amount being referred to as the “Unallocated Unit Company Closing Payment Amount”), which amount shall be paid through the payroll system of the Surviving Company and/or its Subsidiaries, subject to withholding pursuant to Section 3.03 below in respect of the entire Unallocated Unit Vesting Reporting Amount for such Unallocated Units;

(e) in accordance with Section 1.08, the Purchasers shall deliver the Representative Holdback Amount to the Representative (on behalf of the Sellers) by wire transfer of immediately available funds;

(f) the Purchasers shall deposit the Escrow Amount in a segregated account (the “Escrow Account”) maintained by the Escrow Agent in accordance with the Escrow Agreement;

(g) the Purchasers, the Merger Sub, the Company and the Representative shall make such other deliveries as are required by Article IV hereof;

(h) the Company shall deliver to the Purchaser and the Merger Sub written evidence of the termination of all agreements set forth on the Terminated Affiliated Transactions Schedule, which terminations shall be effective on or prior to the Closing Date;

(i) the Purchasers shall pay, or cause to be paid, on behalf of […] the Company and its Subsidiaries, the Sellers and the Representative (or any of their respective Affiliates), the Estimated Transaction Expenses set forth in the Pre-Closing Statement by wire transfer of immediately available funds to the account(s) designated in the Pre-Closing Statement;

(j) the […] the prepaid insurance policy (i.e., “tail coverage”) referenced in Section 8.03(b) (the “Tail D&O Policy”);

(k) subject to Section 3.03, the Purchasers shall deliver or cause the Surviving Company to deliver to each Optionholder, as soon as practicable (but in any event within […] following the Effective Time), such holder’s Closing Option Consideration (as determined in accordance with Section 1.05), less such Optionholder’s portion of the Representative Holdback Amount, by wire transfer of immediately available funds (or by such other method as is directed by the Representative) to the account(s) designated by the Representative; provided, that if an Optionholder is a present or former employee of the Surviving Company or any of its Subsidiaries for U.S. federal income Tax purposes, the Purchaser shall cause the Surviving Company to make such payment to such Optionholder through the payroll system of the Surviving Company and its Subsidiaries, subject to withholding pursuant to Section 3.03 below; and

(l) […] shall deliver to […] stock certificates representing all of the Shares, which certificates shall be endorsed to […] or accompanied by stock powers executed in blank.

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3.03 **Required Withholding.** The Purchaser, the Surviving Company, the Paying Agent, and the Escrow Agent, as applicable, shall be permitted to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement to any holder or former holder of Units, Options or Shares such amounts as may be required to be deducted or withheld therefrom under the Code or under any applicable provision of federal, state, local or foreign Tax law (including, for avoidance of doubt, as a result of the vesting of any Incentive Units for which elections under Section 83(b) of the Code were not made), taking into account any applicable exemption under such law. To the extent such amounts are so deducted or withheld and paid to the appropriate taxing authority, the amount of such consideration shall be treated for all purposes under this Agreement as having been paid to the Person to whom such consideration would otherwise have been paid.

**ARTICLE IV**

**CONDITIONS TO CLOSING**

4.01 **Conditions to the Purchasees’ and the Merger Sub’s Obligations.** The obligations of the Purchasers and the Merger Sub to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver by the Purchasers and the Merger Sub in writing) of the following conditions at or prior to the Closing:

(a) (i) The Fundamental Representations set forth in **Article V (A)** other than those Fundamental Representations that address matters as of particular dates, shall be true and correct [...***…] as of the Closing Date as though then made and as though the Closing Date was substituted for the date of this Agreement throughout such representations and warranties, and (B) that address matters as of particular dates shall be true and correct [...***…] as of such dates and (ii) the other representations and warranties set forth in **Article V (A)** other than those representations and warranties that address matters as of particular dates, shall be true and correct as of the Closing Date as though then made and as though the Closing Date was substituted for the date of this Agreement throughout such representations and warranties (without giving effect to materiality, Material Adverse Effect or similar phrases in the representations and warranties), and (B) that address matters as of particular dates shall be true and correct as of such dates (without regard to materiality, Material Adverse Effect or similar phrases in the representations and warranties), except [...***…];

(b) Each of member of the Company Group and [...***…] shall have performed in all material respects the covenants and agreements that are required to be performed by it under this Agreement at or prior to the Closing;

(c) The applicable waiting periods, if any, under the HSR Act shall have expired or been terminated (the “**HSR Condition**”);

(d) No Proceeding by any Governmental Entity shall have been instituted or threatened (and not subsequently settled, dismissed or otherwise terminated) which is [...***…]

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(e) No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger or the material portions of the transactions contemplated by this Agreement, declaring unlawful the Merger or any of the transactions contemplated by this Agreement or causing such transactions to be rescinded shall be in effect;

(f) The Escrow Agent and the Representative shall have executed and delivered to the Purchaser the escrow agreement by and among the Purchaser, the Representative and the Escrow Agent, substantially in the form attached hereto as Exhibit E (the “Escrow Agreement”);

(g) Since the date of this Agreement, there shall not have been a Material Adverse Effect;

(h) […] shall have delivered to […] a certification dated as of the Closing Date, sworn under penalty of perjury, and in form and substance required under Treasury Regulation §1.1445-2(b)(2), stating that […] is not a “foreign person” as defined in Code §1445; provided, however, that in the case of a failure to deliver such certification, the Purchasers’ and the Merger Sub’s sole remedy shall be to withhold on payments hereunder to the extent required by Code §1445 and the Treasury Regulations promulgated thereunder; and

(i) The Company shall have delivered to the Purchasers and the Merger Sub each of the following:
   (i) a certificate of the Company, signed by the Company’s Chief Executive Officer or Chief Financial Officer, dated as of the Closing Date, stating that the preconditions specified in Sections 4.01(a), 4.01(b), and 4.01(g) have been satisfied;
   (ii) a certification dated as of the Closing Date, executed by the requisite “Managers” required to bind the Company under the Company LLC Agreement, sworn under penalty of perjury, and in form in substance required under Treasury Regulation §1.1445-11T(d)(2), stating that (A) 50% or more of the value of the gross assets of the Company does not consist of “United States real property interests” (within the meaning of Code §897(c) and the Treasury regulations thereunder), and (B) 90% or more of the value of the gross assets of the Company does not consist of United States real property interests plus cash or cash equivalents (within the meaning of Treasury Regulation §1.1445-11T(d)(1)); provided, that in the case of a failure to deliver such certification, the Purchasers’ and the Merger Sub’s sole remedy shall be to withhold on payments hereunder to the extent required by Code §1445 and the Treasury Regulations promulgated thereunder;
   (iii) certified copies of resolutions duly adopted by the Company’s board of managers and […] general partner authorizing the execution, delivery and performance of this Agreement and the other agreements contemplated hereby, and the consummation of all transactions contemplated hereby and thereby; and

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If the Closing occurs, all closing conditions set forth in this Section 4.01 which have not been fully satisfied as of the Closing shall be deemed to have been waived by the Purchaser and the Merger Sub.

4.02 Conditions to the Company’s Obligations. The obligation of the Company to consummate the transactions contemplated by this Agreement is subject to the satisfaction of the following conditions as of the Closing Date:

(a) The representations and warranties set forth in Article VI of this Agreement shall be true and correct in all material respects as of the Closing Date as though then made and as though the Closing Date was substituted for the date of this Agreement throughout such representations and warranties (without giving effect to materiality or similar phrases in the representations and warranties);

(b) The Purchasers and the Merger Sub shall have performed in all material respects the covenants and agreements that are required to be performed by them under this Agreement at or prior to the Closing;

(c) The HSR Condition;

(d) The Escrow Agent and the Purchasers shall have executed and delivered to the Representative the Escrow Agreement;

(e) No Proceeding by any Governmental Entity shall have been instituted or threatened (and not subsequently settled, dismissed or otherwise terminated) which is […]***…]

(f) No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger or the material portions of the transactions contemplated by this Agreement, declaring unlawful the Merger or any of the transactions contemplated by this Agreement or causing such transactions to be rescinded shall be in effect; and

(g) The Purchasers and the Merger Sub shall have delivered to the Representative:

(i) a certificate of the Purchasers and the Merger Sub, dated as of the Closing Date, stating that the preconditions specified in Sections 4.02(a) and 4.02(b) have been satisfied; and

(ii) certified copies of the resolutions duly adopted by the Purchaser’s and […]***…] board of directors (or its equivalent governing body) and the Merger Sub’s board of managers (or its equivalent governing body) authorizing the execution, delivery and performance of this Agreement.

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If the Closing occurs, all closing conditions set forth in this Section 4.02 which have not been fully satisfied as of the Closing shall be deemed to have been waived by the Company.

4.03 Frustration of Conditions. None of the Company, the Purchasers or the Merger Sub may rely on the failure of any condition set forth in Section 4.01 or 4.02, as applicable, to be satisfied if such failure was caused by such party’s failure to use, as required by this Agreement, its commercially reasonable efforts to consummate the Merger and consummate the transactions contemplated hereby as expeditiously as practicable.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Purchasers and the Merger Sub, except as set forth in the schedules accompanying this Agreement (each, a “Schedule” and, collectively, the “Disclosure Schedules”), as follows; provided, any disclosure set forth in any Schedule shall be considered to have been set forth in each other Schedule and shall be deemed to modify the representations and warranties in this Article V, in each case, if the relevance of the disclosure set forth in such Schedule to another Schedule or any representation or warranty that is not expressly qualified by such Schedule is reasonably apparent on the face of such disclosure:

5.01 Organization and Organizational Power. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and the Company has all requisite limited liability company power and authority and all authorizations, licenses and permits necessary to own and operate its properties and to carry on its businesses as now conducted, except where the failure to hold such authorizations, licenses and permits would not have a Material Adverse Effect. The Company is qualified to do business in every jurisdiction in which its ownership of property or the conduct of business as now conducted requires it to qualify, except where the failure to be so qualified would not have a Material Adverse Effect. The Company has heretofore made available to the Purchaser complete and correct copies of its Governing Documents (including the Company LLC Agreement) as in effect through and including the date hereof. The Company is not in material default under or in material violation of any provision of its Governing Documents. The Company is not a party to, or bound by, any Contract (including any Organizational Document) that entitles any Unitholder or other holder of equity interests in the Company to any “dissenter’s rights,” “appraisal rights” or any similar remedies under Delaware LLC Law or any other applicable Law.

5.02 Subsidiaries. Neither the Company nor any of its Subsidiaries owns or holds the right to acquire any stock, partnership interest or joint venture interest or other equity ownership interest in any other Person, other than as set forth on the Subsidiaries Schedule. Each of the Subsidiaries listed on the Subsidiaries Schedule (each, a “Company Subsidiary”) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, has all requisite power and authority and all authorizations, licenses and permits necessary to own its properties and to carry on its businesses as now conducted and is qualified to do business in every jurisdiction in which its ownership of property
5.03 Authorization; No Breach; Valid and Binding Agreement.

(a) The execution, delivery and performance of this Agreement, and the Transaction Agreements to which it is a party, by the Company and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite limited liability company action, and no other limited liability company proceedings on its part are necessary to authorize the execution, delivery or performance of this Agreement.

(b) Except as set forth on the attached Authorization Schedule, the execution, delivery and performance of this Agreement by the Company and/or […] does not and the consummation of the transactions contemplated hereby will not conflict with or result in any material breach of, constitute a material default under, result in a material violation of, result in the creation of any material Lien upon any material assets of any member of the Company Group under, or require any material authorization, consent, approval, exemption or other action by or notice to any court or other Governmental Entity under, (i) the provisions of the certificates or articles of formation or incorporation or bylaws or other Organization Documents of any member of the Company Group, (ii) any Material Contract, including any material indenture, mortgage, lease, loan agreement or other agreement or instrument to which any member of the Company Group is bound (or give any Person the right to: (A) declare a default or exercise any remedy under any Material Contract; (B) accelerate the maturity or performance of any Material Contract; or (C) cancel, terminate or modify any right, benefit, obligation or other term of any Material Contract), or (iii) any order or decree by any Governmental Entity, or any Law, to which any member of the Company Group is subject.

(c) Assuming that this Agreement is a valid and binding obligation of the Purchaser and the Merger Sub, this Agreement constitutes a valid and binding obligation of the Company, enforceable in accordance with its terms, except as enforceability may be limited by

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bankruptcy laws, other similar laws affecting creditors’ rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

(d) The adoption of this Agreement and approval of the Merger requires the affirmative vote (the “Required Member Vote”) of the holders of a majority of the Capital Units (as such term is defined in the Company LLC Agreement) outstanding on the applicable record date. The Required Member Vote is the only vote of the Company’s equityholders required under applicable Law, Delaware Law, the Company’s Organizational Documents and all Contracts to which the Company or any Company Subsidiary is a party to legally adopt this Agreement and approve the Merger.

5.04 Capitalization. As of the date hereof, the Capitalization Schedule accurately sets forth (a) the number of Units that are issued and outstanding, and (b) the number of issued options to acquire Units which are exercisable (or will become exercisable as a result of the transactions contemplated hereby (whether pursuant to the terms of such options or at the election of the Company’s board of managers)), as of immediately prior to the Effective Time. All such Units and Options are owned of record by the Unitholders and Optionholders in the amounts set forth on the Capitalization Schedule, and all of the outstanding Units have been duly authorized and were issued in compliance with all applicable Laws and the Company’s Organizational Documents. Except as set forth on the Capitalization Schedule, the Company does not have any other limited liability company interests, equity securities or securities containing any equity features authorized, issued or outstanding, and there are no agreements, options, warrants, profits interests, equity appreciation, phantom equity, calls, puts, rights to subscribe, conversion rights or other rights or arrangements outstanding which provide for the sale or issuance of any of the foregoing by the Company or its Subsidiaries. Except as set forth on the Capitalization Schedule, there are no agreements or other obligations (contingent or otherwise) which require the Company or its Subsidiaries to repurchase or otherwise acquire any of their respective limited liability company interests or other equity securities that would survive the Closing. There are no voting trusts, proxies or any other agreements or understandings with respect to the voting of the Units. The Company is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any Units.

5.05 Financial Statements and Related Matters.

(a) Part A of the Financial Statements Schedule attached hereto consists of: (i) the Company’s unaudited consolidated balance sheet as of September 30, 2015 (the “Latest Balance Sheet”) and the related unaudited consolidated statement of income and cash flows for the nine-month period then ended (the “Latest Statement of Income and Cash Flows” and together with the Latest Balance Sheet, the “Unaudited Financial Statements”) and (ii) the Company’s audited consolidated balance sheet as of December 31, 2014, and the related audited consolidated statements of income, cash flows and members’ equity for the twelve-month period then ended (the “Audited Financial Statements” and together with the Unaudited Financial Statements, the “Financial Statements”). Except as set forth on the attached Financial Statements Schedule, the Financial Statements have been prepared in accordance with GAAP (subject in the case of the Unaudited Financial Statements to the absence of footnote disclosures and normal and customary year-end adjustments none of which are material in amount), consistently applied throughout the periods indicated therein, and present fairly in all material respects the financial
condition, results of operations and cash flows of the Company and its Subsidiaries (taken as a whole) as of the times and for the periods referred to therein. Neither the Company nor any of its Subsidiaries has any Liabilities or obligations that, if known, would be required by GAAP to be reflected or reserved against in a consolidated balance sheet, other than Liabilities and obligations (x) included or disclosed on the face of the Financial Statements, (y) incurred in the Ordinary Course of Business since the date of the Latest Balance Sheet or (z) incurred directly in connection with this Agreement or the transactions contemplated hereby.

(b) The Company maintains a system of internal accounting controls which are sufficient, in all material respects, to provide reasonable assurance that (i) transactions are executed by the members of the Company Group with management’s authorizations, (ii) transactions are recorded by the members of the Company Group as necessary to permit preparation of financial statements and to maintain accountability for assets, (iii) access to assets of the Company Group is permitted only in accordance with management’s authorization and (iv) the recorded accountability for assets of the Company Group is compared with existing assets of the Company Group at reasonable intervals and appropriate action is taken with respect to any differences.

(c) The Company has made available to the Purchaser a correct and complete aging schedule with respect to the billed accounts receivable of the Company and its Subsidiaries as of the date of the Latest Balance Sheet indicating a range of days elapsed since invoice. All of the accounts receivable, subject to the reserves which are reflected in the net amount set forth on the face of the Latest Balance Sheet, whether billed or unbilled, of the Company and its Subsidiaries arose in the Ordinary Course of Business, are carried at values determined in accordance with GAAP consistently applied, do not represent obligations for goods sold on consignment, on approval or on a sale-or-return basis and are not subject to any other repurchase or return arrangement. No Person has any Lien (other than Permitted Liens) on any accounts receivable of the Company or any Company Subsidiary and no request or agreement for deduction or discount has been made with respect to any accounts receivable of the Company or any Company Subsidiary.

(d) As of […***…], (i) the Company Group owns at least […***…] vials of KRYSTEXXA and […***…] units of MIGERGOT, in each case, packaged for commercial sale in the United States, and (ii) no vials of KRYSTEXXA have been packaged by or on behalf of the Company Group for commercial sale outside of the United States. As of […***…], the Company Group owns at least […***…] kilograms of […***…]. All existing inventories of the Company Group are useable or saleable in the Ordinary Course of Business and, as of the date of this Agreement, the oldest inventory of the Company Group has a remaining shelf life of at least […***…]. All inventories of the Company Group have been manufactured in accordance with Good Manufacturing Practices and are of good and marketable quality. The inventory levels maintained by the Company Group, subject to the inventory reserves set forth on the face of the Latest Balance Sheet, (A) are not excessive in light of the normal operating requirements of the Company Group, and (B) are adequate for the conduct of the operations of the Company Group in the Ordinary Course of Business.

5.06 Absence of Certain Developments.

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(a) Since [...***...], there has not been any Material Adverse Effect. Except as set forth on the Developments Schedule or except as expressly contemplated by this Agreement, since [...***...] to the date hereof, the Company and its Subsidiaries have conducted their business in the Ordinary Course of Business, and neither the Company nor its Subsidiaries has: effected any recapitalization, reclassification, merger, consolidation, equity dividend, equity split or like change in its capitalization or declared, accrued, set aside or paid any dividend or made any other distribution in respect of any equity securities;

(b) transferred, sold, pledged, encumbered, disposed or delivered any units or shares of its or its Subsidiaries’ equity securities or issued or sold any securities convertible into, or options with respect to, or warrants to purchase or rights to subscribe for, any units or shares of its or its Subsidiaries’ equity securities, except for issuances of Units upon exercise of outstanding Options or as otherwise expressly contemplated by this Agreement;

(c) amended its or its Subsidiaries’ certificate or articles of formation or incorporation, operating agreement or bylaws or other Organizational Documents;

(d) sold, assigned or transferred any material portion of its assets, properties or rights, except in the Ordinary Course of Business or pursuant to any agreement set forth on the Contracts Schedule;

(e) (i) materially amended, terminated or accelerated, or exercised or waived any material rights under, any contract required to be disclosed on the Contracts Schedule (or any contract that would be required to be disclosed on the Contracts Schedule, but for the amendment, termination, acceleration, or exercise or waiver of any rights thereunder), or (ii) entered into any contract required to be disclosed on the Contracts Schedule, in each case other than in the Ordinary Course of Business;

(f) made any loans or incurred or guaranteed any Indebtedness;

(g) made any capital expenditures in excess of $[...***...] individually or $[...***...] in the aggregate or commitments therefor;

(h) granted any material Lien (other than Permitted Liens) on any of its material assets or material properties, including the Leased Real Property;

(i) (i) materially increased the compensation or fringe benefits (including vacation or paid-time-off entitlement) of any present or former director, officer, employee, consultant or independent contractor of the Company or any of its Subsidiaries, other than compensation raises to employees who are not officers or directors of the Company or any Company Subsidiary, consultants and independent contractors which are made in the Ordinary Course of Business and did not exceed [... ***...]% with respect to any such Person, (ii) granted any severance or termination pay to any present or former director, officer, employee, consultant or independent contractor of the Company or any of its Subsidiaries, (iii) granted any equity or equity-based awards or (iv) forgiven or discharged in whole or in part any outstanding material loans or advances to any present or former director, officer, employee, consultant or independent contractor of the Company or any of its Subsidiaries;

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commenced any legal Proceeding or settled, compromised or waived any material right in respect of any material litigation or other legal Proceeding;

materially accelerated the collection of accounts receivable, materially delayed the purchase of supplies, materially delayed normal capital expenditures, repairs or maintenance, or materially delayed payment of accounts payable or accrued expenses; or

committed or agreed to any of the foregoing.

5.07 Title to Properties.

Except as set forth on the Liens Schedule, the Company or its Subsidiaries owns good and valid title to, or holds pursuant to valid and enforceable leases, all of the tangible personal property shown to be owned or leased by it on the Latest Balance Sheet […] or acquired after the date of the Latest Balance Sheet, free and clear of all Liens, except for Permitted Liens.

The material machinery, equipment and other tangible assets owned or leased by the Company Group that are currently being used by or on behalf of the members of the Company Group in the conduct of the business of the Company Group (including in the manufacturing of the Company Products) (i) are in reasonably good operating condition and repair (normal wear and tear excepted), suitable for the uses intended therefore, and free from latent defects other than such defects as do not interfere with the intended use thereof in the conduct of normal operations, (ii) have been maintained in accordance with the normal practice of the Company Group and (iii) there is not currently any maintenance of any such assets that has been deferred by the Company Group. The attached Assets Schedule sets forth a complete and correct list of all material tangible assets of the Company Group (including all manufacturing equipment owned by the Company Group) that are not located on the Leased Real Property (which schedule includes the physical location of such assets). The Company or a Company Subsidiary has a right to promptly obtain possession of all material tangible assets owned by a member of the Company Group that are located at facilities controlled by third parties.

The real property demised by the leases described on the attached Leased Real Property Schedule (the “Leased Real Property”) constitutes all of the real property leased by the Company and its Subsidiaries. The Leased Real Property leases are in full force and effect, and the Company or its Subsidiaries holds a valid and existing leasehold interest under each such lease, subject to proper authorization and execution of such lease by the other party and the application of any bankruptcy or creditor’s rights laws. The Company has delivered or made available to the Purchaser complete and accurate copies of each of the leases described on the Leased Real Property Schedule, and none of such leases have been modified in any material respect, except to the extent that such modifications are disclosed by the copies delivered or made available to the Purchaser and are described on the Leased Real Property Schedule. Neither the Company nor its Subsidiaries (i) is in default under any of such leases in any material respect, or (ii) has received notice of any default under any of such leases. To the Company’s knowledge, no landlord is in default with respect to any of such leases.
(d) None of the Company’s or its Subsidiaries’ possession and quiet enjoyment of the Leased Real Property has been disturbed and there are no disputes with respect to the Leased Real Property. No security deposit or portion thereof deposited with respect to such Leased Real Property has been applied in respect of a breach or default under such leases which has not been redeposited in full. None of the Company or its Subsidiaries owes any brokerage commissions or finder’s fees with respect to the Leased Real Property. None of the Company or any of its Subsidiaries has subleased, licensed or otherwise granted any Person the right to use or occupy such Leased Real Property or any portion thereof.

(e) Neither […]***[…] the Company nor the Company’s Subsidiaries owns, or has ever owned, any real property.

5.08 Tax Matters.

(a) Except as set forth on the attached Taxes Schedule: Each member of the Company Group has filed all income and other material Tax Returns that it was required to file under applicable Law, and all such Tax Returns were correct and complete in all material respects. All Taxes due and owing by each member of the Company Group (whether or not shown to be due on any Tax Return) have been paid. Each member of the Company Group has properly reported and/or withheld and paid over to the appropriate taxing authority all amounts required to have been reported and/or withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, member, stockholder, Affiliate or other third party. No member of the Company Group has waived any statute of limitations beyond the date hereof with respect to any Taxes or agreed to any extension of time with respect to any Tax assessment or deficiency that has not yet been either paid or resolved.

(b) No audits or administrative or judicial proceedings are pending or being conducted with respect to any Taxes or Tax Return of any member of the Company Group, nor has any member of the Company Group received any written notice from a taxing authority that it intends to conduct such an audit or investigation which audit or investigation has not yet commenced. All deficiencies asserted or assessments made as a result of any past examinations by any taxing authority of the Tax Returns of, or including, any member of the Company Group have been fully paid. No claim has been made in writing by any Tax authority in a jurisdiction where a member of the Company Group has not filed a Tax Return that such member of the Company Group is or may be subject to Tax by that jurisdiction.

(c) The unpaid Taxes of the Company and its Subsidiaries (i) did not, as of the date of the Latest Balance Sheet, exceed the reserve for Tax Liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Latest Balance Sheet (rather than any notes thereto), and (ii) do not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Company and its Subsidiaries in filing their Tax Returns. The unpaid Taxes of […]***[…] (A) did not, as of the date of the balance sheet included in […]***[…] Balance Sheet Schedule, exceed the reserve for Tax Liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of such balance sheet (rather than any notes thereto), and (B) do not exceed that reserve as adjusted for the passage of time through the Closing Date

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in accordance with the past custom and practice of [...***... in filing its Tax Returns. Since the earlier of (x) the date of the Latest Balance Sheet and (y) the date of [...***...] Balance Sheet Schedule, no member of the Company Group has incurred any Liability for Taxes outside the Ordinary Course of Business.

(d) No member of the Company Group has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Code §355 or §361.

(e) No member of the Company Group is or has been a party to any “listed transaction” as defined in Code §6707A and Treasury Regulation §1.6011-4.

(f) No member of the Company Group has applied for or received any private letter ruling from the Internal Revenue Service (or any comparable Tax ruling from any other Governmental Entity).

(g) [...***...] has not been a “United States real property holding corporation” within the meaning of Code §897(c)(2) during the applicable period specified in Code §897(c)(1)(A)(ii). As of the Closing Date, within the meaning of Treasury Regulation §1.1445-11T(d), neither (i) 50% or more of the value of the gross assets of the Company consists of United States real property interests, nor (ii) 90% or more of the value of the gross assets of Company consists of U.S. real property interests plus cash or cash equivalents.

(h) There are no Liens as a result of any unpaid Taxes upon any of the assets of any member of the Company Group, other than Liens for Taxes not yet due and payable.

(i) The Company has made available to the Purchaser true, correct and complete copies of all U.S. federal, state, local and non-U.S. income and franchise Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by any member of the Company Group filed or received since [...***...].

(j) Neither the Purchaser, any member of the Company Group, nor any of their Affiliates, will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in method of accounting by a member of the Company Group for a taxable period ending on or prior to the Closing Date, (ii) use of an improper method of accounting by a member of the Company Group for a taxable period ending on or prior to the Closing Date, (iii) “closing agreement” as described in Code §7121 (or any corresponding or similar provision of state, local or foreign income Tax law) executed by a member of the Company Group on or prior to the Closing Date; (iv) installment sale or open transaction disposition made by a member of the Company Group on or prior to the Closing Date; (v) prepaid amount received by a member of the Company Group on or prior to the Closing Date; or (vi) election under Code §108(i) by any member of the Company Group prior to the Closing.

(k) Except for [...***...] interest in the Splitter LP, the Splitter LP’s interest in the Company, the Company’s interest in Crealta Pharmaceuticals LLC, and Crealta Pharmaceuticals LLC’s interest in Crealta Ireland Limited, no member of the Company Group directly or indirectly owns, and (never has directly or indirectly owned in any taxable period for

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which an applicable Tax statute of limitations has not expired), any equity interest in any corporation, partnership, limited liability company, trust or any other entity or arrangement that is treated as a “business entity” within the meaning of Treasury Regulation §301.7701-2.

(l) No member of the Company Group has (i) ever been a member of an affiliated group filing a consolidated, combined or unitary income Tax Return, (ii) ever been a party to any Tax sharing, indemnification or allocation agreement (other than this Agreement and any loan, lease or similar agreement entered into in the Ordinary Course of Business the primary purpose of which is not Taxes), or (iii) any Liability for the Taxes of any other Person (other than the Company or any of its Subsidiaries) under Treasury Regulations §1.1502-6 (or any similar provision of state, local or non-U.S. Law, including any arrangement for group or consortium relief or similar arrangement), as a transferee or successor, by contract, by operation of Law, or otherwise.

(m) For U.S. federal and applicable state income Tax purposes, (i) the Splitter LP is and since its inception has been properly classified as a domestic partnership, and will be properly so classified until the Splitter LP Liquidation, under Treasury Regulations §§301.7701-2 and 301.7701-3, (iv) the Company is and since inception has been properly classified as a domestic partnership, and will properly be so classified through and until the Closing, under Treasury Regulations §§301.7701-2 and 301.7701-3, (iv) Crealta Pharmaceuticals LLC is and since its inception has been properly classified as an entity disregarded as separate from the Company, and will be properly so classified through the Closing, under Treasury Regulations §§301.7701-2 and 301.7701-3, and (v) Crealta Pharmaceuticals Ireland Limited is and since its inception has been properly classified as an entity disregarded as separate from the Company, and will properly be so classified through the Closing, under Treasury Regulations §§301.7701-2 and 301.7701-3.

(n) No member of the Company Group is subject to Tax in any country other than its country of incorporation, organization or formation by virtue of having employees, a permanent establishment or other place of business in that country. The Company has provided to the Purchaser all material documentation governing any applicable material Tax holidays or incentives that have current applicability to a member of the Company Group. All related party transactions involving members of the Company Group are at arm’s length and in material compliance with Code §482, the Treasury Regulations promulgated thereunder and any comparable provision of any other Tax Law.

(o) None of the Shares or Units is a “covered security” within the meaning of Code §6045(g). Except for Unallocated Units, no Share or Unit was issued in connection with the performance of services (i) for which no valid and timely Code §83(b) election was made and (ii) that does not satisfy the conditions of IRS Revenue Procedure 2001-43. The Company has provided the Purchaser with true, correct and complete copies of all election statements filed under Code §83(b) and received by the Company in accordance with Treasury Regulation §1.83-2(d). No Code §83(b) election was made for any of the Unallocated Units. No Optionholder is a partner of the Company for U.S. federal income Tax purposes.
(p) This Section 5.08 and Section 5.13 (to the extent it relates to Taxes) constitute the sole and exclusive representations and warranties of the Company in this Article V with respect to any Tax matters. None of the representations in Sections 5.08(a), 5.08(b), 5.08(c), 5.08(g), 5.08(h), 5.08(i) or 5.08(n) shall be deemed to apply to any Taxes that are not Indemnified Taxes, and, for the avoidance of doubt, no representation is made concerning the existence of any net operating loss, Tax basis or other Tax asset that any member of the Company Group may have in a taxable period beginning after the Closing Date.

5.09 Contracts and Commitments.

(a) Except for the Contracts set forth on Part A of the attached Contracts Schedule, and except for Contracts entered into by the Company or its Subsidiaries after the date hereof in accordance with Section 7.01, neither the Company nor any of its Subsidiaries is party to or bound by any (such Contracts required to be disclosed under Part A of the Contracts Schedule, the “Material Contracts”):

   (i) collective bargaining agreement or any other Contract, program, policy or arrangement pursuant to which any of member of the Company Group is or may become obligated to make any bonus, severance or change in control payment or similar payment to a Company Employee (other than payments constituting base salary, incentive bonuses or commissions paid in the ordinary course of business) in excess of $…***… per annum;

   (ii) equity purchase, option or similar plan;

   (iii) (A) Contract or agreement for the employment of any officer, employee or other person on a full-time or consulting basis providing for or resulting in aggregate compensation in excess of $…***… per annum, or (B) any consulting or employment agreement with a health care provider entered into in the past …***…;

   (iv) Contract, agreement or indenture relating to the borrowing of money or to mortgaging, pledging or otherwise placing a Lien, except for Permitted Liens, on any material portion of the assets of the Company and its Subsidiaries;

   (v) Contract relating to indebtedness for borrowed money of any member of the Company Group, whether incurred, assumed, guaranteed or secured by any assets;

   (vi) lease, Contract or agreement under which it is lessee of, or holds or operates any personal property owned by any other party, for which the annual rental exceeds $…***…;

   (vii) lease, Contract or agreement under which it is lessor of or permits any third party to hold or operate any property, real or personal;

   (viii) Contract or group of related Contracts with the same party for the purchase of products or services which provided for payments by the Company or its

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Subsidiaries in excess of $[...***...]

during the trailing twelve-month period ending on the date of the Latest Balance Sheet or which is reasonably expected as of the date hereof to be greater than $[...***...]
during any calendar year beginning on or after [...***...];

(ix) agreements or Contract relating to any completed or pending material business or product acquisition by the Company or its Subsidiaries within the last [...***...];

(x) Contract that requires the Company or any Company Subsidiary to make any payments by way of royalties, fees, or otherwise to any owner or licensor of, or other claimant to, any Intellectual Property;

(xi) material Contract, license or royalty agreement relating to the use by a third party of material Intellectual Property owned by the Company or any Company Subsidiary (other than any nonexclusive licenses granted by the Company in the Ordinary Course of Business);

(xii) any Contract that grants, assigns or otherwise transfers any material right, title or interest in or to any Intellectual Property;

(xiii) Contract or agreement with any Affiliate;

(xiv) Contract or agreement that contains covenants or other agreements materially limiting the freedom of the Company, any Company Subsidiary or any of their Affiliates to compete in any business, industry or geographic area or with any other Person or requiring the Company or any of its Subsidiaries to exclusively sell, develop, supply, buy, lease or distribute any products or other assets to or for any Person or which contain pricing protection or “most favored nation” provisions or minimum purchase or minimum sale obligations or which prohibit the Company or any Company Subsidiary from changing the price charged for any Company Product;

(xv) material Contract with minimum purchase commitments or “take or pay” contract terms;

(xvi) distribution, vendor, dealership, franchise or service Contract or agreement (excluding purchase orders issued or received in the Ordinary Course of Business) relating to the distribution, marketing or sale of any Company Products or services;

(xvii) warranty agreement with respect to products sold or services rendered by the Company, co-promotion agreement or managed care contract;

(xviii) any Contract that is a settlement, conciliation or similar agreement pursuant to which the Company or any Company Subsidiary will be required after the execution date of this Agreement (A) to conduct its business in accordance with any material obligations or limitations from and after the execution of such Contract or (B) to pay consideration in excess of $[...***...];
(xix) Contract under which any member of the Company Group may receive or is required to make any earn-out payments in the form of future milestones or otherwise;

(xx) Contract that provides for: (A) reimbursement of any current director or officer of a member of the Company Group for, or advancement to any current director or officer of a member of the Company Group of, legal fees or other expenses associated with any Proceeding or the defense thereof; or (B) indemnification of any current director or officer of a member of the Company Group;

(xxii) Contract that (A) is with a supplier of material equipment, consumables, products, reagents, raw materials or any component, or any services used in the Company Products, which supplier is the only source in the market place or only supplier to the Company Group or (B) relates to any cell line used in the manufacture of any Company Product;

(xxiii) Contract incorporating or relating to any material guaranty, warranty, sharing of liabilities or indemnity (including any indemnity with respect to Intellectual Property) or similar obligation, other than Contracts entered into in the Ordinary Course of Business; or

(b) Except as set forth on Part B of the Contracts Schedule, true and correct copies of all written Contracts, agreements, settlements and instruments which are referred to on the Contracts Schedule have been made available to the Purchaser and the Merger Sub, in each case together with all amendments, waivers or other changes thereto. The Contracts Schedule contains an accurate and complete description of all material terms of all oral Contracts referred to therein.

(c) Neither the Company nor its Subsidiaries is in breach of, of default under, in any material respect, any Contract, agreement, settlement or instrument listed on or required to be listed on Part A of the Contracts Schedule, to the knowledge of the Company, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute any event of default under any such Contract and each such Contract, agreement, settlement or instrument is valid, binding, enforceable and in full force and effect as it relates to the Company and its Subsidiaries and, to the Company’s knowledge, as it relates to the other parties thereto, in each case except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors’ rights and general principles of equity affecting the availability of specific performance and other equitable remedies. No event has occurred that with the passage of time or the giving of notice or both would result in a material default, breach or event of noncompliance by the Company or any of its Subsidiaries or, to the Company’s knowledge, any other party under any such contract, agreement, settlement or instrument required to be listed on the Contracts Schedule. Except as set forth on the Contracts Schedule, with respect to each contract, agreement, settlement or instrument required to be set forth on the Contracts Schedule: (i) neither the Company nor any of its Subsidiaries has received written notice of the intention of any party to such contract, agreement, or instrument to decrease the rate of business, cancel, terminate or
renegotiate any such contract, agreement or instrument; and (ii) to the Company’s knowledge, there has not been any breach by any other party to such contract, agreement, settlement or instrument. As of the date of this Agreement, no third party to any Material Contract has indicated to the Company or any of its Subsidiaries in writing or, to the knowledge of the Company, orally that it desires to materially modify, renew, renegotiate or cancel any Material Contract to which it is a party.

5.10 **Intellectual Property.**

(a) Part A of the **Intellectual Property Schedule** accurately identifies:

(i) in Part A(i) of the **Intellectual Property Schedule**: (A) each item of Registered IP in which any member of the Company Group has or purports to have an ownership interest of any nature (whether solely or jointly with another Person) (the “Company Registered IP”); (B) the jurisdiction in which such Company Registered IP has been registered or filed and the applicable registration or serial number; and (C) any other Person that has an ownership interest in such item of Company Registered IP and the nature of such ownership interest; and

(ii) each of the patents and patent applications included in the Company Registered IP that are owned solely or jointly by a member of the Company Group.

(b) The Company or a Company Subsidiary exclusively owns all right, title and interest to and in the Company IP (other than Intellectual Property licensed to the Company or Company Subsidiary or jointly owned with a third party as noted in Part A(i) of the **Intellectual Property Schedule**) free and clear of any Liens (other than Permitted Liens). Without limiting the generality of the foregoing:

(i) all application, registration, issuance, renewal and maintenance fees due for material Company Registered IP, including all Company Registered IP related to KRISTEXXA® (pegloticase) or MIGERGOT® (ergotamine tartrate and caffeine suppositories), having a final due date on or before the date of this Agreement have been paid in full and are current;

(ii) no Company Employee, to the knowledge of the Company, has any claim, right (whether or not currently exercisable) or interest to or in any Company Owned IP and each Company Employee who is or was involved in the creation or development of any Intellectual Property for or on behalf of the Company or any Company Subsidiary has signed a valid, enforceable (A) agreement containing an assignment of all rights in and to such Intellectual Property to the Company or such Company Subsidiary (without further payment being owed to any such Company Employee and without any restrictions or obligations in the Company’s or such Company Subsidiary’s ownership and use thereof), or where such assignment is not permitted under applicable Law, an exclusive license of such Intellectual Property, which license is described in Part B(ii) of the **Intellectual Property Schedule**, and (B) confidentiality provisions protecting the Company Owned IP and Selected Licensed IP, which in each
case, to the knowledge of the Company, have not been materially breached by such Company Employee;

(iii) the Company and each Company Subsidiary has taken, in the exercise of its and their reasonable business judgment, all reasonable steps to maintain the confidentiality of all Company IP and otherwise protect, maintain and enforce all Company Owned IP and Selected Licensed IP (to the extent the Company or any Company Subsidiary has the right to maintain and enforce Selected Licensed IP), including to protect and enforce its rights in all proprietary information held by the Company or any Company Subsidiary, or purported to be held by the Company or any Company Subsidiary, as a trade secret;

(iv) none of the Company or any Company Subsidiary is now or has ever been a member or promoter of, or a contributor to, any industry standards body or any similar organization that could reasonably be expected to require or obligate the Company or any Company Subsidiary to grant or offer to any other Person any license or right to any Company IP;

(v) no funding, facilities or personnel of any Governmental Entity or any university, college, research institute or other educational institution is being used, or, to the knowledge of the Company, has been used, directly or indirectly, to create, in whole or in part, any Intellectual Property owned or purported to be owned by the Company or any Company Subsidiary, except for any such funding or use of facilities or personnel that does not result in such Governmental Entity or institution obtaining from the Company or any Company Subsidiary ownership or royalty rights or any other similar right, title or interest (including any “march in” rights) in or to such Intellectual Property (including any claim or option to any of the foregoing); and

(vi) To the knowledge of the Company, the Company and its Subsidiaries own or otherwise have the right, through ownership, license or otherwise, to all Intellectual Property (including all manufacturing and other know-how used in the manufacturing and packaging of KRYS TEXXA® (pegloticase)) necessary to conduct the business of the Company Group as conducted as of the date of this Agreement.

(c) All Company Owned IP and Selected Licensed IP that is material to the business of any of the Company Group is subsisting, has not expired, lapsed or been abandoned or cancelled, and to the Company’s knowledge, is valid and enforceable.

(d) Neither the execution, delivery or performance of this Agreement nor the consummation of any of the transactions contemplated hereby will, or would reasonably be expected to, with or without notice or the lapse of time, result in or give any other Person the right or option to cause, create, impose or declare: (A) a loss of, or Lien on, any Company Owned IP or Selected Licensed IP, in each case, that is material to the business of the Company and its Subsidiaries; or (B) the grant, assignment or transfer to any other Person of any license or other right or interest under, to or in any of the Company Owned IP or Selected Licensed IP.
(e) To the knowledge of the Company, no Person has infringed, misappropriated or otherwise violated, and no Person is infringing, misappropriating or otherwise violating, any Company Owned IP or Selected Licensed IP. Part E of the Intellectual Property Schedule: (i) accurately identifies (and the Company has made available to the Purchaser an accurate and complete copy of) each letter or other written or electronic communication or correspondence that has been sent or otherwise delivered by or to any member of the Company Group or any Representative of the Company Group between […] and the date of this Agreement regarding any alleged or suspected infringement or misappropriation of any Company Owned IP or Selected Licensed IP; and (ii) provides a brief description of the current status of the matter referred to in such letter, communication or correspondence.

(f) The conduct of the business of the Company Group as conducted since […] and including, without limitation, the development, manufacture, use, import, export, offer for sale, sale or other commercialization of any of the Company Products, does not and has not infringed (directly, contributorily, by inducement or otherwise), misappropriated or otherwise violated any Intellectual Property of any other Person. Part F of the Intellectual Property Schedule: (i) accurately identifies (and the Company has made available to the Purchaser an accurate and complete copy of) each letter or other written or electronic communication or correspondence that has been sent or otherwise delivered by or to any member of the Company Group or, to the knowledge of the Company, any Company Representative, between […] and the date of this Agreement regarding any alleged or suspected infringement or misappropriation of any Intellectual Property of any other Person by any member of the Company Group or any of the Company Products; and (ii) provides a brief description of the current status of the matter referred to in such letter, communication or correspondence.

(g) No infringement, misappropriation or similar claim or Proceeding involving infringement or misappropriation of any Intellectual Property is pending and served or, to the knowledge of the Company, pending and not served or threatened against any member of the Company Group or against any other Person who is, or has asserted or would reasonably be expected to assert that it is, entitled to be indemnified, defended, held harmless or reimbursed by the Company or any Company Subsidiary with respect to such claim or Proceeding (including any claim or Proceeding that has been settled, dismissed or otherwise concluded).

(h) Part H of the Intellectual Property Schedule sets forth a true and correct list of all grants, benefits, incentives, subsidies and/or other awards received by any member of the Company Group or any other grants, benefits, incentives, subsidies and/or other awards received by third parties for which any member of the Company Group is Liable, in each case, from the OCS (each, an “OCS Grant”), including: (i) the month and year of such grant, (ii) the recipient of such grant, (iii) the amount of such grant, (iv) the aggregate amount of principal and interest outstanding under such grant, and (v) any non-monetary obligations undertaken or owed by any member of the Company Group with respect to such grant. […]  

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Other than as required under the terms of the Contracts set forth on Part A(x) of the Contracts Schedule, no member of the Company Group is required to make any royalty, license fee or other similar payments after the date of this Agreement arising out of, resulting from or relating to the use of the Company IP or the sale or exploitation of the Company Products in connection with the business of the Company Group as currently conducted.

5.11 Litigation. Except as set forth on the attached Litigation Schedule, as of the date hereof, there are no material suits or material Proceedings pending or, to the Company’s knowledge, threatened in writing that involve the Company or its Subsidiaries (or any of the assets owned, leased or used by any of the Company or its Subsidiaries), at law or in equity, or before or by any Governmental Entity and neither the Company nor its Subsidiaries, or any assets of the Company or its Subsidiaries, is subject to any outstanding judgment, injunction, writ, order or decree of any court or other Governmental Entity.

5.12 Governmental Consents, etc. Except for the applicable requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”), no material permit, consent, approval or authorization of, or declaration or notice to or filing with, any Governmental Entity is or will be required in connection with any of the execution, delivery or performance of this Agreement by the Company or the consummation of any transaction contemplated hereby and neither the execution, delivery or performance of this Agreement by the Company nor the consummation of any transaction contemplated hereby will give any Governmental Entity the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by any of the Company or its Subsidiaries.

5.13 Employee Benefit Plans.

(a) Part A of the attached Employee Benefits Schedule sets forth an accurate and complete list of all the Company Employee Plans and Company Employee Agreements.

(b) With respect to each Company Employee Plan and Company Employee Agreement, the Company has made available to the Purchaser correct and complete copies of, as applicable: (i) the plan document, amendments thereto, communications promising benefits materially greater than those set forth in the aforementioned plan document and amendments

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thereto, trust agreements, and other funding vehicles; (ii) the most recent Annual Report (Form 5500 Series) and accompanying schedules and financial statements, if any; (iii) the current summary plan description and any material modifications thereto, if any (if required to be furnished under ERISA); (iv) the most recent determination or opinion letter from the IRS, if any with respect to each Company Employee Plan intended to be qualified under Section 401(a) of the Code; (v) all material correspondence, if any, to or from any Governmental Entity since […***…] relating to any Company Employee Plan; and (vi) all discrimination tests, if any, required under the Code for each Company Employee Plan intended to be qualified under Section 401(a) of the Code for the most recent plan year.

(c) Each of the Company Employee Plans that is intended to be qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended (the “Code”), has received a favorable determination or prototype opinion letter from the Internal Revenue Service, and nothing has occurred since the date of such letter that would reasonably be expected to adversely affect the qualified status of such Plan. Except as has not had and would not reasonably be expected to result in a Material Adverse Effect, the Company Employee Plans comply in form and in operation with their terms and with the requirements of the Code and ERISA and other applicable Laws. To the Company’s knowledge, each member of the Company Group has substantially performed all material obligations required to have been performed by them under, and are not in default or violation of, and have no knowledge of any default or violation by any other party to, the material terms of any Company Employee Plan.

(d) With respect to the Company Employee Plans, all material contributions and premium payments required by the terms of a Company Employee Plan or applicable Law to have been made prior to the date hereof have been made. To the knowledge of the Company, no “prohibited transaction,” within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt under Section 408 of ERISA, has occurred with respect to any Company Employee Plan that would result in material Liability to the Company or its Subsidiaries. There are no actions, suits or claims pending, or to the knowledge of the Company threatened or reasonably anticipated (other than routine claims for benefits), against any Company Employee Plan or against the assets of any Company Employee Plan. To the knowledge of the Company, there are no audits, inquiries or Proceedings pending or threatened by the IRS, Department of Labor, or any other Governmental Entity with respect to any Company Employee Plan. Neither the Company nor any of its Subsidiaries has incurred any material penalty or tax with respect to any Company Employee Plan under Section 502(i) of ERISA or Sections 4975 through 4980 of the Code.

(e) No member of the Company Group or any Company Predecessor Entity has ever maintained, sponsored, participated in, or contributed to or had any liability (including on account of being considered a single employer under Section 414 of the Code with any other Person) with respect to (i) any “multiemployer plan” (as defined in Section 4001(a)(3) of ERISA), or (ii) any “pension plan” (as defined in Section 3(2) of ERISA) that is subject to Section 412 of the Code or Title IV of ERISA. No member of the Company Group or any Company Predecessor Entity has ever maintained, sponsored, participated in, or contributed to or had any liability with respect to (A) any Company Pension Plan in which equity interests of any member of the Company Group is or was held as a plan asset, or (B) any Foreign Plan.

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(f) No Company Employee Plan provides life, health, medical or other welfare benefits to former employees or beneficiaries or dependents thereof, except for health continuation coverage as required by Section 4980B of the Code or Part 6 of Subtitle B of Title I of ERISA.

(g) To the knowledge of the Company, the Company and its Subsidiaries have, prior to the Effective Time, substantially complied with the health care continuation requirements of COBRA, the requirements of FMLA, the requirements of HIPAA, and any similar provisions of state law applicable to the Company Employees, except where any failure to comply has not had, nor reasonably could be expected to have, a Material Adverse Effect.

(h) Except as set forth on Part H of the Employee Benefits Schedule, the consummation of the transactions contemplated by this Agreement will not constitute an event under any Company Employee Plan, Company Employee Agreement (either alone or upon the occurrence of any additional or subsequent events), that will result (either alone or in connection with any other circumstance or event) in any payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Company Employee.

(i) No member of the Company Group is party to any Contract, arrangement or plan that has resulted or would result, separately or in the aggregate, in the payment of any “excess parachute payment” within the meaning of Code Section 280G (or any corresponding provision of state, local or foreign tax law) as a result of the transactions contemplated by this Agreement (including in combination with other events or circumstances). No amount payable to any Person in connection with the consummation of the transactions contemplated by this Agreement (including in combination with other events or circumstances) will be limited as to the deduction related thereto pursuant to Section 280G of the Code or subject to an excise tax under Section 4999 of the Code. No member of the Company Group is under an obligation to gross-up any payment due to any Person for excise taxes due pursuant to Section 4999 of the Code.

(j) Each Company Employee Plan, Company Employee Agreement, employment agreement, or other compensation arrangement of the Company that constitutes a “nonqualified deferred compensation plan” subject to Section 409A of the Code has been written, executed, and operated in compliance with Section 409A of the Code and the regulations thereunder. Neither the Company nor any Affiliate of the Company has any obligation to gross-up or otherwise reimburse any Person for any tax incurred by such Person pursuant to Section 409A of the Code.

(k) With respect to each Company Employee Plan that is a health plan subject to compliance with the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, (collectively, the “2010 Health Care Law”), there will not be any material Liability or material excise Tax under Section 4980H of the Code triggered with respect to operation of such Company Employee Plan for time periods prior the Closing. The Company was not an Applicable Large Employer (as defined in the 2010 Health Care Law) during calendar year 2015.
Except as set forth on Part L of the Employee Benefits Schedule, each recipient of equity interests in the Company or any member of the Company Group issued in connection with the performance of services has made a valid and timely election in respect of such equity interests pursuant to Section 83(b) of the Code, and the Company has made available to the Purchaser true, correct and complete copies of all election statements under Section 83(b) of the Code, together with evidence of timely filing of such election statements with the appropriate IRS center.

Except as set forth on Part M of the Employee Benefits Schedule, with respect to each Senior Management Agreement, neither the Company nor any member of the Company Group has taken any action to cause the definition of “Severance Period” under such Senior Management Agreement to exceed […]***…].

5.14 **Insurance.** The attached Insurance Schedule lists each material insurance policy maintained by the Company and its Subsidiaries. Neither the Company nor its Subsidiaries is in material default with respect to its obligations under any such insurance policy and, to the Company’s knowledge, each such insurance policy is in full force and effect. Such insurance policies are in full force and effect, all premiums due and payable under such insurance policies have been paid on a timely basis, there is no material claim pending under any such insurance policy as to which coverage has been questioned, denied or disputed by the underwriters of such policy and, as of the date of this Agreement, the Company has no knowledge of any threatened termination of, or material premium increase with respect to, any of such policies.

5.15 **Compliance with Laws.** Except as otherwise set forth on the attached Compliance with Laws Schedule:

(a) Each member of the Company Group is, and since […]***…] has been in compliance in all material respects with all applicable Laws (including Healthcare Laws, any pricing agreements with, or pricing regulations of, any Governmental Entity (including under the 340B Drug Pricing Program), any Laws relating to occupational health and safety, and, in each case, the rules and regulations promulgated thereunder).

(b) There are, and since […]***…] there have been, no material investigations, Proceedings or disciplinary actions pending or threatened in writing against the Company or its Subsidiaries by a Governmental Entity alleging material noncompliance with any applicable Laws or Healthcare Law in federal, state, foreign, and other jurisdictions and there is no Proceeding, audit, or recoupment by or before any Governmental Entity alleging a violation of Healthcare Laws in federal, state, foreign or other jurisdictions by the Company or its Subsidiaries.

(c) All material approvals, filings, permits, approvals, accreditations, authorizations and licenses of Governmental Entities (collectively, “Permits”) required to conduct the business of the Company Group are in the possession of the Company or one of its Subsidiaries, are valid and in full force and effect and are being complied with in all material respects.

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(d) The Company and its Subsidiaries have filed with the applicable regulatory authorities (including the FDA or any other Governmental Entity performing functions similar to those performed by the FDA) all material filings, declarations, listings, registrations, reports or submissions that are required to conduct the business of the Company Group as presently conducted and as presently planned to be conducted, including but not limited to adverse event reports. All such filings, declarations, listings, registrations, reports or submissions were in material compliance with applicable Laws when filed, and to the knowledge of the Company, no deficiencies have been asserted by any applicable Governmental Entity with respect to any such filings, declarations, listing, registrations, reports or submissions. All preclinical and clinical investigations sponsored by the Company and/or any of its Subsidiaries, including those in which any or all regulatory obligations have been transferred to a third party, are being, and since […] have been, conducted in material compliance with applicable Laws, rules, regulations and guidance documents, including Good Laboratory Practices and Good Clinical Practices requirements, and federal and state Laws, rules, regulations and guidance documents restricting the use and disclosure of individually identifiable health information.

(e) Since […***…], there has been no false or misleading statement or material omission in any statement made to any Governmental Entity, including, but not limited to the FDA, by the Company or any of its Subsidiaries.

(f) Neither the Company nor any of its Subsidiaries has been debarred or convicted of any crime or engaged in any conduct that did or could result in debarment under 21 U.S.C. § 335a or exclusion from federal healthcare programs under 42 U.S.C. § 1320a-7, and to the Company’s knowledge, neither the Company nor any of its Subsidiaries has engaged in any conduct that would reasonably be expected to result in debarment or exclusion from U.S. federal health care programs.

(g) Since […**…], there has been no recall, detention, withdrawal, seizure or termination or suspension of manufacturing requested or threatened by any Governmental Entity relating to the products sold by the Company and/or its Subsidiaries. Since […***…], there have been no field notifications or adverse regulatory actions taken (or, to the knowledge of the Company, threatened) by any Governmental Entity with respect to any Company Products and none of the Company or any Company Subsidiary has, either voluntarily or at the request of any Governmental Entity, provided post-sale warnings, safety alerts, “dear doctor” letters or investigator notices regarding an alleged lack of safety, efficacy or regulatory compliance of any of its products.

(h) None of the Company, any Company Subsidiary, or any Company Representative has committed an act, made a statement or failed to make a statement, that (in any such case) is prohibited under the FDA’s policy respecting “Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities,” set forth in 56 Fed. Reg. 46191 (September 10, 1991). To Company’s knowledge, neither the Company nor any Company Subsidiary has made any voluntary or involuntary self-disclosure to any Governmental Entity or representative thereof regarding any material non-compliance with any Laws.

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Each of the Company and the Company Subsidiaries is, and since [...***...], have, conducted their export and related transactions in all material respects in accordance with (i) all applicable export, re-export, and anti-boycott Laws of the United States and United States economic sanctions Laws administered by the Office of Foreign Assets Control within the U.S. Department of Treasury and (ii) all other applicable import and export control Laws in any countries in which such Person conducts business.

No member of the Company Group is or ever was (i) a party to a Medicaid Drug Rebate Agreement or (ii) a participant in the Medicaid Drug Rebate Program [...***...]. No member of the Company Group has any rebate Liability under the Medicaid Drug Rebate Program.

No member of the Company Group has ever directly sold any Company Products outside of the United States.

Notwithstanding the foregoing, no representations and warranties are being made under this Section 5.15 with respect to environmental matters, which are covered exclusively by Section 5.16.

5.16 Environmental Compliance. Except as set forth on the attached Environmental Schedule:

(a) The Company and its Subsidiaries are, and have been during the past [...***...] years, in material compliance with all applicable Environmental Requirements.

(b) The Company and its Subsidiaries possess all material Permits, licenses and other authorizations required under Environmental Requirements for their operations and are in material compliance with all terms and conditions of such Permits, licenses and other authorizations.

(c) There are no material suits or Proceedings pending or, to the Company’s knowledge, threatened against the Company or any of its Subsidiaries, pursuant to Environmental Requirements.

(d) Neither the Company nor any of its Subsidiaries is subject to any material judgment, order or decree of any court or other Governmental Entity that is outstanding and was issued pursuant to Environmental Requirements.

(e) Neither the Company nor its Subsidiaries has received, within the three (3) year period prior to the date hereof, any currently unresolved written notice of material violations or material liabilities arising under Environmental Requirements, including any notice of any material investigatory, remedial or corrective obligation, relating to the Company, its Subsidiaries or their facilities and arising under Environmental Requirements.

(f) This Section 5.16 constitutes the sole and exclusive representations and warranties of the Company with respect to any environmental matters, including any arising under Environmental Requirements.

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5.17 Affiliated Transactions. Except as set forth on the attached Affiliated Transactions Schedule, to the Company’s knowledge, no officer, director or Affiliate of the Company or any individual in such officer’s or director’s immediate family is a party to any material agreement, contract, commitment or transaction with the Company or has any material interest in any material property used by the Company.

5.18 Employees.

(a) Part A of the attached Employee Schedule contains a list of all current employees of the Company Group, and consultants and independent contractors providing services to the Company Group, as of the date of this Agreement, and correctly reflects, in all material respects: (i) their start dates; (ii) their positions; (iii) their full-time, part-time, or temporary status, and for employees of the Company Group, their employer and classification status (e.g., exempt or nonexempt); (iv) their base salaries or base hourly wage or contract rate; (v) their target bonus rates or target commission rates; (vi) accrued but unused vacation time and/or paid time off; (vii) any other compensation payable to them (including compensation payable pursuant to any other bonus, deferred compensation or commission arrangements or other compensation, mandatory end-of-service and/or severance payments); (viii) any promises or commitments made to them with respect to changes or additions to their compensation or benefits; (ix) their visa status, if applicable, (x) each employee of the Company Group who is not fully available to perform work because of disability or other leave, together with the basis of such leave and the anticipated date of return to service, and (xi) any outstanding loans.

(b) Except as set forth on the Employee Schedule, the employment of all employees of the Company Group is terminable by the Company or the applicable Company Subsidiary at will, without payment of severance or other compensation or consideration, and without advance notice. The Company has made available to the Purchaser accurate and complete copies of all employee manuals and handbooks, disclosure materials, policy statements and other materials relating to the employment of the employees of the Company Group.

(c) To the knowledge of the Company, no current or former consultant or independent contractor of the Company Group could reasonably be deemed to be a misclassified employee.

(d) Except as set forth on Part D of the attached Employee Schedule, (a) neither the Company nor its Subsidiaries has experienced any labor strike, walkout, lockout, picketing or other material labor dispute within the past [...***...], (b) to the Company’s knowledge, no union organizing activities are presently underway or threatened with respect to employees of either the Company or its Subsidiaries and no such activities have occurred within the past three (3) years, and (c) neither the Company nor any of its Subsidiaries have any collective bargaining agreements or collective bargaining relationships with any labor organization. During the past [...***...], neither the Company nor any of its Subsidiaries has implemented any employee layoffs requiring notice under the federal Worker Adjustment and Retraining Notification Act of 1988 or any similar applicable Law (collectively, the “WARN Act”) without complying therewith in all material respects.

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No member of the Company Group has any Liability for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Entity with respect to unemployment compensation benefits, social security or other benefits or obligations for any employee of the Company Group (other than routine payments to be made in the Ordinary Course of Business). No member of the Company Group has engaged in any unfair labor practice within the meaning of the National Labor Relations Act. There is no claim, pending, or the knowledge of the Company, threatened against any member of the Company Group by an employee of the Company Group in respect of any illness or injury, which is not fully covered by an insurance policy listed on the Insurance Schedule.

5.19 Certain Business Practices. Each of the Company and its Subsidiaries, and to the Company’s knowledge, the Company Representatives (a) has not used and is not using any funds for any unlawful contributions, unlawful gifts, unlawful entertainment or other unlawful expenses; (b) has not made any direct or indirect unlawful payments to any foreign or domestic Government Official; (c) has not violated and is not violating any Anti-Corruption Laws; (d) has not established or maintained, and is not maintaining, any unlawful or unrecorded fund of monies or other properties; (e) has not made, and is not making, any false or fictitious entries on its accounting books and records; (f) has not made, and is not making, any bribe, rebate, payoff, influence payment, kickback or other unlawful payment of any nature, and has not paid, and is not paying, any fee, commission or other payment that has not been properly recorded on its accounting books and records as required by the Anti-Corruption Laws; and (g) has not otherwise unlawfully given or received anything of value to or from a Government Official, an intermediary for payment to any individual including Government Officials, any political party or customer for the purpose of obtaining or retaining business.

5.20 Material Suppliers. The attached Suppliers Schedule sets forth the names of the ten suppliers to whom the Company Group paid the greatest sum of money in respect of services, products and/or materials provided to the Company Group during the year ended December 31, 2014 and during the nine-months ended September 30, 2015. To the knowledge of the Company, since […***…], no supplier listed on the Suppliers Schedule has notified any member of the Company Group that it is canceling, materially reducing or otherwise terminating its business with the Company Group or that it intends to cancel, reduce or otherwise terminate its relationship with the Company Group. Each manufacturer of a Company Product is obligated under the terms of a Material Contract, upon the termination of such manufacturing relationship, to assist the Company with the transition of the manufacturing of such Company Product to a third party selected by the Company, which obligation includes transferring to the Company or its designee (a) all equipment owned by the Company or any Company Subsidiary that is then in the possession of such manufacturer and (b) any know-how that is owned or controlled by such manufacturer and that is necessary for, or otherwise used in, the manufacturing of such Company Product, and, as of the date of this Agreement, no member of the Company Group has received written notice, and, to the Company’s knowledge there are no facts or circumstances, indicating that such manufacturer does not intend to satisfy such obligations.

5.21 Brokerage. Except for fees and expenses of the Persons listed on the attached Brokerage Schedule, there are no claims for brokerage commissions, finders’ fees or similar compensation in connection with the transactions contemplated by this Agreement based

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on any arrangement or agreement made by or on behalf of any member of the Company Group for which the Purchaser, the Merger Sub, the Company or any of their respective Affiliates would be liable following the Closing.

5.22 [...***...].

(a) **Capacity, Power and Authority; Absence of Conflicts.** [...***...] possesses full right, capacity, power and authority to enter into and carry out the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by [...***...]. Assuming the due authorization, execution and delivery by each of the Company, the Purchaser and the Merger Sub of this Agreement and the other Transaction Documents to which they are a party, this Agreement constitutes, and upon their execution and delivery, the other Transaction Documents to which [...***...] is to become a party will constitute, valid and binding obligations of [...***...], enforceable in accordance with their respective terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors’ rights and general principles of equity affecting the availability of specific performance and other equitable remedies. The execution, delivery and performance by [...***...] of the Transaction Documents to which it is a party do not, and the consummation of the transactions contemplated hereby and thereby will not, (i) conflict with or result in any breach of the terms, conditions or provisions of [...***...] certificate of incorporation or bylaws or other Organizational Documents, (ii) conflict with or violate any Law to which [...***...] is subject or (iii) constitute a breach or default under (with or without notice or lapse of time, or both), result in a violation of, result in the creation of any Lien upon any assets of [...***...] under, or require any authorization, consent, approval, exemption or other action by or notice or declaration to, or filing with, any court or other Governmental Entity or other Person under, the provisions of any indenture, mortgage, lease, loan agreement or other agreement, Contract or instrument to which [...***...] is a party or otherwise bound.

(b) **Ownership of the Shares; No Other Equity Interests.** [...***...]

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[...***...]

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(c) **Consents and Approvals.** Except for compliance with the HSR Act, no consent, approval or authorization of, or declaration, filing or registration with, any Governmental Entity is required to be made or obtained by [...***…] in connection with the consummation of the transactions contemplated by this Agreement. No consent, approval or authorization of, or notice to any counterparty to any contract to which [...***…] is bound must be made or obtained by [...***…] in connection with the consummation of the transactions contemplated by this Agreement.

(d) [...***…]

5.23 **No Other Representations or Warranties.** Except for the representations and warranties contained in Article VI, each of the Company and the Representative (a) acknowledges that none of Parent, Merger Sub nor any other Person on behalf of Parent makes any other express or implied representation or warranty (i) with respect to Parent or any of its Affiliates, (ii) with respect to any other information provided to the Company or the Company Representatives or (iii) in connection with the transactions contemplated by this Agreement and (b) disclaims reliance on any information other than the representations and warranties expressly set forth in Article VI.

**ARTICLE VI**

**REPRESENTATIONS AND WARRANTIES OF THE PURCHASERS AND THE MERGER SUB**

The Purchasers and the Merger Sub represent and warrant to the Sellers, [...***…] and the Company that, except as set forth in the Disclosure Schedules; provided, any information set forth in any Schedule or incorporated in any Section of this Agreement shall be considered to have been set forth in each other Schedule and shall be deemed to modify the representations and warranties in this Article VI, in each case, if the relevance of the disclosure set forth in such Schedule is reasonably apparent on the face of such disclosure:

6.01 **Organization and Organizational Power.** The Purchaser is a private company limited by shares duly organized, validly existing and in good standing under the laws of Ireland, with full power and authority to enter into this Agreement and perform its obligations hereunder. [...***…] is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with full power and authority to enter into this

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Agreement and perform its obligations hereunder. The Merger Sub is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, with full power and authority to enter into this Agreement and perform its obligations hereunder.

6.02 **Authorization.** The execution, delivery and performance by each of the Purchasers and the Merger Sub of this Agreement and the other Transaction Documents to which they are a party and the consummation of the transactions contemplated hereby and thereby, and the performance of their obligations hereunder and thereunder, have been duly and validly authorized by all requisite corporate or limited liability company action, as the case may be, and no other proceedings on their part are necessary to authorize the execution, delivery or performance of this Agreement and the other Transaction Documents or the consummation of the transactions contemplated hereby and thereby. The Purchasers and Merger Sub have duly executed and delivered this Agreement and, at or prior to the Closing, will have duly and validly executed and delivered each of the other Transaction Documents to which they are a party. Assuming the due authorization, execution and delivery by each of the Company, the Representative and […]***…] of this Agreement and the other Transaction Documents to which they are a party, this Agreement constitutes, and upon their execution and delivery, the other Transaction Documents to which the Purchasers or Merger Sub is to become a party, will constitute, valid and binding obligations of each of the Purchasers and the Merger Sub, enforceable in accordance with their respective terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors’ rights and general principles of equity affecting the availability of specific performance and other equitable remedies. No vote of the holders of any class or series of capital stock of the Purchasers or the Merger Sub (other than the consent of the Purchaser which has been obtained) is required to adopt this Agreement and approve the transactions contemplated hereby.

6.03 **No Violation.** Neither the Purchasers nor the Merger Sub is subject to or obligated under its certificate or articles of incorporation or formation, its bylaws or its operating agreement (or similar organizational documents), any Law, or any material permit, agreement or instrument, or any license or franchise, or subject to any order, writ, injunction or decree of any Governmental Entity, which would be breached or violated in any material respect by the Purchasers’ or the Merger Sub’s execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby.

6.04 **Governmental Consents.** Except for the applicable requirements of the HSR Act, no material permit, consent, approval or authorization of, or declaration to or filing with, any Governmental Entity or any other Person is required to be obtained by the Purchasers or the Merger Sub in connection with its execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

6.05 **Litigation.** As of the date of this Agreement, there are no suits or proceedings pending or, to the Purchasers’ or the Merger Sub’s knowledge, threatened in writing against the Purchasers or the Merger Sub at law or in equity, or before or by any Governmental Entity, which challenges the validity of this Agreement or would adversely affect or restrict the Purchasers’ or the Merger Sub’s performance under this Agreement or their ability to consummate the transactions contemplated hereby. As of the date of this Agreement, neither the

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Purchasers nor the Merger Sub is subject to any outstanding judgment, order or decree of any court or other Governmental Entity that would adversely affect or restrict the Purchasers’ or the Merger Sub’s ability to consummate the transactions contemplated hereby.

6.06 Brokerage. Except for the Persons listed on the attached Purchaser Brokerage Schedule, no Person is entitled to any brokerage commissions, finders’ fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Purchasers or the Merger Sub.

6.07 Investment Representation. The Purchaser is acquiring the membership interests of the Company for its own account with the present intention of holding such securities for investment purposes and not with a view to, or for sale in connection with, any distribution of such securities in violation of any federal or state securities laws. The Purchaser is an “accredited investor” as defined in Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”). The Purchaser acknowledges that the membership interests of the Company have not been registered under the Securities Act, or any state or foreign securities laws and that the membership interests of the Company may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of unless such transfer, sale, assignment, pledge, hypothecation or other disposition is pursuant to the terms of an effective registration statement under the Securities Act, and the membership interests of the Company are registered under any applicable state or foreign securities laws or sold pursuant to an exemption from registration under the Securities Act, and any applicable state or foreign securities laws.

6.08 Availability of Funds. The Purchasers and the Merger Sub, in the aggregate, will have at the Closing sufficient cash to make payment of all amounts to be paid by them hereunder on and after the Closing Date.

6.09 The Merger Sub. The Merger Sub is a newly organized limited liability company, formed solely for the purpose of engaging in the transactions contemplated by this Agreement. Prior to the date hereof, the Merger Sub has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated by this Agreement. The Merger Sub is a wholly owned Subsidiary of the Purchaser.

6.10 No Other Representations or Warranties. Except for the representations and warranties contained in Article V, each of the Purchasers and the Merger Sub (a) acknowledges that none of the Company, […***…], the Sellers nor any other Person on behalf of the Company makes any other express or implied representation or warranty (i) with respect to […] or the Company or any of its Subsidiaries, (ii) with respect to any other information provided to the Purchasers or the Merger Sub or (iii) in connection with the transactions contemplated by this Agreement and (b) disclaims reliance on any information other than the representations and warranties expressly set forth in Article V. Except to the extent covered by the representations and warranties contained in Article V, neither the Company nor any other Person is making any representations or warranties with respect to any information, documents, projections, forecasts or other material made available to the Purchaser, the Merger Sub or its or their representatives in certain “data rooms” or management presentations or otherwise in expectation of the transactions contemplated by this Agreement.

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ARTICLE VII

COVENANTS OF THE COMPANY

7.01 Conduct of the Business

(a) From the date hereof until the Closing, each member of the Company Group shall, and shall cause each of its respective Subsidiaries to, conduct its business and the businesses of its Subsidiaries in the Ordinary Course of Business, except (i) if the Purchaser or the Merger Sub shall have consented in writing or (ii) as otherwise required or permitted by this Agreement; provided that, the foregoing notwithstanding, (x) no member of the Company Group may use available cash as of immediately prior to the Closing to repay any Indebtedness, other than Item 1 on the Indebtedness Schedule, pay any Transaction Expenses or otherwise make any cash distributions and (y) no action by the Company or its Subsidiaries with respect to matters specifically addressed by any other provision of this Section 7.01 shall be deemed a breach of this Section 7.01, unless such action would constitute a breach of one or more of such other provisions and (y) the Company and its Subsidiaries’ failure to take any action prohibited by Section 7.01(b) shall not be a breach of this Section 7.01.

(b) From the date hereof until the Closing, except (i) as set forth on the Conduct of Business Schedule attached hereto, (ii) as otherwise required or permitted by this Agreement or (iii) as consented to in writing by the Purchaser or the Merger Sub (which consent will not be unreasonably withheld, conditioned or delayed), the Company shall not and shall cause each of its Subsidiaries not to:

(A) except for issuances of Units upon exercise of Options outstanding as of the date of this Agreement, issue, sell, grant, pledge, promise or deliver any equity securities or other equity interests or any subscriptions, warrants, options or other agreements or rights of any kind whatsoever to purchase or otherwise receive or be issued any equity securities or other equity interests or any securities convertible into, or exercisable or exchangeable for, any equity securities or interests of the Company or any of the Company’s Subsidiaries;

(B) effect any recapitalization, reclassification, dividend, equity split or like change in its capitalization or establish a record date for, declare, accrue, set aside or pay any dividend, make or pay any dividend or other distribution (whether in cash, stock, property or otherwise) in respect of its or its Subsidiaries’ equity securities or form a Subsidiary;

(C) amend or otherwise modify its or its Subsidiaries’ certificate or articles of formation or incorporation or other Organizational Documents;

(D) make any redemption or purchase of or otherwise acquire, directly or indirectly, any of its or its Subsidiaries’ equity securities or other equity interests;

(E) sell, assign or transfer, or exclusively license, any material portion of its assets, except in the Ordinary Course of Business and pursuant to an agreement set forth on the Contracts Schedule.
(F) make any investment in excess of $[…***…] in, or any loan in excess of $[…***…] to, any other Person, except in the Ordinary Course of Business and pursuant to any agreement set forth on the Contracts Schedule;

(G) make any capital expenditures, capital additions or capital improvements in excess of $[…***…] individually or $[…***…] in the aggregate or commitments therefor, except for such capital expenditures or commitments therefor that are reflected in the Company’s or its Subsidiaries’ current budget, a copy of which was previously made available to the Purchaser;

(H) hire any new employees, or implement any employee layoffs other than terminations of non-executive officers for cause;

(I) make any loan to, or enter into any other material transaction with, any of its directors, officers, or employees outside the Ordinary Course of Business except pursuant to any agreement set forth on the Contracts Schedule or the Affiliated Transactions Schedule;

(J) incur or guarantee any indebtedness for borrowed money or make any pledge of any of its or its Subsidiaries equity interests or material assets or permit any of its material assets to become subject to any Liens, except for Permitted Liens;

(K) acquire or agree to acquire by merging with, or by purchasing a portion of the stock or assets of, or by any other manner, any business or any entity;

(L) make or change any election in respect of Taxes, change an annual Tax accounting period, adopt or change any accounting method in respect of Taxes, file any amended Tax Return, enter into any closing agreement with respect to Taxes, settle any claim or assessment in respect of Taxes, surrender or abandon any right to claim a refund of Taxes, or consent to any extension or waiver of the limitation period applicable to any material claim or assessment in respect of Taxes or take any similar action relating to the filing of any Tax Return or the payment of any Tax, if such election, change, adoption, amendment, agreement, settlement, surrender, consent or other action would have the effect of increasing the Tax Liability of the Purchaser, any member of the Company Group, or any of their Affiliates for any period ending after the Closing Date;

(M) waive, release, assign, compromise, commence, settle or agree to settle any Proceeding, other than waivers, releases, compromises or settlements in the Ordinary Course of Business that (i) involve only the payment of monetary damages not in excess of (x) $[…***…] individually or (y) $[…***…] in the aggregate and (ii) do not include the imposition of equitable relief on, or the admission of wrongdoing by, the Company or any of its Subsidiaries;

(N) other than in the Ordinary Course of Business (e.g., in connection with normal safety updates) make, or materially amend, any filings with the FDA, the European Medicines Agency or any other Governmental Entity performing functions similar to those performed by the FDA, the European Medicines Agency or such other regulatory authority;

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(O) enter into any Material Contract, amend or modify in any material respect any Material Contract or terminate any Material Contract or knowingly waive any material right under any Material Contract;

(P) adopt, establish, enter into, amend or terminate any Company Employee Plan or Company Employee Agreement or any plan, agreement, program, policy, trust, fund or other arrangement that would be a Company Employee Plan or Company Employee Agreement if it were in existence as of the date of this Agreement (except for amendments to be required to comply with applicable Law),

(Q) increase the compensation or fringe benefits (including severance, termination, retention and change of control compensation or benefits) of, or grant any bonus or other incentive compensation to, any current or former Company Employee or other individual service provider of the Company or any Company Subsidiary,

(R) grant any severance or termination pay to any Company Employee or other individual service provider of the Company or any Company Subsidiary; provided, that the Company or a Company Subsidiary may make severance or termination payments to employees in accordance with the terms of Contract between such employees and the Company or a Company Subsidiary in effect on the date of this Agreement;

(S) terminate, cancel, amend, waive, modify or fail to maintain, renew or comply with any material Permit;

(T) enter into or adopt any plan or agreement of complete or partial liquidation, restructuring, recapitalization or dissolution, or file a voluntary petition in bankruptcy or commence a voluntary legal procedure for reorganization, arrangement, adjustment, release or composition of indebtedness in bankruptcy or other similar Laws now or hereafter in effect;

(U) sell, either directly or indirectly, any Company Products outside of the United States;

(V) take any action, with respect to any Senior Management Agreement, to cause the definition of “Severance Period” under such Senior Management Agreement to exceed [… *** … ]; or

(W) agree or commit to take any of the actions described in clauses (A) through (V) of this Section 7.02(b).

From the date hereof until the Closing, except to the extent reasonably required to complete the Splitter LP Liquidation, (i) […] shall not (A) transfer, assign, sell, gift-over, hedge, pledge or otherwise dispose of (whether by sale, liquidation, dissolution, dividend or distribution), enter into any derivative arrangement with respect to, create or suffer to exist any Liens (other than Permitted Liens) on any of the Shares or any right or interest therein or consent to any of the foregoing or (B) directly or indirectly take or cause the taking of any other action that would be reasonably expected to restrict, limit or interfere with the performance of [… *** … ] obligations under this Agreement, (ii) […]

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shall cause [...***…] not to (A) conduct any business other than holding equity interests in the Splitter LP and the Units, (B) transfer, assign, sell, gift-over, hedge, pledge or otherwise dispose of (whether by sale, liquidation, dissolution, dividend or distribution), enter into any derivative arrangement with respect to, create or suffer to exist any Liens (other than Permitted Liens) on any of the equity interests in the Splitter LP [...***…] or any right or interest therein or consent to any of the foregoing, (C) incur any Indebtedness or other Liabilities, (D) declare, accrue, set aside or pay any dividend or make any other distribution in respect of any equity securities, or (E) enter into or adopt any plan or agreement of complete or partial liquidation, reorganization, recapitalization or dissolution, or file a voluntary petition in bankruptcy or commence a voluntary legal procedure for reorganization, arrangement, adjustment, release or composition of indebtedness in bankruptcy or other similar Laws now or hereafter in effect, and (iii) [...***…] shall cause the Splitter LP not to (A) conduct any business other than holding the Units, (B) transfer, assign, sell, gift-over, hedge, pledge or otherwise dispose of (whether by sale, liquidation, dissolution, dividend or distribution), enter into any derivative arrangement with respect to, create or suffer to exist any Liens on any of the Units held by Splitter LP or any right or interest therein or consent to any of the foregoing, (C) incur any Indebtedness or other Liabilities, or (D) declare, accrue, set aside or pay any dividend or make any other distribution in respect of any equity securities.

7.02 Access to Books and Records. Subject to Section 8.07, from the date hereof until the Closing Date, the Company shall provide the Purchasers and their authorized representatives (the “Purchaser’s Representatives”) with reasonable access during normal business hours and upon reasonable notice to the offices, properties, senior personnel, books and records of [...***…], the Company and their respective Subsidiaries in order for the Purchasers to have the opportunity to make such investigation as it shall reasonably desire to make of the affairs of the Company Group; provided that, notwithstanding the foregoing, (a) such access does not unreasonably interfere with the normal operations of the Company or its Subsidiaries, (b) such access shall occur in such a manner as the Company reasonably determines to be appropriate to protect the confidentiality of the transactions contemplated by this Agreement and (c) nothing herein shall require the Company to provide access to, or to disclose any information to, the Purchasers if such access or disclosure would reasonably be likely to (i) cause significant competitive harm to the Company or its Subsidiaries if the transactions contemplated by this Agreement are not consummated, (ii) waive any legal privilege or (iii) be in violation of applicable Law (including the HSR Act and other anti-competition Laws) or the provisions of any agreement entered into prior to the date of this Agreement to which the Company or any of its Subsidiaries is a party. The Purchasers acknowledges that the Purchasers are and remain bound by the Confidentiality Agreement, between Horizon Pharma plc and Crealta Holdings LLC dated September 24, 2015 (the “Confidentiality Agreement”).

7.03 Regulatory Filings. As soon as practicable following the date hereof until the Closing, to the extent not previously completed, the Company shall make or cause to be made all filings and submissions required under the HSR Act and any other material Laws or regulations applicable to the Company and its Subsidiaries for the consummation of the transactions contemplated herein. Until the Closing, the Company shall coordinate and cooperate with the Purchasers in exchanging such information and providing such assistance as the Purchasers may reasonably request in connection with all of the foregoing.

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7.04 **Conditions** The Company and the Representative shall use commercially reasonable efforts to cause the conditions set forth in **Section 4.01** to be satisfied as soon as practicable following the date hereof and to consummate the transactions contemplated herein as soon as possible after the satisfaction of the conditions set forth in **Article IV** (other than those to be satisfied at the Closing itself); provided that none of the Company, […]***…], the Representative nor the Sellers shall be required to expend any funds to obtain any consent from any Governmental Entity required under **Section 4.01**. The Company and the Representative shall deliver to the Purchasers, no later than […]***…] Business Days prior to the Closing Date, an appropriate payoff letter, dated no more than […]***…] Business Days prior to the Closing Date, from each holder of Closing Date Indebtedness, which are indicated on the **Indebtedness Schedule**, indicating the amounts payable to such Person to fully satisfy such Indebtedness as of the Closing Date and stating that upon payment of such amount that such holder shall release his, her or its Liens and other security interests in, and agree to execute and/or file Uniform Commercial Code Termination Statements and such other documents or endorsements reasonably necessary to release his, her or its Liens and other security interest in, the assets and properties of Company Group, and that all obligations with respect to the related Indebtedness shall be satisfied (subject to the survival of obligations, if any, that by the terms of the documentation governing such Indebtedness continue after full repayment and termination of such Indebtedness) (each, a “**Payoff Letter**”).

7.05 **Exclusive Dealing**

(a) During the period from the date of this Agreement through the Closing or the earlier termination of this Agreement pursuant to **Section 10.01**, the Company and […]***…] shall not, and shall cause their respective Subsidiaries not to, and shall not authorize or instruct any Company Representative to (i) solicit, initiate, discuss or knowingly encourage or facilitate the submission of any Takeover Proposal by any Person, (ii) participate in any discussions or negotiations regarding, or furnish to any Person any non-public information with respect to, or take any other action intended or reasonably expected to facilitate the making of any inquiry or proposal to the Company or […]***…] that constitutes, or is reasonably expected to lead to, any Takeover Proposal by any Person or (iii) enter into any agreement, arrangement, letter of intent, term sheet, understanding or Contract with any Person the terms of which require it to abandon or terminate the transactions contemplated hereby. Without limiting the foregoing, it is understood that any violation of the restrictions set forth in the preceding sentence by any Company Representative, acting on behalf of, and with the authorization of, any member of the Company Group, shall be deemed to be a breach of this **Section 7.05(a)** by the Company.

(b) Neither the board of managers of the Company or […]***…] shall (i) withdraw or modify in a manner materially adverse to the Purchaser or Merger Sub, the approval or recommendation by such board of managers of this Agreement or the transaction contemplated hereby, or (ii) approve or recommend any Takeover Proposal.

(c) In addition to the obligations of the Company and […]***…] set forth in paragraphs (a) and (b) of this **Section 7.05**, each of the Company and […]***…] shall promptly (and in all events within […]***…]) advise the Purchaser orally and in writing of any request by any Person to the Company or […]***…] for nonpublic information that the

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Company or [...] reasonably believes is likely to lead to a Takeover Proposal or of any Takeover Proposal submitted to the Company or [...] and any inquiry by any Person directed to the Company or [...] reasonably believes is likely to lead to any Takeover Proposal and the material terms and conditions of such request or inquiry, and shall promptly provide the Purchaser with a true, correct and complete copy of any Takeover Proposal that is received by the Company or [...] (or on their behalf). The Company shall, promptly after the execution of this Agreement, request the return or destruction of any confidential information shared in connection with any terminated discussions or negotiations with respect to any Takeover Proposal. Each of the Company and [...] shall (and shall cause its Affiliates and its and their respective representatives to) immediately cease and cause to be terminated any existing discussions or negotiations with any Persons (other than Parent or an Affiliate of Parent) conducted heretofore with respect to any Takeover Proposal.

7.06 Notification. From the date hereof until the Closing Date, if the Company has knowledge of any variances from the representations and warranties contained in Article V that would cause the condition set forth in Section 4.01(a) not to be satisfied, the Company shall, as soon as practicable (but in any event at least [...] Business Days prior to the Closing), disclose to the Purchaser in writing such variances. The Company’s satisfaction of its obligations in the foregoing sentence shall not relieve the Company of any of its other obligations under this Agreement.

7.07 Unitholder Consent. The Company shall, in accordance with the Company LLC Agreement and the applicable requirements of the Delaware LLC Law, obtain the written consents of Unitholders for the adoption of this Agreement and the approval of the Merger and the other transactions contemplated hereby (the “Member Written Consent”). The Company shall deliver to the Purchaser the Member Written Consent executed by Unitholders who collectively constitute the Required Member Vote no later than [...] following the time of execution and delivery of this Agreement.

7.08 Company Equity Plan. As soon as reasonably practicable following the date of this Agreement the Company shall obtain any necessary determinations and/or resolutions of the board of managers of the Company or a committee thereof and shall take any other actions that may be necessary (under the Company Equity Plan and award agreements pursuant to which Options are outstanding or otherwise) (a) to deliver, prior to the Closing, all required notifications of the Merger and the other transactions contemplated by this Agreement to the holders of Options, (b) to cancel and extinguish the Options as contemplated in Section 1.05 of this Agreement, and (c) to terminate the Company Equity Plan immediately prior to the Effective Time.

7.09 Termination of Certain Agreements and Company 401(k) Plan. The Company shall take all such steps as may be necessary to terminate, effective as of or prior to the Closing, all of the agreements set forth on the Terminated Affiliated Transactions Schedule. If requested in writing by the Purchaser at least [...] days prior to the Closing Date, the Company shall adopt or cause to be adopted written resolutions providing for the termination of the Company 401(k) Plan (a copy of which shall be provided reasonably in advance to the Purchaser for its review and the Company shall consider in good faith all comments received.

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from the Purchaser on such resolutions prior to their adoption), with such termination effective as of no later than the date immediately preceding the Closing Date but contingent on the occurrence of the Closing.

7.10 Liquidation of Splitter LP. Prior to the Closing, (a) […] shall cause (i) the Splitter LP to be dissolved, (ii) the general partner of the Splitter LP to liquidate and wind up the Splitter LP (including all Liabilities and obligations of the Splitter LP), in each case, in accordance with applicable Law and the terms of the Organizational Documents of the Splitter LP (collectively, the “Splitter LP Liquidation”) and (b) […] shall provide to the Purchasers reasonable documentation evidencing the Splitter LP Liquidation in accordance with the terms of this Section 7.10.

ARTICLE VIII

COVENANTS OF THE PURCHASER

8.01 Access to Books and Records. From and after the Closing, for a period of […] shall, and shall cause the Surviving Company to, provide the Representative and its authorized representatives with access, during normal business hours and upon reasonable notice, to (i) the books and records (for the purpose of examining and copying) of the Company and its Subsidiaries with respect to periods or occurrences prior to or on the Closing Date, but excluding where such books and records are subject to (a) a dispute between the parties or (b) attorney-client privilege or other privilege which would be impaired by such disclosure; provided, that the Persons provided such access shall treat any non-public information of the Company Group as confidential and shall not disclose such information to any third party, and (ii) employees of the Purchasers, the Surviving Company and their Affiliates for purposes of better understanding books and records. Unless otherwise consented to in writing by the Representative, the Purchasers shall, and shall cause the Surviving Company and its Subsidiaries to, for a period of […] following the Closing Date, retain and not otherwise dispose of the books and records of the Company and its Subsidiaries relating to periods prior to the Closing Date in a manner reasonably consistent with the practices of the Purchasers for similar books and records.

8.02 Notification. From the date hereof until the Closing Date, if the Purchasers become aware of any variances from the representations and warranties contained in Article VI that would cause the condition set forth in Section 4.02(a) not to be satisfied, the Purchasers shall, as soon as practicable, disclose to the Representative and the Company in writing such variances.

8.03 Director and Officer Liability and Indemnification.

(a) For a period of […] after the Closing Date, the Purchasers shall not, and shall not permit the Surviving Company or its Subsidiaries to amend, repeal or otherwise modify any provision in […] the Company’s or the Company Subsidiaries’ certificate of formation, certificate of incorporation, articles of incorporation, operating agreement, bylaws, or equivalent governing documents relating to the exculpation or indemnification (including fee advancement) of any officers, managers and/or directors (unless

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required by Law), it being the intent of the parties that the officers, managers and directors of the Company and its Subsidiaries shall, subject to the terms, conditions and limitations thereof, continue to be entitled to such exculpation and indemnification (including fee advancement) to the full extent of the Law and the Purchasers shall cause [...***…], the Surviving Company and its Subsidiaries to, honor and perform under all such indemnification obligations owed to any of the individuals who were officers, managers and/or directors of [...***…], the Company or its Subsidiaries at or prior to the Closing Date under the terms, and subject to the conditions and limitations, of such governing documents.

(b) Prior to or at the Closing, the [...***…] shall purchase (and pay in full all premiums on) an extended reporting period endorsement under the Company’s existing directors’ and officers’ liability insurance coverage for the individuals who were officers, managers and directors of the Company Group at or prior to the Closing Date that shall provide such officers, managers and directors with coverage for [...***…] following the Effective Time of not less than the existing coverage (in amount and scope) and have other terms not materially less favorable to the insured Persons than the directors’ and officers’ liability insurance coverage presently maintained by the Company [...***…]. After the Effective Time, the Purchasers and the Surviving Company shall maintain such policy in full force and effect, and continue to honor the obligations thereunder.

(c) If the Surviving Company, its Subsidiaries or any of their respective successors or assigns (i) is to consolidate with or merges into any other Person and will not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) is to transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of the Surviving Company and its Subsidiaries shall assume all of the obligations set forth in this Section 8.03. The provisions of this Section 8.03 are intended for the benefit of, and will be enforceable by, each current and former officer, manager, director or similar functionary of the Company or its Subsidiaries and his or her heirs and representatives, and are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person may have had by contract or otherwise.

(d) Notwithstanding anything herein to the contrary, if any claim, action, suit, proceeding or investigation (whether arising before, at or after the Closing Date) is made against any individuals who were officers, managers or directors of [...***…], the Company and its Subsidiaries at or prior to the Closing Date or any other party covered by directors’ and officers’ liability insurance, on or prior to the [...***…] anniversary of the Closing Date, the provisions of this Section 8.03 shall continue in effect until the final disposition of such claim, action, suit, proceeding or investigation.

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8.04 **Employment and Benefit Arrangements.**

(a) For at least [...***…] following the Closing Date, the Purchasers shall cause the Surviving Company to provide to the Covered Employees, for so long as such Covered Employees remain employees of the Purchasers, the Surviving Company or any Subsidiary thereof, with base salary and cash incentive compensation targets that are no less favorable than the base salary and cash incentive compensation targets provided to such employees prior to the Closing and either (i) maintain in effect on behalf of employees of the Company and its Subsidiaries all employment, severance, termination, retirement and other compensation and benefit plans, programs, arrangements, agreements and policies (other than any equity-based plans) of the Company or its Subsidiaries as in effect as of the date hereof (the “Company Plans”), or (ii) provide all employees of the Company and its Subsidiaries with such compensation and benefit plans, programs, arrangements, agreements and policies as are provided to similarly situated employees of the Purchasers and/or their Affiliates. If the Purchasers require termination of the Company 401(k) Plan pursuant to Section 7.09, the Purchasers shall permit the employees of the Surviving Company and its Subsidiaries who are participants in the Company 401(k) Plan to be eligible immediately following the Closing to participate in a 401(k) plan maintained by the Purchasers or their Affiliates (the “Purchaser’s 401(k) Plan”) and to make rollover contributions of their account balances from the Company 401(k) Plan that are “eligible rollover distributions” (as defined in Section 402(c)(4) of the Code) to the Purchaser’s 401(k) Plan, including rollovers of promissory notes evidencing any outstanding plan loans under the Company 401(k) Plan.

(b) Notwithstanding anything to the contrary in this Section 8.04, for fiscal year 2015, the Purchaser shall pay, or shall cause the Surviving Company to pay, in accordance with the terms of the Company’s annual bonus plan (except that any employee who is terminated without cause by the Purchaser, the Surviving Company or any of their respective Subsidiaries shall be deemed to have satisfied any continued employment requirement or other requirement that such employee be employed by the Surviving Company or any of its Subsidiaries at the time of the bonus payment) at such time as payment is made under the Purchaser’s annual bonus plan (but provided that such payment shall be made no later than March 15, 2016) bonuses to Company Employees in an aggregate amount that at a minimum equals the amount of the total bonus accrual for Company Employees reflected as current liabilities in the calculation of Net Working Capital (as finally determined under Article II).

(c) To the extent a Covered Employee remains an employee of the Purchasers, the Surviving Company or any Subsidiary thereof, and such Covered Employee is eligible to participate in such plans (or would be eligible to participate in such plans after giving effect to provision of such service credit) the Purchasers shall use commercially reasonable efforts to provide such Covered Employees with service credit for all purposes (other than for purposes of benefit accrual under a defined benefit pension plan) under any compensation or benefit plans, programs, arrangements, agreements and policies sponsored by the Purchasers or any of their Affiliates, except to the extent duplication of benefits would result. To the extent that the Purchasers modify any welfare benefit coverage or plan under which the Covered Employees participate, the Purchasers shall use commercially reasonable efforts to waive any applicable waiting periods, pre-existing conditions or actively-at-work requirements and shall give such Covered Employees credit under the new coverages or benefit plans for deductibles.

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co-insurance and out-of-pocket payments that have been paid during the year in which such welfare benefit coverage or plan modification occurs. The Purchaser shall be solely responsible for any obligations arising under Section 4980B of the Code with respect to all “M&A qualified beneficiaries” as defined in Treasury Regulation §54.4980B-9.

(d) Nothing in this Section 8.04 shall (i) be construed to limit the right of the Purchasers, the Company, or any of the Company Subsidiaries (including, following the Effective Time, the Surviving Company) to amend or terminate any Company Employee Plan or other benefit plan, to the extent such amendment or termination is permitted by the terms of the applicable plan and subject to compliance with the other provisions of this Section 8.04, or (ii) be construed as a guarantee of continued employment or to require the Purchasers, the Company, or any of the Company Subsidiaries (including, following the Effective Time, the Surviving Company) to retain the employment of any Covered Employee or any other particular Person for any fixed period of time following the Effective Time, which employment may be terminated at any time in accordance with applicable Law. Nothing in this Section 8.04 shall give any third party, including any Covered Employees, any right to enforce the provisions of this Section 8.04 as a third-party beneficiary.

8.05 Regulatory Filings.

(a) To the extent not previously completed, the Purchasers, the Company and their respective representatives shall (i) take all of the steps reasonably necessary, and proceed diligently and in good faith, using reasonable best efforts to, within […] Business Days after the date hereof, make or cause to be made all filings and submissions required under the HSR Act or any other applicable antitrust or noncompetition Laws or regulations (“Antitrust Laws”) or other Laws applicable for the consummation of the transactions contemplated herein, and (ii) provide such other information and communication to any Governmental Entity or other Persons as such Governmental Entity or other Persons may reasonably request in connection therewith.

(b) In connection with their obligations under Section 8.05(a), each of the Purchasers and the Company shall, to the extent permitted by applicable Law, (i) keep each other informed in all material respects and on a reasonably timely basis of any material communication received by such party from, or given by such party to, any Governmental Entity and of any material communication received or given in connection with any Proceeding by a private party, in each case with respect to this Agreement or the transactions contemplated hereby, (ii) notify each other of all documents filed with, submitted to or received from any Governmental Entity with respect to this Agreement or the transactions contemplated hereby, (iii) furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any such governmental filing or submission hereunder and (iv) reasonably cooperate with each other in connection with and in advance of any such filing or submission with a Governmental Entity in connection with the transactions contemplated by this Agreement and in connection with any investigation or other inquiry by or before any Governmental Entity relating to this Agreement or the transactions contemplated hereby, including any Action initiated by a private party. Subject to applicable laws relating to the exchange of information, each of the Purchasers and the Company (A) shall have the right to review in advance, and to the extent practicable each will consult with each other with respect to, all information that appears in any filing made with, or written materials submitted to, any Governmental Entity with respect

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to this Agreement or the transactions contemplated hereby in connection with the HSR Clearance, and (B) shall give the other a reasonable opportunity to attend and participate in meetings and telephone conferences with any such government agency relating to the foregoing. To the extent permitted by applicable law, the Company will not, nor will it permit any of its representatives to make any material communications with, or proposals relating to, or enter into, any material understanding, undertaking or agreement with, any Governmental Entity relating to the transactions contemplated by this Agreement without the Purchaser’s prior review and approval.

(c) Notwithstanding the foregoing, neither the Purchasers nor any of their Affiliates shall be required to sell, divest or otherwise dispose of, hold separate, enter into any license or similar agreement with respect to, restrict the ownership or operation of, or agree to sell, divest or otherwise dispose of, hold separate, enter into any license or similar agreement with respect to, or restrict the ownership or operation of any assets or businesses of the Company, the Purchasers or any of their respective Affiliates, unless such action would not have a material adverse impact on the Purchasers, any of their Subsidiaries or Affiliates, the Company or its Subsidiaries.

(d) The [...***…] shall be responsible for all filing fees under the HSR Act, other Antitrust Laws and all other Laws or regulations applicable to the [...***…]. The [...***…] shall cause the filings under the HSR Act to be considered for grant of “early termination.”

8.06 Conditions. The Purchasers and the Merger Sub shall use all commercially reasonable efforts to cause the conditions set forth in Section 4.02 to be satisfied as soon as practicable following the date hereof, to cause the Closing to occur as expeditiously as possible following the execution of this Agreement and to consummate the transactions contemplated herein as soon as reasonably possible after the satisfaction of the conditions set forth in Article IV (other than those to be satisfied at the Closing itself).

8.07 Contact with Customers and Suppliers. Prior to the Closing, the Purchasers and the Purchaser’s Representatives may only contact and communicate with the customers, service providers and suppliers of the Company and its Subsidiaries regarding the transactions contemplated hereby after prior consultation with and written approval of the Representative.

ARTICLE IX

ADDITIONAL COVENANTS

9.01 Disclosure Generally. All Disclosure Schedules and exhibits attached hereto are incorporated herein and expressly made a part of this Agreement as though completely set forth herein. Without modifying or limiting the introductory language to Article V or Article VI, all references to this Agreement herein or in any of the Disclosure Schedules or exhibits shall be deemed to refer to this entire Agreement, including all Disclosure Schedules and exhibits.

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9.02 Provision Respecting Legal Representation. Each of the Purchasers, the Merger Sub, [...***…], the Company and their respective Subsidiaries hereby agrees, on its own behalf and on behalf of its directors, equityholders, members, partners, officers, employees and Affiliates, that, in the event that a dispute arises after the Closing between the Purchasers, the Surviving Company and/or their respective Subsidiaries, on the one hand, and the Representative, the Sellers and/or their respective Affiliates, Kirkland & Ellis LLP (“K&E”) may represent the Representative, the Sellers or any of their respective directors, managers, equityholders, members, partners, officers, employees or Affiliates in such dispute even though the interests of such Persons may be directly adverse to the Purchasers, the Surviving Company or any of their respective Subsidiaries, and even though K&E may have represented the Company or any of the Company’s Subsidiaries in a matter substantially related to such dispute, or may be handling ongoing matters for the Purchasers, the Company or any of their respective Subsidiaries. The Purchasers and the Merger Sub further agree that, as to all communications among K&E, the Company, any of the Company’s Subsidiaries, the Representative, the Sellers and/or any of their respective Affiliates that relate in any way to the transactions contemplated by this Agreement, the attorney-client privilege and the expectation of client confidence belongs to the Representative (on behalf of the Sellers) and may be controlled by the Representative and shall not pass to or be claimed by the Purchasers, the Surviving Company or any of their respective Subsidiaries. Notwithstanding the foregoing, in the event that a dispute arises between the Purchasers, the Surviving Company or any of their respective Subsidiaries and a third party (other than a party to this Agreement or any of their respective Affiliates) after the Closing, the Surviving Company or any of the Surviving Company’s Subsidiaries may assert the attorney-client privilege to prevent disclosure of confidential communications by K&E to such third party; provided, however, that neither the Surviving Company nor any of the Surviving Company’s Subsidiaries may waive such privilege without the prior written consent of the Representative, on behalf of the Sellers.

9.03 Tax Matters.

(a) Responsibility for Filing Tax Returns.

(i) The Representative, on behalf of the Sellers, shall prepare or cause to be prepared and timely file or cause to be timely filed (with the cooperation of the Purchasers) any (i) partnership income Tax Returns for the Company or the Splitter LP and [...***…] in each case, with respect to taxable periods ending on or before the Closing Date (“Seller Prepared Returns”), and timely remit or cause to be timely remitted any Taxes shown thereon to the appropriate Governmental Entity.

(ii) The Purchasers shall prepare or cause to be prepared and timely file or cause to be timely filed all Tax Returns for the Company and its Subsidiaries and [...***…] that are not Seller Prepared Returns for all periods (or portions thereof) ending prior to or including the Closing Date the due date of which (including extensions) is after the Closing Date (“Purchaser Prepared Returns”), and timely remit or cause to be timely remitted any Taxes shown thereon to the appropriate Governmental Entity. To the extent any Taxes shown as due on Purchaser Prepared Returns that are prepared in accordance with Section 9.03 are Indemnified Taxes (which excludes, for the

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avoidance of doubt, any such Taxes taken into account in the calculation of Net Working Capital or Transaction Expenses in the calculation of the Final Merger Consideration pursuant to Article II), the Purchasers and the Representative shall jointly direct the Escrow Agent to distribute cash from the Escrow Account in the amount of such Indemnified Taxes prior to the due date for payment of such Taxes.

(iii) Each Seller Prepared Return and Purchaser Prepared Return shall be prepared and timely filed in a manner consistent with applicable Law, Sections 9.03(e) and 9.03(g), and to the extent not inconsistent with the foregoing, past practice, provided in the case of Purchaser Prepared Returns that such past practice reflects at least a “more likely than not” position (if such position is available). At least […***…] prior to the date on which each income or other material Tax Return described this Section 9.03(a) is required to be filed, the Representative shall submit such Seller Prepared Return to the Purchaser, and the Purchaser shall submit such Purchaser Prepared Return to the Representative, in each case for the other’s review and approval as provided in the third-to-last sentence of this Section 9.03(a)(iii). The Purchaser and the Representative shall consider in good faith any reasonable comments provided by the other. No Tax Return described in this Section 9.03(a) shall be filed without the written consent of the Purchaser or the Representative, as applicable, which consent may not be unreasonably withheld, conditioned or delayed. If the parties are unable to resolve any dispute arising under this Section 9.03(a) within […***…] days for the final due date of filing an applicable Tax Return (including available automatic extensions), the parties shall submit the dispute to the Accounting Firm, which will promptly determine those matters in dispute (based on presentations from the parties and not based on its independent review) and will render a written report as to the disputed matters. The costs and expenses of the Accounting Firm will be […***…].

(b) Amendment of Tax Returns. Without the prior written consent of the Representative (not to be unreasonably withheld, conditioned or delayed), the Purchasers will not (i) except for Tax Returns that are filed in accordance with Section 9.03(a), file or amend or permit the Surviving Company or any of its Subsidiaries or […***…] to file or amend any Tax Return relating to a taxable period (or portion thereof) ending on or prior to the Closing Date (a “Pre-Closing Tax Period”), (ii) with respect to Tax Returns filed pursuant to Section 9.03(a), after the date such Tax Returns are filed pursuant to Section 9.03(a), amend or permit any of the Surviving Company or any of its Subsidiaries or […***…] to amend any such Tax Return, (iii) extend or waive, or cause to be extended or waived, or permit the Surviving Company or any of its Subsidiaries or […***…] to extend or waive, any statute of limitations or other period for the assessment of any Tax or deficiency related to a Pre-Closing Tax Period or (iv) make or change any election or change any method of accounting with respect to Taxes with retroactive effect to a Pre-Closing Tax Period for any of the Company or any of its Subsidiaries or […***…].

(c) No Section 338 Election. None of the Purchasers, the Merger Sub, the Company or any of their Affiliates shall make any election under Code §338 (or any similar provision under state, local or foreign Law) with respect to the transactions contemplated by this Agreement.

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(d) **Transfer Taxes.** Any transfer, documentary, sales, use, registration and real property transfer or gains tax, stamp tax, excise tax, equity transfer tax, or other similar Tax imposed as a result of the transactions contemplated by this Agreement (collectively, “Transfer Taxes”), and any penalties or interest with respect to the Transfer Taxes, shall be [...***…]. The party responsible under applicable Law for submitting payment of Transfer Taxes to the applicable Tax authority shall timely file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes. If required by applicable Law, the Purchasers, [...***…], the Surviving Company or any Company Subsidiary, or any or all of the Sellers shall join in the execution of any such Tax Returns and other documentation.

(e) **Determinations Concerning Pre-Closing Taxes.** In connection with the preparation of Tax Returns under Section 9.03(a), the determination of Net Working Capital, and the determination of Indemnified Taxes, the Purchasers and the Sellers agree that:

(i) In the case of any Straddle Period: (A) the amount of any Tax based on or measured by income, receipts, or payroll of a member of the Company Group attributable to a Pre-Closing Tax Period (A) shall be determined based on an interim closing of the books as of the close of business on the Closing Date (and in the case of any Taxes attributable to the ownership of any equity interest in any partnership or other “flowthrough” entity, as if the taxable period of such partnership or other “flowthrough” entity ended as of the end of the Closing Date), and (B) the amount of other Taxes of the members of the Company Group attributable to the Pre-Closing Tax Period shall be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period through and including the Closing Date and the denominator of which is the number of days in such taxable period.

(ii) To the extent permitted by applicable Law, all Transaction Tax Deductions shall be treated as properly allocable to a Pre-Closing Tax Period ending on the Closing Date. The parties shall apply the safe harbor election set forth in IRS Revenue Procedure 2011-29 to determine the amount of any success-based fees that are deductible in a Pre-Closing Tax Period. The Purchasers and the Sellers agree to prepare all U.S. federal, state and local income Tax Returns with respect to [...***…], the Company and its Subsidiaries consistent with this Section 9.03(e)(ii), whether or not such Tax Return is described in Section 9.03(a).

(f) **Request for Tax Returns.** At the request of the Representative, the Purchasers shall deliver to the Representative copies of all Tax Returns relating to the tax periods (or portions thereof) ending on or prior to the Closing.

(g) **Tax Treatment.** The Purchasers, [...***…], the Company, the Surviving Company, any of its Subsidiaries, and the Sellers agree to report, act and file all Tax Returns in a manner consistent with the following U.S. federal income tax treatment (and unless otherwise required by applicable Law, none shall take any position inconsistent therewith in any Tax Claim):

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(i) the transactions effected pursuant to this agreement shall be treated as the purchase of the Shares by the Purchaser followed immediately thereafter by the purchase of all the membership interests of the Company […***…] by the Purchaser, and that all membership interests of the Company held by […***…];

(ii) […***…] shall have a Tax year that ends as of the end of the day on the Closing Date;

(iii) the Company (as a result of termination under Code §708(b)), shall have a Tax year that ends as of the end of the day on the Closing Date, and shall file a valid and timely election under Code §754 (and any corresponding provision of state Law) with respect to such Tax year; and

(iv) neither the Company nor the Splitter LP shall make the election described in Code §6241(g) (4), as amended pursuant to the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, §1101, in respect of any Tax Return relating to a Pre-Closing Tax Period (including any amendments thereof).

(h) Cooperation on Tax Matters. The Purchasers and the Representative shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the preparation and filing of any Tax Return and any audit, litigation or other proceeding with respect to Tax Returns or Taxes of the Company and its Subsidiaries or […***…]. Such cooperation shall include the retention and (upon the other party’s request) the provision of records and information which are reasonably relevant to any such Tax Return, audit, litigation or other proceeding or any tax planning, and making employees available on a mutually convenient basis to provide additional information and explanation of any materials provided hereunder.

(i) Tax Contests.

(i) At its election, the Representative, on behalf of the Sellers, will have the responsibility for, and the right to control, any audit, litigation or other proceeding with respect to Taxes or Tax Returns of any member of the Company Group (each, a “Tax Claim”) that relates solely to one or more taxable periods ending on or prior to the Closing Date; provided, however, that the Purchaser and the Surviving Company will have the right, directly or through its designated representatives, to review in advance and comment upon all submissions made in the course of such Tax Claims (including any administrative appeals thereof), and the Representative shall not dispose of any Tax Claim without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed. The Purchaser shall, at its own expense, be permitted to participate in any Tax Claim controlled by the Representative. Notwithstanding the foregoing, if any limits on indemnification hereunder would materially limit the Purchaser Indemnified Parties’ recovery for the expected potential Damages arising under a Tax Claim, the Purchaser shall be entitled to control of the Tax Claim with counsel of its own choosing, provided that in all cases the Representative

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shall be permitted to elect to control any U.S. federal or state income Tax audit of the Company for a taxable period ending on or prior to the Closing Date. For the avoidance of doubt, if the Representative does not elect to defend a Tax Claim to which it is entitled to assume control pursuant to this Section 9.03(i)(i), the reasonable third party out-of-pocket expenses incurred by the Purchaser in connection therewith shall constitute Damages.

(ii) With respect to all Tax Claims not described in Section 9.03(i)(i) above, the Purchaser and the Surviving Company will have the responsibility for, and the right to control such Tax Claims, but, in respect of obligations under Section 9.03, with respect to any Tax Claim that relates in whole or in part to a Pre-Closing Tax Period or could reasonably be expected to give rise to material Indemnified Taxes, the Representative, on behalf of the Sellers, shall have the right, directly or through its designated representatives, to review in advance and comment upon all submissions made in the course of such Tax Claims (including any administrative appeals thereof) to the extent related to Pre-Closing Tax Periods or Indemnified Taxes, and the Surviving Company shall not dispose of any Tax Claim to the extent it relates to Pre-Closing Tax Periods or Indemnified Taxes without the consent of the Representative, which consent shall not be unreasonably withheld, conditioned or delayed.

(j) No Intermediary Transaction Tax Shelter. Neither the Purchasers nor the Merger Sub nor their Affiliates shall take any action with respect to the Company or its Subsidiaries or […] that would cause the transactions contemplated by this Agreement to constitute part of a transaction that is the same as, or substantially similar to, the “Intermediary Transaction Tax Shelter” described in Internal Revenue Service Notices 2001-16 and 2008-111.

(k) Purchase Price Allocation. Within […] the […] shall prepare and deliver to the […] an allocation of the Final Merger Consideration (plus any assumed liabilities required to be taken into account) amongst the assets of the Company and its disregarded entity Subsidiaries (the “Purchase Price Allocation”) for the Purchasers’ review and approval. The Purchase Price Allocation shall be prepared in accordance with applicable Law, including in accordance with Code §1060, §751 and §755 and the Treasury Regulations promulgated thereunder (and any similar Law, as appropriate). Within […] days after the Representative’s delivery of the Purchase Price Allocation, the Purchasers shall deliver to the Representative either a notice accepting the Purchase Price Allocation or a statement setting forth objections thereto and the basis for such objections. The Purchaser and the Representative shall use good faith efforts to resolve any such objections. If they are unable to mutually agree on the Purchase Price Allocation, they shall submit the dispute to the Accounting Firm, which will promptly determine those matters in dispute (based on presentations from the parties and not based on its independent review) and will render a written report as to the disputed matters. The costs and expenses of the Accounting Firm will be split evenly between the Purchaser and the Representative (on behalf of the Sellers). The parties agree to file all U.S. federal, state and local income Tax Returns in a manner consistent with the Purchase Price Allocation.
ARTICLE X

TERMINATION

10.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Purchaser and the Representative (on behalf of the Company);

(b) by the Purchaser upon written notice to the other parties hereto, if there has been a violation or breach by any member of the Company Group or [...***…] of any covenant, representation or warranty contained in this Agreement, which violation or breach (i) would cause the conditions set forth in Section 4.01(a) or Section 4.01(b) to not then be satisfied and (ii) has not been waived by the Purchaser in writing or, if curable, cured by the Company within [...***…] days after receipt by the Company of written notice thereof from the Purchaser; provided, however, that the Purchaser may not so terminate if it has breached this Agreement so as to cause any conditions set forth in Section 4.02(a) or Section 4.02(b) not to be then satisfied;

(c) by the Representative (on behalf of the Company) upon written notice to the other parties hereto, if there has been a violation or breach by the Purchaser or Merger Sub of any covenant, representation or warranty contained in this Agreement, which violation or breach (i) would cause the conditions set forth in Section 4.02(a) or Section 4.02(b) to not then be satisfied and (ii) has not been waived by the Representative (on behalf of the Company) in writing or, if curable, cured by the Purchaser within [...***…] days after receipt by the Purchaser of written notice thereof from the Representative (on behalf of the Company); provided that the following violations or breaches shall not be subject to cure hereunder unless otherwise agreed to in writing by the Seller and shall be deemed breaches or violations that prevent the satisfaction of the conditions to the obligations of the Seller at the Closing: (i) a breach by the Purchaser of Section 3.02, (ii) the failure of the Closing to occur on the date specified in Section 3.01 or (iii) the failure to deliver the Closing Cash Consideration on the Closing Date as required hereunder; provided further that the Representative (on behalf of the Company) may not so terminate if any member of the Company Group or [...***…] has breached this Agreement so as to cause any conditions set forth in Section 4.01(a) or Section 4.01(b) not to be then satisfied;

(d) by the Purchaser or the Representative (on behalf of the Company) upon written notice to the other parties hereto, if the transactions contemplated hereby have not been consummated on or before [...***…] (such date, the “Outside Date”); provided that (i) the right to terminate this Agreement under this Section 10.01(d) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the primary cause of, or resulted in, the failure of the Closing of the transactions contemplated hereby to occur on or prior to such date, (ii) in the event that all of the conditions contained in Article IV, (other than those conditions that by their terms or nature are to be satisfied at the Closing, but subject to such conditions being able to be satisfied at the Closing) are satisfied prior to the Outside Date but the HSR Condition is not satisfied at least [...***…] prior to the Outside Date, either the Purchaser or the Representative may elect, by notice to the other party at least [...***…] prior to the Outside Date, to extend the Outside Date to [...***…] (the “Extended Outside Date”);
Date”) and (iii) if the satisfaction, or waiver by the appropriate party, of all of the conditions contained in Article IV (other than those conditions that by their terms or nature are to be satisfied at the Closing, but subject to such conditions being able to be satisfied at the Closing) occurs [...***…] Business Days or less prior to the Outside Date or, as applicable, the Extended Outside Date, then neither the Purchaser nor the Representative (on behalf of the Company) shall be permitted to terminate this Agreement pursuant to this Section 10.01(d) until the [...***…] Business Day after the Outside Date or, as applicable, the Extended Outside Date; or

(e) by the Purchaser, if the Required Member Vote has not been obtained by the Company within [...***…] following the execution and delivery of this Agreement.

10.02 Effect of Termination. Any termination of this Agreement under Section 10.01 will be effective immediately upon the delivery of a valid written notice of the terminating party to the other parties hereto. In the event this Agreement is terminated by either the Purchaser or the Company as provided in Section 10.01, the provisions of this Agreement shall immediately become void and of no further force and effect (other than this Section 10.02, Article XI and Article XII and the Confidentiality Agreement), and there shall be no Liability on the part of the Purchaser, Merger Sub, Representative, the Company or the Sellers to one another, except for any willful breaches of this Agreement prior to the time of such termination.

ARTICLE XI

DEFINITIONS

11.01 Definitions. For purposes hereof, the following terms when used herein shall have the respective meanings set forth below:

“Additional Merger Consideration” means, as of any date of determination, without duplication, any consideration paid or payable to the Sellers pursuant to Section 2.02 pro rata in accordance with each Seller’s Residual Percentage.

“Affiliate” of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, contract or otherwise.

“Allocable Portion of the Closing Merger Consideration” means, with respect to any Unit outstanding immediately prior to the Effective Time (which for this purpose shall include all Units issuable upon exercise of all Options outstanding immediately prior to the Effective Time), an amount, rounded down to the nearest whole cent, equal to that portion, if any, of the Closing Merger Consideration that would be payable in respect of such Unit if the Company were liquidated immediately after the Closing and the Closing Merger Consideration was available for distribution to the Sellers in accordance with Section 4.1 of the Company LLC Agreement (assuming, for the avoidance of doubt, that all Incentive Units have vested and all Options have been exercised prior to such distribution).

“Allocated Units” means Units that are not Unallocated Units.

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“Business Day” means any day other than a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in Chicago, Illinois or New York, New York.

“Closing Date Cash” means all cash and cash equivalents held by the Company, […] and/or their respective Subsidiaries as of immediately prior to the Closing.

“Closing Date Indebtedness” means all Indebtedness of the Company, […] and/or their respective Subsidiaries as of immediately prior to the Closing.

“COBRA” shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“Company 401(k) Plan” means the Crealta Pharmaceuticals 401(k) Plan.

“Company Employee” means any current or former officer or other employee, or any individual who is a current or former independent contractor, consultant or director, of or to any member of the Company Group or any Company Predecessor Entity.

“Company Employee Agreement” shall mean each management, employment, severance, consulting, relocation, repatriation, expatriation, or other similar agreement, or contract between any member of the Company Group or any Company Predecessor Entity and any Company Employee.

“Company Employee Plan” means any employee benefit plan (as defined in Section 3(3) of ERISA) and each other material program, policy, practice, contract, agreement, commitment or other arrangement providing or promising benefits to any Company Employee or any beneficiary or dependent thereof that is sponsored or maintained by any member of the Company Group or any Company Predecessor Entity or to which any member of the Company Group or any Company Predecessor Entity contributes or is obligated to contribute or has or may have any material Liability, whether or not written, funded or unfunded including without limitation any employee welfare benefit plan within the meaning of Section 3(1) of ERISA, any employee pension benefit plan within the meaning of Section 3(2) of ERISA (whether or not such plan is subject to ERISA) and any material compensation, bonus, incentive, deferred compensation, vacation, stock purchase, stock option, equity or similar award, severance, termination pay, employment, performance award, change of control or material fringe benefit plan, program or policy, except such definition shall not include any Company Employee Agreement.

“Company Equity Plan” means the Crealta Holdings LLC 2014 Non-Qualified Unit Option Plan.

“Company Group” means […***…], the Company, and their respective Subsidiaries.

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“Company IP” means: (i) all Intellectual Property relating to the Company Products in which the Company or any Company Subsidiary has an ownership interest; and (ii) all other Intellectual Property with respect to which the Company or any Company Subsidiary has (or purports to have) an ownership interest or an exclusive license or similar exclusive right.

“Company LLC Agreement” means the Amended and Restated Limited Liability Company Agreement of the Company, dated as of August 2, 2013 (as amended).

“Company Owned IP” means the Company IP that is owned (or purported to be owned) by the Company or any Company Subsidiary.

“Company Pension Plan” shall mean each Company Employee Plan that is an “employee pension benefit plan,” within the meaning of Section 3(2) of ERISA.

“Company Predecessor Entity” means any company or entity to which the Company or any Company Subsidiary is a successor.

“Company Products” means all products that have been since […***…], are currently or are currently scheduled to be marketed, sold, licensed or provided by the Company or any of its Subsidiaries, including KRYSTEXXA® (pegloticase), MIGERGOT® (ergotamine tartrate and caffeine suppositories) and MELOXICAM ZYDIS (i.e., any formulation of MELOXICAM that incorporates, is manufactured with or otherwise uses Zydus® Fast Dissolving Dosage Form).

“Company Representative” means with respect to any member of the Company Group, the directors, officers, other employees, agents, attorneys, accountants, investment bankers, and other advisors and representatives of such member of the Company Group.

“Contract” means any written, oral or other agreement, contract, subcontract, lease, understanding, arrangement, instrument, note, option, warranty, purchase order, license, sublicense, insurance policy, benefit plan or legally binding commitment.

“Covered Employees” shall mean employees who are employed by any member of the Company Group at the Effective Time.

“Damages” shall mean losses, costs, damages and expenses, including reasonable out-of-pocket attorneys’ fees and expenses and reasonable fees and expenses of other professionals and experts that have been incurred or properly paid by an Indemnified Party.

“Environmental Requirements” means any Law, any judicial and administrative order or determination concerning (a) pollution or the protection, preservation or restoration of the environment (including all those relating to the generation, handling, transportation, treatment, storage, disposal, distribution, labeling, discharge, release, threatened release, control, or cleanup of any hazardous materials, hazardous substances or hazardous wastes, or petroleum); (b) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of, any Hazardous Substances; or (c) public health and safety issues (including occupational safety and health) solely with respect

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to exposure to Hazardous Substances; in each case of (a) through (c) as enacted as of or prior to the Closing Date.


“Escrow Agent” means Citibank, N.A.

“Escrow Amount” means $[...***...].

“Escrow Distribution” means each distribution of the Escrow Funds to the Paying Agent and the Surviving Company pursuant to Section 12.06.

“Escrow Period” means the period beginning on [...***...] and ending at 11:59 pm Central Time on the date that is [...***...].

“Executive Employee” means each of [...***...].

“FDA” means the United States Food and Drug Administration.

“FMLA” shall mean the Family Medical Leave Act of 1993, as amended.

“Foreign Plan” shall mean any plan, program, policy, practice, agreement or other arrangement mandated by a government other than the United States, any Company Employee Plan maintained or contributed to by the Company or any member of the Company Group that is not subject to United States law, and any Company Employee Plan that covers or has covered employees whose services are performed primarily outside of the United States.

“Fundamental Representations” means the representations and warranties set forth in [...***...].

“GAAP” means United States generally accepted accounting principles.

“Government Official” means (i) any officer or employee of any Governmental Entity, (ii) any Person acting in an official capacity on behalf of a Governmental Entity, (iii) any officer or employee of a Person that is majority or wholly owned by a Governmental Entity, (iv) any officer or employee of a public international organization, such as the World Bank or the United Nations or (v) any officer or employee of a political party or any Person acting in an official capacity on behalf of a political party, in each case, acting in his or her official capacity.

“Governmental Entity” means any federal, national, state, foreign, provincial, local or other government or any governmental, regulatory, administrative or self-regulatory authority, agency, bureau, board, commission, court, judicial or arbitral body, department,
political subdivision, tribunal or other instrumentality thereof, including any multinational authority having governmental or quasi-
governmental powers, or any other industry self-regulatory authority or arbitral body.

“Hazardous Substances” means shall mean any substance for which exposure is regulated by any Governmental 
Entity or any Law due to its dangerous or deleterious properties or characteristics, including any toxic waste, pollutant, contaminant, 
hazardous substance, toxic substance, hazardous waste, special waste, petroleum or any derivative or by-product thereof, radon, 
radioactive material, asbestos, or asbestos containing material, urea formaldehyde foam insulation, lead, toxic mold, mold spores and 
mycotoxins or polychlorinated biphenyls.

“Healthcare Laws” means (i) the Federal Food, Drug and Cosmetic Act and the regulations promulgated 
thereunder, (ii) the Public Health Service Act (42 U.S.C. §201 et seq.), and the regulations promulgated thereunder, (iii) all federal and 
state fraud and abuse laws, including the Federal Anti-Kickback Statute (42 U.S.C. §1320a-7(b)), the civil False Claims Act (31 
U.S.C. §3729 et seq.), the administrative False Claims Law (42 U.S.C. §1320a-7b(a)), the Anti-Inducement Law (42 U.S.C. §1320a-
7a(a)(5)), the exclusion laws (42 U.S.C. §1320a-7), and the regulations promulgated pursuant to such statutes, (iv) HIPAA, (v) the 
the Social Security Act and the regulations promulgated thereunder, and (vii) all applicable laws, rules and regulations, ordinances, 
judgments, decrees, orders, writs and injunctions administered by the FDA and other Governmental Entities that regulate the design, 
development, testing, studying, manufacturing, processing, storing, importing or exporting, licensing, labeling or packaging, 
distributing or marketing of biopharmaceutical products, or related to kickbacks, patient or program charges, recordkeeping, claims 
process, documentation requirements, medical necessity, referrals, the hiring of employees or acquisition of services or supplies from 
those who have been excluded from government health care programs, quality, safety, privacy, security, licensure, accreditation or any 
other aspect of providing health care services.

“HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320d et seq.), 
as amended by the Health Information, Technology for Economic and Clinical Health Act of 2009, the regulations promulgated 
thereunder and comparable state Laws.

“Incentive Unit” means any Unit that is or was subject to vesting.

“Indebtedness” means, as of any particular time, without duplication, (a) all obligations (including all obligations in 
respect of principal, accrued interest, penalties, fees and premiums (prepayment, redemption or otherwise)) of the Company, […]**
and/or their respective Subsidiaries (i) for borrowed money, (ii) in respect of capitalized leases (as determined in accordance with 
GAAP), (iii) evidenced by notes, bonds, debentures, mortgages, indentures or similar contracts, instruments or agreements, (iv) in 
respect of letters of credit and bankers’ acceptances, in each case, to the extent drawn or funded, (v) for break fees or other breakage 
costs for contracts or agreements relating to interest rate or currency protection, swap agreements, collar agreements or other hedging 
arrangement, (vi) pursuant to any surety bond, performance bond or other guarantee of contractual obligations, to the extent a claim has 
been

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made against such bond obligation or guarantee as of such time, […]**…**].

“**Indemnified Taxes**” means (i) all Taxes (or the non-payment thereof) of any member of the Company Group for all Pre-Closing Tax Periods (calculated in accordance with **Section 9.03(c)**), (ii) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which any member of the Company Group (or any predecessor thereof) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation Section 1.1502-6 or any analogous or similar state, local, or non-U.S. Law or regulation, (iii) any and all Taxes of any Person imposed on a member of the Company Group as a transferee or successor, by contract or pursuant to any applicable Law, which Taxes relate to an event or transaction occurring before the Closing, (iv) any Transfer Taxes that are the responsibility of the Sellers under **Section 9.03(d)**, (v) all Transaction Payroll Taxes, and (vi) any Taxes attributable to inaccuracies in the certifications delivered pursuant to **Sections 4.01(h) or 4.01(i)(ii)**; […]**…**].

“**Intellectual Property**” means any or all of the following: (i) copyrights and registrations and applications for registration thereof; (ii) trade names, trademarks, service marks, trade dress, domain names, URLs, logos and other source identifiers, and registrations and applications for registration thereof, together with the goodwill symbolized by any of the foregoing; (iii) patents and applications therefor and all reissues, divisions, renewals, extensions, provisions, continuations and continuations-in-part thereof; (iv) internet uniform resource locators and domain names; (v) statutory invention registrations, invention disclosures, inventions, know-how, trade secrets, software, formulae, methods, processes, protocols, specifications, techniques, and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing, such as laboratory notebooks, samples, studies and summaries) and other proprietary information, and (vi) all rights

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under, in or to any of the foregoing that may exist or be created under the laws of any jurisdiction in the world.

“IRS” shall mean the United States Internal Revenue Service.

“Law” means any law, rule, regulation, judgment, injunction, order, ordinance, statute, ruling or decree issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any court or other Governmental Entity.

“Liability” means any liability, debt, obligation, deficiency, penalty, assessment, fine, claim or other loss, fee, cost or expense of any kind or nature whatsoever, whether asserted or unasserted, absolute or contingent, known or unknown, accrued or unaccrued, liquidated or unliquidated, and whether due or to become due and regardless of when asserted.

“Liens” means any encumbrance, hypothecation, lien, deed of trust, mortgage, easement, encroachment, pledge, restriction, security interest, option, title retention or other security arrangement, or any other charge or claim of a similar nature in or on any asset, property or property interest.

“Material Adverse Effect” means any change, effect, event, occurrence or development that, individually or in the aggregate, has, or would reasonably be expected to have, a materially adverse effect on (a) the assets, properties, results of operations, business or financial condition of […***…] or the Company to consummate the transactions contemplated by this Agreement; provided, however, that with respect to the foregoing clause (a), none of the following shall be deemed in themselves, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Material Adverse Effect: any change, effect, event, occurrence or development attributable to (i) the announcement or execution of this Agreement, (ii) conditions generally affecting the industries in which the Company and its Subsidiaries participate, the U.S. economy as a whole or the capital markets in general (including currency fluctuation) or the markets in which the Company and its Subsidiaries operate; (iii) any change in applicable Laws, (iv) actions specifically required to be taken under applicable Laws, this Agreement by the Company or any Subsidiary thereof (excluding any covenants relating to the operation of the Company and its Subsidiaries in the Ordinary Course of Business); (v) any change in GAAP or other accounting requirements or principles or the interpretation thereof; (vi) the failure of the Company or its Subsidiaries to meet or achieve the results set forth in any projection or forecast (provided, that this clause (vi) shall not prevent a determination that any change or effect underlying such failure to meet projections or forecasts has resulted in a Material Adverse Effect (to the extent such change or effect is not otherwise excluded from this definition of Material Adverse Effect)); or (vii) the commencement, continuation or escalation of a war, material armed hostilities or other material international or national calamity or act of terrorism; provided that, in the case of clauses (ii), (iii), (v) and (vii) above, if such change, effect, event, occurrence or development disproportionately affects the Company and its Subsidiaries as compared to other Persons or businesses that operate in the industry in which the Company and its Subsidiaries operate, then such change, effect, event, occurrence or development may be taken into account in determining whether a Material Adverse Effect has or will occur.

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“Net Working Capital” means (i) current assets [*] of the Company, [*] and/or their respective Subsidiaries as of immediately prior to the Closing, minus (ii) current liabilities [*] of the Company, [*] and/or their respective Subsidiaries as of immediately prior to the Closing.

“OCS” means the Office of the Chief Scientist of Israeli Ministry of the Economy.

“Optionholder” means a holder of Options.

“Options” means options to acquire the Company’s Common Units.

“Ordinary Course of Business” means the ordinary course of business, including with regard to nature, frequency and magnitude, and otherwise consistent with past practice.

“Organizational Documents” means with respect to any particular entity, (i) if a corporation, the articles or certificate of incorporation and the bylaws (or similar organizational documents for any entity organized or existing in any non-U.S. jurisdiction), (ii) if a limited partnership, the limited partnership agreement and the articles or certificate of limited partnership (or similar organizational documents for any entity organized or existing in any non-U.S. jurisdiction), (iii) if a limited liability company, the articles of organization or certificate of formation and the limited liability company agreement or operating agreement (or similar organizational documents for any entity organized or existing in any non-U.S. jurisdiction), (iv) if any other type of entity (including any non-U.S. entity), the formation or organizational documents and the governing documents, (v) all equityholders’ agreements, voting agreements, voting trust agreements, joint venture agreements, or registration rights agreements, and (vi) any amendment or supplement to any of the foregoing.

“Permitted Liens” means (i) statutory Liens for current Taxes or other governmental charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings by the Company and/or its Subsidiaries and for which adequate accruals or reserves have been established on the Latest Balance Sheet in accordance with GAAP; (ii) mechanics’, carriers’, workers’, repairers’ and similar statutory Liens arising or incurred in the Ordinary Course of Business which are not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings by the Company and/or its Subsidiaries and for which adequate accruals or reserves have been established on the Latest Balance Sheet in accordance with GAAP; (iii) zoning, entitlement, building and other land use regulations imposed by governmental agencies having jurisdiction over the Leased Real Property which are not violated by the current use and operation of the Leased Real Property, as applicable, and which do not adversely affect, impair or interfere with the current use, occupancy or operation of such Leased Real Property; (iv) covenants, conditions, restrictions, easements and other similar matters of record affecting title to the Leased Real Property which do not materially affect, impair or interfere with the occupancy or use of the Leased Real Property, as applicable for the purposes for which it is currently used in connection with the Company’s and its Subsidiaries’ businesses; (v) title to any portion of the Leased Real Property lying within the right of way or boundary of any public road or private road which, individually or in the aggregate, do not materially adversely affect the value or the continued use
of such Leased Real Property; (vi) Liens on goods in transit incurred pursuant to documentary letters of credit set forth on the Contracts Schedule; and (vii) Liens set forth on the Permitted Liens Schedule.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a Governmental Entity or any department, agency or political subdivision thereof.

“Proceeding” means any action, suit, charge, complaint, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Entity or any arbitrator or arbitration panel.

“Registered IP” means all Intellectual Property that is registered, filed or issued with, by or under the authority of any Governmental Entity, including all patents, registered copyrights and registered trademarks and all applications for any of the foregoing.

“Residual Percentage” means the percentage set forth next to each Seller’s name on the Closing Payment Schedule.

“Selected Licensed IP” means all Company IP, other than Company Owned IP, relating to KRYSTEXXA® (pegloticase).

“Senior Management Agreement” shall have the meaning ascribed to such term in the Disclosure Schedules.

“Splitter LP” means GTCR/Crealta Splitter LP, a Delaware limited partnership.

“Straddle Period” means any taxable period that includes (but does not end on) the Closing Date.

“Subsidiary” means, with respect to any Person, any corporation of which a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof, or any partnership, limited liability company, association or other business entity of which a majority of the partnership, limited liability company or other similar ownership interest is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof. For purposes of this definition, a Person is deemed to have a majority ownership interest in a partnership, limited liability company, association or other business entity if such Person is allocated a majority of the gains or losses of such partnership, limited liability company, association or other business entity or is or controls the managing director or general partner of such partnership, limited liability company, association or other business entity.

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“Takeover Proposal” means any proposal or offer from any Person (other than the Purchasers or their Affiliates or their respective representatives) for any acquisition by such Person (whether by merger, recapitalization, consolidation, arrangement, amalgamation, purchase of capital stock or other equity securities, purchase of assets, takeover bid or otherwise) of (a) all or a substantial amount of assets of any member of the Company Group (other than an acquisition of assets of the Company Group in the Ordinary Course of Business or as permitted under the terms of this Agreement) or (b) more than a [...] interest in the total voting securities of the Company or [...] or any tender offer or exchange offer that if consummated would result in any Person beneficially owning [...] or more of any class of equity securities of the Company or [...] or any merger, consolidation, or business combination of the Company or [...] with any unaffiliated third party, other than the transactions contemplated by this Agreement.

“Target Net Working Capital Amount” means $[...]...

“Tax” or “Taxes” means any federal, state, local, or non-U.S. income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code §59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, escheat, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

“Tax Representations” means the representations and warranties set forth in Section 5.08 (Tax Matters).

“Tax Returns” means any return, declaration, statement, election, report, claim for refund, information return or other document (including schedules or any related or supporting information) filed or required to be filed with any Governmental Entity charged with the determination, assessment or collection of any Tax (or provided to a third party pursuant to applicable Tax Laws, such as withholding Tax certificates).

“Transaction Documents” mean this Agreement, the Escrow Agreement and all other agreements, instruments and certificates expressly contemplated by this Agreement to be executed and delivered by any party in connection with the consummation of the transactions contemplated by this Agreement.

“Transaction Expenses” shall mean, [...] (a) all fees, costs and expenses accrued, incurred or otherwise payable by [...] the Company, any Subsidiary thereof and/or the Representative (and/or any of their respective Affiliates) at or prior to the Closing in connection with the transactions contemplated by this Agreement and the other Transaction Documents, including any of the foregoing that are payable in connection with the negotiation, documentation and execution of this Agreement and the other Transaction Documents or the consummation of the transactions contemplated hereby or thereby (including any of the foregoing payable to counsel, investment bankers or other representatives or advisors of [...] the Company, any Subsidiary thereof and/or the Representative (and/or any of their respective Affiliates), in each case to the

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extent unpaid as of the Closing), (b) any commission, severance, bonus, or other similar payment or benefit of any kind payable by any
member of the Company Group contingent solely upon the consummation of the Merger (including the employer portion of any
payroll or employment Taxes incurred or accrued with respect to such payments), and (c) any costs, expenses, fees or other payments
owed or payable by any member of the Company Group in connection with the termination or settlement of any Affiliated Agreements
in accordance with Section 7.09; [...***...].

“Transaction Payroll Taxes” means the employer portion of any payroll or employment Taxes incurred or accrued
with respect to any accelerated vesting of Incentive Units, option exercises, option cash-outs, bonuses, or other compensatory
payments made in connection with the transactions contemplated by this Agreement on or about or prior to the Closing Date.

“Transaction Tax Deductions” means any income Tax deductions that [...***...] deductible by [...***...], the
Company or its Subsidiaries on or prior to the Closing Date and result from or are attributable to expenses, fees or payments of or by
the Sellers, [...***...], the Company or its Subsidiaries in connection with the transactions contemplated by this Agreement, including
all such amounts that are (i) included in Net Working Capital, Indebtedness or Transaction Expenses (including Transaction Payroll
Taxes), (ii) Closing Option Consideration and any other compensatory amounts payable pursuant to the transactions contemplated by
this Agreement, or (iii) deferred financing fees; provided that, to the extent applicable, the parties agree to apply and make the safe
harbor election set forth in IRS Revenue Procedure 2011-29 to determine the amount of deductions attributable to the payment of any
success based fees within the scope of such revenue procedure. Any dispute regarding whether [...***...] is met shall be referred to
the Accounting Firm for final resolution.

“Unallocated Unit Vesting Reporting Amount” shall mean the amount to be reported by the Company or its
applicable Subsidiary in respect of the vesting of a Unitholder’s Unallocated Units at Closing, which amount shall be equal to the sum
of (i) the portion of the Closing Merger Consideration that the Unitholder is entitled to receive (treating, for the avoidance of doubt, the
Representative Holdback as if it were paid to the Sellers on the Closing Date), and (ii) the portion of the Escrow Amount that such
Unitholder would be entitled to receive if the Escrow Amount were paid to the Sellers on the Closing Date, in each case determined
before taking into account any withholding Taxes.

“Unallocated Units” means Units granted pursuant to Items 1 or 2 on the Conduct of Business Schedule.

“Unitholder” means a holder of Units.

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“Units” means the Company’s Common Units.

11.02 Other Definitional Provisions.

(a) Accounting Terms. Accounting terms which are not otherwise defined in this Agreement have the meanings given to them under GAAP. To the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under GAAP, the definition set forth in this Agreement will control.

(b) Successor Laws. Any reference to any particular Code section or any Law will be interpreted to include any revision of or successor to that section regardless of how it is numbered or classified.

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ARTICLE XII

MISCELLANEOUS

12.01 Survival of Representations, Warranties, Covenants and Agreements. The representations and warranties of the Company contained in Article V of this Agreement or in any certificate delivered to Parent or Merger Sub by or on behalf of the Company in connection herewith and the covenants and agreements contained in this Agreement that are to be performed by the Company prior to Closing (the “Pre-Closing Covenants”) shall survive until the termination of [...***...]; provided, that (a) the Tax Representations shall survive until the date that is [...***... ] days after the applicable statute of limitations for the subject matter of such representations and warranties expires and (b) the Fundamental Representations shall survive until 11:59 p.m. Pacific Time on the date that is [...***... ] following the Closing Date; provided, further, that any claim that is properly asserted in writing pursuant to this Article XII prior to the expiration of the survival period applicable to such representation or warranty set forth above shall survive until such claim is finally resolved and satisfied. Except for Section 6.10, the representations and warranties of the Purchasers and Merger Sub contained in this Agreement or in any certificate delivered pursuant to this Agreement shall terminate [...***...]. All covenants and other agreements contained in this Agreement other than the Pre-Closing Covenants shall survive [...***... ] in accordance with their respective terms. It is the express intent of the parties hereto that, if the applicable survival period for an item as contemplated by this Section 12.01 is shorter or longer than the statute of limitations that would otherwise have been applicable to such item, then, by contract, the applicable statute of limitations with respect to such item shall be reduced or extended, as applicable, to the shortened or extended survival period contemplated hereby, as the case may be. The parties hereto acknowledge that the time periods set forth in this Section 12.01 for the assertion of claims under this Agreement are the result of arms'-length negotiation among the parties and that they intend for the time periods to be enforced as agreed by the parties.

12.02 Indemnification by the Sellers. Subject to the other provisions of this Article XII and the Escrow Agreement, following the Closing, each Seller shall, severally and not jointly, in accordance with such Seller’s Residual Percentage, indemnify the Purchasers and the Surviving Company, their respective Affiliates, and each of their respective officers, directors, employees, stockholders, agents, other representatives, successors and permitted assigns (each a “Purchaser Indemnified Party”) in respect of, and hold them harmless against, any Damages suffered, incurred or sustained by any Purchaser Indemnified Party resulting from or arising out of:

(a) any inaccuracy in or breach, as of the date of this Agreement and/or as of the Effective Time (as if such representation or warranty had been made as of the Effective Time), of any representation or warranty made by the Company in Article V of this Agreement or in any certificate delivered to Parent or Merger Sub by or on behalf of the Company in connection herewith;

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(b) any breach or nonfulfillment by any member of the Company Group, […] or the Representative of any of their respective covenants, obligations or agreements contained in this Agreement;

(c) regardless of the disclosure of any matter set forth in the Disclosure Schedules, the allocation or misallocation of the Closing Merger Consideration, the Additional Merger Consideration and/or Escrow Distributions amongst the Sellers, including as a result of any inaccuracy or error in the Closing Payment Schedule;

(d) any claim by a current or former holder of Units, Options or Shares or any other Person, seeking to assert, or based upon: (i) ownership or rights to ownership of any shares of capital stock, membership interests or other equity securities of any member of the Company Group, including any claims for breaches of fiduciary duties owed to such Person in such capacity; or (ii) any rights of a stockholder or other equity holder (other than in the case of clauses “(i)” and “(ii)” claims based on the rights of any such Person to receive a portion of the payments contemplated to be made to such Person hereby as and to the extent set forth herein), including any option, preemptive rights or rights to notice or to vote;

(e) any Closing Date Indebtedness or Transaction Expenses in each case, to the extent not taken into account in the calculation of the Final Merger Consideration in accordance with Article II;

(f) regardless of the disclosure of any matter set forth in the Disclosure Schedules, any Indemnified Taxes; and/or

(g) the Splitter LP Liquidation.

12.03 Indemnification Limitations

(a) Except in the case of fraud and claims under Section 9.03, (i) this Article XII shall be the exclusive means for any Purchaser Indemnified Party to collect any Damages for which it is entitled to indemnification under this Agreement and (ii) the Purchaser Indemnified Parties’ sole and exclusive source of recovery for indemnification claims under Section 12.02(a) […] provided, that in no event shall any Seller’s aggregate Liability to the Purchaser Indemnified Parties for indemnification claims pursuant to this Article XII and Section 9.03 exceed […] The parties acknowledge that there shall not be any duplicative recovery for any Damages arising from the same facts and circumstances.

(b) Notwithstanding anything to the contrary contained in this Agreement, no Purchaser Indemnified Party shall be entitled to recover any Damages related to any particular claim for indemnification under Section 12.02(a), unless and until the amount of such Damage

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for which it would otherwise be entitled to indemnification under Section 12.02(a) exceeds $[...***...] (the “Per Claim Deductible”) (it being understood and agreed that (i) any claim for an amount of less than the Per Claim Deductible shall be disregarded in determining whether the Indemnity Deductible has been exceeded and (ii) any Damage or Damages resulting from any single claim or series of related claims arising out of or resulting from the same facts, events, or circumstances shall be deemed to be one and the same claim for these purposes and shall be aggregated in determining whether the Per Claim Deductible was exceeded); provided, that the Per Claim Deductible shall not apply to (i) any claims for fraud or (ii) any Damages related to the inaccuracy in or breach of any of the Fundamental Representations or the Tax Representations.

(c) Notwithstanding anything to the contrary contained in this Agreement, no Purchaser Indemnified Party shall be entitled to recover any Damages under Section 12.02(a) unless and until the aggregate Damages in excess of the Per Claim Deductible for which they would otherwise be entitled to indemnification under Section 12.02(a) exceed $[...***...] (the “Indemnity Deductible”) (at which point the Purchaser Indemnified Parties shall become entitled to be indemnified only for such Damages in excess of the Indemnity Deductible); provided, that the Indemnity Deductible shall not apply to (i) any claims for fraud or (ii) any Damages related to the inaccuracy in or breach of any of the Fundamental Representations or the Tax Representations.

(d) For purposes of Section 12.02(a), a breach shall be determined without regard to any qualification based on materiality, Material Adverse Effect or similar qualifier contained in such representation or warranty (or in any defined term contained in such representation or warranty other than the first sentence of Section 5.06 and the definition of “Material Adverse Effect” in Article XI. Additionally, a Purchaser Indemnified Party’s entitlement to indemnification pursuant to this Agreement will not be affected by any examination made for or on behalf of any of such parties or the knowledge of any of their respective officers, directors, Affiliates, employees, agents or representatives.

(e) No Seller shall be liable to any Purchaser Indemnified Party for any Damages to the extent such Damages constitute punitive damages, except to the extent such punitive damages are sought or obtained by a third party.

(f) The amount of any Damages that are subject to indemnification under this Article XII shall be calculated net of the amount of any insurance proceeds, contribution, indemnification payments or similar payments or reimbursements actually received by the Purchaser Indemnified Parties in respect of such Damages (net of any costs or expenses incurred in obtaining such insurance, indemnification or reimbursement, including any increases in insurance premiums or retro-premium adjustments resulting from such recovery), provided, that nothing in this Section 12.03(f) shall be construed as or give rise to an obligation to seek any such insurance, indemnification or reimbursement. No Purchaser Indemnified Party shall have any right of indemnification hereunder with respect to any Damages or alleged Damages to the extent that the Damage or alleged Damage is included in the calculation of Net Working Capital or deducted as Indebtedness or Transaction Expenses in the determination of Final Merger Consideration.

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All indemnification payments made to the Purchasers from the Escrow Account shall be treated by the parties as an adjustment to the proceeds received by the Sellers pursuant to Article I of this Agreement.

Notwithstanding anything to the contrary contained in this Agreement, the Purchaser Indemnified Parties shall not be entitled to any indemnification for Taxes attributable to transactions occurring on the Closing Date after the Closing outside the Ordinary Course of Business (other than as explicitly contemplated by this Agreement) or transactions that occur or are deemed to occur at or immediately prior to or immediately following the Closing that are solely attributable to Purchaser’s financing of the transactions contemplated by this Agreement.

12.04 Indemnification Claims Procedure.

(a) If a Purchaser Indemnified Party determines in good faith that such Purchaser Indemnified Party has a bona fide claim for indemnification pursuant to this Article XII, then the Purchaser (on behalf of any Purchaser Indemnified Party) shall deliver to the Representative a written notice (a “Claim Notice”) (i) stating that a Purchaser Indemnified Party has a claim for indemnification pursuant to this Article XII, (ii) to the extent possible, providing a good faith non-binding, preliminary estimate of the amount of indemnifiable Damages such Purchaser Indemnified Party claims to have incurred or suffered or could reasonably be expected to incur or suffer (the “Estimated Claim Amount”); and (iii) specifying in reasonable detail (based upon the information then possessed by such Purchaser Indemnified Party) the material facts known to the Purchaser Indemnified Party giving rise to such claim. Subject to this Article XII, no delay in providing such a Claim Notice shall affect a Purchaser Indemnified Party’s rights hereunder, unless (and then only to the extent that) the Sellers are actually and materially prejudiced by such delay. At the time of delivery of any Claim Notice, the Purchaser shall deliver a duplicate copy of such Claim Notice to the Escrow Agent (on behalf of the applicable Purchaser Indemnified Party).

(b) If the Representative in good faith objects to any claim made in a Claim Notice, then the Representative shall deliver a written notice (a “Claim Dispute Notice”) to the Purchaser and the Escrow Agent during the […***…] calendar day period commencing upon receipt by the Representative of the Claim Notice. The Claim Dispute Notice shall set forth in reasonable detail the principal basis for the dispute of any claim made in the relevant Claim Notice. If no Claim Dispute Notice is delivered prior to the expiration of such […***…] calendar day period, then (i) each claim for indemnification set forth in such Claim Notice shall be deemed to have been conclusively determined in favor of the Purchaser Indemnified Party for purposes of this Article XII on the terms set forth in the Claim Notice and (ii) as applicable, if any funds remain in the Escrow Account, then the Purchaser may, in its sole and absolute discretion, direct the Escrow Agent to deliver cash from the Escrow Account to the Purchaser in accordance with this Section 12.04, or as otherwise required pursuant to this Article XII, the Sellers shall make payment to the Purchaser Indemnified Party in respect of the Damages set forth in such Claim Notice.

(c) Following delivery of a Claim Dispute Notice, the Purchaser and the Representative shall attempt in good faith to resolve any such objections raised in such Claim Dispute Notice. If the Purchaser and the Representative agree to a resolution of such objection,
then (i) a memorandum setting forth the matters conclusively determined by the Purchaser and the Representative shall be prepared and signed by both parties and (ii) as applicable, if such memorandum calls for a payment to a Purchaser Indemnified Party and any funds remain in the Escrow Account, the Purchaser may, in its sole and absolute discretion, direct the Escrow Agent to act in accordance with such memorandum and distribute cash from the Escrow Account in accordance therewith, or as otherwise required pursuant to this Article XII, the Sellers shall make payment to the Purchaser Indemnified Party in accordance with such memorandum.

(d) If no such resolution can be reached during the [...] calendar day period following receipt of a given Claim Dispute Notice, then upon the expiration of such [...] calendar day period, either the Purchaser or the Representative may bring suit to resolve the objection in accordance with Sections 12.14 and 12.18 and 12.19. The decision of the trial court as to the validity and amount of any claim in such Claim Notice shall be non-appealable, binding and conclusive upon the Purchaser and the Sellers. As applicable, if such decision calls for a payment to a Purchaser Indemnified Party and any funds remain in the Escrow Account, the Purchaser may, in its sole and absolute discretion, direct the Escrow Agent to act in accordance with such decision and distribute cash from the Escrow Account in accordance therewith, or as otherwise required pursuant to this Article XII, the Sellers shall make payment to the Purchaser Indemnified Party in accordance with such decision. Judgment upon any award rendered by the trial court may be entered in any court having competent jurisdiction.

12.05 Third Party Claims. In the event of the assertion of any actual or possible Proceeding that has been or may be brought or asserted by a third party against a Purchaser Indemnified Party and that may be subject to indemnification pursuant to this Agreement (each, a “Third-Party Claim”), the Purchaser shall proceed with the defense of such Third-Party Claim on its own (and the costs and expenses incurred by the Purchaser in connection with the defense, settlement or resolution of such Third-Party Claim (including reasonable attorneys’ fees, other professionals’ and experts’ fees and court or arbitration costs) may be included in the Damages for which the Purchaser may seek indemnification pursuant to a claim made hereunder). Representative shall be entitled to participate in the defense of such action, lawsuit, proceeding, investigation or other claim giving rise to the Purchaser’s claim for indemnification under this Agreement at Representative’s expense, and at its option shall be entitled to assume the defense thereof with reputable counsel reasonably acceptable to the Purchaser; provided that Representative shall continue to be entitled to assert any limitation on any claims contained herein; and provided further that Representative shall not have the right to assume control of such defense if (i) the claim which Representative seeks to control (a) involves a claim that is reasonably likely to have a material adverse effect on the reputation, customer or supplier relations or future business prospects of the Purchasers, the Surviving Company or any of their respective Affiliates, (b) seeks equitable or injunctive relief, except where equitable or injunctive relief is incidental to a primary claim or claims for monetary damages and such claim is not reasonably likely to result in equitable or injunctive relief, (c) is brought by a Governmental Entity, (d) involves criminal allegations or (e) would reasonably be expected to result in greater liability to Purchaser Indemnified Parties than the Sellers, taking into account the Indemnity Deductible, the Escrow Amount and other limitations on indemnification herein or (ii) the Representative (or counsel selected by Representative) has failed or is failing to prosecute or defend such claim, and is provided written notice of such failure by the Purchaser Indemnified Party and such failure is not reasonably cured within [...] Business Days of receipt of

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such notice. In the event that the Representative assumes the defense of any Third-Party Claim pursuant to the prior sentence, the Purchaser shall be entitled to participate in the defense of such Third Party Claim with separate counsel at the Purchaser’s expense. Neither the Purchaser nor Representative shall not have the right to settle, adjust or compromise such Third-Party Claim without the consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed), it being agreed that the other party shall consent to any settlement, adjustment or compromise of such Proceeding unless the settlement will result in injunctive or other equitable relief being imposed against the Sellers, on the one hand, or against the Purchaser or any member of the Company Group, on the other, as the case may be, or the settlement does not expressly and unconditionally release the Sellers, on the one hand, or the Purchaser or the Company Group, on the other, as applicable, from all liabilities and obligations with respect to such Third-Party Claim without prejudice, except for payments that would be required to be paid by Representative representing the Indemnity Deductible and/or the Per Claim Deductible. The Purchasers shall give the Representative prompt notice of the commencement of any such Third-Party Claim against a Purchaser Indemnified Party; provided, that any failure on the part of the Purchaser to so notify the Representative shall not limit any of the obligations of the Sellers pursuant to this Article XII (except and only to the extent such failure actually and materially prejudices the defense of such Third-Party Claim). For the avoidance of doubt, Tax Claims shall be subject to Section 9.03(i) rather than this Section 12.05.

12.06 Release of Escrow Amount.

(a) On the […] Business Day following the termination of the Escrow Period, the Escrow Agent shall release the then remaining Escrow Funds (to the extent such funds have not been utilized to pay the Purchaser Indemnified Parties for any indemnification claims under this Article XII) to (i) the Paying Agent for further distribution to the Sellers (other than the Optionholders in respect of Options) and (ii) the Surviving Company (or any successor thereto) for further distribution to the Optionholders in respect of the Options, in each case, in accordance with Section 1.04 and Section 1.05, as applicable; provided, that the Escrow Agent shall retain an amount (up to the total amount of the then remaining Escrow Funds) equal to the amount of any claims for indemnification asserted in good faith prior to the termination of the Escrow Period but which are not yet resolved (each such claim, an “Unresolved Claim”). The amount of the Escrow Funds retained for each Unresolved Claim shall be released (to the extent such funds are not utilized to indemnify any Purchaser Indemnified Party for such Unresolved Claim in accordance with the terms of this Agreement) by the Escrow Agent to the Paying Agent or the Surviving Company, as applicable, in accordance with the prior sentence upon the final and binding resolution of such Unresolved Claim in accordance with this Article XII and the Escrow Agreement.

(b) Notwithstanding anything herein to the contrary, at least […] Business Days prior to any Escrow Distribution to the Sellers, the Representative shall deliver to the Purchasers an updated Closing Payment Schedule (which need not be certified by an officer of the Company) setting forth the portion of such Escrow Distribution payable to each Seller.

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12.07 **Representative.**

(a) **Authority.** By the approval of this Agreement pursuant to the Delaware LLC Law, the Sellers hereby irrevocably constitute and appoint the Representative as the representative, agent, proxy, and attorney-in-fact for each of the Sellers for all purposes contemplated under this Agreement, including the full power and authority on the Sellers’ behalf (i) to consummate the transactions contemplated herein; (ii) to pay such Seller’s expenses incurred in connection with the negotiation and performance of this Agreement (whether incurred on or after the date hereof), including by using funds from the Representative Holdback Amount; (iii) to disburse any funds received hereunder to such Seller and each other Seller; (iv) to endorse and deliver any certificates or instruments representing the Units and execute such further instruments of assignment as the Purchaser or the Merger Sub shall reasonably request; (v) to execute and deliver on behalf of such Seller any amendment or waiver hereto; (vi) (A) to dispute or refrain from disputing, or to deliver instructions, on behalf of such Seller relative to any amounts to be received by such Seller under any Transaction Document or any other agreement contemplated hereby or thereby, any claim made by the Purchaser under any Transaction Document or any other agreement contemplated hereby or thereby, any claim made by the Purchaser under any Transaction Document or any other agreement contemplated hereby or thereby, any claim made by the Purchaser under any Transaction Document or any other agreement contemplated hereby or thereby, any claim made by the Purchaser under any Transaction Document or any other agreement contemplated hereby or thereby, any claim made by the Purchaser under any Transaction Document or any other agreement contemplated hereby or thereby, (B) to negotiate and compromise, on behalf of such Seller, any dispute that may arise under, and exercise or refrain from exercising any remedies available under, the Transaction Documents or any other agreement contemplated hereby or thereby (including pursuant to Article XII of this Agreement), and (C) to execute, on behalf of such Seller, any settlement agreement, release or other document with respect to such dispute or remedy; (vii) to engage attorneys, accountants, agents or consultants on behalf of the Sellers in connection with the Transaction Documents or any other agreement contemplated hereby or thereby and paying any fees related thereto; (viii) to take all other actions to be taken by or on behalf of such Seller in connection herewith; (ix) to retain the Representative Holdback Amount and pay amounts therefrom in accordance with this Agreement; and (x) to do each and every act and exercise any and all rights which such Seller or the Sellers collectively are permitted or required to do or exercise under this Agreement or any other Transaction Document; provided, however, that, notwithstanding the foregoing, the Representative shall not have the authority to agree to any amendment of this Agreement or enter into any agreement or take any of the foregoing actions that would treat any Units differently than other Units. Each of the Sellers agrees that such agency and proxy are coupled with an interest, are therefore irrevocable without the consent of the Representative and shall survive the death, incapacity, bankruptcy, dissolution or liquidation of any Seller. If any Seller dies or becomes incapacitated, disabled or incompetent (such deceased, incapacitated, disabled or incompetent Seller being a “Former Seller”) and, as a result, the agency and power of attorney conferred by this Section 12.07 is revoked by operation of law, it shall not be a breach by such Former Seller under this Agreement if the heirs, beneficiaries, estate, administrator, executor, guardian, conservator or other legal representative of such Former Seller (each a “Successor Seller”) confirms the appointment of the Representative as agent and attorney-in-fact for such Successor Seller. All decisions and actions by the Representative (to the extent authorized by this Agreement) shall be binding upon all of the Sellers, and no Seller shall have the right to object, dissent, protest or otherwise contest the same.

(b) **Authority: Indemnification.** Each Seller agrees that the Purchasers, the Merger Sub and the Surviving Company shall be entitled to rely on any action taken by the Representative, on behalf of such Seller, pursuant to Section 12.07(a) above (an “Authorized
and that each Authorized Action shall be binding on each Seller as fully as if such Seller had taken such Authorized Action. The Purchasers and the Merger Sub agree that the Representative, as the Representative, shall have no Liability to the Purchaser and the Merger Sub for any Authorized Action, except to the extent that such Authorized Action is found by a court of competent jurisdiction to have constituted fraud or willful misconduct. Each Seller hereby severally (based on such Seller’s Residual Percentage), for itself only and not jointly and severally, agrees to indemnify and hold harmless the Representative against all fees, costs and expenses (including reasonable attorneys’ fees), judgments, fines and amounts incurred by the Representative in connection with any action, suit or proceeding to which the Representative is made a party by reason of the fact it is or was acting as the Representative pursuant to the terms of this Agreement.

(c) Exculpation. The Representative shall not have by reason of this Agreement a fiduciary relationship in respect of any Seller, except in respect of amounts received on behalf of such Seller. The Representative shall not be liable to any Seller for any action taken or omitted by it or any agent employed by it hereunder or under any other document entered into in connection herewith, except that the Representative shall not be relieved of any Liability imposed by law for willful misconduct. The Representative shall not be liable to the Sellers for any apportionment or distribution of payments made by the Representative in good faith, and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Seller to whom payment was due, but not made, shall be to recover from other Sellers any payment in excess of the amount to which they are determined to have been entitled. The Representative shall not be required to make any inquiry concerning either the performance or observance of any of the terms, provision or conditions of this Agreement. Neither the Representative nor any agent employed by it shall incur any Liability to any Seller by virtue of the failure or refusal of the Representative for any reason to consummate the transactions contemplated hereby or relating to the performance of its other duties hereunder, except for actions or omissions constituting fraud or bad faith.

(d) Representative Holdback Amount. The Representative will be entitled to obtain reimbursement from the Representative Holdback Amount for any payments, fees, costs and expenses of the Representative payable by the Representative pursuant to this Agreement and will distribute in its discretion any remaining portion of the Representative Holdback Amount to the Sellers on a pro rata basis according to each Seller’s Residual Percentage, it being understood and agreed that such distribution(s) shall be the responsibility of the Representative only and that neither the Purchaser nor the Surviving Company shall have any obligation to ensure that such distribution is, or distributions are, made.

12.08 Press Releases and Communications. Other than delivery of an information memorandum to the Sellers by the Company regarding the transactions contemplated by this Agreement (it being agreed that the Company shall give the Purchaser a reasonable opportunity to review and comment on such information memorandum and the Company shall give reasonable consideration to all reasonable additions, deletions or changes suggested thereto by the Purchaser), no press release or public announcement related to this Agreement or the transactions contemplated herein, shall be issued or made by any party hereto (or any Affiliate to a party hereto) without the joint approval of the Purchaser and the Representative, unless required by Law (in the reasonable advice of counsel), court order or by
obligations pursuant to any listing agreement with or rules of any securities exchange or trading market on which securities of the Purchasers or any of their Affiliates are listed, in which case the Purchaser and the Representative, as the case may be, shall have the right to review such press release, announcement or communication prior to issuance, distribution or publication.

12.09 Expenses. Except as otherwise expressly provided herein, the Company and the Representative, on the one hand, and the Purchasers and the Merger Sub, on the other hand, shall pay all of their own expenses (including attorneys’ and accountants’ fees and expenses) in connection with the negotiation of this Agreement, the performance of their obligations hereunder and the consummation of the transactions contemplated by this Agreement; provided that the Purchasers shall pay the Transaction Expenses on behalf of […] and the Company and its Subsidiaries as provided in Section 3.02(i).

12.10 Knowledge Defined. For purposes of this Agreement, (a) “the Company’s knowledge” and “knowledge of the Company” as used herein shall mean the actual knowledge, of each of […] and (b) “the Purchaser’s knowledge” as used herein shall mean the actual knowledge of […]

12.11 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when personally delivered, (b) when transmitted via facsimile device to the number set out below if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (c) the day following the day (except if not a Business Day then the next Business Day) on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid. Notices, demands and communications, in each case to the respective parties, shall be sent to the applicable address set forth below, unless another address has been previously specified in writing:

Notices to the Merger Sub and, after the Closing, the Surviving Company:

c/o Horizon Pharma, Inc.
520 Lake Cook Road, Suite 520
Deerfield, Illinois 60015
Attn: General Counsel
Facsimile No.: (847) 572-1631

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or to such other address with respect to a party as such party notifies the other in writing as above provided.

12.12 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated by the Purchaser or the Merger Sub without the prior written consent of the Company and the Representative; provided, however, without the prior written consent of the Company and the Representative, (i) the Purchaser may assign this Agreement or any of its rights or interests hereunder to any of its lenders as collateral security and (ii) the Purchaser may assign this Agreement or any of its rights, interests or obligations
hereunder to any of its Affiliates, or any successors by operation of Law, or to any Person in connection with a reorganization, merger, acquisition, consolidation, sale of assets or other similar transaction. No assignment of any obligations hereunder shall relieve the parties of any of their obligations pursuant to this Agreement.

12.13 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

12.14 References. The table of contents and the section and other headings and subheadings contained in this Agreement and the Exhibits hereto are solely for the purpose of reference, are not part of the agreement of the parties hereto, and shall not in any way affect the meaning or interpretation of this Agreement or any Exhibit hereto. All references to days or months shall be deemed references to calendar days or months. All references to “$” shall be deemed references to United States dollars. Unless the context otherwise requires, any reference to a “Section,” “Exhibit,” “Disclosure Schedule” or “Schedule” shall be deemed to refer to a section of this Agreement, exhibit to this Agreement or a schedule to this Agreement, as applicable. Capitalized terms used in the Disclosure Schedules and not otherwise defined therein have the meanings given to them in this Agreement. The words “hereof,” “herein” and “hereunder” and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it. Unless the context otherwise clearly indicates, each defined term used in this Agreement shall have a comparable meaning when used in its plural or singular form.

12.15 Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Person. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement or the Disclosure Schedules attached hereto is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are material or are or are not required to be disclosed, and no party shall use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement or the Disclosure Schedules in any dispute or controversy between the parties as to whether any obligation, item or matter not described or included in this Agreement or Disclosure Schedules is material or are or are not required to be disclosed. The information contained in this Agreement and in the Disclosure Schedules and Exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein shall be deemed to be an admission by any party hereto to any third party of any matter whatsoever (including any violation of Law or breach of contract). For purposes of this Agreement, only those documents posted by the Company or a Person acting on its behalf to the online data room hosted on behalf of the Company and located at https://www.rrdvenue.com before 11:59 pm Chicago Time on the date that is one Business Day prior to the date of this Agreement shall be deemed hereunder to have been “delivered,” “furnished” or “made available” (or any phrase of similar import) to the Purchaser by the Company.
12.16 Amendment and Waiver. Any provision of this Agreement or the Disclosure Schedules (other than updates to the Sellers Schedule and the Capitalization Schedule to reflect (i) the distribution of Units by Splitter LP upon completion of the Splitter LP Liquidation and (ii) grants of Incentive Units as set forth in Items 1 and 2 on the Conduct of Business Schedule, which amendments may be done in writing delivered by the Company to the Purchasers prior to the Closing) or Exhibits hereto may be amended or waived only in a writing signed by the Purchasers, the Merger Sub, the Company and the Representative. No waiver of any provision hereunder or any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default.

12.17 Complete Agreement. This Agreement and the documents referred to herein (including the other Transaction Documents and the Confidentiality Agreement) contain the complete agreement between the parties hereto and supersede any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

12.18 Third-Party Beneficiaries. Section 8.03 shall be enforceable by the current and former officers, directors and similar functionaries of the Company and/or its Subsidiaries and his or her heirs and representatives. Except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

12.19 Waiver of Trial by Jury. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. EACH PARTY TO THIS AGREEMENT HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

12.20 Purchaser and Merger Sub Deliveries. Each of the Purchasers and the Merger Sub agrees and acknowledges that, subject to Section 12.10, all documents or other items delivered or made available to the Purchasers’ authorized representatives shall be deemed to be delivered or made available, as the case may be, to the Purchaser and the Merger Sub for all purposes hereunder.

12.21 Delivery by Electronic Transmission. This Agreement and any signed agreement entered into in connection herewith or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or by .pdf,
.tif, .gif, .jpeg or similar attachment to electronic mail, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such contract, each other party hereto or thereto shall re–execute original forms thereof and deliver them to all other parties. No party hereto or to any such contract shall raise the use of a facsimile machine or by .pdf, .tif, .gif, .jpeg or similar attachment to electronic mail to deliver a signature or the fact that any signature or contract was transmitted or communicated through the use of facsimile machine or by .pdf, .tif, .gif, .jpeg or similar attachment to electronic mail as a defense to the formation of a contract and each such party forever waives any such defense.

12.22 Counterparts. This Agreement may be executed in multiple counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together shall constitute one and the same instrument.

12.23 Governing Law. All issues and questions concerning the construction, validity, interpretation and enforceability of this Agreement and the Exhibits and Schedules hereto shall be governed by, and construed in accordance with, the laws of […***…], without giving effect to any choice of law or conflict of law rules or provisions (whether of […***…] or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than […***…].

12.24 Jurisdiction. Except as otherwise expressly provided in this Agreement, any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby may be brought in the […***…], and each of the parties hereto hereby consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 12.11 shall be deemed effective service of process on such party.

12.25 Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by the Purchasers, the Merger Sub, the Company or the Representative, as applicable, in accordance with their specific terms or were otherwise breached by the Purchasers, the Merger Sub, the Company or the Representative, as applicable. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by any of the Purchasers, the Merger Sub, the Company or the Representative, as applicable, and to enforce specifically the terms and provisions hereof against the Purchasers, the Merger Sub, the Company or the Representative, as applicable, in any court having jurisdiction, this being in addition to any other remedy to which the parties hereto are entitled at law or in equity.

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12.26 **Time is of the Essence.** The parties hereby expressly acknowledge and agree that time is of the essence for each and every provision of this Agreement.

* * * *

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement and Plan of Merger on the date first above written.

Company: CREALTA HOLDINGS LLC

By: /s/ Edward J. Fiorentino
    Name: Edward J. Fiorentino
    Title: Chairman and Chief Executive Officer

Signature Page to Agreement and Plan of Merger
IN WITNESS WHEREOF, the parties hereto have executed this Agreement and Plan of Merger on the date first
above written.

Purchaser: HZNP LIMITED

By: /s/ Kevin Insley
Name: Kevin Insley
Title: Director

HORIZON PHARMA USA, INC.

By: /s/ Timothy P. Walbert
Name: Timothy P. Walbert
Title: President and Chief Executive Officer

Merger Sub: CRIOSTAIL LLC

By: /s/ Timothy P. Walbert
Name: Timothy P. Walbert
Title: President and Chief Executive Officer

***Confidential Treatment Requested

Signature Page to Agreement and Plan of Merger
***Confidential Treatment Requested

Signature Page to Agreement and Plan of Merger (cont'd)
Representative: GTCR FUND X/B LP

By: GTCR Partners X/B LP
Its: General Partner

By: GTCR Investment X LLC
Its: General Partner

By: /s/ Constantine S. Mihas
Name: Constantine S. Mihas
Title: Authorized Signatory

Signature Page to Agreement and Plan of Merger (cont’d)
CERTIFICATE OF MERGER

OF

CRIOSTAIL LLC

(a Delaware limited liability company)

WITH AND INTO

CREALTA HOLDINGS LLC

(a Delaware limited liability company)

* * * * * * * * * *

In accordance with the provisions of Title 6, §18-209 of the Delaware Limited Liability Company Act

* * * * * * * * * *

Crealta Holdings LLC, duly organized and existing under and by virtue of the laws of the State of Delaware (the "Company"), desiring to merge Criostail LLC, a Delaware limited liability company (the "Merger Sub"), with and into itself, pursuant to the provisions of Title 6, §18-209 of the Delaware Limited Liability Company Act, DOES HEREBY CERTIFY as follows:

FIRST: The name and state of organization of the constituent limited liability companies of the merger (the "Merger") are as follows:

<table>
<thead>
<tr>
<th>NAME</th>
<th>STATE OF ORGANIZATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crealta Holdings LLC</td>
<td>Delaware</td>
</tr>
<tr>
<td>Criostail LLC</td>
<td>Delaware</td>
</tr>
</tbody>
</table>

SECOND: An Agreement and Plan of Merger (the "Merger Agreement") has been approved, adopted, certified, executed and acknowledged by both of the limited liability companies.
THIRD: The name of the surviving limited liability company of the Merger is Crealta Holdings LLC (the “Surviving Company”).

FOURTH: An executed copy of the Merger Agreement is on file at the principal place of business of the Surviving Company, Crealta Holdings LLC, such address is 520 Lake Cook Road, Suite 520, Deerfield, IL 60015, and a copy of the Merger Agreement will be furnished by the Surviving Company, upon request and without cost, to any member of the limited liability companies or any person holding an interest in any other business entity which is to merge or consolidate.

FIFTH: The Merger shall be effective immediately upon filing.

* * * * *

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IN WITNESS WHEREOF, said limited liability company has caused this certificate to be signed by an authorized person this __ day of ______, 2015.

Crealta Holdings LLC
a Delaware limited liability company

By: /s/ ______________________
Name: Edward J. Fiorentino
Its: Chief Executive Officer

Certificate of Merger
Letter of Transmittal  
For Units of  
Crealta Holdings LLC  

Surrendered Pursuant to  
the Merger of  
Criostail LLC with and into Crealta Holdings LLC  

The Paying Agent for the Merger is: Continental Stock Transfer & Trust Company  

DELIVERY INSTRUCTIONS  

By Mail, Hand or Overnight Courier  
Continental Stock Transfer & Trust Co.  
17 Battery Place- 8th Floor  
New York, NY 10004  
Attention: Corporate Actions  

For information please email: reorg@continentalstock.com or call (917) 262-2378  

THE INSTRUCTIONS ACCOMPANYING THIS LETTER OF TRANSMITTAL SHOULD BE READ CAREFULLY BEFORE THIS LETTER OF TRANSMITTAL IS COMPLETED.  

DESCRIPTION OF UNITS SURRENDERED  

<table>
<thead>
<tr>
<th>Name and Address of Unitholder (Please fill in, exactly as name appears on Unit Certificate(s))</th>
<th>Security Position(s) Surrendered (Attach additional signed list if necessary)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Type of Unit(s) (e.g., Capital Units, Incentive Units)</th>
<th>Unit Certificate Number(s)</th>
<th>Check box if Lost/Misplaced (See Instruction 10)</th>
<th>Number of Units Represented by Unit Certificate(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**DELIVERY OF THIS LETTER OF TRANSMITTAL OR ANY OTHER REQUIRED DOCUMENT TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE DOES NOT CONSTITUTE A VALID DELIVERY.**

<table>
<thead>
<tr>
<th>CHECK PAYMENT INSTRUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>If you wish to have the cash consideration to be paid to you in the Merger (as defined herein) in exchange for your Unit(s) sent by <strong>check</strong>, please complete the remainder of this Letter of Transmittal and provide mailing address instructions below.</td>
</tr>
<tr>
<td>Address</td>
</tr>
<tr>
<td>City, State, Zip</td>
</tr>
<tr>
<td>Country</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>WIRE PAYMENT INSTRUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>If you wish to have the cash consideration to be paid to you in the Merger (as defined herein) in exchange for your Unit(s) sent by <strong>wire transfer</strong>, please complete the remainder of this Letter of Transmittal and provide wire instructions below or include such instructions herewith. <strong>For international wires, please provide the SWIFT code (BIC) in the ABA Number field, and the complete IBAN in the Account Number field, if available.</strong> A $50.00 wire transfer fee will be deducted from your payment.</td>
</tr>
<tr>
<td>Bank Name</td>
</tr>
<tr>
<td>Bank Routing Number (ABA Number)</td>
</tr>
<tr>
<td>Account Name*</td>
</tr>
<tr>
<td>Account Number</td>
</tr>
<tr>
<td>FFC Account Name (if applicable)</td>
</tr>
<tr>
<td>FFC Account Number (if applicable)</td>
</tr>
<tr>
<td>Bank Contact/Telephone Number</td>
</tr>
</tbody>
</table>

*Please provide the name on the account not the type of account. |
(If wire is to be issued to an account in a name other than that set forth above, See Instructions 3, 4, 5 and 7).  

<table>
<thead>
<tr>
<th>SPECIAL DELIVERY INSTRUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>If you wish to have the Merger cash consideration mailed to an address other than as shown in the box on page 1, please complete this box and the remainder of this Letter of Transmittal.</td>
</tr>
<tr>
<td>Address</td>
</tr>
<tr>
<td>City, State, Zip</td>
</tr>
<tr>
<td>Country</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SPECIAL PAYMENT INSTRUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>(See Instructions 3, 4, 5, 7 and 11)</td>
</tr>
<tr>
<td>If you wish to have the cash consideration to be paid in the Merger (as defined herein) in exchange for your Unit(s) to someone other than the named Unitholder, please complete the remainder of this Letter of Transmittal and provide the payment instructions below.**</td>
</tr>
<tr>
<td>Payee Name</td>
</tr>
<tr>
<td>Address</td>
</tr>
<tr>
<td>City, State, Zip</td>
</tr>
<tr>
<td>Country</td>
</tr>
<tr>
<td>Tax Identification Number***</td>
</tr>
</tbody>
</table>

**Requires signature guarantee. See Instruction No. 3 to this Letter of Transmittal.**

***Fill in Taxpayer Identification Number of Payee. See Instruction 11 to this Letter of Transmittal.
Reference is made to that certain Agreement and Plan of Merger, dated as of January 13, 2016, (“Merger Agreement”), by and among Crealta Holdings LLC, a Delaware limited liability company (“Company”), Criostail LLC, a Delaware limited liability company (“Merger Sub”), Horizon Pharma USA, Inc., a Delaware corporation [...***...], HZNP Limited, a private company limited by shares organized under the laws of Ireland (“Purchaser,” and together with [...***...], “Purchasers”), [...***...] and GTCR Fund X/B LP, a Delaware limited partnership. Capitalized terms used herein but not defined shall have the meanings specified in the Merger Agreement.

In connection with the merger of Merger Sub with and into Company pursuant to the Merger Agreement (the “Merger”), and as part of the transactions described in the Merger Agreement, the undersigned hereby surrenders the below-described unit certificate(s) (the “Certificate(s)”) representing the Company’s Units (“Company Units”), in exchange for the right to receive, on the terms and subject to the conditions set forth in the Merger Agreement, an amount of cash equal to the Allocable Portion of the Closing Merger Consideration attributable to such Company Unit plus any Additional Merger Consideration attributable to such Company Unit plus any Escrow Distribution attributable to such Company Unit, at the times specified therein.

The undersigned (i) acknowledges that the undersigned has reviewed the Merger Agreement, and understands that the only consideration that the undersigned may be entitled to receive with respect to the undersigned’s Company Units in connection with the Merger is the consideration pursuant to the Merger Agreement (ii) consents to to the adoption and approval of the Merger Agreement and the transactions contemplated thereby, (iii) irrevocably waives any right of dissent under applicable law and (iv) affirms the undersigned’s appointment of the Representative (as defined in the Merger Agreement) pursuant to Section 12.07I of the Merger Agreement (including the limitations set forth therein), which is incorporated by reference herein.

The undersigned acknowledges that, until surrendered in accordance with the terms of the Merger Agreement, each outstanding certificate representing Company Units will be deemed from and after the effective time of the Merger, for all purposes, to evidence only the right to receive cash amounts on the terms and subject to the conditions set forth in the Merger Agreement.

Unless otherwise indicated, the name and address of the owner of the Company Units represented by the Certificate(s) are correctly identified in the table entitled “Description of Units Surrendered” below. The undersigned represents and warrants that the undersigned is the owner of such units or has full power and authority to surrender the Certificate(s) on behalf of such owner, free and clear of all liens, claims and encumbrances. The undersigned will, upon request, execute and deliver any additional documents (the “Additional Documents”) reasonably deemed appropriate or necessary by Continental Stock Transfer & Trust Company (the “Paying Agent”) in connection with the surrender of the Certificate(s), and hereby permits the Paying Agent to send a copy of this Letter of Transmittal and any Additional Documents to the Purchaser. All authority conferred or agreed to be conferred in this Letter of Transmittal shall not be affected by, and shall survive, the undersigned’s death or incapacity, and all of the undersigned’s obligations under this Letter of Transmittal shall be binding upon the undersigned’s successors, assigns, heirs, executors, administrators and legal representatives.

The undersigned understands that surrender of the Certificate(s) will not be in acceptable form until receipt by the Paying Agent of this Letter of Transmittal, duly completed and signed with an original signature, together with all and any Certificate(s).

All questions as to validity, form and eligibility of any surrender of the Certificate(s) hereunder will be determined by the Purchaser (which may delegate power in whole or in part to the Paying Agent) in its reasonable discretion and such determination shall be final and binding. The undersigned understands that delivery of any cash amounts to which the holder of the Certificate(s) is entitled will be made as promptly as practicable after surrender of the Certificate(s) along with the properly completed and executed Letter of Transmittal; provided, however, that the actual amount of consideration to be received by the undersigned is subject to adjustment and the results of certain post-Closing items. The undersigned understands and agrees that a portion of the consideration to which the undersigned may be entitled under the Merger Agreement will be included in (i) escrow funds that will be delivered to an escrow agent (the “Escrow Agent”) and held in escrow pursuant to Section 3.02(e) of the Merger Agreement

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and the terms of the escrow agreement executed among the Escrow Agent, the Representative, the Purchaser and certain other parties thereto on the closing of the Merger (the “Escrow Agreement”), with such amounts to be disbursed by the Escrow Agent in accordance with the Escrow Agreement and (ii) a holdback amount which will be delivered to the Representative and held by the Representative pursuant to Section 1.08 of the Merger Agreement, with such amount to be disbursed by the Representative in accordance with the Merger Agreement. The undersigned further understands that the undersigned may in the future become entitled to receive all, a portion or none of the cash deposited in escrow with the Escrow Agent and of the holdback amount held by the Representative pursuant to Section 1.08 of the Merger Agreement.

The undersigned hereby acknowledges receipt of the documents delivered with this Letter of Transmittal, including, without limitation the Merger Agreement and a Form W-9 or Form W-8 (collectively with this Letter of Transmittal, the “Specified Documents”). The undersigned acknowledges that the undersigned has had the opportunity to review the Specified Documents, that the undersigned has consulted, or had the full opportunity to consult, with independent legal, tax, accounting, regulatory and financial advisors regarding the undersigned’s rights and obligations under the Specified Documents and that the undersigned fully understands the terms and conditions contained, and the transactions provided for, herein and therein. The undersigned further acknowledges and agrees to follow the instructions in the “Instructions” section in this Letter of Transmittal.

The undersigned hereby irrevocably constitutes and appoints the Representative as the true and lawful agent, proxy and attorney-in-fact of the undersigned with respect to the Company Units listed in the “Description of Units Surrendered” section of this Letter of Transmittal, and any and all rights represented thereby, with full power of substitution and resubstitution (such power of attorney being deemed to be an irrevocable power coupled with an interest) and authority, to act in the name, place and stead of the undersigned for purposes of executing any documents and taking any actions that the Representative may, in its sole discretion, determine to be necessary, desirable or appropriate within the bounds of the Representative’s authority under the express terms of the Merger Agreement, including in connection with any claim for indemnification, compensation or reimbursement under Article XII of the Merger Agreement or any of the transactions contemplated thereby (subject to the limitations set forth therein). The authority herein conferred or agreed to be conferred shall not be affected by, and shall survive, the death, incapacity or dissolution of the undersigned, and all grants, appointments, acknowledgments, conveyances, deliveries, waivers and obligations of the undersigned hereunder shall be binding upon the heirs, executors, administrators, trustees in bankruptcy, personal and legal representatives, successors and assigns of the undersigned. This transmittal, and the surrender of Company Unit(s) transmitted by this Letter of Transmittal, are irrevocable, provided that, if the Transaction is not consummated, this Letter of Transmittal will be returned to the undersigned.

The provisions of this Letter of Transmittal may be amended or waived only with the prior written consent of the Company, the Representative and the undersigned.

THE UNDERSIGNED HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS LETTER OF TRANSMITTAL OR THE ACTIONS OF THE PARTIES HERETO IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

The undersigned understands and agrees that the method of delivery of the Company Units and this Letter of Transmittal is at the election and risk of the holder of the Company Units. The undersigned hereby acknowledges that the undersigned has read the “Instructions” section in this Letter of Transmittal.

With respect to the undersigned’s surrendered Company Units, this Letter of Transmittal shall be void and of no force and effect if the Closing pursuant to the Merger Agreement fails to occur for any reason and the Merger Agreement is terminated in accordance with its terms.

The undersigned hereby (i) forever waives all dissenter’s, appraisal or similar rights under Delaware law and any other applicable laws, and (ii) withdraws all written objections to the Merger and/or demands for appraisal, if any, with respect to the Company Units owned by the undersigned.
IMPORTANT - UNITHOLDER SIGNATURE PAGE

Must be signed by the named unitholder exactly as his, her or its name appears on the unit certificate(s). Signature below certifies that no language alterations have been made in any way to this form of Letter of Transmittal. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, please set forth full title. See Instruction 4. (For information concerning signature guarantees see Instruction 3.)

Dated ____________________

Sign Here X __________________________

(Signature of Owner)

Name(s) __________________________

(Please Print)

Capacity __________________________

(See Instruction 4)

Address __________________________

Area Code & Telephone No. __________________________

Email Address __________________________

Tax Identification No. (e.g., Social Security No.) __________________________

(Also complete the enclosed Form W-9 or provide the appropriate Form W-8, as applicable.)

STOP – CAREFULLY REVIEW INSTRUCTION 3 PRIOR TO COMPLETING REMAINDER OF PAGE

SIGNATURE GUARANTEE

(This section should be completed by the individual applying the MSG Stamp)

(Apply Medallion Signature Guarantee Stamp Here)
INSTRUCTIONS

Delivery of Letter of Transmittal and Certificate(s).

This Letter of Transmittal or a facsimile hereof, filled in and signed with an original signature, must be used in connection with the delivery and surrender of the Certificate(s). A Letter of Transmittal and the Certificate(s) must be received by the Paying Agent, in satisfactory form, in order to make an effective surrender. Delivery of the Certificate(s) and other documents shall be effected, and the risk of loss and title to the Certificate(s) shall pass, only upon proper delivery of the Certificate(s) to the Paying Agent. The method of delivery of the Certificate(s) and other documents is at the election and risk of the unitholder. If such delivery is by mail, registered mail with return receipt requested, properly insured, is recommended. Surrender may be made by mail, by hand or by overnight courier to Continental Stock Transfer & Trust Company, as Paying Agent, at the address shown above.

Terms of Conversion of the Units.

Each Company Unit (as shown in the box on the first page of this Letter of Transmittal) will be converted at the effective time of the Merger into the right to receive the cash amounts as set forth and described in the Merger Agreement, without interest, and subject to applicable withholding.

Guarantee of Signature.

The Certificate(s) need not be endorsed and unit powers and signature guarantees are unnecessary unless (a) the Certificate(s) is registered in a name other than that of the person surrendering the Certificate(s) or (b) such registered holder completes the Special Payment Instructions or Special Delivery Instructions. In the case of (a) above, any such Certificate(s) must be duly endorsed or accompanied by a properly executed unit power with the signature on the endorsement or unit power and on the Letter of Transmittal guaranteed by a participant in the Security Transfer Agents Medallion Program, the New York Stock Exchange Medallion Signature Guarantee Program or the Stock Exchange Medallion Program (each, an “Eligible Institution”). In the case of (b) above, only the signature on the Letter of Transmittal should be similarly guaranteed.

Signatures on Letter of Transmittal and Endorsements.

The signature must correspond with the name as written on the face of the Certificate(s) without alteration, enlargement or any change whatsoever.

If this Letter of Transmittal is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, such person should so indicate when signing, and proper evidence reasonably satisfactory to the Paying Agent of the authority of such person so to act must be submitted.

Unit Transfer Taxes.

If any payment for surrendered Company Units is to be made to any person(s) other than the person whose name is written on the face of the Certificate(s) representing such surrendered Company Units, it shall be a condition of the issuance and delivery of such check that the amount of any unit transfer taxes (whether imposed on the named unitholder or such person(s)) payable on account of the transfer (or transfers) of the surrendered Company Units shall be delivered to the Paying Agent or satisfactory evidence of the payment of such taxes or nonapplicability thereof shall be submitted to the Paying Agent before such check will be issued.

Validity of Surrender, Irregularities.

All questions as to validity, form and eligibility of any surrender of Company Units hereby will be determined by Purchaser (which may delegate power in whole or in part to the Paying Agent) and such determination shall be final and binding; provided that if there are any defects in the surrender of the Certificate(s), Purchaser or the Paying Agent shall give notice of such defects to the named unitholder. Purchaser reserve the right to waive any
irregularities or defects in the surrender of any Company Units and its interpretations of the terms and conditions of the Merger Agreement and of this Letter of Transmittal (including these instructions) with respect to such irregularities or defects shall be final and binding. A surrender will not be deemed to have been made until all irregularities have been cured or waived.

*Special Payment Instructions.*

Indicate the name (and address) to which payment for the Company Units is to be made if different from the name of the person(s) signing this Letter of Transmittal. This transfer requires a Medallion Guarantee Program stamp which can be found at most banks and brokerages.
Requests for Information or Additional Copies.

Information or additional copies of this Letter of Transmittal may be obtained from the Paying Agent by writing to the address on the front of this Letter of Transmittal or by calling the Paying Agent at (917) 262-2378.

Inadequate Space.

If the space provided on this Letter of Transmittal is inadequate, the Company Unit certificate numbers and number of Company Units should be listed on a separate signed schedule affixed hereto.

Letter of Transmittal Required; Surrender of Certificate(s); Lost Certificate(s).

You will not receive any consideration for your Company Units unless and until you deliver this Letter of Transmittal or a facsimile hereof, duly completed and signed, with original signature to the Paying Agent, together with the Certificate(s) representing such Company Units and any required accompanying evidences of authority in form satisfactory to Purchaser. If the Certificate(s) has (have) been lost or destroyed, such fact should be indicated on the face of this Letter of Transmittal. In such event, the Paying Agent will forward additional documentation and instructions necessary to be completed in order to effectively surrender the Company Units represented by such lost or destroyed Certificate(s) (including instructions relating to payment by holder of such lost or destroyed Certificate(s) of an indemnity/surety bond premium equal to 3% of the cash value of the Company Units represented by such Certificate(s) with a minimum of $100.00. No interest will be paid on amounts due for the Company Units.

11. Form W-9. Each unitholder surrendering Units for payment is required to provide the Paying Agent with such holder’s correct Taxpayer Identification Number ("TIN") and certain other information on a Form W-9 (included in this Letter of Transmittal), or an appropriate IRS Form W-8, as described below. Failure to provide such information or an adequate basis for exemption from backup withholding on the form may subject such holder to federal income tax withholding on cash payments made with respect to certificates by the Payor (as defined below). Please consult the instructions to the enclosed Form W-9 for instructions on how to complete the Form W-9.
IMPORTANT TAX INFORMATION

United States federal income tax law generally requires that if your units are accepted for payment and you are a U.S. Person (as defined below), you or your assignee (in either case, the “Payee”), must provide Purchaser (the “Payor”) with the Payee’s correct TIN, which, in the case of a Payee who is an individual, is generally the Payee’s social security number. If the Payor is not provided with the correct TIN or an adequate basis for an exemption, the Payee may be subject to a $50 penalty imposed by the IRS and backup withholding in an amount equal to 28% (or the then-prevailing rate) of the proceeds received by the Payee pursuant to the Merger. Backup withholding is not an additional tax. Rather, the tax liability of a person subject to backup withholding will be reduced by the amount withheld by the Payor (through the Paying Agent). If withholding results in an overpayment of taxes, a refund may be obtained from the IRS, provided the appropriate information and forms are provided to the IRS and other requirements are satisfied.

To prevent backup withholding, each Payee that is a U.S. Person must provide such Payee’s correct TIN by completing the Form W-9 set forth herein, certifying that (i) the TIN provided is correct, (ii) (a) the Payee is exempt from backup withholding, (b) the Payee has not been notified by the IRS that such Payee is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified the payee that such Payee is no longer subject to backup withholding, and (iii) the Payee is a U.S. Person (including a U.S. resident alien). For these purposes, a “U.S. Person” is (a) an individual who is a U.S. citizen or U.S. resident alien, (b) a partnership, corporation, company or association created or organized in the United States or under the laws of the United States, (c) an estate (other than a foreign estate), or (d) a domestic U.S. trust (as defined in Treasury Regulation Section 301.7701-7)).

If the Payee does not have a TIN, such Payee should apply for and receive a TIN prior to submitting the Form W-9; please consult the instructions to the enclosed Form W-9 (the “W-9 Instructions”) for instructions on applying for a TIN. If the Payee does not provide such Payee’s TIN to the Payor by the time of payment, backup withholding will apply.

If the Company Units are held in more than one name or held in a name other than the name of the actual owner, consult the W-9 Instructions for information on which TIN to report.

Exempt Payees are not subject to these backup withholding and reporting requirements. To prevent possible erroneous backup withholding, an exempt Payee that is a U.S. Person should check the “exempt from backup withholding” box on the Form W-9. See the W-9 Instructions for additional instructions. In order for a Payee that is not a U.S. Person to avoid backup withholding, such Payee must submit an appropriate and properly completed Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP or W-8IMY, signed under penalties of perjury. Such forms, as well as instructions for the same, may be obtained from the IRS at its Internet website: www.irs.gov.
W-9 ATTACHED
AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT
OF
CREALTA HOLDINGS LLC

This Amended and Restated Limited Liability Company Agreement (this “Agreement”) of Crealta Holdings LLC a Delaware limited liability company (the “Company”), is entered into as of [__________] by the parties listed on the attached Exhibit A as the members of the Company (the “Members”).

RECITALS

WHEREAS, the Company was formed on July 26, 2013, as a limited liability company under the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.), as amended from time to time (the “Act”);

WHEREAS, the Company adopted a limited liability company agreement on July 26, 2013, (the “Prior Agreement”);

WHEREAS, the Members now desire to amend and restate the terms of the Prior Agreement to provide for the rights and obligations set forth herein;

WHEREAS, upon the effectiveness of this Agreement, the Prior Agreement will be superseded in all respects by the terms of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby established, the Company and the Members hereby agree as follows:

AGREEMENT

1. Formation. The Company has been organized as a Delaware limited liability company by the filing of a Certificate of Formation (the “Certificate”) under and pursuant to the Act.

2. Name. The name of the Company is Crealta Holdings LLC.

3. Registered Office; Registered Agent; Principal Office; Other Offices. The registered office of the Company required by the Act to be maintained in the State of Delaware shall be the registered office set forth in the Certificate or such other office (which need not be a place of business of the Company) as the Board may designate from time to time in the manner provided by law. The registered agent of the Company in the State of Delaware shall be the initial registered agent named in the Certificate or such other person or persons as the Board may designate from time to time in the manner provided by law. The principal office of the Company shall be at such place as the Board may designate from time to time, which need not be in the State of Delaware, and the Company shall maintain records there.

4. Purposes. The purposes of the Company are to engage in any business or activity that is not prohibited by the Act.
5. Term. The existence of the Company commenced on the date the Certificate was filed with the office of the Secretary of State of Delaware and shall continue until the Company is dissolved pursuant to Section 13 of this Agreement.

6. Members. The names of each Member and the membership interests held by each Member are listed on the attached Exhibit A.

7. Liability of Members. Except as otherwise required by the Act, no Member shall have any personal liability whatsoever in such Member’s capacity as a Member, whether to the Company, to the creditors of the Company or to any other third party, for the debts, liabilities, commitments or any other obligations of the Company or for any losses of the Company.

8. Management.

(a) All management powers over the business and affairs of the Company shall be exclusively vested in a board of managers (the “Board”) appointed from time to time by the Members, and the Board shall conduct, direct and exercise full control over all activities of the Company. Each member of the Board is referred to herein as a “Manager.” The Managers shall be the “managers” of the Company for the purposes of the Act. The Board has the full power on the Company’s behalf, in its name, to manage, control, administer and operate its business and affairs and to do or cause to be done anything necessary or appropriate for the Company’s business. The Managers are hereby designated as authorized persons, within the meaning of the Act, to execute, deliver and file the certificate of formation of the Company and all other certificates (and any amendments and/or restatements hereof) required or permitted by the Act to be filed in the Office of the Secretary of State of the State of Delaware.

(b) The initial number of Managers shall be two (2). The number of Managers of the Company shall be fixed from time to time by the Members. The initial Managers shall be Timothy P. Walbert and Paul W. Hoelscher. Each Manager shall hold his office for the term for which he was appointed and thereafter until his successor shall have been appointed, or until his earlier death, resignation or removal. A Manager need not be a Member or a resident of the State of Delaware.

(c) Any Manager position to be filled by reason of an increase in the number of Managers or by any other reason shall be filled by the Members. Any Manager may be removed by the Members at any time. Any Manager may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time is specified, at the time of its receipt by the remaining Manager(s). The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

(d) The Board may act (i) through meetings and written consents pursuant to Section 8(e) and (ii) through any person or persons to whom authority and duties have been delegated pursuant to Section 8(f).

(e) Each Manager shall have one vote on all matters submitted to the Board (whether the consideration of such matter is taken at a meeting, by written consent or otherwise). The affirmative vote of the Managers holding a majority of the votes of the Managers shall be the act of the Board. Meetings of the Board shall be held at the principal office of the Company or at such other place as may be determined by the Board. A majority of the Managers, present in person or through their duly authorized attorneys-in-fact, shall constitute a quorum at any meeting of the Board. Business may be conducted once a quorum is present. Regular meetings of the Board shall be held on such dates and at such times as shall be determined by the Board. Special meetings of the Board may be called by a majority of all of the Managers on at least 24 hours’ prior written notice to the other Managers, which
notice shall state the purpose or purposes for which such meeting is being called. The actions taken by the Board at any meeting, however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if (but not until), either before, at or after the meeting, the Manager as to whom it was improperly held signs a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes thereof. The actions by the Board may be taken by vote of the Board at a meeting of the Managers thereof or by written consent (without a meeting, without notice and without a vote) so long as such consent is signed by at least the minimum number of Managers that would be necessary to authorize or take such action at a meeting of the Board in which all Managers were present. Prompt notice of the action so taken without a meeting shall be given to those Managers who have not consented in writing. Each meeting of the Board shall, at the request of any Manager, be held by conference telephone or similar communications equipment by means of which all individuals participating in the meeting can be heard.

(f) The Board may, from time to time, designate one or more persons to be officers of the Company. No officer need be a resident of the State of Delaware, a Member or a Manager. Any officers so designated shall have such authority and perform such duties as the Board may, from time to time, delegate to them. The Board may assign titles to particular officers. Unless the Board otherwise decides, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to such officer by the Board. Each officer shall hold office until his successor shall be duly designated and shall qualify or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same individual. Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Board. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any officer may be removed as such, either with or without cause, by the Board whenever in its judgment the best interests of the Company shall be served thereby. The initial officers of the Company shall be as follows:

President and Chief Executive Officer – [***]
Chief Financial Officer and Secretary – [***]
Executive Vice President and Chief Medical Officer – [***]
Executive Vice President and Chief Business Officer – [***]

(g) Each Manager of the Company may at any time and from time to time engage in and own interests in other business ventures of any and every type and description, independently or with others (including ones in competition with the Company) with no obligation to offer to the Company the right to participate therein.

9. Member Meetings, etc.

(a) No Member, unless such Member is also a Manager, shall have any right, power or duty, including the right to approve or vote on any matter, except as expressly required by the Act or other applicable law or as expressly provided for hereunder. Except as otherwise expressly provided by this Agreement or as required by the Delaware Act, acts by the Members holding a majority of the membership interests of the Company shall be the act of the Members.

(b) The actions by the Members permitted hereunder may be taken at a meeting called by the Board or by Members holding a majority of the membership interests of the Company on at least twenty-four hours’ prior written notice to the other Members entitled to vote, which notice shall state the purpose or purposes for which such meeting is being called. The actions taken by the Members

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entitled to vote or consent at any meeting (as opposed to by written consent), however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if (but not until), either before, at or after the meeting, the Members entitled to vote or consent as to whom it was improperly held signs a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes thereof.

(c) The actions by the Members entitled to vote or consent may be taken by vote of the Members entitled to vote or consent by written consent (without a meeting, without notice, and without a vote) so long as such consent is signed by the Members having not less than the minimum number of membership interests that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted. Prompt notice of the action so taken without a meeting shall be given to those Members entitled to vote or consent who have not consented in writing. Any action taken pursuant to such written consent of the Members shall have the same force and effect as if taken by the Members at a meeting thereof. A meeting of the Members may be held by conference telephone or similar communications equipment by means of which all individuals participating in the meeting can be heard.

10. Indemnification.

(a) No officer or Manager shall be liable to any other officer, Manager, the Company or to any Member for any loss suffered by the Company or any Member unless such loss is caused by such person’s willful misconduct, violation of law or material breach of this Agreement. The officers and Managers shall not be liable for errors in judgment or for any acts or omissions that do not constitute willful misconduct, violation of law or material breach of this Agreement; provided, however, that each Manager and each officer shall discharge his duties hereunder in good faith, with the care a corporate director or officer of like position would exercise under similar circumstances, in the manner he, she or it reasonably believes to be in the best interest of the Company. Any officer or Manager may consult with counsel and accountants in respect of Company affairs, and provided such person acts in good faith reliance upon the advice or opinion of such counsel or accountants, such person shall not be liable for any loss suffered by the Company or any Member in reliance thereon.

(b) Subject to the limitations and conditions as provided in this Section 10, each person who was or is made a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative (hereinafter, a “Proceeding”), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a member, Manager or officer, or while a member, Manager or officer is or was serving at the request of the Company as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, shall be, indemnified by the Company to the fullest extent permitted by the Delaware Act, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including attorney’s fees actually incurred by such person in connection with such Proceeding, and. Indemnification under this Section 10 shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder. The rights granted pursuant to this Section 10 shall be deemed contract rights and shall vest immediately upon commencement of such person’s status as a member, Manager, officer, manager, director, partner, venturer, proprietor, trustee, employee, agent or similar functionary, and no amendment, modification or repeal of this Section 10 shall have the effect of limiting
or denying any such rights with respect to actions taken or Proceedings arising prior to any amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Section 10 could involve indemnification for negligence or under theories of strict liability.

(c) Reasonable expenses incurred by a person of the type entitled to be indemnified under Section 10(b), who was, is or is threatened to be made a named defendant or respondent in a Proceeding shall be paid by the Company in advance of the final disposition of the Proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Company; provided that, except as otherwise determined by the Board of Managers, no expenses shall be paid by the Company pursuant to this Section 10(c) in advance of the final disposition of a Proceeding if the party initiating the Proceeding is the Company, any of its subsidiaries or any of their respective securityholders acting by or in the right of the Company or any of its subsidiaries.

(d) The Company, by adoption of a resolution of the Board of Managers, may indemnify and advance expenses to an employee or agent of the Company to the same extent and subject to the same conditions under which it may indemnify and advance expenses to persons who are not or were not Managers or officers but who are or were serving at the request of the Company as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole-proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person to the same extent that it may indemnify and advance expenses to Managers and officers under this Section 10.

(d) Notwithstanding any other provision of this Section 10, the Company shall pay or reimburse reasonable out-of-pocket expenses incurred by a Manager or officer in connection with his appearance as a witness or other participation in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding.

(e) The right to indemnification and the advancement and payment of expenses conferred in this Section 10 shall not be exclusive of any other right which Manager, officer or other person indemnified pursuant to Section 10(b) (an “Indemnitee”) may have or hereafter acquire under any law (common or statutory), provision of the Company’s certificate of formation, this Agreement, vote of the Members or disinterested Managers or otherwise.

(f) The Company may purchase and maintain insurance, or cause its subsidiaries to purchase and maintain insurance, at its or their expense, to protect itself and any person who is or was serving as a Manager, officer or agent of the Company or is or was serving at the request of the Company as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole-proprietorship, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under this Section 10.

(g) Each Member and its affiliates shall be considered express third party beneficiaries of this Section 10, and in the event that such Member or any of its affiliates indemnifies any person who has a right to indemnification from the Company pursuant to this Section 10, such Member or affiliate thereof shall be entitled to subrogation against the Company. The Company is primarily obligated to provide indemnity pursuant to this Section 10 and waives any right to indemnification, subrogation, or contribution against such Member or affiliate thereof.

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If this Section 10 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Manager, officer or any other person indemnified pursuant to this Section 10 as to costs, charges and expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Section 10 that shall not have been invalidated and to the fullest extent permitted by applicable law.

11. **Certificates.** The membership interests of each Member shall be uncertificated unless otherwise determined by the Board.

12. **Distributions.** Distributions shall be made to the Members at the time and in the aggregate amounts determined by the Board.

13. **Allocations of Profits and Losses.** The Company’s profits and losses shall be allocated to the Members in accordance with the membership interests held by each Member as set forth on the attached Exhibit A.

14. **Dissolution.** The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (a) the written consent of the Members, (b) any time there are no members of the Company unless the Company is continued in accordance with the Act, or (c) the entry of a decree of judicial dissolution under Section 18-802.

15. **Capital Contributions.** The Members have contributed the amount in cash set forth on Exhibit A hereto.

16. **Additional Contributions.** The Members are not required to make any additional capital contribution to the Company.

17. **Assignments.** Each Member may assign in whole or in part its limited liability company interest.

18. **Admission of Additional Members.** One or more additional members of the Company may be admitted to the Company with the consent of the Board.

19. **Governing Law.** This Agreement shall be governed by, and construed under, the laws of the State of Delaware, all rights and remedies being governed by said laws.
IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Amended and Restated Limited Liability Company Agreement as of the date first written above.

MEMBERS:

[...***...]

By: ________________________________
Name: 
Title: 

[...***...]

By: ________________________________
Name: 
Title: 

***Confidential Treatment Requested
Exhibit A

Names and Capital Contributions, and Membership Interests of the Members

[...***...]

***Confidential Treatment Requested
EXHIBIT D

Rules of Engagement for Accounting Firm

If an Accounting Firm is engaged pursuant to Section 2.01, the parties will instruct the Accounting Firm to analyze and resolve the parties’ dispute in accordance with the following guidelines (which guidelines and relevant portions of this Agreement the Accounting Firm will be required to review and commit to acting in accordance with):

Retainer and Fees

The fees, costs and expenses of the Accounting Firm shall be borne by the parties in inverse proportion to the relative success of the parties relating to the disputed items submitted to the Accounting Firm, with such determination of relative success made by the Accounting Firm, or if the Accounting Firm is unwilling to make such a determination, then such fees, costs and expenses shall be borne 50% by the Purchaser and 50% by the Representative (on behalf of the Sellers).

To the extent the Accounting Firm requires a retainer or payment of expenses prior to its final determination, the Purchaser and the Representative (on behalf of the Sellers) will each pay 50% of any retainer and, during the engagement, the Accounting Firm will bill 50% of the total charges to the Purchaser and 50% of the total charges to the Representative (on behalf of the Sellers). Such fees, costs and expenses of the Accounting Firm shall be adjusted, if necessary, pursuant to the first paragraph of this “Retainer and Fees” section.

Parameters of Arbitration

Except as permitted herein in order to clarify or understand any position or argument made by a party in its written submission, the Accounting Firm’s determination of the Net Working Capital, the Closing Date Indebtedness, the Transaction Expenses, and the amount of the Closing Date Cash and the resulting Final Merger Consideration shall be based solely on written presentations submitted by the Purchaser and the Representative which are in accordance with the guidelines and procedures (including the definitions of Closing Date Cash, Closing Date Indebtedness, Transaction Expenses and Net Working Capital) set forth in this Agreement (i.e., not on the basis of an independent review). The Accounting Firm shall consider only the disputed matters that were included in the Objections Statement and the Accounting Firm may not assign a value to any item in dispute greater than the greatest value assigned by the Purchaser in the Preliminary Statement, on the one hand, or the Representative in the Objections Statement, on the other hand, or less than the smallest value for such item assigned by the Purchaser in the Preliminary Statement, on the one hand, or the Representative in the Objections Statement, on the other hand.

The timetable for these proceedings will be governed by the following procedures:

- Within fourteen (14) calendar days of retaining the Accounting Firm, each of the Purchaser and the Representative shall submit to the Accounting Firm a memorandum (which may include supporting exhibits) setting forth their respective
positions of all unresolved disputed items in accordance with Section 2.01 of this Agreement (the “Initial Report”).

- Within one (1) Business Day upon receipt of both the Purchaser’s and the Representative’s Initial Reports, the Accounting Firm will distribute a copy of each Initial Report to the other party.

- Within fourteen (14) calendar days of receiving the other party’s Initial Report from the Accounting Firm, each of the Purchaser and the Representative may (but shall not be required to) submit to the Accounting Firm a memorandum responding to the Initial Report submitted to the Accounting Firm by the other party (the “Rebuttal Report”). The Rebuttal Report is to be responsive solely to the arguments raised, and information submitted, by the other party in its Initial Report and no party may introduce new arguments or rely on new information in the Rebuttal Report that was not part of such party’s Initial Report or which are not directly responsive to an argument raised by the other party’s Initial Report, except to the extent such new arguments or new information are used in direct response to arguments raised and information submitted by the other party in its Initial Report.

- Within one (1) Business Day upon receipt of the Rebuttal Reports from the Purchaser and the Representative, the Accounting Firm will distribute a copy of each Rebuttal Report to the other party.

- At any time before or within fifteen (15) calendar days after the submission of the Initial Reports or any Rebuttal Reports by the Purchaser and the Representative, the Accounting Firm may submit written questions to either party following the procedures set forth below in the Section titled “Submission of Questions by the Accounting Firm.”

- Upon receipt of the Rebuttal Report or notice waiving the right to file such report from both the Purchaser and the Representative and receipt of all responses to any written questions submitted by the Accounting Firm (and responses thereto), the Accounting Firm will endeavor to issue a report containing its findings within fifteen (15) calendar days after the later of (i) receiving both the Purchaser’s and the Representative’s Rebuttal Reports or notice waiving the right to file such report, as applicable, or (ii) any responses (if any) to any written questions submitted by the Accounting Firm to either party following the procedures set forth below in the Section titled “Submission of Questions by the Accounting Firm.”

- Unless requested by the Accounting Firm in writing pursuant to the terms of the Section titled “Submission of Questions by the Accounting Firm”, neither the Purchaser nor the Representative may present any additional information or arguments to the Accounting Firm, either orally or in writing.

- The Accounting Firm shall render its decision without conducting a hearing.

Submission of Questions by the Accounting Firm

After receiving both Initial Reports and Rebuttal Reports, if any, the Accounting Firm may submit written questions to the parties for written responses or may direct requests for additional information, calculations, or supporting documentation to the parties reasonably needed by the Accounting Firm in order to clarify or understand any position or argument made by a party in
its written submission, in which case the parties agree to use commercially reasonable efforts to cooperate with such requests (including, without limitation, by ensuring that the Accounting Firm is provided copies of all relevant records of the business in accordance with Article 1.10(b) of this Agreement) in the manner and procedural timing described in this paragraph. If any such questions are addressed to only one party, the Accounting Firm shall submit the questions to that party, with a copy to the other parties. Once received, the party (or parties) to whom the questions are addressed shall have five (5) Business Days to answer the Accounting Firm’s questions, and shall provide a copy of its written answers to the other party at the time they are provided to the Accounting Firm. In response thereto, the other party may, within five (5) Business Days, submit a response to such answer(s) to the Accounting Firm and shall provide a copy of a response to the other party at the time it is provided to the Accounting Firm. If any such questions are addressed to both parties, each party shall have five (5) Business Days from the date of receipt to respond to the Accounting Firm and shall provide a copy of its written answers to the other parties at the time they are provided to the Accounting Firm. In response thereto, each party may, within five (5) Business Days, submit a response to the other party’s answer(s) to the Accounting Firm and shall provide a copy to the other party at the time it is provided to the Accounting Firm.

Adjustment of Time Periods

If the due date for any written submissions to be submitted to the Accounting Firm falls on a day that is not a Business Day, the written submission shall take place on the next Business Day.

Communication between the Accounting Firm and the Parties

The parties agree not to engage in any ex parte communication with the Accounting Firm.

The Accounting Firm will be required to include a representation in its engagement letter that it has not discussed the substance of the disputed matter with either party prior to its joint retention by the parties, and to include a covenant in its engagement letter not to engage in ex parte communications with either party throughout the course of the engagement.

The engagement letter will specifically require the Accounting Firm to review Article 1.10(b) of this Agreement, as well as any other provisions of this Agreement deemed relevant by any of the Purchaser, the Seller or the Accounting Firm.

Nature of Review by Accounting Firm

The Accounting Firm will make its determination in an objective, impartial manner based on inquiry, investigation, and other procedures as it, in its sole discretion may deem necessary, but in all cases consistent with the terms of this Agreement and this Exhibit D.

The Accounting Firm shall agree that between the time the Representative delivered the Objections Statement to the Purchaser and the date hereof, the Purchaser and the Representative may have exchanged certain proposals relating to the disputed items that were intended solely for purposes of facilitating settlement discussions and such proposals were confidential and were provided solely on the condition and understanding that such proposals would not be permitted to be disclosed in any court or arbitration hearing, including with respect to the Accounting
Firm’s engagement in the dispute. The Accounting Firm will be instructed to disregard any evidence of such settlement proposals and negotiations in its consideration of the disputed matter.

Confidentiality

With respect to any information supplied in connection with the Accounting Firm’s engagement and designated by either party as confidential, or which either party should reasonably believe is confidential based on the subject matter or the circumstances of its disclosure, the other party agrees to protect such confidential information in a reasonable and appropriate manner, and use confidential information only to perform its obligations under this Agreement and for no other purpose. This will not apply to information which is: (i) already publicly known prior to such disclosure (and through no breach of the confidentiality obligations hereunder by the recipient thereof), or (ii) disclosed pursuant to legal requirement or order. Notwithstanding the foregoing, no information (whether or not designated as confidential) may be provided to the Accounting Firm without being made available to all parties in accordance with the requirements of this Agreement and this Exhibit D. The Accounting Firm shall not publicly disclose that it has been retained to resolve any dispute relating to this Agreement or that it is involved in the dispute, or any information relating to the dispute.

At the conclusion of the engagement contemplated hereby, confidential information made available hereunder, including copies thereof, shall be returned or destroyed upon request by the disclosing party.

Other Procedural Matters

Procedural matters for the conduct of the dispute resolution, other than as specified herein, will be determined by the Accounting Firm in consultation with the Purchaser and the Representative; provided, however, that any such procedural matters shall in all cases be consistent with the terms of this Agreement and this Exhibit D.

Conflicts of Interest

Except in connection with the dispute being resolved with respect to this Agreement, during the term of this engagement, neither the Accounting Firm nor any member of the Accounting Firm’s team may work on any matters related to the Purchaser, the Representative, the Sellers or any of their respective Affiliates (or such Affiliates’ portfolio companies) or Subsidiaries or otherwise perform services to any entity or individual that may present a conflict of interest that could reasonably affect the Accounting Firm’s services or the unbiased performance of services by any member of the Accounting Firm’s team. The foregoing restrictions on the Accounting Firm will not apply to employees of the Accounting Firm not assigned to work on this engagement.
Citi Preferred Custody Services

Agreement
Between
Citibank, N. A.
as “Escrow Agent”
and

______________________
HZNP Limited
("Parent")

and

______________________
GTCR Fund X/B LP
("Representative")

(Account Number)

Citi Escrow Agent Custody Account
THIS ESCROW AGREEMENT (the “Escrow Agreement”) is made this [_____] day of [___________], 20[___] by and among HZNP Limited, a private company limited by shares organized under the laws of Ireland (“Parent”), GTCR FUND X/B LP, a Delaware limited partnership (the “Representative”), solely in its capacity as the representative of […***…] and the Unitholders and the Optionholders (collectively, the “Participating Securityholders”), and CITIBANK, N.A. (the “Escrow Agent”). Parent and the Representative are sometimes referred to, individually, as a “Party” and, collectively, as the “Parties”.

Parent and the Representative appoint said Escrow Agent as their escrow agent with the duties and responsibilities and upon the terms and conditions provided herein, including Schedule A and any additional schedules annexed hereto and made apart hereof. The Escrow Agent hereby accepts such appointment and agrees to act as escrow agent in accordance with the terms and conditions provided herein, including Schedule A and any additional schedules annexed hereto and made apart hereof. Capitalized terms not defined herein shall have the meanings assigned to them in that certain Agreement and Plan of Merger, dated as of [_______], 2015 (as amended or otherwise modified from time to time, the “Merger Agreement”), by and among Crealta Holdings LLC, a Delaware limited liability company (the “Target”), Parent, Horizon Pharma USA, Inc., a Delaware corporation, Criostail LLC, a Delaware limited liability company and wholly-owned subsidiary of Parent, […]***…) and the Representative.

ARTICLE FIRST: The above-named parties agree that the following provisions shall control with respect to the rights, duties, liabilities, privileges and immunities of the Escrow Agent:

a) The Escrow Agent hereby agrees and covenants with Parent and the Representative that it shall perform all of its obligations hereunder and shall not deliver custody or possession of any of the Escrow Funds (as defined in Schedule A annexed hereto) to anyone except pursuant to the express terms of this Escrow Agreement, including Schedule A and any additional schedules annexed hereto and made apart hereof, or as otherwise required by law.

b) The Escrow Agent shall neither be responsible for or under, nor chargeable with knowledge of, the terms and conditions of any other agreement, instrument or document executed between/among the Parties hereto, except as may be specifically provided in Schedule A annexed hereto. This Escrow Agreement (including all schedules annexed hereto) sets forth all of the obligations of the Escrow Agent, and no additional obligations shall be implied from the terms of this Escrow Agreement or any other agreement, instrument or document. Nothing in this Escrow Agreement shall create a fiduciary or partnership relationship between the Escrow Agent and any other party to this Escrow Agreement.

***Confidential Treatment Requested
c) The Escrow Agent may act in reliance upon any instructions, notice, certification, demand, consent, authorization, receipt, power of attorney or other writing delivered to it by any of the Parties and reasonably believed by it to be genuine without being required to determine the authenticity or validity thereof or the correctness of any fact stated therein, the propriety or validity of the service thereof, or the jurisdiction of the court issuing any judgment or order. The Escrow Agent may act in reliance upon any signature reasonably believed by it to be genuine, and may assume that such person has been properly authorized to do so.

d) Each of the Parties (in the case of the Representative, solely on behalf of the Participating Securityholders and in its capacity as the Representative, not in its individual capacity) severally and Jointly, agrees to reimburse the Escrow Agent on demand for, and to indemnify and hold the Escrow Agent harmless against and with respect to, any and all loss, liability, damage or reasonable and documented expense (including, but without limitation, reasonable and documented attorneys’ fees, costs and disbursements) that the Escrow Agent may suffer or incur in connection with this Escrow Agreement and its performance hereunder, except to the extent such loss, liability, damage or expense arises from its fraud, willful misconduct or gross negligence as adjudicated by a court of competent jurisdiction. Notwithstanding anything to the contrary set forth herein, Parent, on the one hand, and the Representative (solely on behalf of the Participating Securityholders and in its capacity as the Representative, not in its individual capacity), on the other hand, agree, solely as between themselves, that any obligation to the Escrow Agent for loss, liability, damage or expense under this subsection (d) of Article First shall be borne by the Party or Parties determined by a court of competent jurisdiction through a final order to be responsible for causing the loss, liability, damage or expense for which the Escrow Agent is entitled to reimbursement; provided, however, that if no such determination is made, then Parent on the one hand and the Representative (solely on behalf of the Participating Securityholders and in its capacity as the Representative, not in its individual capacity), on the other hand, shall each be responsible for 50% of any such losses, liabilities, damages or expenses (it being agreed and understood that, in the event that either Parent, on the one hand, or the Representative (solely on behalf of the Participating Securityholders and in its capacity as the Representative, not in its individual capacity), on the other hand, are obligated to make any payment in excess of 50% of any such losses, liabilities, damages or expenses, the paying Party shall be entitled to reimbursement from the non-paying Party). In no event shall the Escrow Agent be responsible for special, indirect or consequential loss or damage of any kind whatsoever, even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

e) The Escrow Agent may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of such counsel in respect of such matters.
f) The Escrow Agent shall be under no duty to give the property held in escrow by it hereunder any greater degree of care than it gives its own similar property, but in any event the Escrow Agent shall give the Escrow Funds not less than reasonable care and not less than the care it gives its own similar property.

g) The Escrow Agent shall invest the property held in escrow in such a manner as directed in Schedule A annexed hereto, which may include deposits in Citibank and mutual funds advised, serviced or made available by Citibank or its affiliates even though Citibank or its affiliates may receive a benefit or profit therefrom. The Escrow Agent and any of its affiliates are authorized to act as counterparty, principal, agent, broker or dealer while purchasing or selling investments as specified herein. The Escrow Agent and its affiliates are authorized to receive, directly or indirectly, fees or other profits or benefits for each service, task or function performed, in addition to any fees as specified in Schedule B hereof, without any requirement for special accounting related thereto.

The Parties to this Escrow Agreement acknowledge that non-deposit investment products are not obligations of, or guaranteed, by Citibank/Citigroup nor any of its affiliates; are not FDIC insured; and are subject to investment risks, including the possible loss of principal amount invested. Only deposits in the United States are subject to FDIC insurance.

h) The Escrow Agent shall have no obligation to invest or reinvest the property held in escrow if all or a portion of such property is deposited with the Escrow Agent after 11:00 AM Eastern Time on the day of deposit. Instructions to invest or reinvest that are received after 11:00 AM Eastern Time will be treated as if received on the following business day in New York. The Escrow Agent shall have the power to sell or liquidate the foregoing investments whenever the Escrow Agent shall be required to distribute amounts from the escrow property pursuant to the terms of this Escrow Agreement. Requests or instructions received after 11:00 AM Eastern Time by the Escrow Agent to liquidate all or any portion of the escrowed property will be treated as if received on the following business day in New York. The Escrow Agent shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the escrowed property, as applicable, provided that the Escrow Agent has made such investment, reinvestment or liquidation of the escrowed property in accordance with the terms, and subject to the conditions, of this Escrow Agreement; provided that the foregoing shall not limit the Escrow Agent’s liability for its fraud, willful misconduct or gross negligence.

i) In the event of any disagreement between/among any of the Parties to this Escrow Agreement, or between/among them or either or any of them and any other person, resulting in adverse claims or demands being made in connection with the subject
matter of this Escrow Agreement, or in the event that the Escrow Agent, in good faith, be in doubt as to what action it should take hereunder, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Escrow Agent shall not become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue so to refrain from acting until the earlier of such time (i) the rights of all Parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjusted and all doubt resolved by agreement among all of the interested persons, and the Escrow Agent shall have been notified thereof in writing signed by all such persons. The Escrow Agent shall have the option, after 30 calendar days’ notice to the Parties of its intention to do so, to file an action in interpleader requiring the Parties to answer and litigate any claims and rights among themselves. The rights of the Escrow Agent under this paragraph are cumulative of all other rights which it may have by law or otherwise.

j) The Escrow Agent is authorized, for any securities at any time held hereunder, to register such securities in the name of its nominee(s) or the nominees of any securities depository, and such nominee(s) may sign the name of any of the Parties hereto to whom or to which such securities belong and guarantee such signature in order to transfer securities or certify ownership thereof to tax or other governmental authorities.

k) For purposes of this Escrow Agreement, a “business day” shall mean a day, other than a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in New York City.

l) Any court order presented hereunder shall be accompanied by a written certification from the presenting Party satisfactory to the Escrow Agent to the effect that said court order is final and non-appealable. The Escrow Agent shall act on such court order and certification without further question.

m) Notice to the Escrow Agent and the Parties shall be given as provided in Schedule A annexed hereto.

n) The Escrow Agent shall not have the right to set off or deduct from the Escrow Funds any unpaid fees, non-reimbursed expenses or unsatisfied indemnification rights, and the Escrow Funds shall not be used by the Escrow Agent to set off any other obligations of any of the Parties owing to the Escrow Agent.

o) The Escrow Funds shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of the Escrow Agent or any of the Parties.

p) The provisions of this Article First shall survive the termination or expiration of this Escrow Agreement or the removal or resignation of the Escrow Agent in accordance with the terms hereof.
ARTICLE SECOND:

a) The Parties to this Escrow Agreement other than the Escrow Agent acknowledge that they are solely responsible for, and that neither Citibank nor any of its affiliates have any responsibility for, any Party’s compliance with any laws, regulations or rules applicable to the use of the services provided by Citibank under this Escrow Agreement, including, but not limited to, any laws, regulations or rules, in such Party’s jurisdiction or any other jurisdiction, relating to tax, foreign exchange and capital control, and for reporting or filing requirements that may apply as a result of such Party’s country of citizenship, domicile, residence or taxpaying status.

b) Citigroup, Inc., its affiliates, and its employees are not in the business of providing tax or legal advice to any taxpayer outside of Citigroup, Inc. and its affiliates. This Escrow Agreement and any amendments or attachments are not intended or written to be used, and cannot be used or relied upon, by any such taxpayer or for the purpose of avoiding tax penalties. Any such taxpayer should seek advice based on the taxpayer’s particular circumstances from an independent tax advisor.

ARTICLE THIRD: The Escrow Agent (a) may, in its sole discretion, resign and terminate its position hereunder at any time following 30 calendar days’ written notice to the Parties to the Escrow Agreement herein or (b) may be removed, with or without cause, by Parent and the Representative acting jointly at any time by providing written notice to the Escrow Agent. Within 30 calendar days after receiving the foregoing notice of resignation from the Escrow Agent or within 30 calendar days after giving the foregoing notice of removal to the Escrow Agent, the Parties shall appoint a successor escrow agent and give notice of such successor escrow agent to the Escrow Agent. If a successor escrow agent has not been appointed prior to the expiration of such 30 calendar days, the then acting Escrow Agent may either (i) hold and safeguard the Escrow Funds (without any obligation to reinvest the same) until a successor escrow agent is appointed or (ii) petition any court of competent jurisdiction for the appointment of a successor escrow agent, or other appropriate relief. Any such resulting appointment shall be binding upon all of the parties to this Escrow Agreement. Upon receipt of the identity of the successor escrow agent, the Escrow Agent shall distribute the Escrow Funds then held hereunder and deliver any and all related information and documentation to the successor escrow agent, subject to this Escrow Agreement herein, whereupon the Escrow Agent shall, upon such distribution and delivery, have no further duties, responsibilities or obligations hereunder, except the Escrow Agent shall not be discharged from any liability for actions taken as Escrow Agent under this Escrow Agreement prior to such resignation or removal. Any corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the escrow business of the Escrow Agent’s corporate trust line of business may be transferred, shall be the Escrow Agent under this Escrow Agreement without further act.
ARTICLE FOURTH: The Escrow Agent shall receive the fees provided in Schedule B annexed hereto, which shall be paid by Parent. The provisions of this Article Fourth shall survive the termination or expiration of this Escrow Agreement or the removal or resignation of the Escrow Agent with respect to any fees earned but unpaid as of such termination, expiration, removal or resignation.

ARTICLE FIFTH: Any modification of this Escrow Agreement or any additional obligations assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the Parties hereto.

ARTICLE SIXTH: In the event funds transfer instructions are given (other than in writing at the time of execution of this Escrow Agreement), whether in writing, by telecopier or otherwise, the Escrow Agent is authorized to seek confirmation of such instructions by telephone call back to the person or persons designated in Schedule A, including Exhibit A-1 and Exhibit A-2 annexed hereto (the “Call Back Authorized Individuals”), and the Escrow Agent may rely upon the confirmations of anyone purporting to be a Call Back Authorized Individual. To assure accuracy of the instructions it receives, the Escrow Agent may record such call backs. If the Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it will not execute the instruction until all issues have been resolved. The persons and telephone numbers for call backs may be changed only in writing actually received and acknowledged by the Escrow Agent. The parties agree to notify the Escrow Agent of any errors, delays or other problems within 30 calendar days after receiving notification that a transaction has been executed. If it is determined that the transaction was delayed or erroneously executed as a result of the Escrow Agent’s error, the Escrow Agent’s sole obligation is to pay or refund such amounts as may be required by applicable law. Any claim for interest payable will be at the Escrow Agent’s published savings account rate in effect in New York, New York.

ARTICLE SEVENTH:

a) This Escrow Agreement shall be governed by the law of the State of Delaware in all respects. The parties hereto irrevocably and unconditionally submit to the jurisdiction and venue of the Court of Chancery for the State of Delaware (the “Chancery Court”) and any state appellate court therefrom located within the State of Delaware (or, only if the Chancery Court declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware), in connection with any proceedings commenced regarding this Escrow Agreement, including but not limited to, any interpleader proceeding or proceeding for the appointment of a successor escrow agent the Escrow Agent may commence pursuant to this Escrow Agreement, and all parties irrevocably submit to the jurisdiction of such courts for the determination of all issues in such proceedings, without regard to any principles of conflicts of laws, and irrevocably waive any objection to venue of inconvenient forum.
b) THE ESCROW AGENT AND THE PARTIES EACH FURTHER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS ESCROW AGREEMENT, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. THE ESCROW AGENT AND THE PARTIES EACH HEREBY FURTHER AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT EACH MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE ESCROW AGENT AND THE PARTIES TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

ARTICLE EIGHTH: This Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same Escrow Agreement. Facsimile signatures or signatures transmitted by electronic exchange of PDF files on counterparts of this Escrow Agreement shall be deemed original signatures with all rights accruing thereto.

ARTICLE NINTH: The Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, but not limited to, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility); provided, however, that the Escrow Agent shall use commercially reasonable efforts to resume such performance or fulfillment as soon as reasonably practicable.

ARTICLE TENTH: Notwithstanding anything to the contrary herein, any and all e-mail communications (both text and attachments) by or from the Escrow Agent that the Escrow Agent deems to contain confidential, proprietary, and/or sensitive information shall be encrypted. The recipient (the “E-mail Recipient”) of the encrypted email communication will be required to complete a customary registration process. Instructions on how to register and/or retrieve an encrypted message will be included in the first secure email sent by the Escrow Agent to the E-mail Recipient. Additional information and assistance on using the encryption technology can be found at Citibank’s Secure Email website at: https://securemailserver.citigroup.com/index_en_us.html or by calling (866) 535-2504 (in the United States) or (904) 954-6181 (collect calls accepted).

ARTICLE ELEVENTH: Except with respect to (a) the Representative’s communications with the Participating Securityholders or (b) internal communications
between Parent and its employees, representatives or advisors in connection with the performance under or enforcement of this Escrow Agreement, no publicly distributed printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions “Citibank” by name or the rights, powers, or duties of the Escrow Agent under this Escrow Agreement shall be issued by any Party hereto, or on such Party’s behalf, without the prior written consent of the Escrow Agent.

ARTICLE TWELFTH: This Escrow Agreement shall terminate on the first to occur of the (a) distribution of all of the amounts in the Escrow Funds in accordance with this Escrow Agreement or (b) delivery to the Escrow Agent of a written notice of termination executed jointly by Parent and the Representative.

ARTICLE THIRTEENTH: Except as provided in this paragraph and in Article Third, neither this Escrow Agreement nor any right or interest hereunder may be assigned in whole or in part by any party without the prior consent of the other parties. Notwithstanding anything herein to the contrary, Parent may, without prior written consent of the Escrow Agent, assign all or a portion of its rights, interests or obligations hereunder to one or more of its affiliates or one or more entities managed by one of its affiliates; provided, that no such assignment shall relieve Parent of any obligation hereunder except to the extent actually performed or satisfied by the assignee and provided that Parent provides written notice of such assignment to the Escrow Agent.

[signature page follows]
In witness whereof the parties have executed this Escrow Agreement as of the date first above written. If a date is not referenced in the opening paragraph, the date of this Escrow Agreement shall be the date this Escrow Agreement is accepted by Citibank, N.A. as set forth below.

CITIBANK, N.A.

as Escrow Agent

By: __________________________

Title: _________________________ (Signature)

Date: __________________________

[Signature Page to Escrow Agreement]
GTCR FUND X/B LP
SOLELY IN ITS CAPACITY AS THE REPRESENTATIVE

By: ____________________________
Title: __________________________
Date: ___________________________

[Signature Page to Escrow Agreement]
Schedule A

This “Schedule A” is the Schedule A referred to in that certain Escrow Agreement dated [__________], 20[__] (the Escrow Agreement, including this Schedule A and any other schedules and/or exhibits attached hereto, all of the terms and conditions of which are incorporated herein by reference, in each case as amended and/or supplemented from time to time in accordance with the terms hereof, the “Escrow Agreement”) by and among HZNP Limited, a private company limited by shares organized under the laws of Ireland (“Parent”), GTCR FUND X/B LP, a Delaware limited partnership (the “Representative”), solely in its capacity as the representative of […] and the Unitholders and Optionholders (the “Participating Securityholders”), and CITIBANK, N.A. (the “Escrow Agent” herein). Capitalized terms not defined herein shall have the meanings assigned to them in that certain Agreement and Plan of Merger, dated as of [__________] 2015 (as amended or otherwise modified from time to time, the “Merger Agreement”), by and among Creaalta Holdings LLC, a Delaware limited liability company (the “Target”), Parent, Horizon Pharma USA, Inc., a Delaware corporation ([…***…] and, together with Parent, “Purchasers”), Criostail LLC, a Delaware limited liability company and wholly-owned subsidiary of Parent, […] and the Representative. Parent and the Representative are sometimes referred to, individually, as a “Party” and, collectively, as the “Parties” herein.

WHEREAS, the Merger Agreement contemplates the execution and delivery of the Escrow Agreement and the deposit by Purchasers with the Escrow Agent of $[…***…] in the aggregate (the “Escrow Amount”) subject to the terms and conditions hereof, in order to provide a source of funding as described in the Merger Agreement; and

WHEREAS, the parties to the Escrow Agreement wish such Escrow Amount to be subject to the terms and conditions set forth herein and in the Merger Agreement.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

I. Escrow Funds

On the Closing Date, Purchasers shall deposit, or cause to be deposited, with the Escrow Agent, in accordance with Section 3.02(e) of the Merger Agreement, the Escrow Amount. The Escrow Agent shall hold the Escrow Amount, together with all products and proceeds thereof, including all interest, dividends, gains, earnings and other income (collectively, the “Escrow Earnings”) earned with respect thereto (collectively, the “Escrow Funds”) in a separate and distinct account, subject to the terms and conditions of this Schedule A and the Escrow Agreement. For clarity, all Escrow Earnings shall be retained by the Escrow Agent and reinvested in the Escrow Funds and shall become part of the Escrow Funds and shall be disbursed as part of the

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II. **Investment Instructions**

Unless otherwise instructed in writing by Parent and the Representative, the Escrow Agent shall invest and reinvest the Escrow Funds in a non-interest bearing deposit account insured by the Federal Deposit Insurance Corporation (“FDIC”) to the applicable limits. The Escrow Funds shall at all times remain available for distribution in accordance with Section III below.

The Escrow Agent shall send an account statement to each of Parent and the Representative on a monthly basis reflecting activity in the Escrow Funds for the preceding month.

III. **Disposition and Termination of the Escrow Funds**

The Parties shall act in accordance with, and the Escrow Agent shall hold and release the Escrow Funds as provided in, this Section III as follows:

(a) The Escrow Agent shall distribute the Escrow Funds only in accordance with (i) a joint written instrument delivered to the Escrow Agent that on its face purports to be executed by an authorized representative, designated in the certificates set forth in Exhibit A-1 and Exhibit A-2 annexed hereto, of each of Parent and the Representative (each, a “Joint Instruction”) that instructs the Escrow Agent as to the distribution of some or all of the Escrow Funds as indicated therein, or (ii) a final and non-appealable award, order or judgment of a court of competent jurisdiction (an “Order”), a certified copy of which is delivered to the Escrow Agent by either Parent or the Representative (with a copy to the other party), that instructs the Escrow Agent as to the distribution of some or all of the Escrow Funds as indicated therein. A Joint Instruction shall specify the portion of the Escrow Funds (the “Escrow Payment Amount”) to be distributed and the party or parties to whom such distribution is to be made. The Escrow Agent will make no distributions of any Escrow Funds without first receiving a Joint Instruction or an Order. Each of the Representative and Parent agrees to provide the Escrow Agent with an appropriate Joint Instruction as promptly as practicable following an event requiring a release of all or a portion of the Escrow Funds as provided for under the Merger Agreement, including, without limitation, as set forth in Section 9.03(a)(ii) and Article XII of the Merger Agreement. With respect to Section III(a)(ii) above, (A) in addition to a certified copy of the Order, a cover letter detailing all appropriate wire transfer instructions shall be forwarded to the Escrow Agent by the presenting Party, (B) the Escrow Agent may conclusively rely upon a written certification of the presenting Party to the effect that the Order is final and non-appealable, and (C) the Escrow Agent shall have no independent duty to determine whether any Order delivered to it by any Party is final or non-appealable.
(b) Notwithstanding the foregoing, on the first Business Day following the termination of the Escrow Period, the Escrow Agent shall release the then remaining Escrow Funds to the Paying Agent and the Surviving Company in accordance with Section 12.06 of the Merger Agreement; provided, that the Escrow Agent shall retain an amount (up to the total amount of the then remaining Escrow Funds) equal to the amount of any Unresolved Claims. The Escrow Agent shall only release the amount of the Escrow Funds retained for each Unresolved Claim upon receipt of a Joint Instruction or an Order.

(c) Upon receipt of a Joint Instruction with respect to the Escrow Funds, the Escrow Agent shall promptly, but in any event within two (2) Business Days after receipt of a Joint Instruction, disburse all or part of the Escrow Funds in accordance with such Joint Instruction.

(d) All payments of any part of the Escrow Funds shall be made by wire transfer of immediately available funds as set forth in the Joint Instruction or Order, as applicable. Except as otherwise specified in a Joint Instruction, (i) any distributions for the benefit of the Purchasers shall be distributed [85%] to Parent and [15%] to […***…], and (ii) any distributions for the benefit of the Sellers shall be distributed to the Paying Agent and the Surviving Company in accordance with Section 12.06 of the Merger Agreement in such amounts as shall be set forth on each Joint Instruction.

(e) Call Back Authorized Individuals for the Representative are set forth in Exhibit A-1 annexed hereto. Call Back Authorized Individuals for Parent are set forth in Exhibit A-2 annexed hereto.

IV. Tax Matters

(a) Each of the Parties and […***…] shall provide an Internal Revenue Service (“IRS”) Form W-9 or appropriate IRS Form W-8, as applicable, to the Escrow Agent upon reasonable request, and in any event upon execution of this Escrow Agreement. The Parties understand that if such tax reporting documentation is not provided and certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, to withhold a portion of any interest or other income earned on the investment of the Escrow Funds.

(b) The Parties hereto agree that for tax reporting purposes the Escrow Funds shall be deemed owned [85%] by Parent and [15%] by […***…], and that all Escrow Earnings, if any, earned from the investment of Escrow Funds pursuant to this Agreement shall be treated for tax purposes as earned [85%] by Parent and [15%] by […***…]. Escrow Earnings shall be reported by Citibank to the IRS, or any other taxing authority, as required by law and in accordance with this clause (b) of Article Second.
(c) Upon reasonable request, each distributee of Escrow Funds shall provide an IRS Form W-9 or appropriate IRS Form W-8, as applicable, to the Escrow Agent; provided that the Escrow Agent shall have no responsibility under this Escrow Agreement for the preparation or filing of any tax return in respect of the Escrow Funds except as provided in Section IV(b) of this Schedule A.

V. Fees and Expenses

Unless otherwise provided for in Schedule B to the Escrow Agreement, the Escrow Agent shall not otherwise charge fees for the services provided by the Escrow Agent hereunder.

VI. Notices

All notices, requests, demands and other communications required under this Escrow Agreement shall be in writing, in English, and shall be deemed to have been duly given and received (i) upon receipt when delivered personally, (ii) upon transmission if sent by facsimile transmission with electronic confirmation of receipt, (iii) upon transmission if sent by electronic mail ("e-mail") to the e-mail address given below with electronic confirmation of receipt or (iv) one Business Day after being sent by courier or express delivery service. If notice is given to a party, it shall be given at the address for such party set forth below. It shall be the responsibility of the Parties to notify the Escrow Agent and the other Party in writing of any name or address changes.

If to Parent:
Name: HZNP Limited
Address: HP House
        21 Laffan Street
        Hamilton HM-09
        Bermuda
Attn: Attn: Kevin Insley
Facsimile: 441-292-1244
E-mail: Kinsley@zobec.bm

With a copy to (which shall not constitute notice):
Name: Cooley LLP
Address: 4401 Eastgate Mall
        San Diego, CA 921210-1909
Attn: Barbara Borden
Facsimile: 858-550-6420
E-mail: bbordenbl@cooley.com
If to Representative:
Name: GTCR Fund X/B LP; c/o GTCR LLC
Address: 300 North LaSalle Street
       Suite 5600
       Chicago, Illinois 60654
Attn: Constantine S. Mihas
Facsimile: 312-382-220

With a copy to (which shall not constitute notice):
Name: Kirkland & Ellis LLP
Address: 300 North LaSalle Street
       Chicago, Illinois 60654
Attn: Sanford E. Perl, P.C.; Michael H. Weed, P.C.
Facsimile: 312-862-2200

If to the Escrow Agent:
Name: Citibank, N.A.
Address: Citi Private Bank
       One Sansome Street, 23rd Floor
       San Francisco, CA 94104
Attn: Raafat Sarkis
Telephone: 415-627-6327
Facsimile: 415-592-5584
E-mail: Raafat.sarkis@citi.com
EXHIBIT A-1
Certificate as to Representative’s Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the Representative and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under this Escrow Agreement, on behalf of the Representative. The below listed persons (must list at least two individuals) have also been designated Call Back Authorized Individuals and will be notified by Citibank N.A. upon the release of Escrow Funds from the escrow account(s) unless an original "Standing or Predefined Instruction" letter is on file with the Escrow Agent file with the Escrow Agent.

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<th>Name / Title /Telephone #</th>
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EXHIBIT A-2
Certificate as to Parent’s Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Parent and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under this Agreement, on behalf of Parent. The below listed persons (must list at least two individuals) have also been designated Call Back Authorized Individuals and will be notified by Citibank N.A. upon the release of Escrow Funds from the escrow account(s) unless an original “Standing or Predefined Instruction” letter is on file with the Escrow Agent.

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## Schedule B
### ESCROW AGENT FEE SCHEDULE
Citibank, N.A., Escrow Agent

### Citibank, N.A., Escrow Agent

<table>
<thead>
<tr>
<th>Fee Type</th>
<th>Fee Status</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Acceptance Fee</strong></td>
<td>WAIVED</td>
<td>To cover the acceptance of the Escrow Agency appointment, the study of the Escrow Agreement, and supporting documents submitted in connection with the execution and delivery thereof; and communication with other members of the working group.</td>
</tr>
<tr>
<td><strong>Administration Fee</strong></td>
<td>WAIVED</td>
<td>The annual administration fee covers maintenance of the Escrow Account including safekeeping of assets in the escrow account, normal administrative functions of the Escrow Agent, including maintenance of the Escrow Agent’s records, follow-up of the Escrow Agreement’s provisions, and any other safekeeping duties required by the Escrow Agent under the terms of the Escrow Agreement. Fee is based on Escrow Amount being deposited in a non-interest bearing deposit account, FDIC insured to the applicable limits.</td>
</tr>
<tr>
<td><strong>1099 Tax Preparation Fee</strong></td>
<td>INCLUDED</td>
<td>To cover preparation of Form 1099-INT for the applicable escrow party for each calendar year.</td>
</tr>
<tr>
<td><strong>Transaction Fees</strong></td>
<td>INCLUDED</td>
<td>To cover all required disbursements from escrow account, including disbursements made via check, payments to all parties as designated by client, fees associated with postage and overnight delivery charges incurred by the Escrow Agent as required under the terms and conditions of the Escrow Agreement:</td>
</tr>
<tr>
<td><strong>Legal Fees</strong></td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td><strong>Other Fees</strong></td>
<td>N/A</td>
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</table>
Citi Private Bank is a business of Citigroup Inc. ("Citigroup"), which provides its clients access to a broad array of products and services available through bank and non-bank affiliates of Citigroup. Not all products and services are provided by all affiliates or are available at all locations.

**Investment Products:** •No Bank Guarantee •Not FDIC Insured •May Lose Value

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Citibank, N.A. Member FDIC
Important information about opening a new account at Citi Private Bank:

To help the United States Government fight terrorism and money laundering, Federal law requires financial institutions to obtain, verify, and record information that identifies each individual, business or entity that opens an account or establishes a relationship. What this means for you:

For individuals — when you open an account or establish a relationship, we will ask for your:

- name,
- date of birth,
- residential street address, and
- identification number, such as a social security number, taxpayer identification number, national identification number or passport number.

For businesses and other entities, such as corporations, trusts, etc. — when you open an account or establish a relationship, we will ask for your:

- official name,
- principal place of business or local business street address, and
- taxpayer identification number or other registration number.

For individuals, we may also ask to see (and retain a copy of) your driver’s license, passport or other identifying documents that will help us identify you. For businesses or entities, we may also ask for a copy of your formation documents or other related documentation. If we have difficulty verifying an accountholder’s identity, we may not be able to open an account or establish a relationship, or we may have to block or close the account.

Thank you for your cooperation.
Each member of the Board of Directors (the “Board”) of Horizon Pharma Public Limited Company (the “Company”) other than (1) any member who is affiliated with any holder of more than 5% of the Company’s ordinary shares or (2) any member serving as an employee of the Company or any of its subsidiaries (each such member, a “Director”) will receive the following compensation for his or her Board service. The determination of whether a member of the Board meets the requirements to be eligible to receive compensation as an eligible Director under this Policy will be determined as of the date such cash compensation is otherwise payable, or the date such equity compensation would be granted, as applicable.

**Annual Cash Compensation**

The annual cash compensation amount set forth below is payable in equal quarterly installments, payable in arrears on the last day of each fiscal quarter in which the service occurred. If a Director joins the Board at a time other than effective as of the first day of a fiscal quarter, each annual retainer/fee set forth below will be pro-rated based on days served in the applicable fiscal year, with the pro-rated amount paid for the first fiscal quarter in which the Director provides the service, and regular full quarterly payments thereafter. All annual cash fees are vested upon payment.

1. **Annual Board Service Retainer:**
   a. Non-Executive Chairman of the Board/Lead Independent Director: $100,000
   b. All other Directors: $60,000

2. **Annual Committee Chair Service Fee:**
   a. Chairman of the Audit Committee: $30,000
   b. Chairman of the Compensation Committee: $20,000
   c. Chairman of the Nominating & Corporate Governance Committee: $15,000
   d. Chairman of the Transaction Committee: $20,000

3. **Annual Committee Member (non-Chair) Service Fee:**
   a. Audit Committee: $15,000
   b. Compensation Committee: $10,000
   c. Nominating & Corporate Governance Committee: $7,500
   d. Transaction Committee: $12,500

**Equity Compensation**

The equity compensation set forth below will be granted under the Horizon Pharma Public Limited Company 2014 Non-Employee Equity Plan, as may be amended from time to time (the “Plan”). All stock options granted under this policy will be non-statutory stock options, with an exercise price per share equal to 100% of the Fair Market Value (as defined in the Plan) of the underlying Company ordinary shares on the date of grant (provided, that in all cases, the exercise
price shall not be less than the nominal value of the Company’s ordinary shares), and a term of ten (10) years from the date of grant (subject to earlier termination in connection with a termination of service as provided in the Plan).

1. **Initial Grant:** On the date of any Director’s initial election to the Board, the Director will be automatically, and without further action by the Board, granted (i) a stock option to purchase ordinary shares with an aggregate Black Scholes option value of $300,000 and (ii) restricted stock units with an aggregate value of $300,000. The stock option will vest in thirty-six (36) equal monthly installments from the date of grant, and the restricted stock units will vest in three (3) equal annual installments from the date of grant, such that both the option and restricted stock units will be fully vested on the third anniversary of the date of grant, each subject to the Director’s Continuous Service (as defined in the Plan) through each applicable vesting date. A Director who, in the one year prior to his or her initial election to serve on the Board as a non-employee director, served as an employee of the Company or one of its subsidiaries will not be eligible for an initial grant.

2. **Annual Grant:** On the date of each annual shareholder meeting of the Company, each Director will be automatically, and without further action by the Board, granted (i) a stock option to purchase ordinary shares with an aggregate Black Scholes option value of $212,500 and (ii) restricted stock units with an aggregate value of $212,500. The stock option will vest in twelve (12) equal monthly installments from the date of grant and the restricted stock units will vest in full upon the first anniversary of the date of grant, such that both the option and restricted stock units will be fully vested on the first anniversary of the date of grant, each subject to the Director’s Continuous Service through each applicable vesting date.

**Expenses**

The Company will reimburse each Director for ordinary, necessary and reasonable out-of-pocket travel expenses to cover in-person attendance at and participation in Board and/or Committee meetings; provided, that Directors timely submit to the Company appropriate documentation substantiating such expenses. In addition, the Company will reimburse each Director up to $15,000 annually for financial counseling services, including (1) personal financial planning, (2) estate planning and (3) preparation of tax returns and tax planning for the Directors and/or their dependent children.

2.
This LICENSE AND SETTLEMENT AGREEMENT (this “Agreement”), dated October 1, 2015 (the “Execution Date”), is hereby entered into by and among Horizon Pharma Switzerland GmbH (formerly known as Horizon Pharma AG), a Swiss company with its principal place of business at Kagenstrasse 17, CH-4153 Reinach, Switzerland ("Horizon Pharma Switzerland"), Jagotec AG, a Swiss company with its principal place of business at Eptingerstrasse 61, CH-4132 Muttenz, Switzerland ("Jagotec") (Horizon Pharma Switzerland and Jagotec, individually referred to as a “Licensor” and collectively referred to as “Licensors”), and Actavis Laboratories FL, Inc. (formerly known as Watson Laboratories, Inc. – Florida), a Florida Corporation with a principal place of business at 4955 Orange Drive, Davie, Florida 33314 ("Actavis") (each individually a “Party”, collectively, “Parties”).

WHEREAS, pursuant to 21 U.S.C. § 355(j), Actavis filed Abbreviated New Drug Application No. 204867 (together with any amendments, supplements or replacements thereto, which continue the use of the RAYOS® Tablets as the Reference Listed Drug, the “Actavis ANDA”), to seek approval from the U.S. Food and Drug Administration, including any successor agency thereto (the “FDA”), to market and/or offer for sale prednisone delayed-release tablets in 1 mg, 2 mg, and 5 mg dosage strengths, as described in the Actavis ANDA (“Actavis Generic Tablets”);

WHEREAS, Horizon Pharma Inc., an Affiliate of Horizon Pharma Switzerland, owns New Drug Application No. 202020 (together with any amendments and supplements thereto, “the RAYOS® NDA”) for prednisone delayed-release tablets in 1 mg, 2 mg, and 5 mg dosage strengths, which are sold by Horizon Pharma USA, Inc., an Affiliate of Horizon Pharma Switzerland, under the trademark RAYOS®;

WHEREAS, the Parties are currently involved in U.S. Civil Action No. 13-05124 (JEI/JS) (the “U.S. District Court Case”), with respect to the Actavis ANDA, in the United States District Court for the District of New Jersey (the “Court”), concerning United States Patent Nos. 6,488,960 (“the ‘960 patent”), 8,309,124 (“the ‘124 patent”), and 8,394,407 (“the ‘407 patent”) (the “Asserted Patents”);

WHEREAS, United States Patent Nos. 9,040,085 (“the ‘085 patent”), 6,677,326 (“the ‘326 patent”), 8,168,218 (“the ‘218 patent”) and the Asserted Patents are listed in the Orange Book with respect to the RAYOS® NDA (“Listed Patents”);

WHEREAS, on August 22, 2014, Licensors granted Actavis […**...];

WHEREAS, Horizon Pharma Switzerland is the sole owner of the ‘960 patent and the ‘326 patent;

WHEREAS, Jagotec is the sole owner of the ‘124 patent, the ‘407 patent, the ‘085 patent, and the ‘218 patent;

WHEREAS, Horizon Pharma Switzerland is an exclusive licensee of the Jagotec Patents;
WHEREAS, the Parties recognize the risks, unpredictability and expense of litigation and wish to resolve their disputes relating to the Asserted Patents with respect to the Actavis Generic Tablets in the U.S. District Court Case, through a negotiated and consensual agreement;

WHEREAS, as a result of this Agreement, there will be an opportunity for U.S. generic entry, which entry otherwise may not occur until the expiration of the last to expire of the Licensed Patents; and

WHEREAS, all terms not otherwise defined in the body of this Agreement shall have the meanings ascribed to them in Exhibit A hereto.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the sufficiency and receipt of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

I. Rights and Obligations

1. License. Effective as of the applicable Generic Entry Date (as defined below) and subject to the terms and conditions of this Agreement, Licensors hereby grant Actavis a fully paid up, royalty-free, irrevocable (except as provided in Paragraph 11) license under the Licensed Patents in the Territory, to make, have made, import, have imported, store, use, distribute, have distributed, sell and offer for sale Actavis Generic Tablets in the Territory (all of the foregoing, the “License”). The license granted in the preceding sentence shall be exclusive as to Third Party Generic Tablets for a period of one hundred and eighty (180) days after the Generic Entry Date, and shall thereafter be non-exclusive. Licensors and their Affiliates explicitly retain the right themselves to market at any time an Authorized Generic. Nothing in this Agreement shall prevent Licensors from continuing to manufacture and market branded Rayos®. Licensors also grant to Actavis the right to sublicense, solely to its Affiliates, provided that any such sublicense shall be effective only for only so long as this Agreement remains in effect and the entity to whom the sublicense is granted remains an Affiliate of Actavis (Actavis and its sublicensed affiliates herein referenced as “Licensees”).

2. Pre-Marketing Activities. Licensees shall not engage in soliciting or taking orders or any other marketing or pre-marketing activities before the Generic Entry Date, as set forth in Paragraph 3(b); however, notwithstanding anything to the contrary in this Agreement, reasonably associated pre-marketing activities, other than soliciting and taking orders, including but not limited to, communications with the trade regarding the products to be offered for sale on the Generic Entry Date and engaging customers in non-binding pricing/contracting activities, may be conducted within […***…] days before the applicable Generic Entry Date if the Generic Entry Date is determined under Paragraph 3(a)(i)(x) or 3(a)(ii)(x) or 3(a)(ii)(z), or […***…] business days before the applicable Generic Entry Date if the Generic Entry Date is determined under Paragraph 3(a)(i)(y). Further, notwithstanding the Generic Entry Date and the restrictions contained herein, Actavis and its Affiliates shall be permitted to manufacture, have manufactured, import, store or otherwise take such steps necessary to develop inventory of the Actavis Generic Tablets in advance of the Generic Entry Date for the purpose of preparing for the launch of the Actavis Generic Tablets on or after the Generic Entry Date.

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3. **Generic Entry Date; Agreement not to Market**

(a) For purposes of this Agreement, the “**Generic Entry Date**” means the earliest to occur of the following dates, as applicable to each specific strength of Actavis Generic Tablets:

(i) For all strengths of Actavis Generic Tablets (Actavis Generic 1 mg Tablet, Actavis Generic 2 mg Tablet and Actavis Generic 5 mg Tablet),

(x) December 23, 2022;

(y) [...***…] calendar days after the date on which Actavis provides notice that the Calculated TRX has fallen by at least [...***…]% as compared to the Baseline TRX, provided that such notice includes a copy of the IMS data that supports such notice, and provided that such decline is not a result of bona fide supply interruption;

(ii) Individually, with respect to each specific strength of Actavis Generic Tablets (Actavis Generic 1 mg Tablet, Actavis Generic 2 mg Tablet or Actavis Generic 5 mg Tablet), except as specifically set forth in subparagraph (w) below,

(w) the date of a final decision from which no appeal (other than a petition to the U.S. Supreme Court for a writ of certiorari) has been or can be taken, in litigation against a Third Party who is seeking approval to market a Same Strength Generic Tablet, a holding that all claims of the Licensed Patents, asserted and adjudicated against that Third Party, are invalid, canceled, unenforceable or not infringed by the Third Party’s filing of an Abbreviated New Drug Application seeking approval for marketing such a Same Strength Generic Tablet; however, such a final court decision holding that all asserted and adjudicated claims of the Licensed Patents are invalid, canceled or unenforceable against a Third Party seeking approval to market a Generic 1 mg Tablet shall have the same force and effect as if the decision were against a Third Party seeking approval to market a Generic 2 mg Tablet and vice versa;

(x) [...***…] days prior to the date on which a commercial sale of a Same Strength Generic Tablet by a Third Party would be permitted in the Territory, pursuant to a license or other written authorization granted to such Third Party by the Licensors (and if such Third Party license date is prior to [...***…], Licensors shall provide written notice to Actavis within [...***…] business days after the Licensors have entered into any such written agreement with a Third Party that licenses or authorizes such Third Party to sell a Same Strength Generic Tablet);

(y) the date of a first Commercial Sale in the Territory by a Third Party, without license or authorization by the Licensors, of a Same Strength Generic Tablet; provided, however, that in the event such Third Party ceases the sale and distribution of such Same Strength Generic Tablet, or the Licensors

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subsequently obtain an injunction enjoining such Third Party’s sale and distribution of such Same Strength
Generic Tablet, Licensees shall cease sale and distribution of the Actavis Same Strength Generic Tablet in the
Territory, and the Generic Entry Date shall be deemed not to have occurred;

(z) the date that Licensors and/or their Affiliates launch an Authorized Generic on a commercial scale.

(b) Licensees shall not, in the Territory before the applicable Generic Entry Date, directly or indirectly through
Affiliates, Licensees, sublicensees, or others, market, offer for sale, sell or take orders for, any Actavis Generic Tablets, and Licensees
shall not license, sublicense, enable, permit, or cause (or continue to license, sublicense, knowingly enable, permit or cause) any Person
to do so, except as permitted in Paragraph 2. The Parties further agree that any violation of the foregoing would cause irreparable harm
to Horizon Pharma Switzerland and Jagotec and understanding this, Actavis hereby irrevocably and unconditionally consents to
immediate entry of a temporary restraining order, preliminary injunction and permanent injunction in the event such relief is needed to
prevent such harm in the event of a violation or imminent threat of a violation of the foregoing. Nothing in the preceding sentence shall
limit Actavis’s ability to seek to recover damages for an improperly issued injunction. Further, to the extent Licensors do not post a
bond as a condition to securing injunctive relief, Licensors agree the injunction bond rule will not apply, such that the lack of a bond
shall in no way impair or limit Actavis’s ability to seek damages from the Licensors in the event it is finally determined that any such
injunctive relief was improperly granted.

4. Agreement Not To Challenge Validity or Enforceability

(a) Subject to the remainder of this Paragraph 4, Actavis, on behalf of itself and all Licensees and their Affiliates,
and all respective predecessors, successors, assigns, officers, directors, managers, employees and trustees of the foregoing, […***…],
in any forum (e.g., U.S. courts, ITC, U.S. Patent and Trademark Office (e.g., Inter Parties Review, Reexamination, Interference) or
foreign courts or foreign patent offices), […***…].

(b) […***…] with respect to all Actavis Generic Tablets and for the purposes of enforcement of this Agreement.
For the avoidance of doubt, Actavis’s acknowledgement herein shall not apply and shall have no effect outside the United States or to
any product other than the Actavis Generic Tablets or to any ANDA other than the Actavis ANDA. Further, Licensors and their
Affiliates shall not refer to or rely on such admission and any other stipulation, admission or concession regarding the Licensed Patents
in any proceeding outside the United States or any proceeding with Actavis or its Affiliates involving a product other than the Actavis
Generic Tablets or an ANDA other than the Actavis ANDA.

(c) The foregoing Paragraphs 4(a) and 4(b) shall not preclude Actavis from filing and/or maintaining in the
Actavis ANDA any certifications under 21 U.S.C.
§ 355(j)(2)(A)(vii)(IV) (as amended or replaced) to any patents listed in the Orange Book in connection with the RAYOS® NDA.

(d) In addition, the foregoing Paragraphs 4(a) and 4(b) shall not preclude Actavis from contesting, in any forum (e.g., U.S. courts, ITC, U.S. Patent and Trademark Office (e.g., Inter Parties Review, Reexamination, Interference) or foreign courts or foreign patent offices), the validity or enforceability of the Licensed Patents in connection with any other ANDA or NDA or other product that Actavis may own and/or file, so long as (i) the RAYOS® NDA is not used as a Reference Listed Drug or Listed Reference Drug ("non-RAYOS® ANDA" or "non-RAYOS® NDA") and (ii) with respect to any such action taken by Actavis in the U.S.P.T.O., Licensors or their Affiliates had initiated suit against Actavis and/or its Affiliates alleging that (i) a product other than the Actavis Generic Tablet or a Generic Tablet or (ii) an ANDA other than the Actavis ANDA or an ANDA citing a RAYOS® Tablet as a Reference Listed Drug, infringes any of the Licensed Patents.

(e) Notwithstanding Paragraph 4(d), nothing shall preclude Actavis from challenging the validity, enforceability or infringement of the Licensed Patents in connection with generic versions of Rayos® in strengths other than 1, 2 and 5 mg.

5. Retention of Certain Rights. Nothing set forth herein shall be deemed to give Licensors or their Affiliates any control over any marketing exclusivity that may be granted to Actavis by the FDA in connection with the Actavis ANDA or the Actavis Generic Tablets. Nothing set forth herein shall be deemed to prevent or restrict Actavis or its Affiliates from selling any product other than the Actavis Generic Tablets or to prevent Licensors from pursuing charges of patent infringement based upon sales by Actavis of any product other than the Actavis Generic Tablets.

6. Limited Rights; No Implied Rights. The License granted in Paragraph 1 does not apply to any patent, patent application, or other intellectual property right owned by or licensed to Horizon Pharma Switzerland or Jagotec, other than the Licensed Patents. This License does not apply to any products other than Actavis Generic Tablets that are the subject of the Actavis ANDA. Nothing in this Agreement shall preclude Horizon Pharma Switzerland or Jagotec from granting any sublicense/license or any other rights under any or all of the Licensed Patents, whether to an Affiliate of Horizon Pharma Switzerland or Jagotec, or to any Third Party. Except for the rights expressly granted under Paragraphs 1 and 2, no other rights under any of the Licensed Patents or any other patents or intellectual property rights of Horizon Pharma Switzerland or Jagotec or any of their Affiliates are granted under this Agreement, by implication, estoppel or otherwise, and all other such rights are reserved. Licensees shall not practice the Licensed Patents except pursuant to the License granted in Paragraph 1 and consistent with the Pre-Marketing Activities permitted under Paragraph 2.

7. Covenant Not to Sue. In addition to the license grants contained herein, subject to Licensees’ compliance with this Agreement, Horizon Pharma Switzerland and Jagotec on behalf of themselves and each of their respective Affiliates, agree that neither of them nor their Affiliates will sue, assert any claim or counterclaim against, or otherwise participate in any action or proceeding against Actavis and its Affiliates or any of its permitted sublicensees of the License or any of their respective customers, suppliers, importers, manufacturers or distributors,
or any of their respective predecessors, successors, assigns, agents, officers, employees or representatives, or cause, support or authorize any Third Party to do any of the foregoing, in each case for infringement of any patent or patent application owned, licensed or otherwise Controlled by Horizon Pharma Switzerland or Jagotec or their respective Affiliates either now or in the future based on or arising from the Actavis ANDA or the Actavis Generic Tablets (and any components thereof, including the active ingredient for use in each instance in making any of such Actavis Generic Tablets) in the Territory. Horizon Pharma Switzerland and Jagotec and their Affiliates will impose the foregoing covenant not-to-sue on any Person that acquires (by assignment, license, transfer or otherwise) from Horizon Pharma Switzerland or Jagotec or their Affiliates the right to enforce any such patent or patent application described in the immediately preceding sentence. For all patents described in the first sentence of this Paragraph 7 that may be listed in the Orange Book that may pertain to Actavis Generic Tablets, the foregoing covenant not to sue may be treated as a non-exclusive license solely for the purposes of permitting Actavis and its sublicensed Affiliates to file and maintain with the FDA a “Paragraph IV Certification” under 21 U.S.C. § 355(j)(2)(A)(vii)(IV) (as amended or replaced) with respect thereto.

8. FDA Cooperation. Licensors and their Affiliates hereby waive, with respect to the Actavis ANDA and Actavis Generic Tablets only, any and all regulatory exclusivities for Rayos® that may prevent approval or marketing of the Actavis Generic Tablets in the Territory under the Actavis ANDA as of the Generic Entry Date. To the extent that FDA has granted any regulatory exclusivities or otherwise prevents approval or launch of the Actavis Generic Tablets, Licensors and their Affiliates agree to reasonably cooperate with Actavis and the FDA to gain final approval of the Actavis Generic Tablets. By way of example only, at Licensees’ request, Horizon Pharma Switzerland and Jagotec will submit, or will cause their respective Affiliates to submit, appropriate and reasonable documentation to the FDA evidencing the waivers and licenses set forth in this Agreement. Licensees shall reimburse Horizon Pharma Switzerland and Jagotec for all reasonable costs and expenses incurred by them and/or their Affiliates in seeking Third Party advice and/or assistance in performing activities under this Paragraph 8, within […***…] days after receipt of an invoice therefor, provided such invoice is accompanied by documents from such Third Party verifying such Third Party charges to Horizon Pharma Switzerland and/or Jagotec.

9. Most Favored Licensee and Notice. Licensors represent and covenant to Actavis that the terms of the Agreement being offered to Actavis are and will be equivalent to or better than the terms being offered by Licensors or its Affiliates to any Third Party with respect to any license(s) or other permissions(s) to Generic Tablets (“Third Party Agreement”) with respect to Paragraphs 1, 2, 3 and 9 (License, Pre-Marketing Activities, Generic Entry Date and Notice of Authorized Generic). If Licensors and/or their Affiliates have entered or enter into a Third Party Agreement providing such Third Party with more favorable terms, then the applicable terms in this Agreement will be automatically amended to provide such more favorable terms to Actavis. Licensors shall notify Actavis of any more favorable terms from Paragraphs 1, 2, 3 and 9 within […***…] business days. Licensors further agree that they will provide Actavis at least […***…] calendar days’ advance notice of Licensors’ or its Affiliates’ or a Third Party’s launch of an Authorized Generic.

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II. Term; Dismissal of U.S. District Court Case

10. Term of License. The License commences as to a specific Actavis Generic Tablet on the Generic Entry Date that is applicable to that Actavis Generic Tablet and continues until the last to expire of each of the Licensed Patents (including any extensions thereof) and/or regulatory exclusivities associated therewith, so long as the Agreement remains in effect.

11. Term and Termination of This Agreement/Survival. This Agreement is effective on the Execution Date and continues until the last to expire of each of the Licensed Patents (including any extensions thereof) and/or regulatory exclusivities associated therewith, unless terminated earlier as provided for in this Agreement. Any action undertaken by Actavis or any of its respective Affiliates that, if undertaken by Actavis would be a breach of this Agreement, shall be deemed a breach of this Agreement by Actavis for which Actavis shall bear full responsibility. Licensors may terminate this Agreement immediately upon written notice to Actavis if Actavis or any of its Affiliates or Licensees directly or indirectly, including through assistance obtained from a Third Party, commit a Material Breach. Only a violation of the conditions of Paragraphs 3(b) and/or 4(a) will constitute a “Material Breach”. All licenses and rights granted to Actavis and Licensees in this Agreement shall automatically terminate upon any termination of this Agreement. The provisions of Paragraphs 3(b), 10-12, 14, 20, 27 and 29 shall survive termination of this Agreement for any reason.

12. Government Review. The Parties agree to submit this Agreement to the FTC and the DOJ as required by statute. Each Party shall, to the extent permitted by law:

(a) promptly inform the other Parties of any communication made or received by such Party to or from any governmental authority regarding this Settlement Agreement and/or any related agreements; and

(b) use reasonable efforts to comply with and terminate any investigation or inquiry regarding the Settlement Agreement and/or any related agreements by any government authority, including by providing requested information to such government authority and permitting reasonable access to its documents, officials and data related to this Agreement and/or any related agreements.

(c) To the extent that any legal or regulatory issues or barriers arise with respect to this Agreement, or any subpart thereof, work together in good faith and use reasonable efforts to modify this Agreement to overcome any such legal or regulatory issues (including, for example, objections by the FTC, the DOJ, or any applicable court) in a mutually acceptable fashion, but in no event shall either Party be required to agree to any modification of this Agreement that materially affects the economic value of the transactions contemplated hereby.

13. Final Dismissal of Litigation. In the absence of any adverse action by the FTC or DOJ within [***] calendar days after submission of this Agreement to the FTC and DOJ, or within [***] business days after reaching agreement with the FTC and DOJ as to modification(s) of this Agreement which are acceptable to the Parties if the FTC or DOJ issue any adverse action within that [***]-day period, the Parties shall enter into and cause to be filed in the U.S. District Court Case a Stipulated Order of Dismissal and [Proposed] Order in the form attached as Exhibit B

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to this Agreement, pursuant to which all claims in the U.S. District Court Case will be dismissed without costs or fees.

III. Confidentiality

14. Restrictions; Obligations. The Parties hereby agree that, except as permitted herein or unless otherwise agreed to by the Parties in writing or required by law, the Parties, their Affiliates and their respective employees, officers, directors and other representatives shall not publish or otherwise disclose the contents of this Agreement. The Parties may state publicly that the U.S. District Court Case has been settled on terms that are confidential, but no public announcement concerning the terms or subject matter of this Agreement shall be made, either directly or indirectly, by any Party without first obtaining the approval of the other Party and agreement upon the nature and text of such public announcement or disclosure, such agreement and approval not to be unreasonably withheld, delayed or conditioned; except a Party may make such public announcements that in the opinion of legal counsel for such Party are required by any applicable law, including the US Securities Act of 1933, as amended, the US Securities Exchange Act of 1934, as amended, any governmental law or regulation, or the rules of any recognized stock exchange. Without limiting the foregoing, Actavis acknowledges that Licensors intend to (a) issue a press release (which shall be in substantially the form exchanged and agreed by the Parties prior to execution of this Agreement, and which may disclose (i) that the litigation has settled by Actavis taking a license under the Licensed Patents; and (ii) the Generic Entry Date, which may be accelerated under certain circumstances, and (b) file a disclosure with the U.S. Securities and Exchange Commission (the “SEC”) upon execution of this Agreement, announcing settlement of the U.S. District Court Case and entry into this Agreement, and outlining certain material terms thereof, and (c) publicly file copies of the Agreement with the SEC, which copies may be redacted by Licensors after consultation with Actavis and consistent with the terms of this Paragraph 14. In addition, and notwithstanding the foregoing, the Parties agree that a Party may disclose the contents of this Agreement (i) to its Affiliates, (ii) to the extent necessary to enforce the Agreement, (iii) to Third Parties in connection with due diligence or similar investigations by such Third Parties, and disclosure to potential Third Party investors in confidential financing documents, provided that, in each case under this subclause (iii), any such third party agrees to be bound by reasonable obligations of confidentiality consistent with those set forth in this Paragraph 14, and (iv) to the extent necessary to comply with applicable law or regulation; provided, however, that if a Party believes that the disclosure of all or portions of this Agreement is required by applicable law, then that Party shall inform the other Party in sufficient time, if practicable, prior to any such disclosure to allow the other Party to seek a protective order or confidential treatment prior to any such disclosure. In addition, Actavis may disclose the terms of this Agreement to Teva Pharmaceutical Industries Ltd. and its Affiliates and any Third Party in connection with a potential or actual merger, reorganization, change of control or sale of all or substantially all of the applicable business or assets of Actavis to which this Agreement relates, or to a Third Party in connection with any divestiture of the Actavis ANDA, in accordance with confidentiality terms at least as restrictive as the terms hereof. Each Party agrees that it shall cooperate fully with the other Party with respect to all disclosures regarding this Agreement to any governmental or regulatory agencies or any court, including requests for confidential treatment of proprietary information of any Party included in such disclosure. If the Parties are unable to agree on the
form or content of any required disclosure, such disclosure shall be limited to the minimum required, as determined by the disclosing Party in consultation with its legal counsel. Without limiting the foregoing, each Party shall consult with the other Party on the provisions of this Agreement, to be redacted in any filings made by any Party with the SEC or as otherwise required by law, regulation or the rules of any recognized stock exchange; and provided further that no notice shall be required for disclosure required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

IV. Releases; Representations and Warranties

15. Releases. Upon the terms and subject to the conditions of this Agreement, in consideration of the mutual execution of this Agreement and the mutual agreement to be legally bound by the terms hereof, each Party, on behalf of itself and its Affiliates, hereby releases, acquits and forever discharges the other Party and its Affiliates from any and all pending and potential claims, demands, all manner of actions, causes of action, suits, debts, liabilities, losses, damages, attorneys’ fees, costs, expenses, judgments, settlements, interest, punitive damages and other damages or costs of whatever nature, whether known or unknown, certain or contingent, arising out of, derived from, predicated upon or relating to (a) the Litigation, including any of the claims or counterclaims that were brought or could have been brought against the other Party in the U.S. District Court Case, or (b) under the Licensed Patents with respect to the Actavis Generic Tablets and/or Actavis ANDA; provided, however, that nothing in this Agreement shall prevent or impair the right of either Party to bring a proceeding in court or any other forum for a breach of this Agreement or any representation, warranty or covenant herein.

16. Mutual Representations. Each Party hereby represents and warrants to the other Party, as of the Execution Date, that:

(a) Such Party is validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the corporate power and authority to enter into this Agreement and to carry out the provisions hereof;

(b) Such Party has taken all corporate action necessary to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement;

(c) This Agreement has been duly executed by such Party and constitutes a valid and legally binding obligation of such Party, enforceable in accordance with its terms;

(d) The execution, delivery and performance of this Agreement by such Party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it;
 FOR EXECUTION 

(e) Such Party has been advised by its counsel of its rights and obligations under this Agreement and enters into this Agreement freely, voluntarily, and without duress; and 

(f) Such Party is not relying on any promises, inducements, or representations other than those provided herein. 

17. Licensors Representations. Licensors hereby represent and warrant that: 

(a) they are the sole and exclusive owners of the Licensed Patents existing as of the Execution Date; 

(b) they have not obtained or been granted (and are not aware of any need or requirement to obtain or be granted) any Third-Party License; 

(c) they have the authority to grant the licenses hereunder, and that Licensors, on behalf of themselves and their Affiliates, will impose the license grants, covenants, and other obligations contained in this Agreement on any Third Party to which Licensors or any of their Affiliates, assign or otherwise transfer right, title or interest (excluding any license or sublicense) in or to any of the Licensed Patents; 

(d) as of the Execution Date, Licensors shall not, and shall not cause or encourage any Affiliate or Third Party to initiate or otherwise undertake any activity, directly or indirectly, against the Actavis ANDA or Actavis Generic Tablets to: (i) interfere with Actavis’s efforts to obtain and maintain FDA approval of the Actavis ANDA or the Actavis Generic Tablets, including, but not limited to, the filing of suit against FDA, and/or the filing or submission of any Citizen Petitions, correspondence or other written submissions with FDA or any regulatory or governmental authority, (ii) interfere with Actavis’s launch or ability to market the Actavis Generic Tablets in accordance with the terms of this Agreement, unless Licensors or their Affiliates undertakes such activity defined in subparts (i) or (ii) pursuant to court order or as otherwise requested by FDA or required by law. For clarity, the use by Licensors of price reductions, co-promotion agreements, product bundling or other marketing practices customarily used in the trade are not prevented or restricted by this Agreement and would not constitute interference with the ability of Actavis to market the Actavis Generic Tablets. 

(e) Licensors and their Affiliates shall not: (i) delist the Licensed Patents from the Orange Book unless Licensors reasonably determine in good faith that such delisting is required under applicable law, or (ii) seek or otherwise undertake any action with the FDA to withdraw Rayos® from the market for […***…] after the launch of the Actavis Generic Tablets. 

18. Limitations. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN PARAGRAPHS 15-17 OF THIS AGREEMENT, NO PARTY MAKES ANY REPRESENTATION OR EXTENDS ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, TO THE OTHER PARTY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT WITH RESPECT TO ANY AND ALL OF THE FOREGOING. 

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ACTAVIS ACKNOWLEDGES THAT, NOTWITHSTANDING THE RIGHTS EFFECTIVE HEREIN AS OF THE EXECUTION DATE OR GENERIC ENTRY DATE, ACTAVIS MIGHT NOT BE ABLE TO LEGALLY EXPLOIT SUCH RIGHTS WITH RESPECT TO THE ACTAVIS GENERIC TABLETS ON SUCH DATES, INCLUDING, FOR EXAMPLE, DUE TO EXCLUSIVITY GRANTED BY THE FDA TO OTHER ABBREVIATED NEW DRUG APPLICATION FILERS, LACK OF REGULATORY APPROVAL FOR THE ACTAVIS GENERIC TABLETS BY THE FDA OR THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

V. Waiver

19. Waiver. A waiver by any Party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach hereof. All rights, remedies, undertakings, obligations and agreements contained in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of any Party.

VI. Choice of Law and Remedies

20. Choice of Law; Remedies. This Agreement shall be governed and interpreted in accordance with the laws of the State of Delaware, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of Delaware, excluding such State’s choice-of-law principles. The Court shall have exclusive jurisdiction (to the extent that it has subject matter jurisdiction) in all matters arising under this Agreement, and the Parties hereto expressly consent and submit to the personal and subject matter jurisdiction of the Court. This Agreement does not limit or restrict the remedies available to any Party for the breach of another Party, and the Parties expressly reserve any and all remedies available to them, at law or in equity, for breach of this Agreement.

VII. Assignment

21. Assignment. Neither Party hereto may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, (a) any Party may assign its rights and obligations under this Agreement to any of its Affiliates, (b) Licensors may assign their rights and obligations under this Agreement to any successor in interest to Licensors’ entire business or to the Rayos® NDA, and (c) Actavis may assign its rights and obligations under this Agreement to any Third Party in connection with a merger, reorganization, change of control or sale of all or substantially all of the applicable business or assets of Actavis to which this Agreement relates, or to a Third Party in connection with any divestiture of the Actavis ANDA, without prior written consent. In each case ((a) through (c)), provided that (A) notwithstanding any such assignment, such Party shall remain liable for its and its Affiliates’ performance under this Agreement as if such Party remained a party hereto; (B) no such assignment shall in any manner relieve, limit or impair the obligations of that Party hereunder; and (C) following a transfer by a Party to its Affiliate, any subsequent transaction that
would cause such Affiliate to cease to be an Affiliate of such Party shall be deemed to be an assignment of this Agreement subject to
this Paragraph. Any purported assignment in violation of the foregoing shall be null and void *ab initio* and of no force or effect.

VIII. Costs

22. Costs. Each Party shall each bear their own costs and legal fees associated with the negotiation and preparation of this Agreement.

IX. Severability

23. Severability. When possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

X. Integration

24. Entire Agreement. This Agreement and any Exhibits, shall constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both oral and written, among the Parties with respect to such subject matter.

XI. Amendment

25. Amendment. No amendment, modification or supplement of any provisions of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.

XII. Descriptive Headings

26. Captions. The captions and descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

XIII. No Presumption Against Drafting Party

27. No Presumption. This Agreement and its wording are the result of mutual arm’s length negotiation, and in the event of a dispute concerning the meaning of any term contained herein, no adverse inference or presumption shall be drawn against the Party who drafted such term.

XIV. Third Party Benefit

28. Third Party Benefit. None of the provisions of this Agreement shall be for the benefit of or enforceable by any Third Party.
XV. Notice

29. Notice. Any notice or other communication to be given under this Agreement by a Party to the other Party shall be in writing and shall be (a) personally delivered, (b) delivered by overnight express delivery service or same-day local courier service, or (c) delivered by facsimile or other electronic transmission (followed by a copy by the preceding (a) or (b)), to the address of the other Party as set forth below, or to such other address as may be designated by the Parties from time to time in accordance with this Paragraph 29. Notices delivered personally, by overnight express delivery service or by local courier service shall be deemed given as of actual receipt. Notices delivered by facsimile or other electronic transmission shall be deemed given upon receipt by the sender of confirmation the transmission, if confirmation is transmitted before 5:00 p.m. (recipient’s local time) on a business day, and otherwise on the following business day.

If to Horizon Pharma Switzerland GmbH:

Hans-Peter Zobel
Horizon Pharma Switzerland GmbH
Kägenstrasse 17
CH-4153 Reinach
Switzerland

With copy to:
Brian Beeler
Horizon Pharma, Inc.
520 Lake Cook Road
Suite 520
Deerfield, IL 60015

If to Jagotec AG:

John Murphy
Group General Counsel
Jagotec AG
Eptingerstrasse 61
CH-4132 Muttenz
Switzerland

If to Actavis Laboratories FL, Inc.:

Actavis, Inc.
Morris Corporate Center III
400 Interpace Parkway
Parsippany, NJ 07054
Attn: Chief Legal Officer
XVI. **Counterparts**

30. **Counterparts.** This Agreement may be executed in any number of signature page counterparts transmitted via facsimile, any one of which need not contain the signature of more than one Party but all such counterparts taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized representative as of the day and year first above written.

HORIZON PHARMA SWITZERLAND GmbH

By: /s/ Robert W. Metz
Name: Robert W. Metz
Title: Director

JAGOTEC AG

By: /s/Geraldine Venthoye /s/Guy Vergnault
Name: Geraldine Venthoye Guy Vergnault
Title: EVP Pharmaceutical VP Oral Drug
Development Delivery Solutions

ACTAVIS LABORATORIES FL, INC.

By: /s/ A. Robert D. Bailey
Name: A. Robert D. Bailey
Title: EVP and Chief Legal Officer

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EXHIBIT A

Definitions

“Actavis Generic 1 mg Tablet” means the Generic 1 mg Tablet for which Actavis is seeking approval pursuant to the Actavis ANDA.

“Actavis Generic 2 mg Tablet” means the Generic 2 mg Tablet for which Actavis is seeking approval pursuant to the Actavis ANDA.

“Actavis Generic 5 mg Tablet” means the Generic 5 mg Tablet for which Actavis is seeking approval pursuant to the Actavis ANDA.

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with any one of the Parties. For purposes of the foregoing definition, “control” (including, with correlative meaning, the terms “controlled by”, and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of interests representing equity securities, or partnership interests or by contract, or otherwise, and ownership of more than fifty percent (50%) of such equity securities or partnership interests in a Person shall, without limitation, be deemed to be control for purposes of this definition.

“Authorized Generic” means any product that is manufactured, sold or distributed pursuant to the Rayos® NDA without a trademark or using a trademark other than Rayos® or a successor trademark thereto.

“Baseline TRX” means the average monthly prescriptions of RAYOS® Tablet extended units (in all dosage strengths) based upon the National Prescription Audit Weekly database administered by IMS, for the period [...***...] through [...***...].

“Calculated TRX” means the average for any [...***...] consecutive months of prescriptions of RAYOS® Tablet extended units (in all dosage strengths) as reported in the National Prescription Audit Weekly database administered by IMS, beginning on [...***...] (on a rolling basis).

“Commercial Sale” means an arm’s length transaction between two separate commercial entities, by which, for compensation, unrestricted title to, and possession of, a Generic Tablet, which has been approved by the FDA, passes from one entity to another entity, which is not directly or indirectly controlled by, and itself does not control, and is not under common control with, the other entity.

“Control” means, with respect to any patents or other intellectual property rights, possession by an entity of the ability (whether by ownership, license or otherwise) to grant access to, to grant use of, or to grant a license or a sublicense of or under such patents or intellectual property rights without violating the terms of any agreement or other arrangement with any third party.

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“Generic Tablet” means (i) a pharmaceutical tablet that has been approved for sale, or for which approval for sale is being sought, in the Territory, from the FDA, as a Therapeutic Equivalent of a RAYOS® Tablet, pursuant to an ANDA or pursuant to an application under 21 U.S.C. § 355(b)(2), or (ii) an Authorized Generic.

“Generic 1 mg Tablet” means a Generic Tablet to the RAYOS® 1 mg Tablet.

“Generic 2 mg Tablet” means a Generic Tablet to the RAYOS® 2 mg Tablet.

“Generic 5 mg Tablet” means a Generic Tablet to the RAYOS® 5 mg Tablet.

“Horizon Pharma Switzerland Patents” means the ‘960 and ‘326 patents (including any extensions, divisionals, continuations, continuations-in-part, reissues, reexaminations, inter partes and post-grant reviews thereof, and any foreign counterparts or equivalents thereof (regardless of whether any claim of priority is asserted or otherwise exists)) and any other patents currently or prospectively listed in the Orange Book for a RAYOS® Tablet, that are owned or controlled by Horizon Pharma Switzerland as of the Execution Date or thereafter, during the term of this Agreement.

“Jagotec Patents” means the ‘124, ‘218, the ‘407 and the ‘085 patents (including any extensions, divisionals, continuations, continuations-in-part, reissues, reexaminations, inter partes and post-grant reviews thereof, and any foreign counterparts or equivalents thereof (regardless of whether any claim of priority is asserted or otherwise exists)), and any other patents currently or prospectively listed in the Orange Book for a RAYOS® Tablet, that are owned or controlled by Jagotec as of the Execution Date or thereafter, during the term of this Agreement.

“Licensed Patents” means Horizon Pharma Switzerland Patents and Jagotec Patents, except to the extent that a Licensor is legally or otherwise may be required to in-license rights under patent(s) and/or patent application(s) with respect to a RAYOS® Tablet, from a third party, and such license is subject to royalty, milestone or other payment obligations to such third party (each, a “Third-Party License”), such patent(s) and patent application(s) shall not be included within “Licensed Patents”, regardless of whether such patent(s) or patent application(s) would otherwise fall within this definition of “Licensed Patents.”

“Manufacture” means to use, make or have made a product.

“Market” and “Marketing” means to offer for sale, sell, or distribute a product.

“Orange Book” means the FDA’s publication “Approved Drug Products With Therapeutic Equivalence Evaluations.”

“Person” means an individual, corporation, partnership, limited liability company, firm, association, joint venture, estate, trust, governmental or administrative body or agency, or any other entity.
FOR EXECUTION

“RAYOS® Tablet” means a pharmaceutical tablet that, as of the Execution Date, has been approved by the FDA, pursuant to the RAYOS® NDA.

“RAYOS® 1 mg Tablet” means the pharmaceutical tablet containing 1 mg of prednisone that, as of the Execution Date, has been approved by the FDA, pursuant to the RAYOS® NDA.

“RAYOS® 2 mg Tablet” means the pharmaceutical tablet containing 2 mg of prednisone that, as of the Execution Date, has been approved by the FDA, pursuant to the RAYOS® NDA.

“RAYOS® 5 mg Tablet” means the pharmaceutical tablet containing 5 mg of prednisone that, as of the Execution Date, has been approved by the FDA, pursuant to the RAYOS® NDA.

“Same Strength Generic Tablet” means a Generic Tablet having the same amount of prednisone as another Generic Tablet. For the avoidance of doubt, by way of example, the Actavis Generic 1 mg Tablet has the same strength as a Generic 1 mg Tablet.

“Territory” means the United States of America, including its territories, possessions and commonwealths, including without limitation, the Commonwealth of Puerto Rico and the District of Columbia.

“Therapeutic Equivalent” has the meaning given to it by the FDA in the FDA publication Approved Drug Products with Therapeutic Equivalence Evaluations, as may be amended from time to time.

“Third Party” means any person or entity other than the Parties and their respective Affiliates.

“Wholesaler Affiliate” means a subsidiary or Affiliate of a Party whose primary business is wholesale distribution of pharmaceutical products. A Wholesaler Affiliate shall not be deemed to be an Affiliate of a Party for purposes of this Agreement. For clarity, Actavis’s Wholesaler Affiliates as of the Agreement Effective Date are Anda, Inc., Anda Pharmaceuticals, Inc., and Valmed Pharmaceuticals, Inc.
EXHIBIT B

JOINT STIPULATION OF DISMISSAL

Pursuant to Rules 41(a)(1) and 41(c) of the Federal Rules of Civil Procedure, Plaintiffs Horizon Pharma Switzerland GmbH (formerly known as Horizon Pharma AG) and Jagotec AG and Defendant Actavis Laboratories FL, Inc. hereby stipulate and agree that Civil Action No. 13-05124 (JEI/JS), including all claims, counterclaims, and affirmative defenses asserted, are hereby dismissed with prejudice, and without costs, disbursements or attorneys’ fees to any party.

SO ORDERED this day of ________________, 2015.

______________________________
United States District Judge

- 4 -
LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made and entered into as of the 12th day of August 1998, by and among Mountain View Pharmaceuticals, Inc., Duke University, and Bio-Technology General Corporation.

WHEREAS, DUKE has developed certain recombinant mammalian uricases prior to the start of the GRANT, including PBC URICASE;

WHEREAS, DUKE and/or MVP have developed, pursuant to the GRANT, additional recombinant mammalian uricases;

WHEREAS, DUKE and MVP have developed, pursuant to the GRANT, PEG conjugates of PBC URICASE and other mammalian uricases;

WHEREAS, MVP has developed PEG conjugates of non-mammalian uricases;

WHEREAS, DUKE and MVP, in order to have the benefits of these developments made available to the public, desire to license their rights therein exclusively, on a worldwide basis, to BTG in the FIELD; and

WHEREAS, BTG desires to obtain such a license.

NOW THEREFORE, in consideration of the premises and the faithful performance of the covenants herein contained, the PARTIES agree as follows:

ARTICLE 1 – INDEPENDENT CONTRACTORS

1.0 MVP’s and DUKE’S relationships to one another and to BTG under this AGREEMENT are those of independent contractors and not as agents, joint venturers or partners.

ARTICLE 2 – DEFINITIONS

2.0 As used throughout this AGREEMENT, the terms and phrases set forth herein in capital letters shall be defined as set forth in this Article 2.

2.1 “AFFILIATES” of a person or an entity shall mean any individual, sole proprietorship, firm, partnership, corporation, trust, joint venture or other entity, whether de jure or de facto, which, directly or indirectly, controls, is controlled by or is under common control with such person or entity. As used in this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the policies and management of a person or entity, whether by the ownership of stock, by contract or otherwise.
2.2 “AGREEMENT” shall mean this License Agreement as amended from time to time.

2.3 “BIRD” shall mean the U.S.-Israel Binational Industrial Research and Development Foundation.

2.4 “BTG” shall mean Bio-Technology General Corporation, a corporation organized under the laws of Delaware, and having its principal offices at Iselin, New Jersey 08830, and its AFFILIATES.

2.5 “DUKE” shall mean Duke University, a North Carolina not-for-profit corporation, having its principal office at Durham, North Carolina 27710, and its AFFILIATES.

2.6 “DUKE TECHNOLOGY” shall mean technologies conceived, reduced to practice, developed, or acquired, by or for DUKE, or licensed to DUKE, or developed jointly with MVP, relating to mammalian urate oxidase (mammalian uricase), including the know-how and other information described in detail in Exhibit A attached hereto and made a part hereof, as of the EFFECTIVE DATE, and including any improvement made by DUKE thereon during the TERM of this AGREEMENT, for use in the FIELD; provided, however, that with respect to such improvements, DUKE shall promptly disclose each such improvement to BTG and it shall be included in the license only if, within six (6) months after disclosure, BTG elects to incorporate the improvement into LICENSED PRODUCTS or the manufacturing process thereof.

2.7 “EFFECTIVE DATE” shall mean the date first written above.

2.8 “FIELD” shall mean the treatment of humans.

2.9 “GRANT” shall mean the STTR grant from NIH (Grant No. DK48529) for a research project titled, “Mammalian PEG-Uricase for Therapy of Intractable Gout” under which LICENSORS received funding from September 30, 1996, through August 31, 1998.

2.10 “IMPUTED NET SALES” shall have the meaning ascribed to it in Section 2.17(a).

2.11 “INFORMATION” shall have the meaning ascribed to it in Section 11.1.

2.12 “LICENSED PRODUCTS” shall mean any products (including all dosage forms, strengths, and package sizes) that utilize TECHNOLOGY in whole or in part.

2.13 “LICENSEEE” shall mean BTG.

2.14 “LICENSOR” shall mean MVP, DUKE or both of them, depending on the context.

2.15 “MVP” shall mean Mountain View Pharmaceuticals, Inc., a corporation organized under the laws of California, and having its principal place of business at Menlo Park, California 94025, and its AFFILIATES.
2.16 “MVP TECHNOLOGY” shall mean technologies conceived, reduced to practice, developed, or acquired, by or for MVP, or licensed to MVP, or developed jointly with DUKE, relating to mammalian urate oxidase (mammalian uricase) and non-mammalian urate oxidase (non-mammalian uricase) and PEG conjugates of both mammalian uricase and non-mammalian uricase, including the know-how and other information described in detail in Exhibit B attached hereto and made a part hereof, as of the EFFECTIVE DATE, including any improvements made by MVP thereon during the TERM of this AGREEMENT, for use in the FIELD; provided, however, that with respect to such improvements, MVP shall promptly disclose each such improvement to BTG and it shall be included in the license only if, within six (6) months after disclosure, BTG elects to incorporate the improvement into LICENSED PRODUCTS or the manufacturing process thereof.

2.17 “NET SALES” shall mean LICENSEE’s aggregate arm’s length gross charges to the trade, physicians or patients charged for sales by LICENSEE of the LICENSED PRODUCTS, less all normal and customary trade and quantity discounts and less any sales and excise taxes and duties paid by LICENSEE.

(a) In the event that the LICENSED PRODUCTS are distributed by LICENSEE at no cost to the recipient for revenue-producing activities, these shall be deemed to be NET SALES (“IMPUTED NET SALES”) for purposes of computing royalty obligations, except for LICENSED PRODUCTS distributed that are not reimbursable or which are used for non-revenue-producing activities such as promotional samples and supplies for clinical studies or field trials.

(b) IMPUTED NET SALES shall be valued at the mean price for such respective LICENSED PRODUCTS sold by LICENSEE during the calendar quarter preceding the calendar quarter during which such IMPUTED NET SALES occur.

(c) Transfer prices for LICENSED PRODUCTS between AFFILIATES shall not be considered for the purpose of computing NET SALES or IMPUTED NET SALES.

2.18 “NIH” shall mean the U.S. National Institutes of Health.

2.19 “PATENT RIGHTS” shall mean rights to any claims directed to any aspect of the TECHNOLOGY in all United States and foreign patent applications filed and any patents now issued or hereinafter issuing from such patent applications, substitutes, continuations, continuations-in-part, divisional applications, reexaminations or reissues thereof, which contain at least one claim directed to any aspect of the TECHNOLOGY, a current listing of which appears in Exhibit C attached hereto and made a part hereof, as amended from time to time during the TERM of this AGREEMENT.

2.20 “PARTY” or “PARTIES” shall mean LICENSEE on the one hand and DUKE and/or MVP on the other hand, or all three, depending on the context.
2.21 “PBC URICASE” shall mean […***…].

2.22 “PEG” shall mean poly(ethylene glycol) or poly(ethylene oxide).

2.23 “SALES AND REVENUE REPORTS” shall have the meaning ascribed to it in Section 6.9.

2.24 “STTR” shall mean the Small Business Technology Transfer Research program.

2.25 “SUBLICENSE REVENUES” shall mean all revenues or other consideration received by LICENSEE from sublicensees, including, without limitation, sublicense issue fees, other sublicense fees, royalties, and milestone payments.

2.26 “TECHNOLOGY” shall mean the DUKE TECHNOLOGY and the MVP TECHNOLOGY.

2.27 “TERM” shall have the meaning ascribed to it in Section 10.1.

2.28 “TERRITORY” shall mean each and every country of the world, including, with respect to each country, its territories and possessions.

2.29 “TOP […***…] MARKETS” shall mean the […***…] countries with the greatest dollar volume of sales of allopurinol during the twelve (12) months preceding any particular date, based on monthly data compiled by IMS America.

2.30 “TOTAL REVENUES” shall mean the sum of NET SALES plus SUBLICENSE REVENUES.

2.31 “TOTAL SALES” shall mean the cumulative sum of NET SALES of LICENSED PRODUCTS by LICENSEE plus net sales of LICENSED PRODUCTS by its sublicensees from the EFFECTIVE DATE.

2.32 “USPTO” shall mean the United States Patent and Trademark Office.

ARTICLE 3 – SPONSORED RESEARCH

3.1 LICENSEE shall sponsor research relevant to the TECHNOLOGY at the facilities of each of the LICENSORS.

3.2 LICENSEE agrees to provide not less than $[…***…] to DUKE and $[…***…] to MVP (less any amounts received by MVP from BIRD) for sponsored research during the first twenty-four (24) months following the EFFECTIVE DATE.

3.3 Payments for such sponsored research shall be made at least semiannually to each of the LICENSORS at the annual rate of at least $[…***…] per year; provided,

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however, that with respect to MVP, these payments shall be reduced by the amounts received by MVP from BIRD.

3.4 The funding for sponsored research at DUKE is to support research at DUKE by Dr. […***…], and it is understood that if for any reason, Dr. […***…] should no longer be affiliated with DUKE during the period for which the funding is provided, then DUKE will transfer the funding to another institution with which Dr. […***…] may affiliate, upon his departure from DUKE.

ARTICLE 4 – LICENSE AND TRANSFER OF TECHNOLOGY

4.1 LICENSORS hereby grant to LICENSEE and LICENSEE hereby accepts from LICENSORS, upon the terms and conditions herein specified, an exclusive, royalty-bearing license in the TERRITORY, with the right to grant sublicenses, under the TECHNOLOGY and PATENT RIGHTS, subject to U.S. Government rights in the TECHNOLOGY, to make and have made, use and have used, and sell and have sold, LICENSED PRODUCTS for use in the FIELD. In recognition of the general applicability to other drugs of MVP’s technology for the production of PEG conjugates of uricases, BTG expressly agrees that it shall not utilize such technology in any manner except for the production of PEG conjugates of uricases and only as provided in this AGREEMENT; provided, however, that MVP expressly agrees that nothing contained in this AGREEMENT shall be read to preclude LICENSEE from using technology for the production of PEG conjugates which is in the public domain, or which is developed by LICENSEE independent of MVP’s technology for the production of PEG conjugates, or which LICENSEE acquires or licenses from a third party.

4.2 Within sixty (60) days after the execution of this AGREEMENT:

(a) DUKE agrees to provide LICENSEE with the materials and copies of the protocols and representative results for the methods listed in Exhibit A.

(b) MVP agrees to provide LICENSEE with the materials and copies of the protocols and representative results for the methods listed in Exhibit B.

(c) LICENSORS agree to provide LICENSEE with copies of any and all patents and patent applications identified in Exhibit C.

4.3 MVP hereby grants to LICENSEE the exclusive, royalty-free, right and license in the TERRITORY and in the FIELD to use such rights as MVP may possess in the trademark, PURICASE™, the registration of which has been published in the Official Gazette of the USPTO (Volume 1211, Number 2, page TM 100) and is pending in the European Community (Application No. 716019).

(a) LICENSEE may use whichever trademark or trademarks it may elect, in its sole discretion, in connection with the marketing of LICENSED

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PRODUCTS, and shall be under no obligation to use the trademark, PURICASE™.

(b) If LICENSEE elects not to use the trademark PURICASE™ or otherwise fails to use such trademark by one (1) year after the first sale of any LICENSED PRODUCT, MVP shall retain all rights to its use.

4.4 LICENSEE shall comply with all obligations imposed by the U.S. Government on exclusive licenses of inventions made under a U.S. Government funding agreement including, but not limited to, the requirement that any products which are sold in the United States be substantially manufactured in the United States, if such products are based on inventions conceived or first actually reduced to practice under such funding agreements.

(a) LICENSORS recognize that the currently projected market for LICENSED PRODUCTS does not justify a second manufacturing facility, and that LICENSEE currently has a manufacturing facility in Israel, and, therefore, LICENSORS and LICENSEE agree to cooperate and use their best efforts to promptly obtain a waiver of the U.S. manufacturing requirement.

(b) DUKE represents that PBC URICASE was constructed at DUKE prior to its receipt of the GRANT and that U.S. Government funds did not support its development; and represents further that subject to review and determination by DUKE, other uricases may also have been constructed at DUKE prior to its receipt of the GRANT, developed without the support of U.S. Government funds, and that DUKE shall promptly identify any such uricases for LICENSEE.

4.5 Any sublicenses granted by LICENSEE shall be on such financial terms as LICENSEE may negotiate in its sole discretion but otherwise shall be subject to, and shall incorporate therein, conditions at least as stringent as those imposed on LICENSEE by the terms of this AGREEMENT.

(a) LICENSEE agrees to be responsible for any obligations assumed hereunder by its sublicensees.

(b) LICENSEE further agrees that all sublicense agreements will provide that if LICENSORS terminate this AGREEMENT pursuant to Section 10.3 or 10.6 prior to the end of the TERM in one or more countries, or if LICENSEE terminates this AGREEMENT pursuant to Section 10.2, all such sublicenses in those countries shall be assigned directly to LICENSORS; provided, however, that LICENSORS first agree, in writing, to assume all of LICENSEE’s obligations under such sublicenses and to hold LICENSEE harmless with respect to any claims made by such sublicensees as a result of such termination; provided, however, that LICENSORS shall not be liable for any claims against LICENSEE arising out of LICENSEE’s negligence or willful wrongdoing, or claims arising from LICENSEE’s breach, prior to termination, of its obligations under a sublicense.
(c) LICENSORS shall promptly be provided a copy of each sublicense agreement, provided, however, that during the TERM of this AGREEMENT, LICENSORS shall maintain such agreements in confidence and shall not contact any such sublicensee without LICENSEE’s prior written consent.

4.6 Upon expiration of the TERM of this AGREEMENT with respect to each country as set forth in Article 10, the licenses granted in this Article 4 shall become fully paid-up, irrevocable and non-exclusive in each such country.

**ARTICLE 5 – LICENSE FEES AND MILESTONE PAYMENTS**

5.1 The LICENSEE shall make separate payments to MVP and to DUKE according to the following schedule:

<table>
<thead>
<tr>
<th>Event Triggering Payments</th>
<th>To MVP</th>
<th>To DUKE</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Execution of this AGREEMENT</td>
<td>[...***...</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
</tr>
<tr>
<td>2) Successful transfer of the technology for the production of PEG conjugates of uricase</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
</tr>
<tr>
<td>3) First anniversary of execution of this AGREEMENT</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
</tr>
<tr>
<td>4) Filing for an investigational new drug exemption</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
</tr>
<tr>
<td>5) Commencement of a Phase 2 clinical study</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
</tr>
<tr>
<td>6) Filing of an application to permit marketing in any one of the [... ***...]</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
</tr>
<tr>
<td>7) Marketing approval in any one of the [... ***...]</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
</tr>
<tr>
<td>8) Cumulative TOTAL REVENUES of $[... ***...]</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
</tr>
<tr>
<td>9) Cumulative TOTAL REVENUES of $[... ***...]</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
</tr>
<tr>
<td>Totals:</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
<td>[... ***...]</td>
</tr>
</tbody>
</table>

5.2 LICENSEE shall make the payments identified in Section 5.1 as follows:

(a) Payments 1) upon execution of this AGREEMENT.

(b) Payments 2) not later than thirty (30) days after successful transfer of the technology for the production of PEG conjugates of uricase, as set forth in Section 5.10.

(c) Payment 3) on the first anniversary of the EFFECTIVE DATE.

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(d) Payments 4) not later than thirty (30) days after the first filing of an application for an investigational new drug exemption for LICENSED PRODUCTS.

(e) Payments 5) not later than thirty (30) days after enrolling the first patient in a Phase 2 clinical study of LICENSED PRODUCTS.

(f) Payments 6) not later than thirty (30) days after filing an application to permit marketing of LICENSED PRODUCTS in any one of the […***…].

(g) Payments 7) not later than thirty (30) days after obtaining approval to market LICENSED PRODUCTS in any one of the […***…].

(h) Payments 8) not later than sixty (60) days after the end of the calendar quarter in which cumulative TOTAL REVENUES from LICENSED PRODUCTS exceed the equivalent of $[…***…].

(i) Payments 9) not later than sixty (60) days after the end of the calendar quarter in which cumulative TOTAL REVENUES from LICENSED PRODUCTS exceed the equivalent of $[…***…].

5.3 All of the payments in this Article 5 are in addition to the royalties specified in Article 6.

5.4 All payments required by this AGREEMENT, if not paid when due, shall bear interest at the rate of one and one-half percent (1 1/2%) per month or fraction thereof, or the maximum interest rate allowed by applicable law, whichever is less.

5.5 If this AGREEMENT is executed before LICENSEE has had the opportunity to review and approve the version of the patent application (titled “PEG-URATE OXIDASE CONJUGATES AND USE THEREOF”) that has been filed with the United States Patent and Trademark Office, then:

(a) If upon such review subsequent to execution of this AGREEMENT, which LICENSEE shall complete within sixty (60) days after receipt of such application, LICENSEE determines in good faith that such application is inadequate (e.g., for lack of support in the specification or in view of the prior art), LICENSEE may elect, in its sole discretion, to terminate this AGREEMENT.

(b) If LICENSEE does so elect to terminate, MVP and DUKE shall each refund to LICENSEE all payments made to them by LICENSEE as of the date of termination, and MVP shall be solely responsible for the repayment to BIRD, should such repayment be required, of any funds received by MVP from BIRD.

5.6 MVP shall commence the transfer to BTG of its proprietary technology for the production of PEG conjugates of uricases once the following conditions have been met:

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(a) MVP and DUKE have been notified, in writing, by BTG following the review of their patent application as set forth in Section 5.5, either that such patent application is acceptable or, if unacceptable, that BTG nonetheless elects not to terminate the AGREEMENT, and that, therefore, the payments made by BTG to MVP and DUKE as of the date of such written notice are irrevocable;

(b) BTG and MVP have selected a specific uricase and BTG has provided at least […] from a single batch to MVP for each […] of PEG conjugate to be prepared by MVP as part of the technology transfer; and

(c) BTG has installed at its facility in Israel all of the necessary instruments, accessories, columns and other materials for assessing the activity of uricase, the purity of the PEG-uricase conjugates and the number of strands of PEG attached per uricase subunit according to MVP’s protocols. […]

5.7 Such transfer shall commence as soon as practical after BTG has met all of the conditions in Section 5.6.

5.8 The technology transfer shall include the following steps:

[…***…]

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5.9 BTG and MVP shall use their best efforts to complete successful transfer of such technology as promptly as possible and each company shall therefore assign appropriately skilled personnel to this task.

5.10 The technology transfer shall be complete once Sections 5.8(c) and 5.8(d) have been completed and BTG shall notify LICENSORS in writing within thirty (30) days of such completion.

5.11 Failure to successfully transfer the technology within one (1) year after the transfer is initiated by MVP, unless such failure is caused by BTG’s failing to comply with Section 5.9, shall have the following consequences:

(a) MVP and DUKE shall forfeit payments 2) in Section 5.1 and they shall not be made pursuant to Section 5.2 or otherwise; and

(b) MVP and DUKE shall forfeit the royalties attributable to know-how pursuant to Section 6.4 as further defined in Section 6.5.

5.12 If the U.S. Government declines to waive the U.S. manufacturing requirement, MVP shall cooperate with LICENSEE to transfer such technology to a U.S. manufacturer selected by LICENSEE; provided, however:

(a) that payments 2) in Section 5.1 shall have been made;

(b) that such manufacturer shall first agree to maintain such technology in confidence on terms no less restrictive than those applicable to LICENSEE under this AGREEMENT, and to use such technology only for the production of PEG-uricase conjugates for LICENSEE;

(c) that such manufacturer does not manufacture PEG-uricase conjugates for itself or any third party;

(d) that such manufacturer is not […]***…, or […]***…; and

(e) that such manufacturer is a company for which, as of the effective date of the agreement between LICENSEE and such company, none of the following three (3) individuals: […]***…, is an employee, director, consultant, or shareholder possessing at least ten percent of the outstanding shares of common stock, unless MVP’s prior written consent has been obtained, which consent shall not be unreasonably withheld.

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ARTICLE 6 – ROYALTIES, RECORDS AND REPORTS

6.1 Within sixty (60) days after the end of each calendar quarter, LICENSEE shall pay to LICENSORS, in equal shares, any running royalties due pursuant to this Article 6 on NET SALES of LICENSED PRODUCTS made by LICENSEE during the preceding calendar quarter.

6.2 The total rates of such running royalties, subject to adjustment pursuant to Section 6.5, shall be:

(a) \([…***…]\) percent \([…***…]\%) of the NET SALES of LICENSED PRODUCTS made by LICENSEE until the TOTAL SALES equal \([…***…]\);

(b) \([…***…]\) percent \([…***…]\%) of NET SALES of LICENSED PRODUCTS made by LICENSEE once the TOTAL SALES exceed \([…***…]\) and until such TOTAL SALES equal \([…***…]\); and

(c) \([…***…]\) percent \([…***…]\%) of NET SALES of LICENSED PRODUCTS made by LICENSEE once the TOTAL SALES exceed \([…***…]\).

6.3 Concurrent with the payments provided for in Sections 6.1 and 6.2 and subject to Sections 6.5 and 6.6, LICENSEE shall pay to LICENSORS, in United States Dollars, royalty payments in the amount of \([…***…]\) percent \([…***…]\%) of SUBLICENSE REVENUES accrued by LICENSEE during the preceding calendar quarter.

6.4 Of the percentages specified in Sections 6.2 and 6.3, one half \((\frac{1}{2})\) shall be considered a patent royalty, and one half \((\frac{1}{2})\) shall be considered a royalty for use of know-how.

6.5 Subject to Article 8, the actual royalty rates payable in any country pursuant to Sections 6.1, 6.2 and 6.3 shall be determined as follows:

(a) If there is no patent protection under PATENT RIGHTS in a country in the TERRITORY and no protection under the U.S. Orphan Drug Act or any foreign equivalent in such country, then the applicable royalty rates for such country shall be \([…***…]\) percent \([…***…]\%) of the royalty rates specified in Sections 6.2 and 6.3 if there has been a successful transfer of technology pursuant to Section 5.10, and \([…***…]\) percent \([…***…]\%) if there has not been a successful transfer.

(b) If there is patent protection under PATENT RIGHTS in a country in the TERRITORY or protection under the U.S. Orphan Drug Act or any foreign equivalent in such country, then the applicable royalty rates for such country shall be the royalty rates specified in Section 6.2 and 6.3 if there has been a successful transfer of technology pursuant to Section 5.10, and \([…***…]\) percent \([…***…]\%) of the royalty rates specified in Sections 6.2 and 6.3 if there has not been a successful transfer.

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6.6 For the purpose of calculating royalties due to LICENSORS, revenues in currencies other than United States Dollars shall be converted to United States Dollars using the exchange rates that were published in the *Wall Street Journal* on the last business day of the calendar quarter during which LICENSEE accrued such revenues.

6.7 LICENSEE shall keep full, true and accurate books of accounts and other records containing all particulars that may be necessary to properly ascertain and verify the royalties payable by LICENSEE hereunder.

6.8 Upon the request of LICENSORS, LICENSEE shall permit an independent Certified Public Accountant selected by LICENSORS (except one to whom the LICENSEE has some reasonable objection, such as that the accountant represents either of LICENSORS with respect to its own matters) to have access, not more than once in any calendar year, and during ordinary business hours, to such of LICENSEE'S records as may be necessary to determine, in respect of any quarter ending not more than three (3) years prior to the date of such request, the correctness of any report and/or payment made under this AGREEMENT.

(a) If such examination results in a determination that LICENSEE has underpaid its obligations to LICENSORS by more than three percent (3%), the cost of such examination shall be borne by LICENSEE.

(b) If such examination results in a determination that LICENSEE has correctly paid or overpaid its obligations to LICENSORS, the cost of such examination shall be borne by LICENSORS.

(c) All adjustments resulting from such examinations shall be made by appropriate payments within thirty (30) days after the results of the examination become known to the PARTIES.

(d) Such accountant shall maintain all information learned during such inspection in confidence and shall report to LICENSORS whether there has been an overpayment, correct payment or underpayment of royalties and, if applicable, the amount of such overpayment or underpayment.

6.9 For each quarterly payment, LICENSEE shall render to each of the LICENSORS written accounts (“SALES AND REVENUE REPORTS”) of the NET SALES of LICENSED PRODUCTS by LICENSEE and AFFILIATES, net sales by SUBLICENSEES, and the SUBLICENSE REVENUES accrued by LICENSEE during the preceding quarter.

(a) LICENSEE warrants that such SALES AND REVENUE REPORTS will be prepared in accordance with Generally Accepted Accounting Principles.

(b) SALES AND REVENUE REPORTS will be supplied to each of the LICENSORS not later than sixty (60) days after the end of each calendar quarter in which the LICENSEE accrues revenue from sales of LICENSED PRODUCTS or from sublicenses of the LICENSED PRODUCTS.
c) LICENSORS agree to hold such SALES AND REVENUE REPORTS in confidence.

ARTICLE 7 – PERFORMANCE OBLIGATIONS

7.1 The LICENSEE shall use its best efforts to bring LICENSED PRODUCTS to market and to diligently market LICENSED PRODUCTS during the TERM of this AGREEMENT.

7.2 LICENSEE and MVP shall commit such funds as each may receive from BIRD solely to the development of LICENSED PRODUCTS.

7.3 LICENSEE shall repay all funds provided by BIRD to LICENSEE and MVP, up to [***] percent ([…***%]) of the grant, as required by BIRD.

7.4 Beginning in 1999 (for calendar year 1998), and continuing until the year following the year of the first commercial sale of LICENSED PRODUCTS, the LICENSEE shall submit annual progress reports to LICENSORS by February 28th of each year, which reports shall discuss the progress and results, as well as ongoing plans, with respect to the development of LICENSED PRODUCTS.

ARTICLE 8 – PATENTS AND INFRINGEMENT

8.1 Subsequent to the EFFECTIVE DATE, LICENSORS shall continue to have responsibility, at their shared expense, for filing, prosecuting and maintaining their jointly owned patent applications in the USPTO on TECHNOLOGY; DUKE shall continue to have responsibility, at its own expense, for filing, prosecuting and maintaining its solely owned patent applications in the USPTO on DUKE TECHNOLOGY; and MVP shall continue to have responsibility, at its own expense, for filing, prosecuting and maintaining its solely owned patent applications in the USPTO on MVP TECHNOLOGY. LICENSORS shall keep LICENSEE advised as to the prosecution of such applications by forwarding to LICENSEE copies of all official correspondence relating thereto, and shall give LICENSEE an opportunity to comment on all applications, responses to Office Actions, Declarations and other papers before they are filed with the USPTO, and shall consult with LICENSEE concerning the scope of allowed claims before paying any issue fee.

8.2 LICENSEE agrees to cooperate with the LICENSORS in the prosecution of the U.S. patent applications to ensure that the applications reflect, to the best of LICENSEE’s knowledge, all items of commercial and technical interest and importance.

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8.3 LICENSORS shall seek patent protection in Europe (including the United Kingdom), Japan and such other countries as LICENSEE may designate, and LICENSEE shall reimburse LICENSORS within thirty (30) days for their reasonable, out-of-pocket costs associated with obtaining such protection; provided, however, that the prosecution of such applications shall be at the direction of LICENSEE and LICENSEE may elect to prosecute such applications itself or have them prosecuted through LICENSEE’s agents.

(a) Regardless of whether LICENSORS or LICENSEE prosecute(s) such application, the resultant patents shall be owned by LICENSORS.

(b) LICENSORS may elect to seek patent protection in countries not designated by LICENSEE, in which case LICENSORS shall be responsible for all expenses attendant thereto.

(c) In the event that LICENSEE elects to prosecute foreign patent applications itself, LICENSORS will be kept informed, will have an opportunity to comment, and shall have the right to approve such applications, which approval will not be unreasonably withheld.

(d) If LICENSEE decides to abandon or not pursue any application, LICENSEE shall notify LICENSORS in a timely manner so that LICENSORS can decide whether or not to assume the prosecution.

8.4 Any inventions made, during the TERM of this AGREEMENT, with respect to the manufacture, use or sale of LICENSED PRODUCTS shall be:

(a) the sole property of LICENSEE if made solely by LICENSEE;

(b) the joint property of LICENSEE and LICENSORS if made jointly by LICENSEE and LICENSORS; and

(c) the sole property of LICENSORS if made solely by LICENSORS;

provided, however, that any such invention made solely by LICENSORS shall be included within PATENT RIGHTS.

8.5 Upon learning of the infringement by a third party of PATENT RIGHTS, the PARTY learning of such infringement shall promptly inform the other PARTIES, in writing, of that fact and shall provide any evidence available pertaining to such infringement.

(a) LICENSEE may elect, within sixty (60) days after notice and at its own expense, to take whatever steps are necessary to stop the infringement and recover damages.

(i) If LICENSEE elects to take such action, it will:
(A) keep LICENSORS informed of the steps taken and the progress of any legal actions taken;

(B) during the pendency of such actions, offset against royalties owed to LICENSORS on NET SALES in the country or countries affected by the infringement, the costs of any actions taken to stop such infringement up to a maximum of fifty percent (50%) of the royalties owed or owing to LICENSORS;

(C) be entitled to enter into a settlement on such terms as it may elect;

(D) retain for its own account, after first deducting the costs of any actions taken to stop such infringement, seventy-five percent (75%) of any amounts received in settlement or awarded as damages with the remaining twenty-five percent (25%) being paid in equal shares to LICENSORS; and

(E) if unsuccessful in halting such infringement, be entitled to reduce its royalties owed to LICENSORS, with respect to the country or countries affected by such infringement, by fifty percent (50%) during the remaining TERM of the Agreement in each of those countries; provided that the infringer has achieved ten percent (10%) or more of the market defined by LICENSED PRODUCTS and the infringing product in those countries in which the infringement exists.

(ii) If LICENSEE does not elect to take such action within such period, it will promptly inform LICENSORS, in which event LICENSORS may elect within thirty (30) days:

(A) to take such action as is required to stop such infringement, and will then be entitled to settle such actions on such terms as they may elect (provided, however, that if they grant a license to the infringer, LICENSEE shall be entitled to reduce its royalties owed to LICENSORS for the country or countries affected by fifty percent (50%) and shall be entitled to the benefit of any terms which are more favorable than those granted to LICENSEE under this AGREEMENT), will keep LICENSEE informed of the steps taken and the progress of any legal actions taken, and will be entitled to retain any amounts received in settlement or awarded in damages; provided, however, that during the period and for the country or countries in which LICENSEE does not enjoy exclusivity, or with respect to which LICENSORS are not able to stop such infringement, LICENSEE shall be entitled to reduce the applicable royalty rate by fifty percent (50%); provided that the infringer has achieved ten percent (10%) or more of the market defined by LICENSED PRODUCTS and the infringing product; or
not to take any action against such infringers, in which event LICENSEE shall be entitled to elect either:

(1) to terminate this AGREEMENT pursuant to Section 8.8; or

(2) to reduce the applicable royalty rate by fifty percent (50%) for each country affected by such infringement; provided that the infringer has achieved ten percent (10%) or more of the market defined by LICENSED PRODUCTS and the infringing product in the countries where such infringement exists.

8.6 LICENSORS shall give prompt notice to LICENSEE of any inquiry received with respect to the availability of a license under PATENT RIGHTS or TECHNOLOGY and also of any third party patent of which LICENSORS become aware that may present an issue of infringement with respect to LICENSEE’s activities under this AGREEMENT.

8.7 LICENSEE shall give LICENSORS prompt notice of each claim or allegation received by it that the manufacture, use or sale of LICENSED PRODUCTS constitutes an infringement of a third party patent or other intellectual property rights. If such alleged infringement is due to the incorporation of DUKE TECHNOLOGY or MVP TECHNOLOGY in the LICENSED PRODUCTS, then:

(a) LICENSEE shall have the primary right and responsibility, but not the obligation, at its own expense to defend and control the defense of any such claims against LICENSEE, using counsel of its choosing.

(b) During the pendency of any such action, no royalties shall be payable to LICENSORS on account of NET SALES of LICENSED PRODUCTS in any countries affected by such action.

(c) LICENSEE’s attorneys’ fees and any amounts agreed to be paid in settlement of any such action or awarded against LICENSEE as damages, shall be deducted by LICENSEE from any future royalties due to LICENSORS.

(d) If LICENSEE is required to pay a royalty to any third party as a result of settlement of any such claim or allegation of infringement, it shall be entitled to deduct such royalty from the royalties due to LICENSORS under this AGREEMENT.

(e) The settlement of any such action must be approved by LICENSORS, which approval shall not be unreasonably withheld.

8.8 Independent of any action which LICENSEE or LICENSORS may elect to take pursuant to Section 8.5 or 8.7 with respect to the prosecution, defense or compromise of any such allegation or claim, LICENSEE may elect to terminate this AGREEMENT solely with respect to the country or countries to which such claim or allegation pertains. In such event, all rights to the use and sale of LICENSED PRODUCTS and regulatory filings in that country or those countries
shall revert to LICENSORS.

8.9 In any action brought under this Article 8, the PARTIES not bringing or defending the action shall, in their sole discretion, be entitled to participate through counsel of their own choosing in any such action; provided, however, that such participation shall be limited to an advisory role and counsel for the PARTY bringing or defending the action shall be lead counsel and the action shall be directed by such PARTY.

8.10 Each PARTY agrees to cooperate with the other PARTIES in any reasonable manner deemed by the PARTY defending or prosecuting an action under this Article 8, to be necessary in defending or prosecuting such action.

**ARTICLE 9 – REGULATORY, PUBLICATION, OTHER USE, AND EXPORT**

9.1 LICENSEE agrees to use its best efforts to have the LICENSED PRODUCTS cleared by the responsible government agencies requiring such clearance for marketing in those countries in which LICENSEE intends to sell LICENSED PRODUCTS or award sublicenses.

(a) To accomplish such clearances at the earliest possible dates, LICENSEE agrees to file, according to the standard practice in the industry, any and all necessary data with the appropriate government agencies.

(b) Where permitted by law, LICENSEE shall include the names of both LICENSORS as co-registrants on all regulatory filings.

9.2 LICENSEE further agrees that the right of publication of the TECHNOLOGY shall reside in the inventor(s) and other personnel of LICENSORS and the LICENSORS shall use their best efforts to provide a copy of such publication forty-five (45) days in advance of publication for review by LICENSEE. If LICENSEE determines that the publication by LICENSORS will disclose any trade secrets, LICENSORS shall delay publication for an additional sixty (60) days after the forty-five (45) day period to allow patent applications to be filed.

9.3 It is agreed that, notwithstanding any provisions herein, LICENSORS are free to use the TECHNOLOGY and PATENT RIGHTS for their own non-commercial purposes, whether educational, teaching, research or clinical purposes, without payment of royalties or other fees.

9.4 LICENSEE and LICENSORS agree to comply with all United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities and technology.
ARTICLE 10 – DURATION AND TERMINATION

10.1 This AGREEMENT shall become effective upon the EFFECTIVE DATE and shall remain in full force and effect, on a country-by-country basis, for the longer of: ten (10) years from the date of first sale of LICENSED PRODUCTS in each country, or the date of expiration of the last-to-expire patent, of those patents included in the PATENT RIGHTS, in each country; such period of time with respect to each country being known as the TERM of this AGREEMENT; provided, however, that this AGREEMENT may be terminated in one or more countries prior to the TERM in accordance with Sections 8.8, 10.2, 10.3 or 10.6.

10.2 LICENSEE may, prior to expiration of the TERM, elect to terminate this AGREEMENT with respect to any one or more countries in the TERRITORY, at any time, effective after the first anniversary of the EFFECTIVE DATE, by giving LICENSORS written notice at least six (6) months prior to each such termination. On the effective date of each such termination, LICENSEE shall cease the manufacture, use and sale of LICENSED PRODUCTS in the country or countries in which LICENSEE has elected to terminate prior to expiration of the TERM.

10.3 As used in this Section 10.3, PARTY shall mean either (1) BTG or (2) MVP and DUKE, jointly. Any PARTY may immediately terminate this AGREEMENT for fraud, willful misconduct, or illegal conduct of the other PARTY upon written notice of same to such PARTY. Except as provided above, if a PARTY fails to fulfill any of its material obligations under this AGREEMENT, the non-breaching PARTY may terminate this AGREEMENT, with respect to the country or countries affected, upon written notice to the other PARTY, as provided below. Such notice must contain a full description of the event or occurrence constituting a breach of this AGREEMENT. A PARTY receiving notice that it has breached the AGREEMENT will have the opportunity to cure that breach within thirty (30) days of the receipt of notice. A PARTY’s ability to cure a breach will apply only to the first two (2) material breaches properly noticed to that PARTY under the terms of this AGREEMENT. Any subsequent material breach by that PARTY will entitle the other PARTY to terminate this AGREEMENT immediately upon proper notice to such PARTY without a cure period. In the event that a PARTY commits such a subsequent breach, the non-breaching PARTY may, at its option and in addition to any other remedies it may have in law or in equity, terminate this AGREEMENT for default by sending to the breaching PARTY written notice of termination, effective immediately upon receipt.

10.4 Upon the termination of this AGREEMENT in one or more countries prior to the end of the TERM, LICENSEE shall notify LICENSORS of the quantity of LICENSED PRODUCTS that LICENSEE then has in inventory with respect to the country or countries for which the termination is effective and LICENSEE shall then have a license in each such country to sell that amount of LICENSED PRODUCTS, but no more, provided that the LICENSEE shall pay the royalty thereon at the rate and at the time provided for herein.
10.5 If this AGREEMENT is terminated pursuant to Section 8.8 or pursuant to this Article 10 by either LICENSEE or LICENSORS prior to the end of the TERM in one or more countries, then all intellectual property rights conveyed by LICENSORS to LICENSEE under this AGREEMENT (including, without limitation: rights in the mark, PURICASE™, approved and pending regulatory applications, Orphan Drug Designations, Drug Master Files, sublicenses, preclinical data and clinical data) shall revert to LICENSORS with respect to those countries.

10.6 If, during the TERM of this AGREEMENT, a PARTY shall become bankrupt or insolvent, or if the business of a PARTY shall be placed in the hands of a receiver or trustee, whether by the voluntary act of such PARTY or otherwise, or if a PARTY shall cease to exist as an active concern, then if the PARTY experiencing such event is:

(a) LICENSEE, then this AGREEMENT shall terminate immediately, and all rights to LICENSED PRODUCTS and the TECHNOLOGY shall revert to the LICENSORS or their respective successors or assignees;

(b) MVP or DUKE, then the rights granted to LICENSEE under this AGREEMENT by such LICENSOR shall become paid-up, exclusive, and irrevocable, this AGREEMENT shall terminate with respect to such LICENSOR, and LICENSEE shall make such payments to the remaining LICENSOR that it would have received absent termination of the AGREEMENT with respect to the other LICENSOR.

10.7 Expiration or termination of this AGREEMENT shall be without prejudice to or limitation on any other remedies or any accrued obligations of any of the PARTIES.

ARTICLE 11 – CONFIDENTIAL INFORMATION

11.1 Confidential information (“INFORMATION”) shall mean all information provided by LICENSORS to LICENSEE or by LICENSEE to LICENSORS and identified as confidential at the time of disclosure. Specifically excepted from this definition is all information that is:

(a) already known by the receiving PARTY at the time of disclosure, as demonstrated by clear and convincing evidence contemporaneous with or preceding the disclosure;

(b) publicly disclosed through no improper act or omission of the receiving PARTY;

(c) rightfully received by the receiving PARTY from a third party without any obligation of confidentiality; or
(d) disclosed pursuant to any judicial or government requirement or order, provided that the receiving PARTY takes reasonable steps to provide the disclosing PARTY with sufficient prior notice in order to allow the disclosing PARTY to contest such requirement or order; or

(c) independently developed by DUKE alone, without reference or access to the disclosing PARTY’s INFORMATION.

11.2 In the event the receiving PARTY is required by law, regulation or court order to disclose any of the disclosing PARTY’s INFORMATION, the receiving PARTY will promptly notify the disclosing PARTY in writing prior to making any such disclosure in order to facilitate the disclosing PARTY seeking a protective order or other appropriate remedy from the proper authority. The receiving PARTY agrees to cooperate with the disclosing PARTY in seeking such order or other remedy. The receiving PARTY further agrees that if the disclosing PARTY is not successful in precluding the requesting legal body from requiring the disclosure of the INFORMATION, it will furnish only that portion of the INFORMATION that is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the INFORMATION.

11.3 The receiving PARTY agrees to hold INFORMATION in trust and confidence for the disclosing PARTY, using the same care and discretion that the receiving PARTY uses with respect to its own proprietary information that it considers confidential and, in any event, at least the care that is standard in the industry for confidential, proprietary information of another. The receiving PARTY will not use such information for any purpose except those expressly set forth in this AGREEMENT and will not disclose such information to any third party without the prior written authorization from the disclosing PARTY.

(a) Any INFORMATION that MVP discloses to BTG related to PEGylation of proteins or to purification or analysis of PEG-protein conjugates may not be disclosed to DUKE. Except as provided in the foregoing sentence, any other INFORMATION that MVP discloses to BTG may be disclosed by BTG to DUKE.

(b) Obligations of this Section 11.3 shall remain in effect during the TERM of this AGREEMENT and for a period of five (5) years after the expiration or termination of the AGREEMENT in the last-to-expire or last-to-terminate country, whichever occurs later.

(c) No provision contained in this AGREEMENT shall be read to preclude BTG from providing PEGylated uricase to DUKE for research or clinical purposes, or from informing DUKE of the number of strands and molecular weight of the PEG and other descriptive characteristics of the PEGylated uricase provided to DUKE.

(d) Notwithstanding the foregoing, DUKE shall not be obligated to hold in confidence another PARTY’s INFORMATION for longer than five (5) years after such INFORMATION is disclosed to it.
ARTICLE 12 – LAW TO GOVERN

12.1 The laws of the State of California will govern the construction, interpretation and performance of this AGREEMENT, without giving effect to conflicts of law rules thereof.

ARTICLE 13 – ASSIGNMENT

13.1 No PARTY may assign any of its rights or delegate any of its duties under this AGREEMENT without the prior written consent of the other PARTIES except:

(a) In connection with the sale of a PARTY’s entire business operation; or
(b) In connection with the assignment of the rights or delegation of the duties of any PARTY to any of its AFFILIATES.

13.2 Any unauthorized attempted assignment or delegation shall be null and void and of no force or effect.

ARTICLE 14 – NOTICES

14.1 Any notice or other communication required or permitted under this AGREEMENT will be in writing and will be deemed given as of the date it is: (a) delivered by hand, or (b) mailed, postage prepaid, first class, certified mail, return receipt requested, to the PARTY/PARTIES at the address listed below or subsequently specified in writing, or (c) sent, postage prepaid, return receipt requested, by courier service, to the PARTY/PARTIES at the address listed below or subsequently specified in writing:

If to the LICENSORS:

Mountain View Pharmaceuticals, Inc.
3475-S Edison Way
Menlo Park, California 94025
Attn.: Merry R. Sherman, Ph.D.

AND:

Office of Science and Technology
North Building, Room 230
Research Drive
Duke University, Box 90083
Durham, North Carolina 27708
Attn.: License Administrator
ARTICLE 15 – INDEMNITY, INSURANCE
AND REPRESENTATIONS

15.1 LICENSEE agrees to indemnify, hold harmless and defend LICENSORS, their officers, employees, and agents, against any and all claims, suits, losses, damages, costs, fees, and expenses, including reasonable attorneys’ fees, asserted by third parties, both government and non-government, resulting from or arising out of LICENSEE’s exercise of the rights granted under this AGREEMENT. LICENSEE shall not be responsible for the intentional wrongdoing of LICENSORS.

15.2 LICENSORS agree to indemnify, hold harmless and defend LICENSEE, its officers, employees, and agents, against any and all claims, suits, losses, damages, costs, fees, and expenses, including reasonable attorneys’ fees, asserted by third parties, both government and non-government, resulting from or arising out of LICENSORS’s exercise of their rights and obligations under this AGREEMENT. LICENSORS shall not be responsible for the intentional wrongdoing of LICENSEE.

15.3 The PARTIES shall maintain in force at their sole cost and expense general liability insurance coverage in an amount reasonably sufficient to protect against liability under this Article 15. LICENSEE also shall maintain in force at its sole cost and
expense product liability insurance coverage in an amount reasonably sufficient to protect against liability under this Article 15. Each PARTY shall have the right to request and to receive copies of the appropriate certificates of insurance from the other PARTIES for the purpose of ascertaining the sufficiency and currency of such coverage.

15.4 Except as provided in Section 15.8, nothing in this AGREEMENT shall be deemed to be a representation or warranty by LICENSORS of the validity of any of the patents or the accuracy, safety, efficacy, or usefulness, for any purpose, of any TECHNOLOGY.

15.5 LICENSORS shall have no obligation, expressed or implied, to supervise, monitor, review or otherwise assume responsibility for the production, manufacture, testing, clinical trials, marketing or sale of any LICENSED PRODUCTS, and LICENSORS shall have no liability whatsoever to LICENSEE, its officers, employees or agents for or on account of any injury, loss, or damage, of any kind or nature, sustained by, or any damage assessed or asserted against, or any other liability incurred by or imposed upon LICENSEE, its officers, employees or agents or any other person or entity, arising out of or in connection with or resulting from LICENSEE’s:

(a) production, use, or sale of any LICENSED PRODUCTS;
(b) use of any TECHNOLOGY; or
(c) advertising or other promotional activities with respect to any of the foregoing.

15.6 MVP hereby represents and warrants to BTG and DUKE that MVP has the right to grant the licenses set forth herein under PATENT RIGHTS and MVP TECHNOLOGY, including the license to the technical know-how summarized in Exhibit B, and to the use of the trademark, PURICASE™.

15.7 DUKE hereby represents and warrants to BTG and MVP that DUKE has the right to grant the licenses set forth herein under PATENT RIGHTS and DUKE TECHNOLOGY, including the license to the technical know-how and materials summarized in Exhibit A.

15.8 Each of the LICENSORS hereby separately represents and warrants to BTG that:

(a) it has no actual knowledge, as of the EFFECTIVE DATE, that the use of TECHNOLOGY for the manufacture, use or sale of LICENSED PRODUCTS will infringe any patent or other intellectual property right of any third party in any country in the world, and that, if at any time during the TERM of this AGREEMENT, it becomes aware of any such information, it will promptly disclose such to BTG;
(b) it has no actual knowledge, as of the EFFECTIVE DATE, of any prior art that would raise any issue concerning the validity of any patents issued or to issue on any applications which are included in PATENT RIGHTS, and that, if at any time during the TERM of this AGREEMENT, it becomes aware of any such information, it will promptly disclose such to BTG;

(c) it is not aware of any other agreements, amendments or licenses that affect its authority or ability to enter into this AGREEMENT;

(d) prior to the execution of this AGREEMENT, it has not assigned, encumbered, pledged, mortgaged, used as collateral, granted a security interest or lien in or otherwise engaged in any action that affects its ability to grant LICENSEE the rights granted pursuant to the terms of this AGREEMENT; and

(e) during the TERM of this AGREEMENT, it will not engage in any action that could reasonably be anticipated to adversely affect its ability to grant LICENSEE the rights to manufacture, use and sell LICENSED PRODUCTS anywhere in the world pursuant to the terms of this AGREEMENT.

ARTICLE 16 – USE OF A PARTY’S NAME

16.1 Except for the rights granted to LICENSEE herein with respect to the mark PURICASE™, no PARTY to this AGREEMENT will, without the prior written consent of another party:

(a) use in advertising, publicity or otherwise, the name of any employee or agent, any trade-name, trademark, trade dress, service mark, symbol, or any abbreviation, contraction or simulation thereof owned by another PARTY; or

(b) represent, either directly or indirectly, that any product or service of another PARTY is a product or service of the representing PARTY or that it is made in accordance with or utilizes the information or documents of another PARTY.

16.2 No PARTY will originate any publicity, news release or other public announcement or comment, written or oral, related to this AGREEMENT without the prior written consent of the other PARTIES, except as may be required by law. The PARTY making any announcement, which it reasonably believes to be required by law, will first give the other PARTIES an opportunity to review the form and content of any such announcement and comment upon it before it is made.
Notwithstanding the foregoing, LICENSORS acknowledge that BTG is a publicly traded company, and hereby consent to BTG’s disclosure of this AGREEMENT and its relationship with LICENSORS in its filings with the Securities and Exchange Commission and its disclosures to its stockholders.

ARTICLE 17 – SEVERABILITY

17.1 Each clause of this AGREEMENT is distinct and severable. If any clause is deemed illegal, void or unenforceable, it is the PARTIES’ intent that all other clauses or portions of this AGREEMENT shall remain in effect to the maximum extent possible.

ARTICLE 18 – WAIVER

18.1 The failure of any PARTY in any instance to insist upon the strict performance of the terms of this AGREEMENT will not be construed to be a waiver or relinquishment of any of the terms of this AGREEMENT, either at the time of the PARTY’s failure to insist upon strict performance or at any subsequent time, and such terms will continue in full force and effect.

ARTICLE 19 – TITLES

19.1 All titles and article headings contained in this AGREEMENT are inserted only as a matter of convenience and reference. They do not define, limit, extend or describe the scope of this AGREEMENT or the intent of any of its provisions.

ARTICLE 20 — ENTIRE UNDERSTANDING

20.1 This AGREEMENT represents the entire understanding between the LICENSEE and the LICENSORS, and supersedes all other agreements, expressed or implied,
between the LICENSEE and the LICENSORS, with the sole exception of the agreement dated July 30, 1998 among BIRD, BTG and MVP.

IN WITNESS WHEREOF, the PARTIES have caused this AGREEMENT to be executed by their duly authorized representatives as of the EFFECTIVE DATE.

MOUNTAIN VIEW PHARMACEUTICALS, INC.

By: /s/Merry R. Sherman, Ph.D.

Merry R. Sherman, Ph.D.
President

DUKE UNIVERSITY

By: /s/Robert L. Taber

Robert L. Taber, Ph.D.
Associate Vice-Chancellor and Director,
Office of Science and Technology

BIO-TECHNOLOGY GENERAL CORP.

By: /s/Robert M. Shaw

Robert M. Shaw
Vice President, General Counsel
Exhibit A

Summary of Know-how, Information and Materials to be Provided by
DUKE to BTG as Part of DUKE TECHNOLOGY

[...***...]

***Confidential Treatment Requested
Exhibit B

Summary of Know-how, Information and Materials to be Provided by MVP to BTG as Part of MVP TECHNOLOGY

[...***…]

***Confidential Treatment Requested
Exhibit C

Patents and Patent Applications included within PATENT RIGHTS
(To Be Amended from Time to Time during the TERM)

[...***...]

***Confidential Treatment Requested
Amendment

BTG, Duke and MVP agree as follows:

Article 1— Definitions

1.0 Unless specifically defined in this Amendment, the capitalized terms shall have the meanings ascribed to them in the Agreement.

1.1 “Agreement” shall mean the License Agreement entered into by and among BTG, Duke and MVP on August 12, 1998.

1.2 “Amendment” shall mean this amendment to the Agreement entered into by and among BTG, Duke and MVP as of the Amendment Date.

1.3 “Amendment Date” shall mean November 12, 2001.

Article 2 — Amendments.

3.0 Effective as of the Amendment Date, the Agreement is amended to delete Section 9.1(b) in its entirety.

3.1 This amendment is conditioned upon the payment to MVP by BTG (by wire transfer) of $[…***…], (consisting of $[…***…] allocated to Milestone No. 4 and $[…***…] allocated to Milestone No. 5), as an advance payment in partial satisfaction of the payments due under Milestone Nos. 4 and 5.

3.2 BTG shall provide to MVP complete copies of all written and electronic communications related to PEG-uricase, such as regulatory filings and other correspondence, to and from government regulatory agencies (including, without limitation, the U.S. Food and Drug Administration), within five (5) business days of BTG’s filing or receipt, respectively, of such communications.

Article 3 — Miscellaneous

3.1 This Amendment shall be effective as of the Amendment Date.

3.2 Except as expressly modified in this Amendment, the Agreement shall remain in full force and effect according to its terms.

IN WITNESS WHEREOF, BTG, Duke and MVP have caused this Amendment to be executed as of the Amendment Date by their duly authorized officers.

BIO-TECHNOLOGY GENERAL CORP.

By: /s/ Norman W. Barton

Name: Norman W. Barton

Title: Chief Medical Officer

***Confidential Treatment Requested
DUKE UNIVERSITY
By: /s/ Robert L. Taber
Name: Robert L. Taber, Ph.D.
Title: Vice Chancellor, Science & Tech. Dev.

MOUNTAIN VIEW PHARMACEUTICALS, INC.
By: /s/ Mark Saifer
Name: Mark Saifer
Title: Vice President
SECOND AMENDMENT TO LICENSE AGREEMENT

THIS SECOND AMENDMENT is made and entered effective as of the 30th day of August, 2010, (hereinafter, the “SECOND AMENDMENT EFFECTIVE DATE”).

AMONG:

SAVIENT PHARMACEUTICALS, INC.
a Delaware corporation, formerly known as Bio-Technology General Corporation (hereinafter, “SAVIENT”) 
AND

MOUNTAIN VIEW PHARMACEUTICALS, INC.
a California corporation, (hereinafter, “MVP”) 
AND

DUKE UNIVERSITY
a North Carolina not-for-profit corporation, hereinafter, “DUKE”).

WHEREAS:

SAVIENT, MVP and DUKE are PARTIES to a License Agreement dated August 12, 1998, as amended by the Amendment effective as of November 21, 2001 (hereinafter, the “AGREEMENT”) pursuant to which SAVIENT licensed from MVP and DUKE the exclusive rights to develop, manufacture and sell certain LICENSED PRODUCTS, as defined in the AGREEMENT,

NOW THEREFORE in consideration of the mutual promises, agreements and covenants contained herein, the adequacy of such consideration having been agreed and acknowledged by each PARTY, the PARTIES agree to further amend the AGREEMENT as follows:

1. Definitions. All capitalized terms utilized herein shall have the same meaning ascribed to them and set forth in Article 2, DEFINITIONS of the AGREEMENT, unless specifically stated otherwise herein or unless a defined term is specifically modified hereby. For the avoidance of doubt, as used throughout the AGREEMENT, the term “LICENSORS” is meant to designate one or both of MVP and DUKE, as the context requires.

2. Change of Name Acknowledgement. Section 2.4 of the AGREEMENT is hereby deleted in its entirety and replaced as follows:

“SAVIENT” shall mean Savient Pharmaceuticals, Inc., formerly known as Bio-Technology General Corporation (“BTG”), a corporation organized under the laws of Delaware, and having its principal offices located at One Tower Center, East Brunswick, New Jersey 08816, and its AFFILIATES. The PARTIES acknowledge that Bio-Technology General Corporation formally changed its name to Savient Pharmaceuticals, Inc. on June 24, 2003. All references to “BTG” in the AGREEMENT are hereby deleted and replaced with “SAVIENT” and SAVIENT assumes all rights,
assignments and responsibilities under this AGREEMENT previously due to, owned by, assigned to or due or responsible from BTG.

3. **Activities of […***…] of LICENSED PRODUCTS.** Section 5.12(d) of the AGREEMENT is hereby deleted in its entirety and replaced as follows:

“(d) that such manufacturer is not […***…] (hereinafter, “[…***…]”), or […***…] or any AFFILIATE, subsidiary or successor thereof; […***…]. Except with respect to the matters specifically contemplated herein; the PARTIES agree that no PARTY waives any claim that may have arisen prior to the date hereof under the terms and conditions of the AGREEMENT; and”

4. **Completion of Technology transfer and Payment of Milestones.** The PARTIES acknowledge and agree that the technology transfer contemplated in Section 5.8 of the AGREEMENT has been successfully completed and that all milestone payments identified in Section 5.1(1) through and including Section 5.1(6) have been made lay SAVIENT to each of the LICENSORS in accordance with the relevant terms of Section 5.2 of the AGREEMENT as of the Effective Date of this SECOND AMENDMENT.

5. **No Notice of Breach of Agreement.** The PARTIES acknowledge and agree that the AGREEMENT is in full force and effect and that no PARTY has provided notice to any other PARTY of any breach of the AGREEMENT pursuant to Section 10.3 of the AGREEMENT.

6. **Updated Patent Rights.** The PARTIES acknowledge and agree that Exhibit C to the AGREEMENT is hereby amended to reflect the PATENT RIGHTS contemplated under the AGREEMENT as of the SECOND AMENDMENT EFFECTIVE DATE and as set forth in the attached Exhibit C-1 and that the

***Confidential Treatment Requested***

Second Amendment to License Agreement
PATENT RIGHTS and Exhibit C-1 shall be subject to further updating by the PARTIES during the TERM as provided in Section 2.19 of the AGREEMENT.

7. **Representation of LICENSORS.** The LICENSORS and LICENSEE represent and warrant that Exhibit C-1 is complete and accurate in all material respects.

8. Section 8.4 is hereby deleted in its entirety and replaced as follows:

“8.4 Any inventions made, during the TERM of this AGREEMENT, with respect to the manufacture, use or sale of LICENSED PRODUCTS shall be:

(a) the sole property of LICENSEE if made solely by LICENSEE;

(b) the joint property of LICENSEE and both LICENSORS if made jointly by LICENSEE and both LICENSORS;

(c) the joint property of LICENSEE and a LICENSOR if made jointly by LICENSEE and that LICENSOR and not by the other LICENSOR;

(d) the joint property of LICENSORS if made jointly by LICENSORS and not by LICENSEE; and

(e) the sole property of a LICENSOR if made solely by that LICENSOR;

Provided, however, that any such invention that is DUKE TECHNOLOGY and/or MVP TECHNOLOGY as defined in Sections 2.6 and 2.16, respectively, made solely by a LICENSOR or jointly by the LICENSORS (i) shall be automatically included within the TECHNOLOGY (ii) shall be promptly disclosed by the LICENSORS or relevant LICENSOR to LICENSEE and (iii) any patents and patent applications in which at least one claim is directed to any such invention so included in the TECHNOLOGY shall be automatically included within the PATENT RIGHTS.

Provided, further, that in the event that a patent application on any invention coveted by section 8.4 (a), (b), or (c) is directed to subject matter described or disclosed in or claimed by any PATENT RIGHTS: (A) LICENSEE will advise the applicable LICENSOR that such LICENSOR’S PATENT RIGHTS are implicated by the prosecution of such LICENSEE patent application by forwarding to such LICENSOR a copy of any application and all official correspondence relating thereto received from any patent office and any proposed material response thereto drafted by LICENSEE no later than […***…] ([… ***…]) business days prior to the anticipated filing date for such application or response (except in the event of a provisional patent application filed on an emergency basis, LICENSEE shall provide a commercially reasonable period dictated by the prevailing circumstances), to allow LICENSOR a reasonable opportunity to provide appropriate written comments on LICENSEE’S draft application, responses to Office Actions,

***Confidential Treatment Requested
Declarations, and any other papers affecting the prosecution of the patent application before such papers are filed with the USPTO or an equivalent non-US patent authority, such comments provided by such LICENSOR shall be limited to that portion of LICENSEE’s draft application, responses to Office Actions, Declarations, and any other papers affecting the prosecution of the patent application which relate, are directed to or implicate the subject matter described or disclosed in or claimed by such LICENSOR’S PATENT RIGHTS; (B) LICENSEE will reasonably incorporate or otherwise appropriately address any such written comments received from such LICENSOR in such papers to be so filed; and (C) LICENSEE will provide each such LICENSOR with a reasonable opportunity to timely consult with LICENSEE concerning the scope of allowed claims before paying any issue or equivalent non-US fee. In no event, however will LICENSEE’S acceptance or non-acceptance of any comments from any LICENSOR provided in accordance with this section, in whole or in part, be a basis for alleging a breach of this Section 8.4.”

9. Notices. Section 14.1 of the AGREEMENT is hereby deleted in its entirety and replaced as follows:

14.1 Any notice or other communication required or permitted under this AGREEMENT will be in writing and will be deemed given as of the date it is: (a) delivered by hand, or (b) mailed, postage prepaid, first class, certified mail, return receipt requested, to the PARTY/PARTIES at the address(es) listed below or subsequently specified in writing, or (c) sent, postage prepaid, return receipt requested, by courier service, to the PARTY/PARTIES at the address(es) listed below or subsequently specified in writing;

If to the LICENSORS:

Mountain View Pharmaceuticals, Inc.
3475-S Edison Way
Menlo Park, California 94025-1821
Attn: Merry R. Sherman, Ph.D.

AND:

Duke University School of Medicine
Office of Corporate Research Collaborations
2200 W. Main St., Suite 700
Box 104025
Durham, North Carolina 27710
Attn: Director

With a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attn: Matthew B. Zisk, Ph.D., Esq.

AND:

Duke University
Office of University Counsel
310 Blackwell Street, 4th Floor
Box 104124
Durham, North Carolina 27710

With a copy to:
If to the LICENSEE:
Savient Pharmaceuticals, Inc.
One Tower Center, 14th Floor
East Brunswick, NJ 08816
Attn: Philip K. Yachmetz, Esq.
Senior Vice President & General Counsel

With a copy to:
Wilmer, Hale, Cutler, Pickering & Dorr
60 State Street
Boston, MA 02109
Attn: Graham Robinson, Esq.

9. **No Modification.** Except as expressly provided for herein, the AGREEMENT shall remain in full force and effect without amendment. The AGREEMENT, as amended by this SECOND AMENDMENT, contains the entire agreement among the PARTIES with respect to the subject matter contemplated herein and from and after the SECOND AMENDMENT EFFECTIVE DATE, the AGREEMENT shall mean the AGREEMENT as so further amended by this SECOND AMENDMENT. The PARTIES agree that no further amendment or modification to the AGREEMENT shall become binding unless such further amendment or modification is reduced to writing and is contained in a written amendment signed by all PARTIES hereto.

[The remainder or this page is intentionally blank.]
IN WITNESS WHEREOF, the PARTIES have caused this SECOND AMENDMENT to be executed by their respective duly authorized representatives as of the date first written above.

SAVIENT PHARMACEUTICALS, INC.

By: /s/ Philip K. Yachmetz
    Philip K. Yachmetz, Esq.
    Senior Vice President &
    General Counsel

DUKE UNIVERSITY

By: /s/ H. Gilbert Smith
    H. Gilbert Smith, Ph. D
    Managing Director, Corporate Research
    Collaborations & Licensing Officer

MOUNTAIN VIEW PHARMACEUTICALS, INC.

By: /s/ Merry R. Sherman
    Merry R. Sherman, Ph.D.
    CEO and President

Second Amendment to License Agreement
[...***...]

***Confidential Treatment Requested
[...***...]

***Confidential Treatment Requested
April 14, 2014

Merry R. Sherman, Ph.D.
CEO and President
Mountain View Pharmaceuticals, Inc.
3475 Edison Way, Suite S
Menlo Park, CA 94025-1821

H. Gilbert Smith, Ph.D.
Associate Dean & Managing Director
Corporate Research Collaborations
Duke University School of Medicine
2200 W. Main Street, Suite 910B
Durham, NC 27705

Re: Third Amendment to License Agreement by and among Mountain View Pharmaceuticals, Inc. (“MVP”), Duke University (“Duke”), and Savient Pharmaceuticals, Inc. (formerly known as Bio-Technology General Corporation (“BTG)) dated August 12, 1998, as amended November 12, 2001 and August 30, 2010 (the “License”)

Dear Drs. Sherman and Smith:

The purpose of this letter agreement (this “Third Amendment”) is to amend the License effective as of March 12, 2014 (the “Effective Date”). In connection with the acquisition by Crealta Pharmaceuticals LLC (“Crealta”) of the business operations of Savient Pharmaceuticals, Inc. (“Savient”), Savient assigned all of its rights and obligations under the License to Crealta effective as of January 9, 2014 (the “Assignment Effective Date”). As a result, all references in the License to either BTG or Savient are hereby understood to refer to Crealta, provided that the foregoing shall not be interpreted as granting Crealta any rights prior to the Assignment Effective Date, granting MVP or Duke any additional rights under the License, requiring MVP or Duke to render performance to Crealta of any obligations satisfied by MVP or Duke prior to the Assignment Effective Date, or requiring Crealta to render performance to MVP or Duke of any obligations satisfied by BTG or Savient prior to the Assignment Effective Date. Crealta, MVP and Duke are the “Parties” hereto and each, individually, is a “Party”.

In addition, the Parties confirm that the current notice information for each of the Parties for the purposes of Section 14.1 of the License is as follows:
Further, attached to this Third Amendment is Exhibit C-2, which reflects the Patent Rights contemplated under the License as of the Effective Date. This Exhibit C-2 replaces Exhibit C of the License and Exhibit C-1 of the Second Amendment, and it is subject to further updating by the Parties during the Term as contemplated in Section 2.19 of the License.

The Parties also acknowledge and agree that: (i) all milestone payments identified in Section 5.1(1) through and including Section 5.1(9) have been made by Licensee to each of the Licensors; (ii) the License is in full force and effect; and (iii) that no Party to the License has provided notice to any other Party to the License of any breach of the License pursuant to Section 10.3 of the License.

Finally, the Parties agree that: (i) in Article 2 of the Amendment of the License dated November 12, 2001, the section numbers shall be corrected to read 2.0, 2.1, and 2.2, respectively; and (ii) in the Second Amendment of the License dated August 30, 2010, Section 9 titled “No Modification” shall be corrected to Section 10.

Except as previously provided for herein, the License shall remain in full force and effect without amendment. The License, as amended by this Third Amendment, contains the entire agreement among the Parties with respect to the subject matter contemplated herein and from and after the Effective Date, the License shall mean the License as so further amended by this Third Amendment. The Parties agree that no further amendment or modification to the License shall become binding unless such further
amendment or modification is reduced to writing and is contained in a written amendment signed by all Parties hereto.

All capitalized terms used in this Third Amendment that are not otherwise defined herein shall have the meanings set forth in the License.

Please confirm MVP’s and Duke’s agreement with the foregoing by signing and dating where indicated below and returning the countersigned Third Amendment to me.

Sincerely,

/s/ Edward Donovan
Edward Donovan
General Counsel, Crealta Pharmaceuticals LLC

Acknowledged and Agreed:

MOUNTAIN VIEW PHARMACEUTICALS, INC.
By: /s/ Merry R. Sherman
Name: Merry R. Sherman
Title: CEO and President
Date: April 14, 2014

DUKE UNIVERSITY
By: /s/ H. Gilbert Smith
Name: H. Gilbert Smith, Ph.D.
Title: Assoc. Dean and Managing Director Corporate Research Collaborations
Date: April 14, 2014

Cc: Marya Postner, Ph.D., Esq.
Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304-1130
Exhibit C-2

See attached.
SCHEDULE A

Patents and Patent Applications included within PATENT RIGHTS
(To Be Amended from Time to Time during the TERM)

[...***...]

***Confidential Treatment Requested

page 1 of 10
FOURTH AMENDMENT
TO LICENSE AGREEMENT BY AND AMONG
MOUNTAIN VIEW PHARMACEUTICALS, INC., DUKE UNIVERSITY AND
CREALTA PHARMACEUTICALS LLC,
INCLUDING PATENT ASSIGNMENT

BACKGROUND

Mountain View Pharmaceuticals, Inc. (“MVP”), Duke University (“Duke”), and Crealta Pharmaceuticals LLC (“Licensee”) are parties to that certain License Agreement dated August 12, 1998, as previously amended on November 12, 2001, August 30, 2010 and March 12, 2014 (the “Agreement”). The Parties now wish to further amend the Agreement, in accordance with the terms and conditions set forth in this Fourth Amendment to the Agreement (this “Amendment”).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the covenants and promises contained herein, the Parties hereby agree to amend the Agreement as follows, effective as of the last date signed by all of the Parties (the “Amendment Effective Date”), subject to being binding on MVP and Licensee as set forth in Section 9:

1. Definitions. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed in the Agreement.

   (a) The following definitions are hereby added to Article 2 of the Agreement:

      2.33 “Assigned Patent Rights” means the U.S. patents and patent applications set forth in Exhibit A hereto, together with all substitutes, continuations, divisional applications, reexaminations or reissues of the foregoing. For the avoidance of doubt, the Assigned Patent Rights do not include any patents or patent applications in any country or jurisdiction other than the United States.

      2.34 “Ex-U.S. Net Sales” means [...***…].

      2.35 “United States” or “U.S.” means the United States and its 50 States and territories.

      2.36 “U.S. Net Sales” means [...***…].

   (b) The following sentence is hereby added to the end of the definition of Patent Rights in Section 2.19 of the Agreement: Notwithstanding the foregoing, Patent Rights shall not include MVP’s interest in the Assigned Patent Rights.

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2. **Consideration.** Within [...] days of the Amendment Effective Date, Licensee shall pay to MVP the non-creditable, non-refundable amount of [...] U.S. Dollars ($[...]) in immediately available funds in consideration of the assignment of MVP’s interest in the Assigned Patent Rights and the other modifications to the Agreement set forth herein. Licensee shall make such payment to MVP by wire transfer to the bank account specified in Exhibit B of this Amendment. The modifications to Licensee’s rights and obligations under the Agreement set forth in Sections 3 and 4 below and the assignment of MVP’s interest in the Assigned Patent Rights are contingent upon, and shall not become effective until, MVP’s receipt of such payment in full (the date of MVP’s receipt of such payment, the “Modification Effective Date”). Upon the Modification Effective Date, the transfer of MVP’s interest in the Assigned Patent Rights shall be final and irrevocable, and MVP shall not have any of MVP’s interest in the Assigned Patent Rights returned, reverted, or otherwise assigned back to MVP, unless agreed to in writing by Licensee and MVP.

3. **Modifications with respect to Licensee’s U.S. Royalty Obligations to MVP.** Subject to Section 2 above, and without affecting any rights of Duke or any obligations of Licensee to Duke:

   (a) Commencing as of [...] (the “Royalty Adjustment Date”), the license granted to Licensee pursuant to Section 4.1 of the Agreement shall become royalty-free and fully paid up solely with respect to MVP’s interest in the Technology, Assigned Patent Rights, and the Patent Rights, in each case, solely with respect to the U.S. Accordingly, U.S. Net Sales made prior to the Royalty Adjustment Date shall remain royalty-bearing under Article 6 of the Agreement, and U.S. Net Sales made on or after the Royalty Adjustment Date shall be royalty-free, as further set forth in subsection (b) below.

   (b) Commencing upon the Royalty Adjustment Date, Licensee shall be relieved of its obligations (i) under Section 6.1 of the Agreement to pay any royalty to MVP on U.S. Net Sales, and (ii) under Section 6.3 of the Agreement to pay any royalty to MVP on Sublicense Revenues solely to the extent arising from sublicenses granted by Licensee to use, sell or offer to sell Licensed Products in the U.S. (and to manufacture, have manufactured and/or import Licensed Products in connection therewith) (such Sublicense Revenues, “U.S. Sublicense Revenues”). If Licensee grants a sublicense that either (A) includes both the U.S. and territories outside of the U.S., or (B) is made with respect to the U.S. and is in connection with a sublicense of a territory outside of the U.S., then the Parties shall reasonably establish an equitable allocation of the consideration paid to Licensee with respect to such sublicense(s) as between U.S. Sublicense Revenues and Sublicense Revenues allocable to such other territory(ies). For clarity, following the Royalty Adjustment Date, Licensee’s payment obligation under Sections 6.1, 6.2, and 6.3 solely with respect to U.S. Net Sales and U.S. Sublicense Revenues shall be to pay Duke [...] percent ([...]% of U.S. Net Sales and [...] percent ([...]% of U.S. Sublicense Revenues, and Licensee’s payment obligation under Sections 6.1, 6.2, and 6.3 with respect to all other Net Sales and all other Sublicense Revenues shall remained unchanged.

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MVP’s rights under Section 4.5(c), Section 6.7, Section 6.8, and Section 6.9 of the Agreement shall cease to apply with respect to any U.S. Net Sales or any U.S. Sublicense Revenues accrued by Licensee on or following the Royalty Adjustment Date. For clarity, Section 4.5(c), Section 6.7, Section 6.8 and Section 6.9 of the Agreement shall continue to apply with respect to (i) any sales of Licensed Products by Licensee in the U.S. prior to the Royalty Adjustment Date, (ii) any U.S. Sublicense Revenues accrued by Licensee prior to the Royalty Adjustment Date, and (iii) all Ex-U.S. Net Sales and all Sublicense Revenues in the Territory other than U.S. Sublicense Revenues, whether accrued prior to, on or after the Royalty Adjustment Date.

MVP shall have no further right to enforce Section 7.1 or Section 9.1 of the Agreement, in each case, solely with respect to Licensed Products in the U.S. For clarity, if Licensee fails to fulfill any of its material obligations under the Agreement with respect to any country or countries outside of the U.S., then the Licensors retain their rights to terminate the Agreement with respect to the country or countries affected in accordance with Section 10.3 of the Agreement.

4. Assignment of Interest in Assigned Patent Rights; Modifications with respect to Patent-Related Rights and Obligations. Subject to Section 2 above, and, except as expressly set forth in this Section 4, without affecting any rights of Duke or any obligations of Licensee to Duke, effective as of the Modification Effective Date:

(a) MVP hereby sells, assigns, transfers and conveys to Licensee, free and clear of all liens and encumbrances (subject to subsection (b) below), all of MVP’s right, title, and interest in and to the Assigned Patent Rights. Within […] following the Modification Effective Date, MVP shall execute and deliver to Licensee a patent assignment for the Assigned Patent Rights in the form attached as Exhibit C hereto. MVP shall take all reasonable further actions, and provide Licensee, Licensee’s successors, assigns or other legal representatives, all such cooperation and assistance (including the execution and delivery of any and all affidavits, declarations, oaths, exhibits, assignments, powers of attorney or other documentation) reasonably requested by Licensee to more fully and effectively effectuate the purposes of this assignment, including, without limitation with respect to the following: (1) the prosecution of any applications assigned herein; (2) the prosecution or defense of any interference, opposition, reexamination, reissue, infringement or other proceedings that may arise in connection with any of the Assigned Patent Rights, including, but not limited to, testifying as to any facts relating to the Assigned Patent Rights and to this assignment; and (3) in the implementation or perfection of this assignment in the United States. […] For the avoidance of doubt, the Parties acknowledge and agree that this Amendment shall have no effect on Licensee’s receipt and enjoyment of the exclusive license to or

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under the Patent Rights and Technology (including MVP Technology) granted to Licensee pursuant to Section 4.1 of the Agreement, which license shall remain in full force and effect.

(b) Licensee acknowledges that: (i) all of the Assigned Patent Rights are jointly owned by MVP and Duke (prior to the assignment set forth in subsection (a) above); (ii) Duke’s ownership in the Assigned Patent Rights remains unchanged by the assignment set forth in subsection (a) above; and (iii) the Assigned Patent Rights are subject to retained government rights in connection with the funding of the inventions claimed therein.

(c) Licensee hereby grants to MVP the exclusive, perpetual, irrevocable, royalty-free, fully paid-up, world-wide, non-transferable license (except as permitted by Sections 13.1 and 13.3) under Licensee’s interest in the Assigned Patent Rights, subject to all encumbrances therein as of the Modification Effective Date, sublicensable through multiple tiers of sublicensees, for [...***…]. THE FOREGOING ARE LICENSED TO MVP “AS IS” AND WITHOUT WARRANTY OF ANY KIND. LICENSEE DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

(d) Section 8.1 of the Agreement shall hereby be labeled Section 8.1(a). The following is added to the Agreement as Section 8.1(b): Notwithstanding the foregoing, and solely with respect to the Assigned Patent Rights in the U.S., Duke and Licensee shall have responsibility, at their shared expense (or as they may otherwise decide between them), for filing, prosecuting and maintaining their jointly owned patent applications within the Assigned Patent Rights in the USPTO. Licensee shall keep MVP advised as to the prosecution of such applications by forwarding to MVP copies of all official correspondence relating thereto, and shall give MVP an opportunity to comment on all applications, responses to office actions, declarations and other papers before they are filed with the USPTO, and shall consult with MVP concerning the scope of allowed claims before paying any issue fee. MVP shall be responsible for any costs incurred by MVP in connection with MVP’s receipt, review, comment, consultation, or other activities it takes with respect to any of the documentation provided Licensee pursuant to this Section 8.1(b).

(e) Solely with respect to the [...***…], if Licensee elects to stop an infringement of the [...***…] and recover damages as set forth in Section 8.5(a) of the Agreement, then the following shall apply in lieu of Section 8.5(a)(i) (D): Licensee shall be entitled to retain for its own account, after first deducting the costs of any actions taken to stop such infringement, [...***…] percent ([...***…]% of any amounts received in settlement or awarded as damages, with the remaining [...***…] percent ([…***…]) being paid to Duke.

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(f) Solely with respect to an infringement of the Assigned Patent Rights, the references in Section 8.5(a)(ii)(A) to “Licensors” shall be deemed to refer solely to Duke and the references in Section 8.9 to “Parties” shall be deemed to refer solely to Duke and Licensee.

(g) Solely with respect to inquiries regarding licenses in the U.S. or third party patents in the U.S., the references in Section 8.6 to “Licensors” shall be deemed to refer solely to Duke.

(h) Licensee shall not have the right under Section 8.7(c) or Section 8.7(d) to offset any attorneys’ fees, settlement amounts and/or royalties due to a third party in connection with a third party infringement action to the extent based on the inclusion of the Assigned Patent Rights in the U.S. that are incurred after the Royalty Adjustment Date against any royalties owed to MVP by Licensee based on Ex-U.S. Net Sales or on Sublicense Revenues attributable to any territory outside of the U.S.

(i) If the Licensee terminates the Agreement in the U.S. pursuant to Section 8.8 thereof, or if Licensee or Licensors terminate the Agreement in the U.S. pursuant to Article 10 thereof, then MVP’s rights in the Assigned Patent Rights conveyed to Licensee pursuant to Section 4(a) of this Amendment shall not revert to MVP and instead shall remain with Licensee; however, Licensee shall remain subject to the prohibition of the manufacture, use and sale of Licensed Products in the country or countries in which Licensee has elected to terminate as set forth in Sections 8.8 and 10.2 of the Agreement.

(j) The Parties acknowledge that, as between Duke and Licensee, Licensee shall have, subject to Licensee’s continued compliance with the terms of the Agreement (but provided, however, that Duke provides the appropriate notice and opportunity to cure in the event of any non-compliance), the sole and exclusive right to use the Assigned Patent Rights in connection with [...***…].

(k) Upon the Modification Effective Date, MVP shall deliver to Licensee, to the extent not already in Licensee’s or its patent counsel’s possession:
   (i) copies of the Assigned Patent Rights and, to the extent reasonably available to MVP and reasonably requested by Licensee, other manifestations or embodiments of the Assigned Patent Rights;
   (ii) all internal and outside patent counsel files that comprise U.S. Patent and Trademark Office ("USPTO") notices, and correspondence from and to the USPTO relating to the prosecution and maintenance of the Assigned Patent Rights; and
   (iii) accurate and complete copies of all unpublished patent applications, if any, included in the Assigned Patent Rights.

For clarity, MVP may retain copies of the foregoing consistent with its obligations under Article 11 of the Agreement.

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Solely with respect to inventory of the Licensed Products in the U.S., the references in Section 10.4 of the Agreement to “Licensors” shall be deemed to refer solely to Duke.

(i) Upon learning of an actual or reasonably suspected infringement by a third party of the Assigned Patent Rights exclusively licensed to MVP, the Party learning of such infringement shall promptly inform the other Parties in writing of that fact and shall provide any evidence available pertaining to such infringement.

(ii) MVP may elect, within [***] days after notice and at its own expense, to take whatever steps are necessary to enforce against such third party the Assigned Patent Rights exclusively licensed to MVP.

1. If MVP elects to take such action, it will: (a) keep Duke and Licensee informed of the steps taken and the progress of any legal actions taken; and (b) be entitled to enter into a settlement on such terms as it may elect, subject to Duke and Licensee’s consent; and

2. If MVP does not elect to take such action within such period, it will promptly inform Duke and Licensee, in which event Duke and Licensee may elect within [***] days: (a) to take such action as is required to stop such infringement, and will then be entitled to settle such actions on such terms as they may elect, subject to MVP’s consent, will keep MVP informed of the steps taken and the progress of any legal actions taken, and will be entitled to retain any amounts received in settlement or awarded in damages; or (b) not to take any action against such infringers.

MVP shall give Duke and Licensee prompt notice of each claim or allegation received by MVP that the manufacture, use or sale of products under MVP’s exclusive license constitutes an infringement of a third party patent or other intellectual property rights. If such alleged infringement is due to MVP’s or its sublicensee’s manufacture, use, sale, offer for sale or U.S. importation of one or more products that incorporate subject matter disclosed in the Assigned Patent Rights, then:

(i) MVP shall have the primary right and responsibility, but not the obligation, at its own expense to defend and control the defense of any claims against MVP, using counsel of its choosing; and

(ii) The settlement of any such action must be approved by Duke and Licensee, which approval shall not be unreasonably withheld.

In any action brought under Section 4(m) or Section 4(n), the Parties not bringing or defending the action shall, in their sole discretion, be entitled to participate through counsel of their own choosing in any such action; provided however, that such participation shall be limited to an advisory role and counsel for the Party bringing or defending the action shall be lead counsel and the action shall be directed by such Party. Each Party agrees to cooperate with the other Parties in any reasonable

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5. **Representations and Warranties.** MVP represents and warrants to Licensee that:

(a) MVP’s right, title and interest in and to the Assigned Patent Rights are free and clear of any liens, security interests or other encumbrances, subject to Section 4(b) of this Amendment;

(b) MVP has the full right and authority to execute this Amendment and to assign to Licensee the rights assigned herein; and

(c) MVP has not executed, and will not execute, any agreement or other instrument: (i) in conflict herewith; or (ii) that would permit MVP to make or have made, use or have used, sell or have sold, or license or sublicense, any drug that relates to (a) mammalian or non-mammalian uricases or (b) PEG conjugates of mammalian or non-mammalian uricases, in each case that is indicated for any of the treatments for which the drug marketed or sold as of the Modification Effective Date under the brand or name Krystexxa is or was indicated.

6. **Indemnification.** MVP agrees to indemnify, hold harmless and defend Licensee, its officers, employees, and agents, against any and all claims, suits, losses, damages, costs, fees, and expenses, including reasonable attorneys’ fees, asserted by third parties, both government and non-government, resulting from or arising out of the misrepresentation or breach of: (a) any representation, warranty or covenant of MVP under Section 5 of this Amendment; or (b) any covenant of MVP under any other Section of this Amendment.
7. **Effect of MVP Corporate Liquidation and Assignment.**

(a) The following is added at the end of Section 10.6(b) of the Agreement:

“provided, however, that this Section 10.6(b) shall not apply by reason of a transaction by MVP that satisfies the conditions of Section 13.3.”

(b) The following is added at the beginning of Section 13.1 of the Agreement:

“Except as provided in Section 13.3,”.

(c) The following is added as a new Section 13.3 of the Agreement:

“At any time after the Amendment Effective Date, MVP may effect a corporate liquidation and associated assignment of this Agreement without the consent of the other Parties, provided, however, that following such liquidation event (1) MVP’s rights and obligations under this Agreement have been assigned to an entity formed by MVP or one or more of its stockholders, and (2) such entity is also the assignee of all of or substantially all of MVP’s Patent Rights and the MVP Technology, and all related obligations, in each case as then existing. Any such entity must agree to be bound by all terms and conditions of this Agreement.”

8. **Miscellaneous.** Except as expressly set forth in this Amendment, all terms and conditions of the Agreement remain in full force and effect. This Amendment sets forth and constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and all prior agreements, understanding, promises and representations, whether written or oral, with respect thereto. Each Party confirms that it is not relying on any representations or warranties of any other Party except as specifically set forth herein. No amendment or modification of this Amendment will be binding upon the Parties unless in writing and duly executed by an authorized representative of each Party. In the event of a conflict or inconsistency between the terms of this Amendment and the terms of the Agreement (or any other amendment), the terms of this Amendment shall control with respect to such conflict or inconsistency. Any term or condition of this Amendment may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver will be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. The waiver by any Party hereto of any right hereunder or of claims based on the failure to perform or a breach by another Party will not be deemed a waiver of any other right hereunder or of any other breach or failure by said other Party whether of a similar nature or otherwise. Each Party acknowledges that it has been represented by legal counsel with respect to the negotiation and preparation of this Amendment and agrees that no provision hereof shall be strictly construed against any Party, irrespective of which Party is deemed to have drafted such provision. The captions of this Amendment are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Amendment or the intent of any provision contained in this Amendment. This Amendment may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will
constitute one and the same instrument. In addition, this Amendment may be executed by facsimile or PDF and such facsimile or PDF signature shall be deemed to be an original.

9. **Execution by All Parties.** This Amendment shall be binding upon MVP and Licensee effective on the date last signed by both of them. If this Amendment has not been also executed by Duke by midnight, Pacific Daylight Time, July 24, 2015, then upon written notice from MVP or Licensee to the other Parties, this Amendment shall be terminated and all terms and conditions hereof shall be deemed null, void and of no further effect.

**REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE Follows.**
IN WITNESS WHEREOF, the Parties have duly executed this Amendment.

MOUNTAIN VIEW PHARMACEUTICALS, INC.

By: /s/Merry R. Sherman

Name: Merry R. Sherman

Title: CEO and President

Date: July 15, 2015

CREALTA PHARMACEUTICALS LLC

By: /s/Edward Fiorentino

Name: Edward Fiorentino

Title: Chairman & CEO

Date: 7/15/15

DUKE UNIVERSITY

By: /s/ Rose Ritts

Name: Rose Ritts

Title: Executive Dir., OCU

Date: July 16, 2016
Exhibit A

Patents and Patent Applications included within the Assigned Patent Rights

[...***...]  

***Confidential Treatment Requested
Exhibit B

Bank Wiring Instructions

[...***...]

***Confidential Treatment Requested
Exhibit C

PATENT ASSIGNMENT

THIS PATENT ASSIGNMENT (“Assignment”) is made and entered into by and between Mountain View Pharmaceuticals, Inc., a California corporation having its principal offices at 3475 Edison Way, Suite S, Menlo Park, CA, USA 94025 (“Assignor”), and Crealta Pharmaceuticals LLC, a Delaware limited liability company having its principal offices at 500 W. Silver Spring Dr., Suite K-200, Glendale, WI, USA 53217 (“Assignee”).

WHEREAS, Assignor and Assignee are parties to a Fourth Amendment to License Agreement By and Among Mountain View Pharmaceuticals, Inc., Duke University, and Crealta Pharmaceuticals LLC, Including Patent Assignment, dated as of July __, 2015 (the “Amendment”); and

WHEREAS, pursuant to the Amendment, Assignor wishes to assign to Assignee, and Assignee wishes to acquire from Assignor, the patents and patent applications set forth on Schedule A attached hereto, including any substitutes, continuations, divisions, reissues reexaminations or extensions thereof, and including the subject matter of all claims thereof (collectively, the “Assigned Patent Rights”).

NOW, THEREFORE, for good and valuable consideration, Assignor does hereby sell, assign, transfer and set over to Assignee, subject to the terms of the Amendment, Assignor’s right, title and interest in and to the Assigned Patent Rights, for the United States, including, without limitation, all corresponding rights that are or may be secured under the laws of the United States, now or hereafter in effect, for Assignee’s use and enjoyment, and for the use and enjoyment of Assignee’s successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by Assignor if this Assignment had not been made, including, without limitation, all claims for damages by reason of infringement occurring on or after the Modification Effective Date as defined in the Amendment or other unauthorized use of the Assigned Patent Rights occurring on or after the Modification Effective Date, with the right to sue for, and collect the same for Assignee’s use and enjoyment and for the use and enjoyment of its successors, assigns or other legal representatives.

Assignor hereby permits the Commissioner for Patents to record Assignee as an assignee and owner of the Assigned Patent Rights.

REMAINDER OF PAGE INTENTIONALLY BLANK;
SIGNATURE PAGE FOLLOWS.
MOUNTAIN VIEW PHARMACEUTICALS, INC.

By: _____________________________
Name: ___________________________
Title: ____________________________

CREALTA PHARMACEUTICALS LLC

By: _____________________________
Name: ___________________________
Title: ____________________________
COMMERCIAL SUPPLY AGREEMENT

between

SAVIENT PHARMACEUTICALS INC.

and

BIO-TECHNOLOGY GENERAL (ISRAEL) LTD.
This Commercial Supply Agreement (the “Agreement”) is made and entered into as of the 20th day of March 2007, (hereinafter the “Effective Date”), by and between Savient Pharmaceuticals, Inc., a public company organized under the laws of the State of Delaware having its principal place of business at One Tower Center, 14th Floor, East Brunswick, New Jersey 08816, USA (“Savient”), and Bio-Technology General (Israel) Ltd., a private company organized under the laws of the State of Israel having its principal place of business at Beer Tuvia Industrial Zone, POB 571, Kiryat Malachi 83104, Israel (“BTG”) (hereinafter, each of Savient and BTG a “Party” and, collectively, the “Parties”).

WITNESSETH:

WHEREAS, pursuant to the Share Purchase Agreement (the “SPA”) and the Asset Purchase Agreement (“APA”), each dated March 23, 2005 (the SPA and APA, collectively, the “Divestiture Agreements”), Savient has, on 17 July 2005, sold to Ferring B.V. all of the issued and outstanding share capital of BTG, and to Ferring International Centre S.A. all of Savient’s right, title and interest in certain drug products and drug candidates developed and/or manufactured by BTG, but not in any case in the drug candidate known as “PEG-uricase” (or also known as “Puricase”); and

WHEREAS, the Parties to this Agreement have entered into a development agreement dated March 20, 2007, (the “Development Agreement”) according to which BTG renders continued development, manufacturing and other services in relation to Puricase.

WHEREAS, Savient wishes BTG, and BTG is willing, to supply Bulk Product for Commercial Launch and further commercial sales.

NOW THEREFORE, in consideration of the foregoing premises, which are incorporated into and made a part of this Agreement, and of the mutual covenants which are recited herein, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

1.01 “AE” shall mean, with respect to the Product, any adverse event associated with the use of the Product in a patient or clinical investigation, whether or not considered drug related, including the following: an adverse event occurring in the course of the use of the Product in professional practice; an adverse event occurring from drug overdose whether accidental or intentional; an adverse event occurring from drug abuse; an adverse event occurring from drug withdrawal; and any significant and consistent failure of expected pharmacological action. AE shall include, without limitation, any unfavorable and unintended sign (including, without limitation, an abnormal laboratory finding), an exacerbation of a pre-existing condition, intercurrent illness, drug interaction, significant worsening of a disease under investigation or treatment, significant failure of expected pharmacological or biological action, symptom or disease temporally associated with the use of the Product, whether or not considered related to
the Product. Notwithstanding anything foregoing to the contrary, with respect to the Territory in which the Product is marketed, AEs shall include any experience required to be reported to a relevant authority in any such country.

1.02 “Affiliate” shall mean any business entity which directly or indirectly controls, is controlled by, or is under common control with any Party to this Agreement. A business entity shall be deemed to “control” another business entity if (i) it owns, directly or indirectly, at least fifty percent (50%) of the issued and outstanding voting securities, capital stock, or other comparable equity or ownership interest of such business entity, or (ii) it has the de facto ability to control or direct the management of such business entity. If the laws of the jurisdiction in which such entity operates prohibit ownership by a Party of fifty percent (50%) or more, “control” shall be deemed to exist at the maximum level of ownership allowed by such jurisdiction; provided, however, that there is a de facto ability to direct or control its management.

1.03 “BLA” means a regulatory application filed with a governmental agency in a country or a group of countries (e.g. FDA or EU EMEA) for the purpose of lawfully marketing, selling, distributing, importing, exporting, manufacturing, developing or using a therapeutic or prophylactic product for the treatment or prevention of a disease or physical condition; a BLA shall include, without limitation, a Product License Application or Marketing Authorization in the European Union, and a Biologics License Application or a New Drug Application in the United States.

1.04 “BTG Assigned Improvements” shall mean all developments, discoveries, inventions, improvements, designs, methods, processes, techniques, devices, formulae and trade secrets related to the Product (including, without limitation, its pharmaceutical utility) and/or Processing of the Bulk Product or Product which are (i) made, created, developed or conceived, or reduced to practice, by BTG or an Affiliate of BTG and (ii) dominated by the Savient Patent Rights or necessary or useful in the Processing of the Bulk Product or Product. Notwithstanding the foregoing, BTG Assigned Improvements shall not include any innovations which are of general use in biopharmaceutical manufacturing.

1.05 “BTG Licensed Improvements” shall mean all developments, discoveries, inventions, improvements, designs, methods, processes, techniques, devices, formulae and trade secrets related to the Product (including, without limitation, its pharmaceutical utility) and/or Processing of the Bulk Product or Product which are (i) made, created, developed or conceived, or reduced to practice, by BTG or an Affiliate of BTG, and (ii) necessary or useful in the Processing of the Bulk Product or (iii) of general use in biopharmaceutical manufacturing.

1.06 “BTG Indemnitee” shall mean BTG and its Affiliates, and each of their respective directors, officers, employees and agents.

1.07 “BTG Know-How” shall mean all Know-How developed by BTG or any of its Affiliates during the Term or by BTG prior to July 17, 2005 relating to (i) the Bulk Product or Product (including, without limitation, its pharmaceutical utility) or (ii) the Processing of the Bulk Product or Product, and shall include, without limitation, all data (in any form, raw or analyzed or reported and whether maintained in paper, electronic or other media forms) relating to
formulation, analytical methods, pre-clinical and clinical trials, pharmacology, toxicology, regulatory information, and data relating to
the manufacture and use of such Bulk Product or Product.

1.08 “Bulk Product” shall mean the bulk solution of polyethylene glycol (PEG) conjugate of uricase ordered by Savient from BTG
pursuant to this Agreement.

1.09 “Business Day” shall mean any day other than (i) Friday, Saturday or Sunday or (ii) a day on which banking institutions
located in New York, New York, United States of America or in Israel are permitted or required by law, executive order or
governmental decree to remain closed.

1.09 “Business Day” shall mean any day other than (i) Friday, Saturday or Sunday or (ii) a day on which banking institutions
located in New York, New York, United States of America or in Israel are permitted or required by law, executive order or
governmental decree to remain closed.

1.10 “cGMP” shall mean current good manufacturing practices as set forth in Title 21, Parts 210 and 211 of the C.F.R. and 21
C.F.R. Part 312 (IND) and Part 314 (NDA), and 21 C.F.R. Part 600 (Biological Products), as established and amended by the FDA.

1.11 “Claim” shall mean all charges, complaints, actions, suits, proceedings, hearings, investigations, claims, demands, judgments,
orders, decrees, stipulations, injunctions, damages (including all incidental and consequential damages claimed by Third Parties),
deficiencies, defaults, assessments, dues, penalties, fines, costs, amounts paid in settlement, liabilities, obligations, taxes, liens, losses,
lost profits claimed by Third Parties, expenses, costs and fees (including without limitation interest, court costs, reasonable fees of
attorneys, accountants and other experts or other expenses of litigation or other proceedings or of any claim, default or assessment),
and includes all damages awardable pursuant to statute and treble damages.

1.12 “Commercial Bulk Product Specifications” shall mean the manufacturing and quality specifications for the Bulk Product,
including, without limitation, unit descriptions established initially in accordance with Section 3.01(ii) and amended from time to time
in accordance with Section 3.01(iii).

1.13 “Commercial Launch” shall mean the first commercial sale of the Product in any country of the Territory.

1.14 “Competing Product” shall mean any prescription pharmaceutical product that (i) contains […] as an active ingredient
or (ii) is used for the therapeutic or prophylactic treatment of gout (in any form) or other diseases and conditions involving
hyperuricemia and/or monosodium urate crystals.

1.15 “Current Provisional Bulk Product Specifications” shall mean those provisional specifications set forth on Exhibit C hereto
and any amended and restated Bulk Product specifications which are agreed to by the Parties in accordance with Section 3.01(i).

1.16 “Development Agreement” shall mean that certain Development Agreement by and between the Parties hereto, dated as of
the date hereof.

1.17 “Dollar” shall mean the United States dollar.

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“FDA” shall mean the United States Food and Drug Administration or its foreign equivalent as may be appropriate in any given context.

“Facility” shall mean, the BTG facility located at Be’er Tuvia Industrial Zone, POB 571, Kiryat Malachi 83104, Israel, within which, and for the purposes of the calculation of “Pro Rata Basis” as defined in Section 1.37 there is the:

(i) “Purification Area” of the Facility used in the Processing of Bulk Product and comprising the small purification line totaling […***…];

(ii) “Fermentation Area” of the Facility used from time to time for the Processing of Bulk Product and comprising the fermentation suite, totaling […***…];

(iii) “Recovery Area” of the Facility used from time to time for the Processing of Bulk Product and comprising the recovery suite, totaling […***…], and;

(iv) “Total Manufacturing Area” of the Facility comprising the portion of the Facility dedicated to product manufacturing, excluding common areas such as buffer preparation, totaling […***…].

“Field” shall mean human therapeutic or prophylactic or diagnostic applications for the prevention, treatment and/or cure of diseases and physical conditions.

“Filled Product” shall mean sterile Product that is in Process and has been filled into its final primary packaging for further labeling or packaging activities.

“Genetic Material” shall mean the master cell bank of the E. coli strain expressing the […*** …] used in the Processing of the Bulk Product.

“IND” shall mean an Investigational New Drug application, as defined in 21 C.F.R. 312.3, and filed with the FDA or any equivalent foreign Regulatory Agency.

“Joint Inventions” shall mean (i) all patentable inventions jointly invented (as determined in accordance with United States patent law) by Savient (or its Affiliates) and BTG (or its Affiliates) pursuant to their activities relating to this Agreement during the Term, and (ii) all Know-How that Savient (or its Affiliates) and BTG (or its Affiliates) jointly make, create, develop, discover, conceive or reduce to practice pursuant to their activities relating to this Agreement during the Term other than those inventions described in the preceding clause (i).

“Know-How” shall mean all technical information, data (including, without limitation, regulatory data) patentable and unpatentable inventions, developments, discoveries, methods and processes that are, in each case, not disclosed in a published patent application or patent or otherwise publicly available, and includes, without limitation, BTG Know-How.

“Legal Requirements” shall mean (i) any present and future national, state, local or similar laws (whether under statute, rule, regulation or otherwise), (ii) requirements under permits, orders, decrees, judgments or directives, and requirements of applicable Regulatory Agencies (including, without limitation, cGMP) and (iii) regulations pertaining to commercially ***Confidential Treatment Requested

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available biologic pharmaceutical products or to maintaining a BLA (with respect to each of the foregoing, as amended or revised from time to time).

1.27 “Negligence” shall mean an act or omission implying either a failure to exercise the care which a reasonable or prudent person would do in the circumstances, or taking action which such a reasonable person would not; as used herein, a reasonable or prudent person shall be considered to have such expertise as would be required in order to allow such party to perform the obligations of the parties hereunder with the level of skill and competence which prevail in the pharmaceutical industry.

1.28 “Non-Conforming Bulk Product” shall mean any Bulk Product which, at the time of delivery in accordance with ARTICLE 7, does not meet the Commercial Bulk Product Specifications.

1.29 “OCS” shall mean Office of Chief Scientist, The Ministry of Industry and Trade, State of Israel.

1.30 “OCS Requirements” shall mean the requirements of OCS which apply to the Product, including, without limitation, as specified pursuant to The Encouragement of Research and Development in Industry Law of 1984, as amended, and in the agreements by and among Savient, BTG and the OCS.

1.31 “Person” shall mean any individual, partnership, corporation, limited liability company, unincorporated organization or association, any trust or any other business entity.

1.32 “Process” or “Processing” shall mean the act of purification, preparation, filling, testing and any other pharmaceutical manufacturing procedures, or any part thereof (including, but not limited to, product or process specifications, testing or test methods, raw material specifications or suppliers, equipment, etc.), relating to, as applicable, the Bulk Product and Product.

1.33 “Product” shall mean pharmaceutical products containing Bulk Product ordered by Savient pursuant to this Agreement.

1.34 “Product Liability Claim” shall mean a Claim of a Third Party (other than a Claim arising out of use of the Product in a clinical trial) that (i) arises as a result of the use of the Product during the Term that results in personal injury or death or (ii) is in anticipation of or intended to prevent or forestall personal injury or death as a result of the use of the Product during the Term.

1.35 “Product Technology” shall mean the (i) Savient Patent Rights, (ii) Savient Know-How, (iii) BTG Assigned Improvements, (iv) BTG Licensed Improvements, (v) BTG Know-How, (vi) any developments, discoveries, inventions, improvements, designs, methods, processes, techniques, devices, formulae, and trade secrets which are or may be (A) developed, acquired or conceived by Savient and/or BTG and are derived from the Development Plan performed under the terms of the Development Agreement, developed by BTG prior to July 17, 2005 and related to the Bulk Product or used in the Processing of Bulk Product, or are derived from the manufacture and supply of Bulk Product, or (B) used in the Processing of Bulk Product.
1.36 “Product Specifications” shall mean the manufacturing and quality specifications for the Product as attached hereto as Exhibit G as they may be modified from time to time.

1.37 “Pro-Rata Basis” shall mean when Facility changes will be implemented pursuant to the provisions of Section 6.03(ii)(B) and:

(i) such Facility changes will impact the totality of the Total Manufacturing Area and/or the common and technical areas related to manufacturing, the cost of the changes multiplied by a percentage, where such percentage equals […***…]

(ii) when such Facility changes will impact only the Fermentation Area, […***…]

(iii) when such Facility changes will impact only the Recovery Area, […***…]

1.38 “Quality Agreement” shall mean that certain Quality Agreement by and between the Parties hereto, dated as of the date hereof and attached to this Agreement as Exhibit D.

1.39 “Regulatory Agency” shall mean with respect to the United States, the FDA, or, in the case of a country in the Territory other than the United States, such other appropriate regulatory agency with similar responsibilities.

1.40 “Residual Rights Agreement” shall mean that certain Amended and Restated Residual Rights Agreement by and between Savient and BTG, effective as of July 17, 2005, and attached hereto as Exhibit F.

1.41 “SAE” shall mean, with respect to the Product, any serious adverse event occurring during clinical trials of the drug at any dose that results in any of the following outcomes: death, a life-threatening adverse drug experience, inpatient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect. Important medical events that may not result in death, be life-threatening or require hospitalization may be considered a serious adverse drug experience when, based upon appropriate medical judgment, they may jeopardize the patient or subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition. Examples of such medical events include allergic bronchospasm requiring intensive treatment in an emergency room or at home, blood dyscrasias or convulsions that do not result in patient hospitalization, or the development of drug dependency or drug abuse.

1.42 “Savient Improvements” shall mean all inventions related to the Bulk Product or Product (including, without limitation, its pharmaceutical utility) and/or Processing of the Bulk Product or Product which are made, created, developed or conceived, or reduced to practice or come to be owned, by Savient or an Affiliate of Savient and are dominated by the Savient Patent Rights.

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1.43 “Savient Indemnitee” shall mean Savient and its Affiliates, and each of their respective directors, officers, employees and agents.

1.44 “Savient Know-How” shall mean all Know-How developed by Savient or any of its Affiliates during the Term relating to (i) the Bulk Product or Product (including, without limitation, its pharmaceutical utility) or (ii) the Processing of the Bulk Product or Product, and shall include, without limitation, all data relating to formulation, analytical methods, pre-clinical and clinical trials, pharmacology, toxicology, regulatory information, and data relating to the manufacture and use of such Bulk Product or Product.

1.45 “Savient Patent Rights” shall mean all valid patent claims contained in (i) the patent(s) and patent applications listed on Exhibit A; (ii) all converted provisionals, divisions, continuations, continuations-in-part, reissues, reexaminations or extensions thereof; (iii) any corresponding foreign counterparts and equivalents thereof; and (iv) any patents or patent applications filed after July 17, 2005.

1.46 “Sublicensee” shall mean any Third Party or Affiliate to whom a sublicense has been granted pursuant to Section 2.05.

1.47 “Term” shall have the meaning set forth in Section 11.01.

1.48 “Territory” shall mean, collectively, each country in the world.

1.49 “Third Party” shall mean any Person who is not a Party or an Affiliate under this Agreement.

1.50 “Time” shall mean for the purposes of the calculation of Pro Rata Basis, as defined in Section 1.37, the percentage based on [... *** …] 

1.51 “United States” shall mean the fifty states of the United States of America, the District of Columbia and all territories and possessions of the United States of America and any other location where the FDA has jurisdiction over medicinal products intended for human use.

ARTICLE 2
INTELLECTUAL PROPERTY LICENSES

2.01 Grant of Licenses; Assignment.

(i) No restriction of license rights under the Residual Rights Agreement. The parties are agreed that the following provisions shall not in any way remove or restrict the rights pertaining to the grant of licenses to either party (“RRA License Rights”) as they exist pursuant to the Residual Rights Agreement. In the event of a conflict between this Agreement

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and the Residual Rights Agreement with respect to the RRA License Rights, the relevant provisions of the Residual Rights Agreement shall take precedence.

(ii) **Grant by Savient.** Savient hereby grants to BTG, and, if applicable, shall cause its Affiliates to grant to BTG, a fully paid-up, royalty-free, non-exclusive license within the State of Israel (“BTG Territory”) to manufacture, have manufactured, produce, have developed, develop, have developed, use, have used, offer for sale, have offered for sale, sell, have sold, export, and have exported Bulk Product under the Savient Patent Rights, the Savient Know-How, and the rights to the Savient Improvements for supply exclusively to Savient.

(iii) **Grant by BTG.** BTG hereby grants to Savient and, if applicable, shall cause its Affiliates to grant to Savient, a fully paid-up, royalty-free, non-exclusive license in the Territory to manufacture, have manufactured,***Confidential Treatment Requested*** produce, have produced, develop, have developed, use, have used, offer for sale, have offered for sale, sell, have sold, export, and have exported Bulk Product under the BTG Licensed Improvements and BTG Know-How.

(iv) **Assignment by BTG.** BTG shall promptly assign (and, if applicable, shall cause its Affiliates to assign) to Savient all right title and interest in and to any invention or discovery which may be claimed as a BTG Assigned Improvement. BTG shall execute (and, if applicable, shall cause its Affiliates to execute) such documents as may be necessary to obtain, perfect or maintain any patent rights arising out of the BTG Assigned Improvements, and shall cooperate with Savient so far as reasonably necessary with respect to furnishing all information and data in its possession which is reasonably necessary or useful to obtain and maintain such patent rights.

2.02 **Notice of Improvements & Joint Inventions.** BTG shall give Notice to Savient of all BTG Assigned Improvements, BTG Licensed Improvements and Joint Inventions promptly within due course of the discovery or creation thereof, but in any event at least thirty (30) days prior to any proposed publication thereof by BTG, its Affiliates or Sublicensees. Savient shall give Notice to BTG of all Savient Improvements and Joint Inventions promptly within due course of the discovery or creation thereof, but in any event at least thirty (30) days prior to any proposed publication thereof by Savient, its Affiliates or Sublicensees. The Parties shall, in any event, notify each other no less than annually, of whether they have made any BTG Assigned Improvements, BTG Licensed Improvements, Savient Improvements or Joint Inventions, as the case may be.

2.03 **Disclosure of Know-How.** BTG shall disclose, and shall cause its Affiliates to disclose, as soon as reasonably practicable, to Savient all BTG Know-How acquired, developed or which comes to be possessed by the BTG or any of its Affiliates after the date hereof (and upon reasonable request by Savient, shall make such disclosure in writing).

2.04 **Use of Joint Inventions.**

(i) Subject to subsections (ii) and (iii) hereof, each Party shall have the right to practice under the Joint Invention rights without any duty of accounting to the other Party.

(ii) BTG agrees that, except as otherwise agreed by the Parties in writing, it shall not (and shall, if applicable, ensure that its Affiliates shall not) (A) grant any license under the
Joint Invention Rights to any other Person to manufacture, have manufactured, produce, have produced, develop, have developed, use, have used, market, have marketed, import, have imported, export, have exported, sell or have sold any Competing Product, or (B) practice any Claim under the Joint Inventions rights to manufacture, have manufactured, produce, have produced, develop, have developed, use, have used, market, have marketed, import, have imported, export, have exported, sell or have sold any Competing Product.

(iii) Each Party agrees that it shall (and shall, if applicable, ensure that its Affiliates shall) notify the other Party before granting any license to any other Person to manufacture, have manufactured, produce, have produced, develop, have developed, use, have used, import, have imported, export, have exported, offer for sale, have offered for sale, sell or have sold any product outside the Field under the Joint Invention rights; provided, however, that neither Party shall grant or purport to grant any license under the Joint Invention rights that is exclusive as to the other Party or its assignees or Sublicensees without the prior written consent of such other Party.

2.05 Sublicensing. Savient shall have the right to grant sublicenses of licenses granted to it in Section 2.01 of this Agreement to its Affiliates and to any Third Party; provided, however, that Savient, to the extent applicable, (i) ensures that each such Sublicensee and Third Party shall consent to be bound by the terms of this Agreement as a Sublicensee or Third Party and to the same extent as Savient with respect to such Sublicenses or Third Party's activities, (ii) informs BTG, in confidence, of each sublicense granted, and any modification or termination thereof, within sixty (60) days after the modification, or termination of a sublicense and (iii) guarantees to BTG the performance of any of its obligations which it fulfills through sublicensing and remains primarily liable for the performance of such obligations.

2.06 OCS Requirements. BTG shall not without prior written approval of Savient (and, if applicable, shall ensure that its Affiliates shall not) take any action (including, without limitation, Processing the Bulk Product outside the State of Israel) which would (i) cause either Party (or any of their Affiliates) to violate any of the OCS Requirements or (ii) result in any increase of royalties due to OCS. Additionally, upon request by Savient, BTG shall cooperate and collaborate with Savient in applying to the OCS for Savient to carry out the manufacture of the Bulk Product through a Third Party outside the State of Israel. The Parties acknowledge the rights and obligations of each Party under Section 5 of the Residual Rights Agreement and each Party shall honor such rights and obligations set forth therein.

ARTICLE 3
SPECIFICATIONS; ONGOING REGULATORY ASSISTANCE

3.01 Specifications.

(i) Current Provisional Bulk Product Specifications. The Current Provisional Bulk Product Specifications are attached as Exhibit C. The Parties are agreed that the Current ProvisionalBulk Product Specifications may still be subject to modification based on the outcome of the Validation, as defined and performed pursuant to the Development.
(ii) **Initial Commercial Bulk Product Specifications.** The initial Commercial Bulk Product Specifications shall be agreed upon in writing by the Parties, as soon as reasonably practicable after the conclusion of the Validation, as defined and performed pursuant to the Development Agreement, but in no event later than ninety (90) days from the conclusion of the Validation, unless the Parties shall mutually agree to extend such time period (hereinafter the “Commercial Bulk Product Specifications”). The Commercial Bulk Product Specifications shall be incorporated into this Agreement by formal amendment as Exhibit C-1 and shall be the controlling standards for the manufacture of Bulk Product pursuant to this Agreement unless and until they are changed by written agreement between the parties. In determining the Commercial Bulk Product Specifications, the Parties shall take into consideration particularly:

(i) the results of the subsequent development activity of BTG under the Development Agreement and

(ii) the results of the Validation as defined and performed pursuant to the Development Agreement.

(iii) **Amendment of Commercial Bulk Product Specifications.** Subject to the provisions of Section 6.02 and 6.03 (including the cost reimbursements provisions thereof), Savient shall have the right to amend the Commercial Bulk Product Specifications from time to time; *provided, however,* that (i) Savient shall use commercially reasonable efforts to minimize the frequency of such changes and shall provide BTG with reasonable advanced Notice of any changes to the Commercial Bulk Product Specifications (but, in any event, at least ninety (90) days advance notice) and (ii) the Parties have agreed in writing upon the implications and costs related to any contemplated changes pursuant to this Section 3.01, which agreement shall not be unreasonably conditioned, withheld or delayed. Without in any way limiting the foregoing, any modifications to the Commercial Bulk Product Specifications required by any Regulatory Agency with jurisdiction to require such modifications shall be made in accordance therewith.

3.02 **Ongoing Assistance by BTG for Initial and Subsequent Filings or Applications.**

(i) Upon the expiration or earlier termination of the Development Agreement, BTG hereby agrees to provide, in respect to any jurisdiction within the Territory (A) all information and assistance which is reasonably necessary for or useful in the preparation of (i) comprehensive and complete INDs and BLAs, including, without limitation, the Chemistry Manufacturing and Controls (CMC) section of the BLAs for the Product, (ii) any amendments and supplements to such filings and applications, (iii) subsequent filings and applications for secondary indications or additional marketing, sale, importing, exporting authorizations, or (iv) similar filings and applications and (B) access to the Facility and pertinent information to FDA inspectors conducting the pre-approval inspection. All documents to be supplied by BTG pursuant to this Section 3.02 or any other provision of this Agreement shall be translated by BTG into the English language as may be necessary. Any labor costs of BTG employees and/or Third Party expenses incurred by BTG related to this assistance shall be reimbursed by Savient in the manner and at the rates set forth on Exhibit B hereto.
(ii) **Ownership.** The Parties agree that all INDs and BLAs arising under this Agreement, including any and all modifications and supplements thereto, will be owned by and held in the name of Savient and will list BTG in accordance with its role as contemplated under this Agreement and in compliance with the Legal Requirements. BTG shall have no rights in or to the IND or BLA and any and all modifications and supplements thereto, other than any rights specifically granted pursuant to this Agreement.

3.03 **Record and Files.** Upon the expiration or earlier termination of the Development Agreement, BTG shall maintain those documents required by the applicable Legal Requirements during the Term and for any period required by such Legal Requirements. BTG shall maintain those records specified in 21 C.F.R. § 600.12(e) for cases of divided manufacturing responsibility for biologics and shall provide the records as specified therein to any Third Party fillers or manufacturers designated by Savient.

**ARTICLE 4**

**SUPPLY OF INGREDIENTS AND MATERIALS**

4.01 **Procurement of Ingredients and Materials.**

(i) **Ordinary and Safety Stocks.** Ingredients and materials necessary for the Processing of Bulk Product shall be purchased and stored by BTG in accordance with the terms of the Quality Agreement and in commercially reasonable and prudent production and safety stock quantities necessary to meet the Bulk Product Forecast (as defined in Section 5.03) giving due regard to the potential for production and batch failures, Bulk Product loss until delivery to Savient and the amendment of the Bulk Product Forecast in accordance with Section 5.06.

(ii) **PEG Purchases from NOF.** The foregoing notwithstanding, Savient, in its sole and absolute discretion, shall have the right, but not the obligation, to directly contract with NOF Corporation for m-PEG-NPC (mono-methoxy polyethylene glycol nitro-phenyl carbonate) (hereinafter the “PEG”) necessary for BTG to Process the Bulk Product, *provided, however,* in the event Savient elects to do so, then (i) Savient shall use best efforts to ensure that adequate stock, including safety stock quantities, of PEG, in amounts to be agreed upon between the Parties, are delivered to BTG in a timely manner in order to enable BTG to fulfill its obligations to Process Bulk Product to meet the requirements of all Purchase Orders placed by Savient pursuant to Section 5.05; (ii) BTG agrees that it will, in accordance with the terms of the Quality Agreement, store and test, as applicable, such stock of PEG delivered by NOF; (iii) BTG shall reimburse Savient for the cost of any PEG utilized in the Processing of Bulk Product that is determined to be (a) Non-Conforming Bulk Product, or (b) a failed batch; (iv) that such agreement between Savient and NOF shall not materially interfere with the terms of this Agreement or unduly interfere with BTG’s ability to carry out its work; and (v) the inability of BTG to perform under the terms of this Agreement, where such failure is due to the failure of Savient to ensure the timely delivery to BTG of adequate stock of PEG shall not be deemed to be a breach by BTG of its obligations under this Agreement.
4.02 Maintenance of Genetic Material. From the Effective Date, BTG shall (or shall procure one of its Affiliates to) maintain such quantity of Genetic Material to meet Purchase Orders placed and the Bulk Product Forecast provided by Savient pursuant to ARTICLE 5. In the event of the expiration or termination of this Agreement, BTG shall, within thirty (30) days of the effective date of such expiration or termination, transfer to Savient or its designee any and all remaining quantities of Genetic Material. Any labor costs of BTG employees and/or Third Party expenses incurred by BTG related to transfer of Genetic Material shall be reimbursed by Savient in the manner and at the rates set forth on Exhibit B hereto.

4.03 Reference Materials. BTG shall provide Savient with any physical, chemical or biological material that is otherwise unavailable, which is to be used as a reference standard in the testing of Bulk Product, ingredients or raw materials. Such physical, chemical or biological material shall be provided to Savient at […***…]. Payments due by Savient under this Section 4.03 shall be payable by Savient no later than […***…] days after the invoice date.

ARTICLE 5

BTG FACILITY CAPACITY, FORECASTING, PURCHASE ORDERS AND ORDER CONFIRMATIONS

5.01 BTG Facility Bulk Product Processing Capacity and Capacity Reservation Fee.

(i) Existing Facility Capacity. Savient and BTG acknowledge that based on the (A) Purification Area used in the Processing of Bulk Product, (B) the Fermentation Area and the Recovery Area used from time to time for the Processing of Bulk Product, (C) methods, processes and procedures currently utilized in the Processing of Bulk Material as of the Effective Date, and (D) […] in the Facility as of the Effective Date (hereinafter the “Capacity Parameters”), the BTG Facility has the projected capacity to Process up to […] batches of Bulk Product per calendar year in the absence of other products manufactured in the areas specified above. Additionally, Savient and BTG acknowledge that this capacity could be increased, upon appropriate advance notice, if additional shift operations were implemented and/or certain Facility changes were made.

(ii) Subject to the terms set forth in this Section 5.01(ii), in order to reserve capacity at BTG for the Processing of Bulk Product, for all Bulk Product forecasted by Savient to be Processed by BTG and purchased by Savient prior to the Commercial Launch of the Product and through […] (hereinafter the “Reservation Fee Period”), Savient shall remit to BTG a Processing Capacity Reservation Fee in the amounts and manner set forth below:

(A) Within ten (10) Business Days of the provision of the Preliminary Bulk Product Forecast pursuant to Section 5.02, Savient shall remit to BTG a Processing Capacity Reservation Fee of […] ($[…***…]).

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Within ten (10) Business Days of the provision of the Bulk Product Launch Forecast pursuant to Section 5.03, Savient shall remit to BTG a Processing Capacity Reservation Fee equal to the amount required to bring Savient’s Processing Capacity Reservation Fee, when added to the amount remitted under Section 5.01(ii)(A), to [***] percent ([***]%) of the applicable Price, as defined in Section 8.01, of the number of batches of Bulk Product reflected on such Bulk Product Launch Forecast, provided, however, if the amount calculated under this Section 5.01(ii)(B) is less than the Processing Capacity Reservation Fee remitted under Section 5.01(ii)(A) the Processing Capacity Reservation Fee shall remain at such higher amount. In the event that the initial Bulk Product Launch Forecast pursuant to section 5.03 is not provided by September 30, 2007, then Savient shall remit monthly to BTG an additional Processing Capacity Reservation Fee of [***] for each additional month that passes until the provision of the initial Bulk Product Launch Forecast.

Within ten (10) Business Days of the provision of any Bulk Product Forecast pursuant to Section 5.03 or any Amended Bulk Product Forecast provided by Savient pursuant to Section 5.06 provided by Savient on or before July 1, 2009, Savient shall remit to BTG a Processing Capacity Reservation Fee equal to the amount required to bring Savient’s Processing Capacity Reservation Fee, when added to the amount remitted under Sections 5.01(ii)(A) and 5.01(ii)(B), to [***] percent ([***]%) of the applicable Price, as defined in Section 8.01, of the number of batches of Bulk Product reflected on such Bulk Product Forecast or Amended Bulk Product Forecast that are projected for purchase during the Reservation Fee Period, provided, however, if the amount calculated under this Section 5.01(ii)(C) is less than the aggregate of the Processing Capacity Reservation Fee remitted under Sections 5.01(ii)(A) and 5.01(B) the Processing Capacity Reservation Fee shall remain at such higher amount.

All Processing Capacity Reservation Fee amounts remitted by Savient to BTG under this Section 5.01(ii) shall:

1. earn interest at the [***] with the interest earned thereon inuring to the sole benefit of Savient;

2. be credited, inclusive of interest, by BTG on a per batch basis by providing a [***]% discount on the value of each batch at the time of invoicing for Bulk Product purchased by Savient during the Reservation Fee Period until it is fully utilized, provided however, except as otherwise provided in Sections 5.01(ii)(F), 5.01(ii)(G) and 5.01(ii)(H), any uncredited Processing Capacity Reservation Fee, inclusive of interest, remaining at the end of the Reservation Fee Period due to a failure by Savient to take delivery of Bulk Product which conforms to the Commercial Bulk Product Specifications and which is ordered pursuant to a Bulk Product Forecast provided pursuant to Section 5.03 or an Amended Bulk Product Forecast provided pursuant to Section 5.06 and which is otherwise properly amended pursuant to Section 5.05 shall be forfeited by Savient to BTG. For purposes of clarity, the credit of the Processing Capacity Reservation Fee shall be allowed only for the number of batches of Bulk Product purchased by Savient during the Reservation Fee Period.
Capacity Reservation Fee shall accrue upon the delivery of the Bulk Product by BTG to Savient and shall be reflected on the invoice which relates to the Bulk Product shipment in question; and

(3) BTG shall provide to Savient a quarterly statement within […] Business Days of the end of each calendar quarter of the then current balance of the Processing Capacity Reservation Fee, inclusive of interest, available for credit to the purchase of Bulk Product by Savient.

(E) Subject to the last sentence of this Section 5.01(ii)(E), Savient and BTG acknowledge and agree that by the conclusion of the Reservation Fee Period the demand for Savient’s Product will be sufficiently capable of reliable forecasting as to negate the need for a Processing Capacity Reservation Fee and that such will not be required for Bulk Product forecasted for purchase beyond the expiration of the Reservation Fee Period. On that basis, the final Processing Capacity Reservation Fee shall be due based on […] percent ([…%]) of the applicable Price, as defined in Section 8.01, of the number of batches of Bulk Product reflected on the Bulk Product Forecast or Amended Bulk Product Forecast that is submitted for the period […]. If there is a delay in the commercial launch of the Product beyond […] or any other factor reasonably preventing a reliable Bulk Product forecasting by the conclusion of the Reservation Fee Period, then the Parties will meet in good faith and discuss whether a further capacity reservation fee is necessary or appropriate and, if it is agreed necessary, for what duration and amount, if any.

(F) Anything to the contrary notwithstanding, in the event that any amount of the Processing Capacity Reservation Fee, inclusive of interest, remains unused or unapplied at the end of the Reservation Fee Period due to a failure by BTG for any reason, including Force Majeure conditions affecting BTG or the import, export or transportation of the Bulk Product which is beyond the reasonable control of BTG or Savient, to timely deliver any number of batches of Bulk Product properly ordered and accepted in accordance with the terms of this Agreement, then any amount of the Processing Capacity Reservation Fee, inclusive of interest, which would have been used for or applied to the purchase of Bulk Product but for the non-delivery or untimely delivery thereof, shall be refunded to Savient by wire transfer within […] Business Days of the end of the Reservation Fee Period. For purposes of determining timely delivery pursuant to this section, the delivery dates identified in a Purchase Order submitted and accepted in accordance with Section 5.05 herein shall be considered binding, except in the event of a Force Majeure condition affecting BTG or the import, export or transportation of the Bulk Product which is beyond the reasonable control of BTG or Savient, in which case the Parties shall agree upon a reasonable extension of the delivery date in accordance with Section 14.14 hereof.

(G) In the event this Agreement is terminated by Savient pursuant to Sections 11.02 (ii) (for Force Majeure conditions affecting BTG), 11.02 (iii) (Material Breach by BTG), or 11.02 (v) (for insolvency of BTG) hereof, any amount of the Processing Capacity Reservation Fee and accrued interest thereon which has not been applied to payments for Bulk Product actually purchased by and delivered to Savient, shall be

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returned to Savient via wire transfer within [...] days of the effective date of termination of this Agreement. In the event this Agreement is terminated with the mutual consent of both Parties, then, as part of such mutual consent, the Parties shall discuss in good faith and reach resolution with regard to the disposition of the then-existing Capacity Reservation Fee, including any interest thereon, having due regard for the reasons and basis that lead the Parties to terminate this Agreement by mutual consent.

(H) Savient and BTG further acknowledge and agree that in the event the BLA for Savient’s Product is not filed with the FDA on or before December 31, 2008 then the Processing Capacity Reservation Fee previously paid by Savient to BTG and accrued interest thereon relating to Bulk Product Forecasts provided by Savient before December 31, 2008 shall be refundable to Savient only in the event and to the extent that BTG is able, with the use of best efforts, to mitigate its losses by scheduling into the Processing Capacity reserved for Savient during such period production of a product or products on behalf of BTG, an Affiliate, or a third party, or any combination thereof.

5.02 Preliminary Bulk Product Forecast. As soon as reasonably practicable, but in no event later than thirty (30) days from the date of full execution of this Agreement, Savient shall provide BTG a preliminary, non-binding projection of its first eighteen month rolling forecast that sets forth Savient’s then best estimate of the date for the delivery of the first commercial quantity of Bulk Product and the total quantity of Bulk Product for commercial supply that Savient expects to order from BTG within the eighteen (18) month period following delivery of such first commercial quantity (“Preliminary Bulk Product Forecast”). In the Preliminary Bulk Product Forecast, Savient shall:

   (i) set forth the assumptions it is utilizing for the establishment of the date for the delivery of the first commercial quantity of Bulk Product;

   (ii) include a breakdown of the total quantity of Bulk Product by month for the eighteen months following the delivery of the first commercial order; and

   (iii) identify the variables, Process and regulatory questions and issues and logistical considerations that could impact the date for the delivery of the first commercial quantity of Bulk Product.

Within thirty (30) days of the issuance of the Preliminary Bulk Product Forecast, Savient and BTG shall meet to commence good faith discussions and agree on the methodology and timeline for bringing to resolution and conclusion any and all Process and regulatory questions, issues and logistical considerations outlined in the Preliminary Bulk Product Forecast. Savient and BTG shall use their mutual best efforts to conclude these discussions and reach final resolution as soon as reasonably practicable, but in no event later than July 30, 2007, unless the parties mutually agree that additional time is required.

5.03 Bulk Product Launch Forecast and Bulk Product Forecast. Commencing at least twelve (12) months prior to the delivery date of the first Firm Order, Savient shall submit to BTG its final initial launch Bulk Product forecast which shall set forth month by month an eighteen (18) month rolling forecast that sets forth the total quantity of Bulk Product for commercial supply

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that Savient either has ordered, desires to order, or expects to order from BTG within the eighteen (18) month period following
delivery of such first commercial quantity (“Bulk Product Launch Forecast”). Thereafter, Savient shall provide on a monthly basis on
or before the first Business Day of each calendar month an updated Bulk Product forecast for the next ensuing eighteen (18) month
rolling period (“Bulk Product Forecast”). In the Bulk Product Forecast, Savient shall:

(i) include a breakdown of the total quantity of Bulk Product by month for the following eighteen (18) month rolling
period; and

(ii) in respect of the monthly breakdown under (i) above, identify the relevant set of Bulk Product Specifications.

As used herein, the term “Forecast” shall mean, as applicable, the Bulk Product Launch Forecast or Bulk Product Forecast, as may be
amended from time to time pursuant to Section 5.06 hereof.

5.04 Firm Orders and Firm Forecasts. The Bulk Product Forecast submitted monthly by Savient shall breakdown by month of the
next ensuing eighteen (18) months of the Bulk Product Forecast and shall consist of:

i. a rolling firm irrevocable order for the first two (2) quarters (i.e. quarters 1 and 2) of the Bulk Product Forecast
(“Firm Order”), which shall each be the subject of a Purchase Order delivered and confirmed in accordance with Section 5.05;

ii. a rolling two (2) quarter forecast for the second two (2) quarters (i.e. quarters 3 and 4) of the Bulk Product Forecast
(each a quarterly “Firm Forecast”); and

iii. a rolling two (2) quarter estimate for the third two (2) quarters (i.e. quarters 5 and 6) of the Bulk Forecast (each a
quarterly “Estimated Forecast”).

5.05 Purchase Orders and Order Confirmations. Savient will accompany its monthly update of the Bulk Product Forecast with a
written purchase order (“Purchase Order”) for each new Firm Order that was only a Firm Forecast in the previous month’s Bulk
Product Forecast. Each Purchase Order shall specify the Bulk Product ordered and the time, manner and address of delivery, all of
which shall be subject to this ARTICLE 5. BTG shall confirm each Purchase Order in a written order confirmation within seven (7)
Business Days after receipt of the Purchase Order.

5.06 Amending Forecasts. Any Bulk Product Forecast that is not a Firm Order is to be considered a forecast or estimate to be used
for planning purposes, and shall not be construed as a firm commitment by Savient to BTG and thus can be increased or reduced by
Savient from time to time. Savient shall be entitled at any time up until and including the time that a Firm Forecast or Estimated
Forecast becomes a Firm Order, to increase or decrease such monthly Firm Forecast or Estimated Forecast for Bulk Product, provided,
however, such increases or decreases on a monthly basis shall not be greater than twenty-five percent (25%) of the originally
forecasted quantity for such month and each month may not be increased and decreased more than one time. As a request by Savient to
increase the quantity of Bulk Product in a Firm Forecast prior to its becoming a Firm Order may require longer lead times for delivery than
requested by Savient, both Parties shall agree jointly on a new delivery date as close as possible to the requested date having due
regard for BTG’s commercial commitments to Third Parties and its own production needs, such agreement to not be unreasonably
withheld, conditioned or delayed. Once a Firm Forecast becomes a Firm Order, Savient may not reduce it, but may request that BTG
increase the quantity of Bulk Product subject to a Firm Order and BTG shall use commercially reasonable efforts to fill the increased
order.

5.07 Fulfillment of Purchase Orders; Review of Forecasts.

   (i) BTG shall satisfy, in accordance with their terms, Savient’s Purchase Orders, provided and confirmed in
       accordance with Section 5.05. BTG shall promptly notify Savient if it becomes aware or believes that it will not be able to satisfy
       such Purchase Orders on time, in full, or at all, which Notice shall include an explanation in reasonable detail of the reason for
       BTG’s failure to comply with a confirmed Purchase Order and its proposed course of action for remedying such failure. Savient
       shall be entitled to request BTG to produce evidence to support its Notice, BTG’s response to such request shall not be
       unreasonably denied or delayed.

   (ii) Within ten (10) Business Days of its receipt of the Bulk Product Launch Forecast or a Bulk Product Forecast or any
       amendment thereto, BTG shall review such Forecast and in the event that BTG believes that it will not be able to satisfy the
       quantity, time or manner for delivery of any portion of the order for any amount of Bulk Product identified in any portion therein
       (i.e.: in the Firm Order, Firm Forecast or Estimated Forecast portions), BTG shall notify Savient of the same, provide a reasonable
       explanation of the cause of its inability to do so and provide alternatives for the delivery of the quantity and/or scheduling or
       manner of delivery to satisfy the requirements of Savient.

   (iii) Unless BTG has indicated, in accordance with Section 5.07(ii), an inability to satisfy the identified quantities of
       Bulk Product in the Bulk Product Launch Forecast, any Bulk Product Forecast, or any amendment thereto, BTG may not refuse to
       accept a Purchase Order which does not deviate from the previously provided Bulk Product Launch Forecast, Bulk Product
       Forecast or amended forecast, as the case may be when, on a rolling basis, months contained in a Firm Forecast or Estimated
       Forecast period becomes a Firm Order.

   (iv) In the event that BTG notifies Savient of its inability to supply any subject quantity of Bulk Product identified in the
       Bulk Product Launch Forecast, any Bulk Product Forecast or amended forecast, the parties agree to work together in good faith to
       expeditiously resolve the discrepancy between the subject forecast and BTG’s inability to supply Bulk Product in accordance
       therewith.

5.08 Effect of Supply Failure. In the event of a Supply Failure (as defined herein), no forecast or estimate shall be considered a
Firm Order until such time as BTG proves to Savient’s reasonable satisfaction that the cause of such Supply Failure has been
corrected. “Supply Failure” shall mean BTG has experienced [...] failed batches of Bulk Product within a calendar quarter, or
[...] failed batches of Bulk Product aggregated over the course of two consecutive quarters, or [...] failed batches of Bulk
Product aggregated over the course of a calendar year. For purposes of this definition, any Bulk Product that is discovered and notified
by Savient in accordance with Section 6.04 (iv) to be Non-Conforming Bulk Product after

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delivery shall be considered a failed batch. In the event of a Supply Failure during the Reservation Fee Period, the period covered by the Reservation Fee Period shall be extended by the quarterly or other period of such Supply Failure.

5.09 **Preferential Right of Supply.** BTG shall schedule its own products or those of an Affiliate for processing at the Facility and shall not accept from a customer that is a Third Party any orders for product processed at the Facility to the extent the fulfillment of such scheduling or order could, at the time of BTG’s scheduling or acceptance of such Third Party order, reasonably be expected to impede BTG’s ability to fulfill Savient’s Bulk Product Requirements as reflected on the then current monthly Firm Orders, Firm Forecast and Estimated Forecast submitted by Savient pursuant to Section 5.04 and acted upon by the Parties pursuant to Sections 5.05, 5.06, and 5.07 *supra*.

5.10 **Alternative Supplier.** Savient shall have the right to establish an alternative supplier for Bulk Product for up to twenty percent (20%) of its annual world-wide Bulk Product requirements; *provided, however,*

(i) in the event of a Supply Failure under Section 5.08 above, Savient shall have the right to purchase all of its Bulk Product requirements from an alternative supplier upon reasonable prior written notice to BTG until BTG demonstrates to Savient’s reasonable satisfaction that BTG has fully remedied such Supply Failure, and

(ii) if despite the good faith efforts of BTG to modify its Capacity Parameters to meet the needs of Savient, or, as applicable, the Parties good faith efforts to agree on cooperative methods to modify the BTG Capacity Parameters, Savient’s Forecasts for orders of Bulk Product up to the OCS Requirements are reasonably anticipated to exceed BTG’s available capacity for the Processing of Bulk Product, then Savient shall have the right to purchase any and all of its requirements of Bulk Product that Savient reasonably determines in good faith may exceed BTG’s available capacity from Savient’s alternate supplier.

BTG acknowledges its obligation to assist Savient with Technology Transfer to an alternative contract manufacturing organization in accordance with the terms and conditions of Section 5.02 of the Development Agreement.

5.11 **Effect of Termination on Purchase Order.** Unless otherwise agreed to in writing by the Parties, the termination of this Agreement shall automatically terminate all then existing Purchase Orders, except when the termination of this Agreement is pursuant to Sections 11.02 (i) (Elective) and 11.02(iv) (Material Breach by Savient), provided such material breach by Savient is not based on the non-payment of non-disputed amounts for Bulk Product deliveries, in which case BTG shall honor and fulfill any then existing Purchase Order and Savient shall pay BTG for any Purchase Order so honored and fulfilled by BTG pursuant to the terms of this Agreement.
ARTICLE 6

PRODUCTION

6.01 Obligation to Supply and Purchase. BTG shall manufacture and supply all Bulk Product quantities ordered by Savient and confirmed by BTG in accordance with the provisions of this Agreement. The Parties acknowledge and agree that, pursuant to the OCS Requirements and subject to the terms of this Agreement, Savient is obligated to order at least 80% of its annual world-wide Bulk Product requirements from BTG (“OCS Annual Requirements”) and BTG is obligated to provide such OCS Annual Requirements. BTG shall bear all risk of loss associated with production and batch failures or loss of Bulk Product until delivery to Savient, in accordance with the provisions of Section 7.01.

6.02 Process Changes.

(i) **Prior Approval of Savient Required.** Except as set forth in this Section 6.02, BTG shall not make any change to the Process for the Bulk Product that would have an impact on the Bulk Product or Product, result in a change to the Commercial Bulk Product Specifications or the Product Specifications or require submissions to or approvals from any Regulatory Agency, except by prior written approval of Savient for such change, which approval shall not be unreasonably conditioned, withheld or delayed.

(ii) **Changes Based on Applicable Legal Requirements.** BTG shall make such changes to the Process for the Bulk Product as may be required pursuant to applicable Legal Requirements; provided that BTG shall have notified Savient in advance of any required change and shall have obtained the prior written approval of Savient for such change, which approval shall not be unreasonably conditioned, withheld or delayed. Costs incurred by BTG in connection with changes to the Process for the Bulk Product that are required pursuant to Legal Requirements applicable solely to the Process for the Bulk Product, including but not limited to the purchase of equipment, shall be paid by Savient in advance, or on such other basis as the parties may agree at such time, of the incurrence of such charges at (x) [***…] percent ([***…]% of cost [***…]); (y) [***…], if applicable, as per Exhibit B; (z) [***…] at [***…] percent ([***…]% of cost; provided, however, that Savient shall have explicitly approved in writing any contemplated changes pursuant to this Section 6.02(ii) prior to BTG implementing any such changes. To the extent that the cost of any purchase of equipment is fully allocated to Savient, title to such equipment shall vest in Savient and Savient shall have the right, but not the obligation, to remove such equipment at its sole cost and expense upon the expiration or termination of this Agreement.

(iii) **Changes Made at the Request of Savient.** From time to time, Savient may request that BTG make certain changes (other than those required by Legal Requirements) to the Processing of the Bulk Product; provided, however, that (A) Savient shall seek to minimize such changes, (B) Savient shall enter into good faith negotiations with BTG regarding the implementation of any such change to the Processing of the Bulk Product, with BTG’s consent to such change not being unreasonably withheld, conditioned, delayed or denied and (C) after the Parties have agreed upon the implications and costs related to a change to the Processing
of the Bulk Product, BTG shall implement such change. Costs incurred by BTG in connection with such changes shall be reimbursed by Savient at (x) [...] percent ( [...]%) of cost excluding [...] ; (y) [...] , if applicable, as per Exhibit B; (z) [...] at [...] percent ( [...]%) of cost. To the extent that the contemplated changes requested by Savient necessitate the purchase of equipment and the cost of such purchase of equipment is fully allocated to Savient, title to such equipment shall vest in Savient and Savient shall have the right, but not the obligation, to remove such equipment at its sole cost and expense upon the expiration or termination of this Agreement.

(iv) **Improvements by BTG.** If BTG identifies a potential improvement that would (A) require changes to the Process, (B) have an impact on the Product or Bulk Product or (C) require submissions to or approvals from any Regulatory Agency, then BTG shall notify Savient of such improvement and the Parties shall, in good faith, discuss implementation of such improvement. Such improvement shall not be made unless the Parties reach agreement including, without limitation, agreement on allocation of cost, which agreement shall be at the sole discretion of the Parties. To the extent that the contemplated changes necessitate the purchase of equipment and the cost of such purchase of equipment is fully allocated to Savient, [...].

(v) **Price Adjustment.** In the event of any changes to the Process, pursuant to this Section 6.02, the Parties will meet and discuss the impact such Process changes have on the cost of Processing Bulk Product, either negative or positive, and will negotiate the resulting adjustment to the Price, as defined in Section 8.01, such adjustment to appropriately reflect the investment made by each Party in such Process changes relative to the manner in which such changes impact the cost of Processing the Bulk Product. To effectuate this Section 6.02(v), both parties shall exchange appropriately detailed documentation and analysis required to adequately assess the negative or positive impact such Process changes have on the cost of Processing Bulk Product.

6.03 **Facility Changes.**

(i) **Facility Changes by BTG.** From time to time, BTG may desire to make certain changes or modifications to its Facility (other than those required by Legal Requirements) (“Facility Changes”) which Facility Changes impact, directly or indirectly, the Processing of the Bulk Product. BTG shall be entitled to make Facility Changes which impact, directly or indirectly, the Processing of the Bulk Product without the prior approval of Savient, provided, however:

(A) prior to the approval of the BLA for Savient’s Product, BTG shall (x) use its best efforts to minimize Facility Changes which impact, directly or indirectly, the Processing of the Bulk Product, and (y) not implement any Facility Changes that will inhibit BTG’s ability to meet its obligations to supply Savient’s requirements under this Agreement or require the approval of a Supplement to the BLA for Savient’s Product, unless such change is unavoidable;
after the approval of the BLA for Savient’s Product, BTG shall not implement any Facility Changes that will inhibit BTG’s ability to meet its obligations to supply Savient’s requirement under this Agreement unless and until the Parties have agreed to a plan for inventory stockpiling to satisfy Savient’s requirements, and;

BTG shall promptly provide Savient notice of its Facility Changes which may impact, directly or indirectly, the Processing of the Bulk Product prior to the anticipated commencement of such Facility Changes and shall enter into good faith negotiations with Savient regarding the implementation of any such Facility Change and the satisfaction of Savient’s requirements for the stockpiling of safety stocks on Bulk Product in order that Savient can meet the clinical and market demands of its Product.

Under no circumstances shall BTG implement a Facility Change which may endanger the quality of the Bulk Product. Costs incurred by BTG in connection with such Facility Changes shall be borne by BTG. As used in this Section 6.03(i), “promptly” shall mean, given the nature and substance of the Facility Change, that period of time commercially reasonably necessary to complete the discussions and negotiations envisaged herein.

(ii) Facility Changes Based on Applicable Legal Requirements. BTG shall make such changes to the Facility as may be required pursuant to applicable Legal Requirements; provided that BTG shall promptly notify Savient in advance of such planned Facility Change; provided, however, that such notice from BTG shall be provided not later than ten (10) Business Days following BTG’s being notified of the necessity of changes to the Facility pursuant to Legal Requirements. Costs incurred by BTG in connection with such changes shall be reimbursed by Savient as follows:

(A) Changes Specific to Savient’s Bulk Product. To the extent that changes to the Facility, including but not limited to the purchase of equipment, are required pursuant to Legal Requirements applicable solely to the Bulk Product, costs incurred for such changes shall be paid by Savient in advance of the incurrence of such charges, or on such other basis as the parties may agree at such time, at (x) [%] percent ([%]%) of cost; (y) [%], if applicable, as per Exhibit B, and; (z) [%] at [%] percent ([%]%) of cost; provided, however, that the Parties shall have agreed to a plan for the satisfaction of Savient’s requirements for safety stock of the Bulk Product to meet the clinical and market demands of its Product. To the extent that the cost of any purchase of equipment is fully allocated to Savient, title to such equipment shall vest in Savient and Savient shall have the right, but not the obligation, to remove such equipment at its sole cost and expense upon the expiration or termination of this Agreement.

(B) Changes Not Specific to Savient’s Bulk Product. To the extent that changes to the Facility are required pursuant to Legal Requirements applicable to biopharmaceutical manufacturing in general, costs incurred for such changes shall be reimbursed by Savient.[...***...].

(C) Changes in Connection With Another Product. If changes to the Facility are required pursuant to Legal Requirements applicable solely to other activities or the

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manufacturer of other products in the Facility (even if such changes would not be required in the absence of the Processing of the Bulk Product at the Facility or if the Processing of the Bulk Product benefits from such changes) the costs incurred for such changes [...***…].

Provided, however, that in the event of changes to the Facility required pursuant to applicable Legal Requirements, the Parties shall enter into good faith negotiations regarding the implementation of any such Facility Change in a manner intended to minimize the interruption of the supply of Bulk Product and, in any event, shall agree on a method for the satisfaction of Savient’s requirements for the stockpiling of safety stocks of Bulk Product in order that Savient can meet the clinical and market demands of its Product.

(iii) Changes Made at the Request of Savient. From time to time, Savient may request that BTG make certain changes to the Purification Area (other than those required by Legal Requirements); provided, however, that

(A) Savient shall seek to minimize such changes,

(B) Savient shall enter into good faith negotiations with BTG regarding the implementation of any such change, with BTG’s consent to such change not being unreasonably withheld, conditioned, delayed or denied and

(C) after the Parties have agreed upon the implications and costs related to the Savient requested changes, BTG shall implement such changes.

Costs incurred by BTG in connection with such changes to the Facility shall be reimbursed by Savient at (x) [...***…] percent ([... ***…%] of cost [...***…]; (y) [...***…], if applicable, as per Exhibit B, and; (z) [...***…] at [...***…] percent ([... ***…%] of cost. To the extent that the contemplated changes requested by Savient necessitate the purchase of equipment and the cost of such purchase of equipment is fully allocated to Savient, title to such equipment shall vest in Savient and Savient shall have the right, but not the obligation, to remove such equipment at its sole cost and expense upon the expiration or termination of this Agreement.

(iv) Price Adjustment. In the event of any changes to the Facility, pursuant to this Section 6.03, the Parties will meet and discuss the impact such Facility changes have on the cost of Processing Bulk Product, either negative or positive, and will negotiate the resulting adjustment to the Price, as defined in Section 8.01, such adjustment to appropriately reflect the investment made by each Party in such Facility changes relative to the manner in which such changes impact the cost of Processing the Bulk Product. To effectuate this Section 6.03(iv), both parties shall exchange appropriately detailed documentation and analysis required to adequately assess the negative or positive impact such Facility changes have on the cost of Processing Bulk Product.

(v) Alternate Use of Purification Area. BTG shall have the right, but not the obligation, to utilize the Purification Area for the production, handling or storage of other
products during periods when the Purification Area is not being utilized for the Processing of Bulk Product pursuant to the terms and conditions of Section 5.7 in the Quality Agreement.

6.04 **Quality Assurance.**

(i) **Testing by BTG.** BTG shall perform quality testing using assays proposed by BTG and acceptable to Savient (which acceptance shall not be unreasonably conditioned, withheld or delayed) in order to assure that the Bulk Product complies with the Commercial Bulk Product Specifications, and shall retain samples of Bulk Product produced and records of the tests made on each such batch in accordance with applicable Legal Requirements. In addition, except as otherwise agreed by the Parties in writing, no Bulk Product shall be delivered until such Bulk Product has been processed in accordance with the tests, inspections and controls required under the Commercial Bulk Product Specifications and such other tests as the Parties may mutually agree upon in writing; provided, however, that the foregoing shall not relieve BTG of its obligation under ARTICLE 5. BTG shall maintain records with respect to the quality testing and shall deliver such records to Savient by facsimile or email and overnight courier prior to shipment of the Bulk Product. Savient shall pay for any and all costs and expenses related to the delivery of records to Savient by overnight courier. Such records shall also be made available to Savient during normal Israeli business hours, upon prior written request.

(ii) **Notice of Non-Conforming Bulk Product.** BTG shall promptly notify Savient of any Non-Conforming Bulk Product of which it becomes aware, whether or not such Non-Conforming Bulk Product been delivered to Savient or its designee, specifying the Bulk Product release testing and batch number.

(iii) **Testing by Savient.** At Savient’s election, Bulk Product may be subjected to testing by Savient at Savient’s facilities or facilities of a Third Party designated by Savient in order to verify conformance with the Commercial Bulk Product Specifications, using assays proposed by BTG and acceptable to Savient (which acceptance shall not be unreasonably conditioned, withheld or delayed). Savient shall maintain records with respect to the scope and nature of any such testing and shall disclose such records to BTG in a timely fashion.

(iv) **Notice of Delivery of Non-Conforming Bulk Product.** Savient shall notify BTG in writing of any Non-Conforming Bulk Product within

(A) forty-five (45) days of delivery of such Non-Conforming Bulk Product in the event of a defect which was discovered or could have been discovered by Savient through the use of reasonable testing methods and procedures mutually agreed to by the Parties in writing or

(B) ten (10) Business Days of Savient’s discovery of the Non-Conforming status of the Bulk Product in the event of a defect not recognizable for Savient through the use of such testing methods and procedures (hereinafter “Hidden Defect”).

Savient’s notices of any non-conforming Bulk Product shall specify the manner in which the Bulk Product fails to meet the Commercial Bulk Product Specifications., BTG shall have the
right to examine and test any Bulk Product in Savient’s possession that Savient claims is Non-Conforming. The Parties shall cooperate to determine the point at which the Bulk Product became Non-Conforming. In the event that the Parties cannot agree as to whether any Bulk Product was Non-Conforming at the time of delivery, the Parties shall promptly appoint an independent specialist (appointed by mutual agreement between the Parties, which agreement shall not be unreasonably withheld, conditioned or delayed) who shall determine whether such Bulk Product was Non-Conforming at the time of delivery. In the absence of manifest error, the independent specialist’s decision shall be conclusive and binding on the Parties.

Except as otherwise provided herein relating to Hidden Defects in the Bulk Product, if Savient fails to notify BTG in writing of any non-conforming Bulk Product within forty-five (45) days of delivery, then the Bulk Product delivered by BTG to Savient shall be deemed to be in all respects in accordance with this Agreement and Savient shall be bound to accept and pay for the same accordingly. For the avoidance of doubt, this shall apply irrespective of whether or not Savient has carried out quality testing in accordance with Section 6.04 (iii).

(v) **Observation by Savient.** During the Term, Savient (including Savient’s agents and consultants) shall have the right, at Savient’s sole cost and expense, during normal business hours and upon reasonable notice, to visit the Facility as per the Quality Agreement.

(vi) **Recalls and Voluntary Withdrawals.** If either Party becomes aware of information about distributed Product containing Bulk Product indicating that it may be Non-Conforming with respect to the Bulk Product or that there is potential adulteration, misbranding and/or any potential issues regarding safety or effectiveness with respect to the Bulk Product, it shall promptly serve Notice to that effect on the other Party. Savient will initiate an investigation and assessment of such circumstances and shall promptly notify BTG of its findings and any proposed course of action. The Parties shall meet to discuss such circumstances and to consider appropriate courses of action. Savient shall bear all costs associated with a recall of the Product unless such recall is caused by a Hidden Defect with respect to the Bulk Product, in which case BTG shall pay all costs associated with the recall, up to the maximum value of the Product Price paid by Savient to BTG for the Bulk Product containing such Hidden Defect.

(vii) **Filled Product Release Testing.** The Parties acknowledge that BTG is performing the Filled Product release testing for Savient under the terms of this Agreement and the Development Agreement until such time as the Filled Product release testing and methods can be transferred to Savient’s new third party fill/finisher of Product (hereinafter “Third Party Fill/Finisher”) or alternate Bulk Product or Product supplier. Savient will use its best efforts to effectuate the Technology Transfer of Product Technology to enable such Filled Product release testing to be performed by Savient’s Third Party Fill/Finisher or its alternate Product supplier as expeditiously as commercially practicable, and upon the approval of such amendments to this Agreement, and, if still in effect at such time, the Development Agreement shall be entered into relieving BTG of its obligation to perform release testing on Filled Product. It is the express intention of the Parties to mutually use best efforts to accomplish this Technology Transfer in adequate time to file the Product BLA with both BTG and Savient’s Third Party Fill/Finisher as alternate parties designated to perform the release testing of Filled Product, provided, however, the failure to succeed in this regard shall not be deemed
a breach by Savient, nor shall it relieve BTG of its obligations to perform such release testing until such time as Savient’s Third Party Fill/Finisher is approved to perform such release testing.

6.05 Labeling and Packaging. BTG shall label and package the Bulk Product in accordance with Legal Requirements applicable to pharmaceutical products shipped in bulk for further processing, labeling, or repackaging.

6.06 Stability. Stability related activities for which BTG is responsible shall be completed in accordance with Quality Agreement. All costs incurred by BTG related to such activities shall be reimbursed by Savient in the manner and at the rates set forth on Exhibit B hereto.

ARTICLE 7

DELIVERY; INVOICES; WARRANTY

7.01 Shipment and Delivery. BTG shall use its best efforts to deliver Bulk Product in accordance with the delivery dates specified in its order confirmations or the Purchase Orders, as may be appropriate. All shipments shall be made by BTG pursuant to Savient’s instructions FCA Ben Gurion Airport, Tel Aviv, Israel, (Incoterms 2000) with BTG being responsible for delivering the Bulk Product cleared for export to the freight forwarder nominated by Savient.

7.02 Certificate of Analysis. An appropriate Certificate of Analysis and all relevant batch records shall precede the shipment of each Bulk Product batch delivered to Savient. BTG shall, for customs purposes, upon delivery of the Bulk Product, provide Savient with a valid declaration of origin, in a form reasonably acceptable to Savient, in respect of all Bulk Product supplied to Savient under this Agreement, together with such other supporting documents relating to the origin of such Bulk Product as Savient may reasonably require. If any of the foregoing documents are only available in a language other than English, the Parties shall agree upon an English language template for such document(s), and BTG shall provide to Savient an English language translation of any deviations from the template(s); provided, however, that any documentation required by any Regulatory Authority to be supplied for the purpose of importing, exporting, selling, storing, transferring, or otherwise disposing of Bulk Product, shall be provided in the English language.

7.03 Method of Invoicing. All orders under this Agreement shall be invoiced at the price which is in effect at the time of shipment.

7.04 Warranty. BTG hereby represents and warrants to Savient that (i) the quality (purity, physical and chemical properties) of the Bulk Product supplied by it to Savient shall be in accordance with its Specifications, shall not be adulterated or misbranded within the meaning of the applicable US food and/or drug law or regulation, and shall comply with all Legal Requirements (including cGMP) and those applicable laws, rules and regulations governing the formulation, manufacture, testing prior to delivery, packaging, labeling according to the Specifications for the Bulk Product and storage and delivery of the Bulk Product and (ii) the Processing of the Bulk Product at the Facility shall be in compliance with the CMC section of
the BLA, as reviewed and attested to as accurate by BTG. This warranty is exclusive and is in lieu of all other warranties, whether written or oral, express, implied or statutory.

ARTICLE 8

PRICE

8.01 Price. The Parties agree that the Bulk Product shall be charged to Savient at the price set out in Exhibit E attached hereto (the “Price”).

8.02 Remittance of Payments. Payments due by Savient under Section 8.01 shall be payable by Savient no later than [...] days after the invoice date; provided, however, that Bulk Product associated with such payment was actually delivered in accordance with Section 7.01. Savient shall make payment by wire transfer of Dollars from a single source in the United States to a bank account designated by BTG or by such other payment method as the Parties may agree upon from time to time. Except where any amounts payable are in dispute under this Agreement and to the extent such dispute is resolved in favor of Savient, in the event of late payment, interest on any past due payments shall accrue at the rate of [...] percent per month, or if such rate shall exceed the maximum rate allowed by law, then at such maximum rate, and shall be payable on demand.

ARTICLE 9

REPORTING OF EVENTS

9.01 Exchange of Drug Safety Information. The Parties shall have the rights and responsibilities pertaining to AEs, SAEs and biologic product deviations in accordance with the provisions of the Quality Agreement attached hereto as Exhibit D.

9.02 Events Affecting Integrity or Reputation. During the Term, the Parties shall notify each other immediately of any circumstances of which they are or become aware of whereby the integrity and reputation of the Product or of the Parties are threatened by the unlawful activity of any Third Party in relation to the Product. In any such circumstances, the Parties shall cooperate to limit any damage to the Parties and/or to the Product.

9.03 Governmental Inspection. Each Party shall advise the other of any governmental communication, inspection or report which addresses or affects the Bulk Product promptly after becoming aware of it. Savient shall have the right to observe any such governmental inspection; provided, however that such governmental inspection is specifically related to the Bulk Product.

***Confidential Treatment Requested
ARTICLE 10
NON-COMPETITION AND NON-SOLICITATION

10.01 Non-Competition. During the Term of this Agreement, and for a period of thirty (30) months after the termination thereof, BTG agrees not to, and shall cause its Affiliates not to, use the Product Technology to manufacture, promote, market or sell any Competing Product in the Territory, nor will BTG acquire directly or indirectly any rights or interest in or to a Competing Product which is being manufactured, promoted, marketed or sold in the Territory. The Parties agree that an acquisition by BTG’s Affiliates of any rights or interest in or to a Competing Product which is being manufactured, promoted, marketed or sold in the Territory shall not be deemed to be an indirect acquisition by BTG, provided BTG has not participated in the acquisition process of its Affiliate.

10.02 Non-Solicitation. During the Term and for a period of thirty (30) months after the termination of this Agreement, the Parties agree that neither Party shall solicit any employee of the other Party or any of its Affiliates, with whom it has come in contact or interacted for the purposes of the performance of this Agreement, to leave the employment of the other Party or its Affiliate and accept employment or work as a consultant with the first Party, except in the event the other Party has approved such solicitation in writing. Notwithstanding the foregoing, nothing herein shall restrict or preclude either Party’s right to make generalized searches for employees by the issue of advertisement in the media (including trade media) or by engaging search firms to engage in searches that are not targeted or focused on an employee or employees of the other Party.

ARTICLE 11
TERM & TERMINATION

11.01 Term. This Agreement shall be in effect from the Effective Date and shall continue in effect until terminated pursuant to a Notice served by either Party in accordance with Section (the “Term”).

11.02 Termination. This Agreement may be terminated in accordance with the following sections:

(i) Elective. Either Party may terminate this Agreement by giving at least three (3) years’ advance Notice (“Elective Termination Notice”) to the other Party, which Elective Termination Notice may not be given prior to the seventh (7th) anniversary of the first delivery of Bulk Product by BTG under this Agreement but may be given at any time thereafter. Upon the third (3rd) anniversary of the Elective Termination Notice, this Agreement shall terminate, unless extended by mutual agreement of the Parties.

(ii) Force Majeure. In the event a Party (“Affected Party”) continues to experience a Force Majeure condition for a period of at least six (6) months after Notice of the Force Majeure was given pursuant to Section 14.04, the other Party shall be entitled to terminate this Agreement by giving a Notice of termination to Affected Party at any time while such Force...
Majeure persists thereafter with the termination becoming effective on the date specified in the Notice of termination.

(iii) **Material Breach by BTG.** Savient shall be entitled to terminate this Agreement, in the event that BTG commits a material breach of this Agreement (including, without limitation, in the event of a Supply Failure pursuant to Section 5.08 that is not due to an event of Force Majeure or a failure on the part of Savient to supply critical raw materials which it is obligated to supply pursuant to the terms of this Agreement) and BTG fails to cure such breach within sixty (60) days of receiving a Notice of default from Savient (or such longer period as Savient may reasonably agree if said breach is incapable of cure within such sixty (60) days) (“BTG’s Cure Period”), by giving a Notice of Termination to BTG (after expiration of BTG’s Cure Period, if applicable), with the termination to take effect on the date specified therein, provided, however, that if BTG experiences a second Supply Failure within any twelve (12) month period then BTG’s Cure Period shall be zero (0) days unless otherwise specified in the Notice of Termination provided by Savient in its sole discretion.

(iv) **Material Breach by Savient.** BTG shall be entitled to terminate this Agreement, in the event that Savient commits a material breach of this Agreement and Savient fails to cure such breach within sixty (60) days of receiving a Notice of default from BTG (or such longer period as BTG may reasonably agree if said breach is incapable of cure within such sixty (60) days) (“Savient’s Cure Period”), by giving a Notice of termination to Savient (after expiration of the Savient Cure Period, if applicable), with the termination to take effect on the date specified therein. For purposes of this Section only, any amount of the Processing Capacity Reservation Fee and accrued interest thereon which has not been applied to payments for Bulk Product actually purchased by and delivered to Savient shall be forfeited by Savient to BTG as of the effective date of termination of this Agreement.

(v) **Insolvency.** Either Party shall be entitled to terminate this Agreement, by giving Notice to the other Party (“Insolvent Party”), in the event of an Insolvency Event occurring in relation to the Insolvent Party, such termination to take effect upon delivery of the Notice of termination to the Insolvent Party. “Insolvency Event” for the purpose of this Clause shall mean any commencement – whether voluntarily or involuntarily – of any action seeking any relief by liquidation, reorganization (other than for corporate reorganization), dissolution or similar act under any bankruptcy, insolvency or similar law or otherwise any action seeking any arrangement between or with its creditors or any commencement of a proceeding or receipt of an order, judgment or decree seeking the liquidation, reorganization or dissolution of a Party or any other relief under any bankruptcy, insolvency or similar law or an arrangement is made with respect to such Party’s debts or business by its creditors with or without the consent of that Party.

11.03 **Savient’s Rights Upon Termination.** In the event Savient terminates this Agreement pursuant to Sections 11.02 (i) (Elective), 11.02 (ii) (for Force Majeure conditions affecting BTG), 11.02 (iii) (Material Breach by BTG), or 11.02 (v) (for insolvency of BTG) or in the event BTG terminates this Agreement pursuant to Section 11.02 (i), BTG shall promptly, upon request by Savient, convey to Savient all Know-How, BTG Licensed Improvements and other information related to the Processing of the Product and/or Bulk Product sufficient to enable Savient or any other Persons engaged by Savient to manufacture, produce or provide the Product.
and/or Bulk Product and BTG shall provide all other assistance that Savient may reasonably request, at no cost to Savient. Such Know-How, BTG Licensed Improvements and other information shall include, without limitation, all records and reports related to (i) the development of the Bulk Product, Product and/or Process, (ii) the Processing of the Bulk Product and Product, (iii) testing for compliance with the Specifications, and (iv) batch records. Unless this Agreement is terminated pursuant to Section 11.02 (iii), Savient shall be responsible for the reasonable labor costs and expenses incurred by BTG in conveying such Know-How, BTG Licensed Improvements and other information and providing such assistance. Such labor costs of BTG employees and/or Third Party expenses shall be reimbursed by Savient in the manner and at the rates set forth on Exhibit B hereto.

11.04 **BTG’s Rights Upon Termination.** In the event that BTG terminates this Agreement pursuant to Sections 11.02(i) (Elective), 11.02(ii) (for Force Majeure conditions affecting Savient), 11.02(iv) (Material Breach by Savient) or 11.02(v) (for insolvency of Savient), any and all outstanding non-disputed payments due from Savient pursuant to this Agreement shall become immediately due and payable. Anything to the contrary notwithstanding, upon termination by BTG, BTG shall promptly, upon request by Savient and at Savient’s cost, convey to Savient, all Know-How, BTG Licensed Improvements and other information related to the Processing of the Bulk Product and/or Product sufficient to enable Savient or any other Persons engaged by Savient to manufacture, product or provide the Bulk Product and/or Product and BTG shall provide all other assistance that Savient may reasonably request, at Savient’s sole cost.

11.05 **Effect of Termination.** Termination of this Agreement for any reason is without prejudice to the Parties’ accrued rights and shall not be construed to release either Party of any obligation matured prior to the effective date of such termination.

11.06 **Survival.** The following provisions shall survive the expiration or termination of this Agreement: 2.01(iii), 2.01(iv), 2.04, 3.02, 3.03, 4.01 (ii), 5.11, 6.04 (i), 6.04(ii), 6.04 (iv), 6.04 (vi), 6.04 (vii), 6.06, ARTICLE 7, ARTICLE 8, ARTICLE 9, Section 10.01 (except in the event of a termination by BTG pursuant to Section 11.02 (iv) (Material Breach by Savient)), 10.02, 11.03, 11.04, 11.05, 11.06, ARTICLE 12, ARTICLE 13, ARTICLE 14. The survival of Sections 3.02, 3.03, 6.04 (vii) and 6.06 shall be subject to BTG being compensated for any actions on their part under these provisions post expiration or termination on the basis of the principles set forth in this Agreement. The Parties expressly understand and agree that Section 2.01 (ii) shall not survive the expiration or termination of this Agreement. For the avoidance of doubt, even after the termination of this Commercial Agreement pursuant to either Section 11.02 (iii) or Section 11.02 (iv), each Party’s rights under the Residual Rights Agreement shall subsist in full and irrespective of the grounds for such termination, except Savient may not compel BTG to perform any additional manufacturing services as may be required by the Residual Rights Agreement.

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ARTICLE 12

REMEDIES

12.01 Remedies for Non-Conforming Bulk Product. In the event BTG delivers to Savient Bulk Product that does not meet the Commercial Bulk Product Specifications, Savient shall, at its option, be entitled to (A) the replacement of such Non-Conforming Bulk Product with corresponding Bulk Product meeting the Bulk Product Specifications and with the cost of the PEG material supplied by Savient and the cost of shipment for such replacement Bulk Product being borne by BTG; or (B) a refund of (x) any price paid by Savient for such Non-Conforming Bulk Product, (y) the cost of the PEG material supplied by Savient for such Non-Conforming Bulk Product, and (z) the shipment costs associated with such Non-Conforming Bulk Product, provided, however, that Savient has notified BTG in writing of the non-conforming Bulk Product in accordance with Section 6.04 (iv). In addition, Savient shall, at BTG’s option and cost, either destroy or return to BTG at its Facility any Non-Conforming Bulk Product.

12.02 Indemnity by BTG.

(i) BTG shall defend, indemnify and hold harmless each Savient Indemnitee from and against (i) all Claims of Third Parties that arise as a result of a material breach of any covenant, agreement, warranty or representation made by BTG under this Agreement, and (ii) all Product Liability Claims, or such portion of Product Liability Claims, as are allocated to BTG pursuant to Section 12.04.

(ii) BTG shall not be obligated under this Section 12.02 to the extent it is shown that the Claim was the direct result of a material breach of any covenant, warranty or representation made by Savient under this Agreement.

(iii) BTG shall have no obligation under this Section 12.02 unless

(A) Savient gives BTG prompt written notice of any Claim for which it seeks to be indemnified under this Agreement,

(B) BTG is granted full authority and control over the defense against such Claim, and

(C) Savient cooperates fully with BTG in defense of the Claim (all reasonable out-of-pocket expenses of such cooperation to be borne by BTG).

Savient shall have the right to participate in the defense of any such Claim utilizing attorneys of its choice, at its own expense; provided, however, that BTG shall have full authority and control to handle any such Claim, including without limitation any settlement or other disposition thereof, for which Savient seeks indemnification under this Section 12.02; provided, however, further that any settlement that includes an admission of fault, culpability or liability on the part of Savient shall not be concluded without Savient’s consent, which consent shall not be unreasonably conditioned, withheld, delayed or denied.
(iv) BTG shall indemnify and hold Savient harmless for any income tax or other taxes which Savient may be required by current or future Legal Requirements to pay on behalf of BTG with respect to any monies payable to BTG under this Agreement, including without limitation, any associated penalties, fines and interest (hereinafter, a “Tax Claim”); provided, however, that if Savient becomes aware of any Legal Requirements according to which Savient is required to pay any taxes on behalf of BTG or to withhold any amounts with respect to any such Tax Claim, then Savient shall act in strict compliance with such Legal Requirements and shall promptly serve written notice to that effect on BTG. Furthermore, upon learning of the existence of a Tax Claim, Savient shall provide prompt written notice to BTG where such notice shall include copies of all materials received by Savient which pertain to the Tax Claim. Additionally, upon request by BTG, Savient shall provide reasonable assistance to BTG to enable BTG to defend any such Tax Claim and/or support a claim for a refund or a foreign tax credit with respect to any such Tax Claim; provided that BTG shall reimburse Savient for any out-of-pocket expenses which Savient incurs in rendering any assistance to BTG pursuant to this provision within thirty (30) days of receipt of a reasonably specific demand for reimbursement with accompanying documentation demonstrating such amounts claimed. Savient shall obtain the approval of BTG for any individual out-of-pocket expense in excess of [***] Dollars ($[***]), such approval not to be unreasonably withheld, delayed or conditioned. BTG shall have the sole right to handle any such Tax Claim utilizing attorneys of its choice, at its own expense; provided, however, that any settlement that includes an admission of fault, culpability, penalty fine or any other liability on the part of Savient shall not be concluded without Savient’s consent, which consent shall not be unreasonably conditioned, withheld, delayed or denied.

12.03 Indemnity by Savient.

(i) Savient shall defend, indemnify and hold harmless each BTG Indemnitee from and against all Claims of Third Parties that arise as a result of (A) a material breach of any covenant, agreement, warranty or representation made by Savient under this Agreement, and (B) patent infringement involving the manufacture, use, importation, sale or marketing of the Bulk Product or Product, and (C) all Product Liability Claims, or such portion of Product Liability Claims, as are allocated to Savient pursuant to Section 12.04.

(ii) Savient shall not be obligated under this Section 12.03 to the extent it is shown that the Claim was the direct result of a material breach of any covenant, warranty or representation made by BTG under this Agreement.

(iii) Savient shall not be obligated under this Section 12.03 unless

(A) BTG provides Savient with prompt written Notice of any Claim for which it seeks to be indemnified under this Agreement,

(B) Savient is granted full authority and control over the defense against such Claim, and
BTG shall have the right to participate in the defense of any such Claim utilizing attorneys of its choice, at its own expense; provided, however, that Savient shall have full authority and control to handle any such Claim, including without limitation any settlement or other disposition thereof, for which BTG seeks indemnification under this Section 12.03; provided, however, further that any settlement that includes an admission of fault, culpability or liability on the part of BTG shall not be concluded without BTG’s consent, which consent shall not be unreasonably conditioned, withheld, delayed or denied.

12.04 Product Liability Claims. Notwithstanding the foregoing Sections 12.02 and 12.03, the Parties’ responsibilities with respect to Product Liability Claims shall be governed by this Section 12.04.

(i) BTG shall be solely responsible for all Product Liability Claims that arise out of Non-Conforming Bulk Product, provided, however, that the following conditions are cumulatively satisfied: (A) such nonconformance existed at the time the Bulk Product was delivered by BTG and (B) such nonconformance was the result of BTG’s failure to manufacture the Bulk Product in strict adherence with the Process and (C) such Non-Conformance was the result of a Hidden Defect. Savient shall be solely responsible for all Product Liability Claims that arise out of Non-Conforming Bulk Product in each of the following cases: (A) such non-conformance occurred after the Bulk Product was delivered to Savient or (B) the Non-Conforming Bulk Product was manufactured by BTG in strict adherence with the Process or (C) such Non-Conformance was not the result of a Hidden Defect.

(ii) Each Party shall give the other prompt written notice of any Product Liability Claim, but the omission of such notice shall not relieve either Party from its obligations under this Section 12.04, except to the extent the other Party can establish actual prejudice and direct damages as a result thereof. With respect to each Product Liability Claim, Savient shall have the first right to defend and settle such Product Liability Claim. In the event that Savient does not assume the defense of such Product Liability Claim within ninety (90) days following Savient’s receipt of notice of the commencement or assertion of such Product Liability Claim, BTG may notify Savient of BTG’s desire to take the lead role in the defense of such Product Liability Claim. If, within ten (10) days after BTG notifies Savient of such desire, Savient does not assume the defense of such Product Liability Claim, then BTG may take the lead role in the defense of such Product Liability Claim.

The Party assuming the defense of any Product Liability Claim as permitted under this Section 12.04 (the “Controlling Party”) shall consult with the other Party on all material aspects of the defense, including without limitation settlement, of such Product Liability Claim, and the Parties shall cooperate fully with each other in connection therewith. The non-defending Party shall also have the right to participate in the defense of any Product Liability Claim utilizing attorneys of its choice, at its own expense. In furtherance of the Parties’ cooperation, the Controlling Party will consult with the other Party regarding strategic decisions, including without limitation the retention of counsel and defense of each Product Liability Claim. The Controlling Party will otherwise keep the other Party fully informed of the status and progress of the defense and any
settlement discussions concerning the Product Liability Claim. Any settlement of a Product Liability Claim that would admit liability on the part of any Party or its Affiliates or Agents, or that would involve any relief other than the payment of money damages, shall be subject to the prior written approval of both Parties, such approval not to be unreasonably withheld or delayed. All damages and expenses (including attorney’s fees) incurred in connection with the defense of a Product Liability Claim shall be allocated between the Parties in accordance with Section 12.04 (i).

12.05 **Limitation of Damages.** Notwithstanding anything to the contrary set forth in this Agreement, in no event shall either Party be liable to the other Party for, and each Party shall procure that none of its Affiliates or Sublicensees shall make any claim against the other Party (or its Affiliates and Sublicensees) for, any lost profits, loss of business, loss of contracts, diminished goodwill, diminished reputation, or consequential, indirect, incidental or special damages arising under or in connection with this Agreement or the Bulk Product.

**ARTICLE 13**

**DISPUTE RESOLUTION AND ARBITRATION**

13.01 **Governing Law.** This Agreement and any and all matters arising directly or indirectly herefrom shall be governed by and construed in accordance with the laws of the State of New York, United States of America, without giving effect to (A) its conflict of law principles and (B) the United Nations Convention on Contracts from the International Sale of Goods.

13.02 **Arbitration.** Any dispute, controversy or claim arising out of or in relation to this contract, including the validity, invalidity, breach or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce in force on the date when the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be three; the seat of the arbitration shall be Zurich, Switzerland; the arbitral proceedings shall be conducted in English and shall take place in London, England.

**ARTICLE 14**

**MISCELLANEOUS**

14.01 **Confidentiality.** During the Term of this Agreement or the Commercial Agreement, whichever expires later, and for a period of three (3) years thereafter, each Party (the “Receiving Party”) shall keep strictly confidential any Confidential Information disclosed by any other Party (the “Disclosing Party”), using at least the same degree of care that it uses to protect its own confidential or proprietary information, but in no event less than reasonable care. The provisions of this ARTICLE 14 shall apply to all Confidential Information, and to all proprietary information of the Disclosing Party relating to the Product and/or the Process that is disclosed (or known) to a Receiving Party prior to the date hereof (which shall be deemed to be Confidential Information, subject to the exceptions in clauses (i) through (iv) below, for purposes of this Agreement). The nature and terms of this Agreement shall be deemed to be Confidential
Information of each Party, subject to the exceptions set forth in clauses (i) through (iv) below, for purposes of this Agreement. The Receiving Party shall use Confidential Information solely for the purposes of this Agreement and the activities contemplated hereby and shall not disclose or disseminate any Confidential Information to any Person at any time, except for disclosure to those of its Affiliates, directors, officers, employees, consultants, accountants, attorneys, advisers and agents that have a need to know such information to permit the Receiving Party to exercise its rights or fulfill its obligations pursuant to this Agreement, provided that such Persons are bound to maintain the confidentiality of such Confidential Information to the same extent as if they were parties hereto. The obligations set forth in this Section 14.01 are subject to the following exceptions:

(i) The Receiving Party may disclose the Disclosing Party’s Confidential Information that is required to be publicly disclosed by law or by regulation; provided, however, that: (A) the Receiving Party shall, where possible, seek confidential treatment for any Confidential Information of the Disclosing Party, and shall provide the Disclosing Party with prompt advance notice of such disclosure and reasonable opportunity to review any such disclosure so that the Disclosing Party may, if it desires, seek a protective order or other appropriate remedy; and (B) the Parties or their Affiliates may disclose the terms of this Agreement in any filings with the U.S. Securities and Exchange Commission (provided that the Parties or their Affiliates, as applicable, use commercially reasonable efforts to seek confidential treatment for any trade secrets, commercial terms or information, or financial terms or information).

(ii) Pursuant to an agreement to maintain confidentiality, any Party may discuss, or provide a copy of, this Agreement to its accountants, its attorneys, and its current, future or potential investors or shareholders.

(iii) Pursuant to an agreement containing confidentiality obligations and subject to the other Parties’ written consent, either Party may provide a copy of this Agreement or relevant portions thereof to any Third Party sublicensee, if required pursuant to the relevant license agreement with such Third Party.

(iv) Any other disclosure of the nature or terms of this Agreement (including, without limitation, any public announcements, press releases or similar publicity with respect to this Agreement) by any Party, must be approved in advance in writing by Savient, in its sole discretion, as to form and content of such disclosure; provided, however, that the contents of any public announcement, press release or similar publicity which has been reviewed and approved can be re-released by any Party in any form without a requirement for re-approval.

14.02 BTG Insurance. BTG and/or its Affiliates shall obtain and maintain during the Term and for five (5) years thereafter comprehensive general liability insurance on a claims-made basis, with endorsements for product liability with annual coverage limits of not less than […] Dollars ($[…] per claim and […] Dollars ($[…] annual aggregate. All of BTG’s insurance policies shall be issued by “A-rated” insurers as designated by Standard and Poor’s Corporation and/or by acceptable other means. The minimum level of insurance set forth herein shall not be construed to create a limit on BTG’s liability hereunder. On the Effective Date and upon the request of Savient (provided that such request shall be made no more than

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once per calendar year), BTG shall furnish to Savient a certificate of insurance evidencing such coverage as of such date. Each such certificate of insurance, as well as any certificates evidencing new or modified coverages of BTG, shall include a provision whereby thirty (30) days written notice must be received by Savient prior to coverage modification or cancellation by either BTG or the insurer. In addition, BTG shall promptly notify Savient of any cancellation or modification of such insurance coverage and of any new or modified coverage. In the case of a modification or cancellation of such coverage, BTG shall promptly provide Savient with a new certificate of insurance evidencing that BTG’s coverage meets the requirements in the first sentence of this Section 14.02.

14.03 Savient Insurance. Savient shall obtain and maintain during the Term and for five (5) years thereafter comprehensive general liability insurance on a claims-made basis, with endorsements for product liability with annual coverage limits of not less than [...] Dollars ([…***…]) per claim and […] Dollars ([…***…]) annual aggregate. All of Savient’s insurance policies shall be issued by “A-rated” insurers as designated by Standard and Poor’s Corporation and/or by acceptable other means. The minimum level of insurance set forth herein shall not be construed to create a limit on Savient’s liability hereunder. On the Effective Date and upon the request of BTG (provided that such request shall be made no more than once per calendar year), Savient shall furnish to BTG a certificate of insurance evidencing such coverage as of such date. Each such certificate of insurance, as well as any certificates evidencing new or modified coverages of Savient, shall include a provision whereby thirty (30) days written notice must be received by BTG prior to coverage modification or cancellation by either Savient or the insurer. In addition, Savient shall promptly notify BTG of any cancellation or modification of such insurance coverage and of any new or modified coverage. In the case of a modification or cancellation of such coverage, Savient shall promptly provide BTG with a new certificate of insurance evidencing that Savient’s coverage meets the requirements in the first sentence of this Section 14.03.

14.04 Notices. All notices, requests, demands, claims and other communications hereunder (each, a “Notice”) shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly delivered four (4) Business Days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one (1) Business Day after it is sent by overnight delivery via a reputable national courier service, in each case to the intended recipient as set forth below:

If to Savient, to:
Savient Pharmaceuticals Inc.
One Tower Center, 14th Floor
East Brunswick, New Jersey 08816, USA
Telecopy: +1-732-418-9065
Attention: Philip K. Yachmetz, EVP & CBO

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with copies, which shall not constitute notice hereunder, sent to:

Savient Pharmaceuticals, Inc. and Wilmer Cutler Pickering Hale and Dorr LLP
One Tower Center, 14th Floor 60 State Street
East Brunswick, NJ 08816 U.S.A. Boston, MA 02109
Attention: John Petrolino Telecopy: +1-617-526-5000
Attention: David E. Redlick, Esq.

If to BTG, to:

Bio-Technology General (Israel) Ltd.
Beer Tuvia Industrial Zone
POB 571
Kiryat Malachi 83104, Israel
Telecopy: +972-8-8612288
Attention: General Manager

with copies, which shall not constitute notice hereunder, sent to:

Ferring International Center SA and Ferring International Center SA
Chemin de la Vergognausaz 50 Chemin de la Vergognausaz 50
CH-1162 Saint-Prex CH-1162 Saint-Prex
Switzerland Switzerland
Attention: General Counsel Attention: EVP, Technical Operations

Any Party may give any notice, request, demand, claim, or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the Party for whom it is intended. Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are not be delivered by giving the other Party notice in the manner herein set forth.

14.05 Entire Agreement. This Agreement and all attachments, including the exhibits hereto, constitutes the entire agreement between Savient and BTG with respect to the subject matter hereof, and supersedes any prior agreements or understandings, both written and oral, between Savient and BTG with respect to such matters, other than the Divestiture Agreements and the Residual Rights Agreement, which shall be read together with this Agreement.

14.06 Order of Precedence. In the event of a conflict or inconsistency that relates to the subject matter hereof between any of the terms of the following documents, the following order of precedence shall control:
(i) this Commercial Supply Agreement between the Parties, and Exhibits hereto

(ii) the Development Agreement between the Parties, and Exhibits thereto

(iii) the Residual Rights Agreement, and Exhibits thereto

Without limiting the generality of the foregoing, and for the avoidance of any doubt, the following sections of the Residual Rights Agreement are hereby superseded by this Agreement as far as the subject matter hereof is concerned: (A) Section 3 - Research & Development; Regulatory Services; Manufacturing Services; (B) Section 4 - Technology Transfer; (C) Section 9 - Indemnification; (D) Section 13 – Governing Law and Dispute Resolution; (E) Annex C (Development and Regulatory Work-Puricase); (F) Annex D (Term Sheet Manufacturing Services); and (G) Annex E (Term Sheet for Technology Transfer). In resolving any such conflicts, these documents shall be read as a whole and in a manner most likely to accomplish their purposes. Any amendments to these documents on which the Parties may agree to in accordance with the terms of each document shall take precedence over any conflicting terms in the prior release of each document. Each Party shall promptly report to the other in writing any inconsistencies in these documents, even if the inconsistency is resolvable using the above order of precedence.

14.07 Covenant of Further Assurances. The Parties covenant and agree that, subsequent to the execution and delivery of this Agreement and without any additional consideration, each of the Parties shall execute and deliver any further legal instruments and perform such acts which are or may become reasonably necessary to effectuate the purposes of this Agreement.

14.08 Waivers; Amendments. The failure of either Party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or conditions or the future exercise of such right, and the obligation of the other Party with respect to such future performance shall continue in full force and effect. Savient and BTG may (A) mutually amend or waive any provision of this Agreement at any time and (B), from time to time after the date hereof, modify and/or replace any of the exhibits hereto, which modified or replaced exhibits shall automatically constitute part of this Agreement; provided, however, that no amendment or waiver of any provision of this Agreement and no modification and/or replacement of any exhibits hereto shall be valid unless the same shall be in writing and duly signed by both of the Parties.

14.09 Relationship. BTG is an independent contractor engaged by Savient for the provision of the Bulk Product and certain services as set forth in this Agreement. Nothing in this Agreement shall constitute BTG as an employee, agent or general representative of Savient. This Agreement shall not constitute either Party as the legal representative or agent of the other, nor shall either Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, or in the name of or on behalf of, the other Party. This Agreement shall not constitute, create or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.
14.10 **Publicity.** Except as otherwise required by Legal Requirements, neither Party shall use the other’s name or refer to it directly or indirectly in an advertisement, news release or release to any professional or trade publication or issue any news release relating to this Agreement, without the prior written approval from such Party for such use or release. The Parties agree that a news release with respect to the consummation of this transaction and the details thereof will be made, the content and form of which shall be reasonably agreed between the Parties. In addition, the Parties agree that Savient shall be permitted to disclose this Agreement and the transactions contemplated hereby in filings made with the U.S. Securities and Exchange Commission or other regulatory authorities in accordance with Section 14.01.

14.11 **Severability.** If any term of other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic and legal substance of the underlying transaction in any country in the Territory is not affected in any manner materially adverse to either Party. Upon such determination that (i) any term of other provision is invalid, illegal or incapable of being enforced and (ii) the economic or legal substance of the underlying transaction in any country in the Territory is affected in a manner materially adverse to either Party, the Parties shall modify this Agreement, with respect to such country in the Territory, so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner to the fullest extent permitted by Legal Requirements in such country in the Territory in order that the underlying transaction be completed as originally contemplated to the fullest extent possible.

14.12 **No Assignment.** Neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned by either Party without the prior written consent of the other Party hereto, except that Savient may assign its rights, interests, or obligations hereunder to any Third Party acquiring rights to the Product and either Party may assign its rights hereunder to any Affiliates or any entity that acquires all or substantially all of such Party’s business or assets (provided that no such assignment shall relieve the assigning Party of its obligations hereunder, and the assigning Party shall remain primarily liable for such obligations). Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

14.13 **Headings.** The headings used in this Agreement are included for convenience only and are not to be used in construing or interpreting this Agreement.

14.14 **Force Majeure.** If either of the Parties is impeded in fulfilling its undertakings in accordance with this Agreement by circumstances beyond its reasonable control, such as, but not limited to, labor conflict, lightening striking, acts of God, fire, war, mobilization or unforeseen military call-up of a large magnitude, requisition, confiscation, commandeering, public decrees, riots, insurrections, general shortage of transport, goods or energy and faults or delays in deliveries from subcontractor or suppliers caused by any circumstances referred to in this Section 14.14, the impediment shall be considered a Force Majeure condition and the Party shall be exempted from liability for delays due to such reasons; **provided, however,** that it notifies the other Party thereof without undue delay after such a circumstance has occurred. Upon such notification, the Parties shall agree upon a reasonable extension of the time for performance, not to exceed an extension equal to the period the Force Majeure condition continues to exist.
14.15 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers hereunto duly authorized as of the Effective Date.

SAVIENT PHARMACEUTICALS, INC.  
BIO-TECHNOLOGY GENERAL (ISRAEL) LTD.

By: /s/ Philip K. Yachmetz  
Name: Philip K. Yachmetz  
Title: EVP & CBO

By: /s/ Dov Kanner  
Name: Dov Kanner  
Title: Managing Director

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Exhibit A

Savient Patent Rights
Confidential Materials omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment. A total of five pages were omitted.

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<th>TITLE</th>
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Exhibit B

Compensation for Services and Reimbursement of Expenses

BTG shall submit invoices to Savient on a quarterly basis in arrears, which invoices shall provide an account of (i) detailed descriptions of the services performed, (ii) the number of hours such services were performed, (iii) the levels of the individuals performing such services and (iv) detailed descriptions of any Third Party expenses incurred (documentation of such expenses shall be provided to Savient upon request).

Payment to BTG shall be due within forty-five (45) days of the date of the invoice (provided that the invoice is received by Savient within three (3) Business Days of the date thereof) or within forty-five (45) days of Savient’s receipt of the invoice (if received by Savient four (4) or more Business Days after the date thereof).

Compensation Rates:

<table>
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<tr>
<th>Level</th>
<th>Daily Rate (eight (8) hour day)</th>
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<tbody>
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<td>Vice President or Senior Director</td>
<td>$ [...***...]</td>
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<tr>
<td>Department Head or Director</td>
<td>$ [...***...]</td>
</tr>
<tr>
<td>Unit Head</td>
<td>$ [...***...]</td>
</tr>
<tr>
<td>Exempt Non-Management Employee, Group Leader &amp; others</td>
<td>$ [...***...]</td>
</tr>
</tbody>
</table>

Beginning on January 1, 2008, and on each successive January 1st thereafter, the above rates shall increase by an amount equal to the average increase in the United States Consumer Pricing Index (CPI) over the immediately preceding twelve (12) month period.

Third Party Expenses:

Savient shall reimburse BTG for documented expenses paid to a Third Party; provided that, other than BTG’s travel expenses for travel at the request of Savient, expenses for raw materials, expenses for subcontractors/consultants, BTG shall be required to obtain Savient’s pre-approval in writing for any expenses to be incurred in excess of [...] Dollars ($ [...***...]).

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Exhibit C

Current Provisional Bulk Product Specifications
<table>
<thead>
<tr>
<th>Parameter</th>
<th>Test</th>
<th>Specification</th>
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***Confidential Treatment Requested
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Exhibit D

Quality Agreement
QUALITY ASSURANCE RESPONSIBILITY AGREEMENT

BETWEEN

SAVIENT PHARMACEUTICALS, INC.

AND

BIO-TECHNOLOGY GENERAL (ISRAEL) LTD.

(COMMERCIAL PHASE)

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ARTICLE 1
PURPOSE AND SCOPE:

1.01 Savient Pharmaceuticals, Inc. ("SAVIENT") and Bio-Technology General (Israel) Ltd. ("BTG") have entered into a Supply Agreement of (event date) herewith (the “Supply Agreement”).

This document (the “Quality Agreement”) defines the quality assurance responsibilities between SAVIENT and BTG. This Quality Agreement applies only to the manufacture and supply by BTG to SAVIENT of the Product (as defined in the Supply Agreement).

ARTICLE 2
DEFINITIONS:

2.01 Capitalized terms used but not otherwise defined in this Quality Agreement will have the meanings ascribed thereto in the Supply Agreement. For ease of reference, the following definitions from the Supply Agreement which are used in this Quality Agreement are copied in full below, amended where appropriate for the purposes of this Quality Agreement:

(i) “BLA” means a Biologics License Application filed with the FDA and/or any other application required for the purpose of marketing or selling or using a therapeutic or prophylactic product to be filed with a governmental agency in a non-U.S. country or group of countries, including, without limitation, a Product License Application or Marketing Authorization in the European Union.

(ii) “Bulk Product” shall mean the bulk solution of polyethylene glycol (PEG) conjugate of uricase ordered by Savient from BTG pursuant to the Supply Agreement.

(iii) “Bulk Product Specifications” shall mean the manufacturing and quality specifications for the Bulk Product, including, without limitation, unit descriptions established from time to time in accordance with section 3.01 of the Supply Agreement.

(iv) “Business Day” shall mean any day other than (i) Friday, Saturday or Sunday or (ii) a day on which banking institutions located in New York, New York, United States of America or in Israel are permitted or required by law, executive order or governmental decree to remain closed.

(v) “cGMP” shall mean current good manufacturing practices as set forth in Title 21, Parts 210 and 211 of the C.F.R. and 21 C.F.R. Part 312 (IND) and Part 314 (NDA), and 21 C.F.R. Part 600 (Biological Products), as established and amended by the FDA.

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(vi) “FDA” shall mean the United States Food and Drug Administration or, where applicable, its regulatory equivalent in a foreign jurisdiction.

(vii) “Facility” shall mean, as applicable, the Be’er Tuvia manufacturing facility located at Beer Tuvia Industrial Zone, POB 571, Kiryat Malachi 83104, Israel.

(viii) “IND” shall mean an Investigational New Drug application, as defined in 21 C.F.R. 312.3, and filed with the FDA or any equivalent foreign Regulatory Agency.

(ix) “Legal Requirements” shall mean (i) any present and future national, state, local or similar laws (whether under statute, rule, regulation or otherwise), (ii) requirements under permits, orders, decrees, judgements or directives, and requirements of applicable Regulatory Agencies (including, without limitation, cGMP) and (iii) regulations pertaining to BLAs (with respect to each of the foregoing, as amended or revised from time to time).

(x) “Process” or “Processing” shall mean the act of purification, preparation, filling, testing and any other pharmaceutical manufacturing procedures, or any part thereof (including, but not limited to, product or process specifications, testing or test methods, raw material specifications or suppliers, equipment, etc.), relating to, as applicable, Bulk Product and Product.

(xi) “Product” shall mean pharmaceutical products containing Bulk Product ordered by Savient pursuant to the Supply Agreement.

(xii) “Regulatory Agency” shall mean with respect to the United States, the FDA, or, in the case of a country in the Territory other than the United States, such other appropriate regulatory agency with similar responsibilities.

2.03 In addition, the following definitions apply to this Quality Agreement:

(i) “Bulk Product” shall mean bulk solution of polyethylene glycol (PEG) conjugate of uricase in its final formulation which is in Process, and has been produced for sterilization, filling or other finishing activities.

(ii) “Filled Product” shall mean sterile Product that is in Process and has been filled into its final primary packaging for further labelling or packaging activities.

(iii) “Final Product” shall mean finished Product in its final packaged and labeled form which is ready for distribution to the marketplace or third party distributors for sale or clinical use.

(iv) “Release” shall mean control, approval and authorization of shipment.
ARTICLE 3

NOTIFICATION OF PROCESS DEVIATIONS AND DOCUMENTATION OF CHANGES:

3.01 BTG shall provide to SAVIENT, within two Business Days of BTG’s discovery of its occurrence, written notification of (i) any deviation from the Process as set forth in the Bulk Product Specifications and the BLA and any deviation from cGMP requirements, regulations and standards, and any event that represents an unexpected or unforeseeable event that may affect safety, purity or potency of Bulk Product; and (ii) any deviation in the quality (purity, physical and chemical properties) of the Bulk Product from the Bulk Product Specifications. Appendix I sets forth a list of examples of deviations from the Process, for purposes of illustration only, and is not intended to be comprehensive or definitive.

(i) BTG shall not conduct any retesting or reprocessing as the result of deviations described above without prior written authorization from SAVIENT Quality Assurance unless a delay of retesting or reprocessing would result in increased risk to the safety, purity or potency of the Bulk Product or Product.

3.02 Any changes to be made to this Quality Agreement in accordance with the provisions set out in this section 3 must be documented as an addendum to this Quality Agreement, and must be signed by authorized representatives from each of the BTG QA department and the SAVIENT QA department, in addition to authorized representatives from any other departments as may be specified in relation to the matters set forth in section 3.3 below. This Quality Agreement will be reviewed by BTG and SAVIENT on a periodic basis (approximately once per year) and revised as appropriate.

3.03 Change Control

(i) Specifications that control the Process for the manufacture, including packaging, holding, and test of Bulk Product and Product, must be signed by authorized representatives from BTG and SAVIENT Quality Assurance, SAVIENT Regulatory Affairs, and SAVIENT Manufacturing. Such documents include, but are not limited to Bulk Product Specifications (including specifications for intermediate), Product Specifications (including specifications for product, component and packaging). Changes to such documents must be signed by authorized representatives from SAVIENT Quality Assurance, SAVIENT Manufacturing and SAVIENT Regulatory Affairs.

(ii) Changes to additional documents that control the Process for the manufacture of Bulk Product and Product (including test methods, manufacturing procedures and batch records) must be assessed according to the BTG change control process described in section 3.4. Any change that would have an impact on the Process, Bulk Product or Product, or require submissions to or approvals from any Regulatory Agency must receive prior written approval by authorized representatives from SAVIENT Quality Assurance, SAVIENT Manufacturing and SAVIENT Regulatory Affairs. If there is no such impact, BTG may proceed with the change, but must notify SAVIENT Quality
Assurance no later than 5 days from the initiation of the BTG change control process. If SAVIENT does not agree with BTG’s assessment of impact, SAVIENT must respond to BTG no later than within 5 days of receipt of notification.

(iii) The stability protocol as well as any changes to the stability protocol must be approved by SAVIENT QA and SAVIENT Regulatory Affairs.

(iv) Critical Raw Materials. The current specifications for Critical Raw Materials are attached as Appendix III. The Parties acknowledge and agree that these specifications may be amended from time to time by the supplier of the material. With respect to such amendments:

BTG shall notify SAVIENT as soon as reasonable practicable, but no later than within 5 days of receipt of notification by BTG.

The Parties will meet and agree as to suitability of the material produced according to the amended specification for manufacture of the Bulk Product.

3.04 BTG will utilize a documented system of written procedures for the control of changes to documents relating to raw materials, packaging materials, labeling, suppliers, equipment, manufacturing methods, batch size, product, intermediates and raw materials specifications, sampling, analytical test methods and Release requirements and any other Processing by BTG, relating to the Bulk Product.

3.05 Any changes to any matter relating to the manufacture and supply of Bulk Product by BTG shall be governed by the procedures set out in the Supply Agreement at Article 3 in relation to changes to the Bulk Product Specifications, and Article 6 in relation to changes to the Process.

3.06 SAVIENT Regulatory Affairs will have responsibility for determining the regulatory impact of any proposed change. SAVIENT Regulatory Affairs will determine the classification and requirements for notification to, or approval by FDA. SAVIENT is responsible for communication of any changes to FDA. SAVIENT Regulatory Affairs will have responsibility to advise BTG of any changes to the BLA prior to submission.

BTG will ensure that changes are evaluated and qualified in accordance with all applicable ICH (International Conference on Harmonization) requirements in addition to all Legal Requirements, including but not limited to:

ICH Guideline Q5E Comparability of Biotechnological/Biological Products Subject to Changes in Their Manufacturing Process.
ARTICLE 4
MATERIALS:

4.01 Procurement of Components
BTG will procure all the components described in the Bulk Product Specifications in such quantities as may be necessary to meet Purchase Orders placed by SAVIENT pursuant to the Supply Agreement, and store the components in appropriate storage conditions under quarantine until tested.

4.02 Inspection and Testing of Materials
Upon receipt, BTG shall sample in accordance with acceptable statistical methods, inspect and test containers of all materials to be used in the Process or in connection with the supply and manufacture of Bulk Product on a batch-by-batch basis, in accordance with the Bulk Product Specifications.

4.03 Bulk Product
BTG will be responsible for ensuring that Bulk Product is manufactured, tested and stored in compliance with all applicable ICH guidance documents (including, without limitation, the guidance contained therein for master and working cell banks) in addition to all Legal Requirements. ICH Guidance includes, but is not limited to:

Q5D Quality of Biotechnological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products.
Q7A, Good Manufacturing Practices Guidance for Active Pharmaceutical Ingredients

4.04 Retention, Storage and Handling of Materials and Product Samples
BTG shall sample and retain such amounts of Bulk Product and of all materials to be used in the Process or in connection with the supply and manufacture of Bulk Product (“Retains”) except water, compressed gasses and any highly volatile compounds as set forth in Appendix II or as otherwise required in accordance with applicable Legal Requirements. BTG will store for five years, or such longer period as may be required in accordance with Appendix II or by Legal Requirement, sample Product and Retains for each batch or lot of intermediates and raw materials. Reasonably prior to the expiry of such retention period, or upon termination of this Quality Agreement, BTG shall offer all such materials to SAVIENT. Any labor costs of BTG employees and/or Third Party expenses incurred by BTG related to the transfer of such materials shall be reimbursed by SAVIENT in the manner and at the rates set forth on Exhibit B to the Supply Agreement.

A schedule of specific Retains, storage conditions and retention periods for Puricase® is listed in Appendix II.

4.05 Transmissible Spongiform Encephalopathy (TSE)
BTG will provide a written TSE declaration that all materials (including non-dedicated equipment) used in the manufacturing process are free from animal derived material. In addition, BTG must have available, on site, written TSE declarations from the supplier, where appropriate, of raw material used in the manufacturing process verifying exclusion

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of animal derived material. If BTG is unable to provide the above declarations, BTG will comply with applicable TSE laws and regulations and will obtain all associated TSE documentation as requested by SAVIENT. This documentation may include a TSE Certificate of Suitability in accordance with European directive 75/318/EEC as amended by directive 1999/82/EEC, the note for guidance EMEA/410/01 rev2 as amended and AP-CSP(99)4, Appendix 2, as amended.

4.06 Supplier Audits

BTG and SAVIENT will provide each other with copies of supplier audit reports for materials used in the Process or manufacture of the Product.

ARTICLE 5

MANUFACTURING, PACKAGING, INSPECTION AND TEST:

5.01 The Processing, packaging, and labeling of Bulk Product will be performed and documented by BTG. BTG will not subcontract any of the Processing, packaging, and labeling functions except as may be permitted in accordance with the Bulk Product Specifications, and if so permitted, in accordance with the provision set forth in Section 2.05 of the Supply Agreement.

5.02 BTG shall not Process or store Bulk Product in the same building in which BTG manufactures, stores or processes potentially hazardous substances (including, without limitation, certain antibiotics such as beta-lactam and cephalosporins, cytotoxic compounds, toxins or poisons such as pesticides or herbicides, (collectively, “Potential Contaminants”) unless the Potential Contaminants are stored or manufactured in contained environments and in compliance with all Legal Requirements and the Bulk Product is Processed and stored in compliance with building, cleaning, validation and changeover requirements of all cGMPs and all Legal Requirements. BTG shall promptly notify SAVIENT if any of the Potential Contaminants are manufactured, processed or stored in any portion of the Facility which may result in the introduction of Potential Contaminants into the areas of such facilities where the Bulk Product is Processed. Savient is aware that other products are processed in the Facility, the nature of those other products existing today and that certain equipment (multi-use equipment) is used in the processing of both the Bulk Product and these other existing products. Savient has also had the opportunity to assess the risk to the Processing of Bulk Product of the use of such certain multi-use equipment with respect to the other existing products. However, in the instance where BTG intends to introduce a new product or substance to its Facility which is out of the matrix of existing products and use such multi-use equipment in the processing or handling of such new product or substance, Savient will need to reassess the risks to the Processing of Bulk Product with this new product or substance utilizing the multi-use equipment. Therefore, whenever BTG plans to introduce a new product or molecular entity which is out of the matrix of existing products to equipment shared with Puricase production, BTG will provide no less than 30 days prior notice of its intent, and will contemporaneously make supporting cleaning validation data/rationale available to Savient. Savient will make its assessment of the risk potential for adulteration of its own product through examination of cleaning validation.
5.03 BTG will provide to SAVIENT: a copy of all master batch record documents and production and control records, a Certificate of Analysis (PEG-uricase API and uricase), executed batch records and associated batch documentation, which shall include, without limitation: formulation records, label records, manufacturing records, environmental monitoring data, microbiological data, in-process and final analytical data, including lab control results, sterility data, deviations/out-of-specification reports and cleaning records for any critical product contact equipment (for example, fermentors or any other non-dedicated product contact equipment).

(i) Translation: BTG will provide an English translation of all such documents, including, without limitation, all reports, notes or comments on records that are not part of the master batch record but if any of the foregoing documents are only available in a language other than English, the Parties shall agree upon an English language template for such document(s), and BTG shall provide to Savient an English language translation of any deviations from the template(s). When required by SAVIENT, translations shall be performed by an independent, translation firm. Translations by a third party firm must be verified by BTG to ensure translation of company or process specific language. Any labor costs of BTG employees and/or Third Party expenses incurred by BTG in relation thereto shall be reimbursed by SAVIENT in the manner and at the rates set forth on Exhibit B to the Supply Agreement.

5.04 Upon request by SAVIENT, BTG will provide access to additional records that are not normally part of the batch record but which bear a reasonable relation to the Bulk Product for SAVIENT to review, which may include, without limitation, maintenance and use records, water testing data, training records, raw material release records, log books, receiving and shipping records, inventory records and vendor qualification records Any labor costs of BTG employees and/or Third Party expenses incurred by BTG in relation thereto shall be reimbursed by SAVIENT in the manner and at the rates set forth on Exhibit B to the Supply Agreement.

5.05 BTG will retain copies of all completed batch records for a minimum of five years, or such longer period as may be required by Legal Requirement. Reasonably prior to the expiry of such retention period, or upon termination of this Quality Agreement, BTG shall offer such completed batch records to SAVIENT. Any labor costs of BTG employees and/or Third Party expenses incurred by BTG related to the transfer of such materials shall be reimbursed by SAVIENT in the manner and at the rates set forth on Exhibit B to the Supply Agreement.

5.06 Use of BTG Manufacturing Space for Bulk Product

BTG has allotted an amount of manufacturing floor space at the Facility for the Processing of Bulk Product (Purification Area in the Agreement). This space may be used for the production of other products subject to the following limitations:
(i) BTG may use the Purification Area for alternate product manufacturing only during periods when the Purification Area is not used for the Processing of Bulk Product.

(ii) BTG adheres to all relevant cGMPs including, without limitation, procedures for prevention of mix-ups, prevention of contamination, labeling requirements, cleaning requirements and changeover requirements.

(iii) BTG shall not, under any circumstances utilize any equipment dedicated to the Processing of Bulk Product for such alternate product manufacturing.

(iv) BTG adheres to limits and procedures described in section 5.2 for Potential Contaminants.

ARTICLE 6

RELEASE AND SHIPMENT OF PRODUCT(S):

6.01 Bulk Product shall be Released in accordance with the procedures set forth in the Supply Agreement, together with the additional obligations described in this section 0 of the Quality Agreement. BTG QA will review the records described in section 5.3 above. Following review and acceptance by BTG QA, BTG will send copies of these documents to SAVIENT QA. SAVIENT QA and Manufacturing will then review the documentation and notify BTG whether or not documentation is acceptable. If such documentation is not reasonably acceptable to SAVIENT, BTG will cooperate in taking such steps as SAVIENT may reasonably require to ensure that the documentation, and any Processing described therein complies with the Bulk Product Specifications and all Legal Requirements.

6.02 BTG QA will be responsible for the QC testing of Filled Product until such time as a third party laboratory has been qualified to perform such testing. BTG will provide a Certificate of Analysis and/or stability results for each batch that BTG tests. Savient QA will be responsible for the review of the manufacturing batch record for Filled Product, review of the Certificate of Analysis and Release of the Filled Product.

6.03 SAVIENT QA will be responsible for the Release of the Final Product.

6.04 Product shall be delivered in accordance with the provisions of Article 7 of the Supply Agreement.

6.05 BTG will not ship any SAVIENT products to any destination, as identified by SAVIENT, unless prior approval has been received from SAVIENT.

ARTICLE 7

DEViations IN PROCESS OR BULK PRODUCT:

In the event of a notification of a deviation by BTG in accordance with section 0 above, BTG shall investigate and fully document in English such deviation within 30 days of its discovery. If BTG cannot resolve the deviation within the 30-day period, BTG will provide

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weekly updates of the investigation progress. At SAVIENT’s request, BTG shall conduct such additional or more detailed investigation of the deviation as SAVIENT may reasonably instruct. Investigation documentation will be retained by BTG as part of the batch documentation for the batch affected. When a deviation has occurred, SAVIENT will have the final review and decision making responsibility as to the impact of the deviation on the Bulk Product or Product, which will include the disposition of affected lots.

**ARTICLE 8**

**STORAGE OF PRODUCT(S):**

Bulk Product will be stored under appropriate storage conditions and in a secure area to ensure that they comply with the Bulk Product Specifications, including all the label requirements, quality specifications and attributes as well as Legal Requirements.

**ARTICLE 9**

**TRACEABILITY OF PRODUCT(S):**

SAVIENT will be responsible for traceability of products to first consignee within the US. BTG will be responsible for traceability from the finished product lot number to raw material and component lots used in manufacture.

**ARTICLE 10**

**CONFLICT OF TERMS:**

To the extent that there exists any conflict between the terms of this Quality Agreement and the Supply Agreement, the latter shall prevail. To the extent that there exists any conflict between the terms of this Quality Agreement and any Legal Requirements, the latter shall prevail.

**ARTICLE 11**

**COMPLIANCE WITH LAWS:**

BTG will ensure that all of its activities pursuant to this Agreement are performed in accordance with all Legal Requirements (including cGMPs), the respective Bulk Product Specifications, conditions of the BLA, and BTG’s Standard Operating Procedures (SOPs). BTG will ensure that the Bulk Product supplied by it to SAVIENT shall not itself cause the Final Product to be adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act and regulations.

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ARTICLE 12
INSPECTIONS:

Each party shall advise the other of any governmental communication, inspection or report, including, without limitation, that of any appropriate regulatory agency in any jurisdiction with responsibilities similar to those of the FDA in respect of the United States, any environmental agency, health agency or other governmental or administrative agency having jurisdiction over the Product or the Processing. The notifying party shall promptly notify the other party by fax and telephone, to the person and on the contact numbers set out below:

TO SAVIENT:

- Contact Name: Robert Lamm, Ph.D., Sr. VP of Quality and Regulatory Affairs
- Telephone: 732-418-9300
- Fax: 732-418-0766

TO BTG:

- Contact Name: Rivka Zaibel, VP, Quality Assurance
- Telephone: 972-8-861-2007
- Fax: 972-8-861-2166
ARTICLE 13

OBSERVATION BY SAVIENT:

Observation by SAVIENT or its authorized representative shall be governed the following. Observation will be limited to not more than one quality audit every 12 months. One additional quality audit may be conducted within the 12 month period if BTG receives a communication from any regulatory authority threatening license approval or supply of the Product due to compliance deficiencies at BTG facilities or if BTG was found to be in material non-compliance of this Agreement during or since the last quality audit. Person-in-Plant visits may be conducted at the discretion of SAVIENT during the manufacture of Bulk Product at BTG facilities. The frequency and duration of any additional visits must be agreed to by SAVIENT and BTG.

ARTICLE 14

ADVERSE EVENTS:

14.1 BTG will provide to SAVIENT within 48 hours of becoming aware, any information from any source that suggests an adverse event or serious adverse event has occurred. This information will include any adverse drug experience or reaction reports or any other information indicating that the product has any toxicity, sensitivity reactions or is otherwise alleged to cause illness or injury due to a possible product quality problem, adulteration or misbranding.

14.2 Quality Assurance Investigations. Upon notification to BTG that SAVIENT has received an SAE, AE, product complaint or inquiry regarding a Product supplied or incorporating a Bulk Product supplied, BTG shall conduct a quality assurance investigation to determine if any process or testing deviations or events may have contributed to the SAE, AE, product complaint or inquiry. BTG shall provide a written report on the results of the investigation to SAVIENT in not more than 30 days from Savient’s notification. In cases where a more comprehensive investigation might be required, the Parties will jointly develop an investigation plan. BTG shall reasonably cooperate with SAVIENT and regulatory agencies regarding an investigation or inquiry that may be initiated by a regulatory agency or otherwise required in response to a consumer or healthcare professional. BTG shall further provide SAVIENT with all data or other information that SAVIENT may reasonably require in connection with any reports or correspondence that SAVIENT provides to the regulatory agency, consumer or healthcare professional relative to any such AE, SAE or product complaint. BTG shall make records accessible to SAVIENT for purposes of FDA or other regulatory agency inspection.

14.3 Exchange of Drug Safety Requests. The Parties shall immediately provide each other with copies of all drug safety requests from all governmental and other regulatory health authorities. Proposed answers affecting the Product will be exchanged between the Parties before submission and the Parties shall cooperate with respect to such answers. SAVIENT shall
have the ultimate decision-making authority with respect to the answers relating to the Product. The Parties shall exchange decisions from applicable health authorities immediately.

**ARTICLE 15**

**STABILITY:**

BTG will perform the stability testing, data interpretation, reporting and updating of stability information to regulatory documents for the Product and Bulk Product and for Product until such time as a third party laboratory has been qualified to perform such testing. Stability related activities for which BTG is responsible shall be completed in accordance with the timing specified in stability protocols and BTG procedures.

**ARTICLE 16**

**REGULATORY AFFAIRS:**

Each Party shall advise the other Party of any regulatory action of which it is aware which would affect the Product in any country of the Territory.

**ARTICLE 17**

**ANNUAL REPORT TO FDA:**

BTG will prepare a summary of all changes to the product, production process, quality controls, equipment or facilities that have a potential to affect the identity, strength, quality, purity or potency of the Product. Such data will be prepared and sent to SAVIENT within thirty days of the end of the review period. BTG will also ensure that the results of all stability testing performed within the review period are sent to Savient within thirty days of the end of the review period.

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### Approvals

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<td>SAVIENT QA</td>
<td>Robert B. Lamm</td>
<td>/s/ Robert B. Lamm</td>
<td>20-Mar-07</td>
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<tr>
<td>BTG QA</td>
<td>Rivka Zaibel</td>
<td>/s/ Rivka Zaibel</td>
<td>20 March 2007</td>
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APPENDIX I

Listing of Example Deviations

The following is a non-exclusive list of deviations requiring notification in accordance with section 0:

- Deviation impacting any filed regulatory document.
- Use of manufacturing or testing site (finished products, intermediates, API or excipients) other than that specified in Bulk Product and Product Specifications and/or BLA.
- Change of manufacturing scale from that specified in Bulk Product Specifications and/or BLA.
- Deviation from packaging or packaging specifications from that specified in Bulk Product Specifications and/or BLA.
- Deviation from suppliers, sources or specifications of starting and Critical Raw Materials or supplier of any filters for Products or intermediates set forth in Bulk Product Specifications and/or BLA.
- Change in the layout, functioning or structure of the Facility, equipment or utilities (HVAC, nitrogen, water or compressed gasses) that may affect the quality of the Bulk Product.
- Use of solvents or reagents (including volatile reagents), other than those specified in Bulk Product Specifications and/or BLA, or change of specifications for such solvents, reagents, or intermediates, or change in analytical methods of solvents, reagents, or intermediates.
- Deviation in amounts of solvents or reagents used from that specified in the Process, Bulk Product Specifications and/or BLA.
- Change in [...***...] status of any raw material or product(s).
- Any reprocessing or rework of any step of the Process.
- A physical contamination, cross-contamination or other chemical contamination.
- Any manufacturing, packaging, labeling, sampling or testing deviation that affects the quality, safety or purity of the Product.
- Departures from the SOPs, IPC tests, stability SOPs, the Stability Protocol or Batch Records outside the filed limits, excursions or any deviation with potential registration impact.
- Any unexpected results from stability testing.
- Environmental monitoring results that are out-of-specification.

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APPENDIX II

Schedule of Retains, Storage Conditions and Retention Periods for Puricase®

The following is a list of the reserve/retention samples that are taken during the manufacturing processes of bulk uricase and PEG-uricase as well as from the final bulk uricase and the final bulk PEG-uricase (Bulk Product).

The document was prepared based on the following BTG QC SOPs:

1. SOP 04-68-1288 (v2): QC Sampling Plan for Bulk Uricase
2. SOP 04-68-1830 (v1): QC Sampling Plan for PEG-Uricase API
3. SOP 04-68-1861 (v1): IPC Testing of Bulk Uricase Batches
4. SOP 04-68-1862 (v1): IPC Testing of PEG-Uricase

Table 1 details the reserve/retention samples that are taken during the manufacturing process of bulk uricase and from the final bulk uricase.

Table 2 details the reserve/retention samples that are taken during the manufacturing process of PEG-uricase and from the final bulk PEG-uricase (Bulk Product).

All IPC samples (including reserve/retention samples) are to be discarded after the Final Product is released by Savient.

Uricase retention and reserve samples will be kept for one year after manufacturing. PEG-Uricase retention and reserve samples will be kept for six years after manufacturing.

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### APPENDIX III

Critical Raw Materials Used in the Production of Recombinant Uricase and PEG-Uricase

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Exhibit E

Product Price

During the first three (3) years from the date of the receipt by Savient of the first commercial batch of the Product, the Price of the Product shall be as follows:

(i) For each gram, […] United States Dollars (USD$[…]) for any aggregated quantities of the Product up to and including […] ordered during any calendar year that commercial batches of Product are shipped, i.e. after the first commercial batch of Product has been shipped.

(ii) For each gram, […] United States Dollars (USD$[…]) for any aggregated quantities of the Product between […] and […] ordered during any calendar year as above; and

(iii) For each gram, […] United States Dollars (USD$[…]) for any aggregated quantities of the Product equal to or greater than […] ordered during any calendar year as above.

The Parties agree that Savient will enter into a supply agreement with NOF, the supplier of […], and will order and pay for PEG needed in Product manufacture on an ongoing basis. In the event that BTG purchases PEG directly from NOF or any other manufacturer, the cost of the PEG will be invoiced to Savient.

Beginning on the Third (3rd) anniversary of the date of receipt of the first commercial batch of Product by Savient, and on each successive first (1st) January thereafter, the Price of the Product shall increase by an amount equal to the average increase in the United States Consumer Pricing Index (CPI) over the immediately preceding twelve (12) month period; such percentage increase shall be applied to each amount specified in (i) through (iii) above.

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This Amended and Restated Residual Rights Agreement ("Agreement") is entered into on the 17th day of July, 2005, by and between Savient Pharmaceuticals, Inc., a public company duly organized under the laws of the State of Delaware ("Savient") and Bio-Technology General (Israel) Ltd., a private company duly organized under the laws of the State of Israel ("BTG"), to replace and supersede the Residual Rights Agreement previously signed and dated 20 June, 2005.

(Savient and BTG shall be referred to jointly as the “Parties” and individually as a “Party”).

WHEREAS, BTG is a wholly owned subsidiary of Savient; and

WHEREAS, the Parties are parties to a Manufacturing Services Agreement effective January 1, 1996 (the “Manufacturing Agreement”) and a Research and Development Services Agreement dated January 1, 1996 (the “R & D Agreement”) (the Manufacturing Agreement and the R & D Agreement being collectively referred to hereunder as the “Inter-Company Agreements”); and

WHEREAS, pursuant to the Share Purchase Agreement (the “SPA”) and the Asset Purchase Agreement (“APA”), each dated March 23, 2005 (the SPA and APA, collectively, the “Divestiture Agreements”), Savient intends to sell to Ferring B.V. all of the issued and outstanding share capital of BTG, and to Ferring International Centre S.A. (together with Ferring B.V., the “Buyer”) all of Savient’s right, title and interest in and to certain assets and rights of Savient in the drug products and drug candidates developed and/or manufactured at BTG pursuant to the Inter-Company Agreements (the “Divestiture” and the “Divested Products”, respectively), but not in any case in the drug candidate known as “Peguricase” (a/k/a “Puricase”); and

WHEREAS, the development of Puricase is ongoing and Savient shall require, and BTG is willing to render, continued development, manufacturing and other services of BTG in relation to Puricase, following the Closing (as defined in the Divestiture Agreements); and

WHEREAS, the Parties wish to record certain specific understandings in relation to certain […] Technology (the “[…***…] Technology”) as to which Savient has retained title, in furtherance of the understandings set out in the SPA in relation thereto, which […] Technology forms part of the Puricase Technology, but which can also be used for the manufacture of other...
products (all products that may be manufactured using the […] Technology, other than Puricase, Divested Products and HA (as defined below), being referred to herein as “[…***…] Products”); and

WHEREAS, the Parties wish to record certain specific understandings in relation to the OCS-funded project, known as BTG-271 (“BTG-271”), in furtherance of the understandings set out in the SPA in relation thereto; and

WHEREAS, the Parties have agreed to terminate the Inter-Company Agreements and wish to record their understandings in relation to the continued development and/or manufacture of Puricase and/or other services that may be rendered by BTG in relation thereto; and

WHEREAS, the Parties wish to record their understandings in relation to the royalties that may be payable to the OCS (“Royalties”) in relation to the Divested Products, Puricase, other products embodying Puricase Technology, […] Products and BTG-271, all subject to and effective as from the Closing.

Now therefore, in consideration of the foregoing premises, which are incorporated into and made a part of this Agreement, and of the mutual covenants which are recited herein, the Parties agree as follows:

1. **Termination of the Inter-Company Agreements**

1.1. Prior to the Closing, Savient and BTG shall comply with the terms and conditions of the Inter-Company Agreements, including any payment obligations by Savient thereunder. Notwithstanding anything to the contrary contained in the Inter-Company Agreements, all of the provisions of the Inter-Company Agreements shall automatically terminate effective as of the Closing, including provisions that were intended to survive termination. Savient shall not have any further obligation to pay BTG in respect of Reimbursable Costs (as such term is defined in the R & D Agreement) or Processing Fees (as such term is defined in the Manufacturing Agreement) that may be outstanding as of such time in relation to Divested Products, and BTG shall be considered as having waived such payments.
1.2. In connection with such terminations, and for the avoidance of doubt, the Parties agree that:

1.2.1. Notwithstanding the provisions of Section 1.1 and Section 3.2 of the Manufacturing Agreement, title to all work in process relating to Divested Products and inventory of Divested Products shall automatically vest in the Buyer, as of the Closing;

1.2.2. Notwithstanding the provisions of Section 1.1 above and Section 11.3 of the Manufacturing Agreement, as of the Closing, BTG shall process and deliver Divested Products ordered prior to the Closing to the Buyer or the Buyer’s designee, and Savient shall have no responsibilities in relation thereto;

1.2.3. As of the Closing, Savient and BTG agree that any liability of Savient to pay BTG for development activities, regulatory or other services of any nature that may have been carried out by BTG for Savient prior to the Closing under the R & D Agreement or otherwise have been satisfied as of the Closing; and

1.2.4. The provisions of the Manufacturing Term Sheet attached hereto as Annex “D” shall apply to work in process relating to Puricase existing as of the Closing and the delivery of Puricase that may have been ordered prior to the Closing.


   2.1. Savient has and shall have the exclusive right, title and interest in and to Puricase and the Puricase Technology, subject to (i) BTG’s irrevocable and perpetual right to conduct research and development with the Puricase Technology developed in the course of Approved Programs, excluding clinical trials that BTG is not in a position to monitor from Israel and (ii) BTG’s right to manufacture Puricase in Israel. BTG shall have commercialization rights with respect thereto only as provided in Section 6 herein or as provided in the Divestiture Agreements. In the case of clauses (i) and (ii), BTG’s rights shall always remain subject to the terms and conditions of any existing supply, manufacturing or development agreement between the Parties. For the avoidance of doubt, Savient and an additional manufacturer on its behalf approved by the OCS, will have the right to use the […] ***] Technology in order to manufacture Puricase.

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2.2. Savient has and shall have the exclusive right, title and interest in the […] Products and the […] Technology subject to BTG’s exclusive, irrevocable, perpetual and unconditional license for purposes of research and development and production. BTG shall have commercialization rights with respect thereto only as provided in Section 6 herein or as provided in the Divestiture Agreements.

2.3. For the purposes of this Agreement, the term “Puricase Technology” means the technology described in the patent applications listed on Annex “B” as 1.1 (the “Puricase Patents”), and any developments, discoveries, inventions, improvements, designs, methods, processes, techniques, devices, formulae and trade secrets which may be developed, acquired and conceived by BTG and are derived from any Development Program in relation to Puricase which have been or may be carried out at any time after the submission of the Puricase Patents and all patents that may issue from patent applications claiming or describing such technology, information and know-how and filed in addition to the Puricase Patents after their submission.

For the purposes of this Agreement, the term “[…***…] Technology” means the technology described in the patent applications listed on Annex “B” as 1.2 (the “[…***…] Patents”) and any developments, discoveries, inventions, improvements, designs, methods, processes, techniques, devices, formulae and trade secrets which have been or may be developed, acquired and conceived by BTG and are derived from any Development Program which have been or may be carried out at any time after the submission of the […] Patents and all patents that may issue from patent applications claiming or describing such technology, information and know-how and filed in addition to the […] Patents after their submission.

For the purposes of this Agreement, “Development Programs” shall mean research and development work carried out by BTG for Savient.

2.4. The Puricase Patents, and the […] Patents (collectively, the “Savient Patents”) are owned by Savient. BTG shall have no rights with respect to the Savient Patents, other than as provided herein or as provided in the Divestiture Agreements. Savient has the sole control over filing and prosecuting applications for United States and foreign patents covering the Puricase Technology and the […] Technology and may file and prosecute the same in Savient’s name. The cost for all such filings and

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prosecutions are and shall be borne by Savient. BTG and its employees and consultants shall provide Savient, without compensation other than recovery of out of pocket expenses, with the necessary authorizations, powers of attorney and other documents and assistance reasonably requested by Savient from time to time to file, secure and maintain Savient’s patent rights in connection with the Savient Patents and BTG hereby grants to Savient powers of attorney to execute and file on BTG’s behalf any documents reasonably necessary to secure and maintain such patent rights.

For the purposes of this Agreement, the term “Savient Patents” means the patents listed on Annex B and any disclosures, continuations, continuations-in-part, divisionals, provisionals, PCT applications, reissuances, revisions, substitutions, conversions, renewals, extensions, prolongations, and reexaminations thereof, any technology and inventions covered thereby, and any corresponding international, regional, and national applications and patents.

2.5. BTG shall, from time to time and as soon as practicable following Savient’s request, provide Savient with documentation describing the current Puricase Technology and […] Technology held by or under the control of BTG and any other report reasonably requested by Savient. For the avoidance of doubt, Puricase Technology and […] Technology shall be described in sufficient detail to allow Savient to manufacture Puricase, or use the […] Technology (as the case may be) it being understood and agreed, however, that Savient shall not commence manufacture of Puricase or of a […] Product (i) unless so permitted by the OCS, if such permission is required; and (ii) unless in compliance with any agreement between the Parties relating to such manufacture and supply; and (iii) provided that such permission by the OCS does not trigger any additional obligations of BTG vis-à-vis Savient or the OCS, above and beyond those provided in such agreement of manufacture and supply or in this Agreement. In any event, BTG may retain copies of such documentation for archival purposes.

2.6. For the sake of clarity:

2.6.1. Nothing herein is intended to derogate from BTG’s ownership of the real property, tools, machinery and equipment which have been or may be acquired by it in furtherance of, or incidental to, the Development Programs;
2.6.2. Neither “Puricase Technology” nor “[…***…] Technology” shall be deemed to include general methods of production or analysis that are generally known in the pharmaceutical industry but have been or will be applied to a Divested Product, HA, Puricase or any […] *** […] Product.

2.7. Savient hereby grants BTG and its Affiliates a non-transferable, royalty-bearing, perpetual, worldwide nonexclusive, unconditional (save for the reasonable consideration to be paid for commercialization rights hereunder) license, under the Puricase Patent to develop products which are not PEGylated recombinant porcine uricase (urate oxidase), and to manufacture and commercialize any such product, it being understood and agreed, however, that the royalties that will be due and payable by BTG to Savient in respect of the commercialization rights to any such product, and other terms and conditions of such license, shall be subject to the negotiation, in good faith, of a mutually acceptable license agreement containing normal and customary terms for transactions of a similar nature (the “License Agreement”). Should the Parties fail to execute the License Agreement within 90 (ninety) days of either Party initiating such negotiations, then the matter may be referred for resolution by either Party, in accordance with the provisions and the procedures attached hereto as Annex F. Nothing in the Parties’ failing to execute the License Agreement or the initiation or conduct of any such procedures shall bar BTG from exercising the license granted to it pursuant to this Section 2.7 pending the decision of the expert.

2.8. The provisions of this Section 2 shall survive the termination or expiration of this Agreement.

3. **Research & Development; Regulatory Services; Manufacturing Services**

3.1. BTG hereby agrees to the extent and on the terms set out in Annexes “C” and “D” hereto (as such Annexes may be modified or superseded by a final definitive agreement between the Parties) to (i) complete the ongoing research and development currently being conducted in respect to Puricase; (ii) transfer the process to BTG’s facility in Be’er Tuvia, Israel; (iii) produce a sufficient quantity of Puricase as required for Phase 3 clinical trials and the initial commercial launch of Puricase and perform all related stability and other testing and activities required for worldwide regulatory filing; (iv) render assistance to Savient in

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relation to the worldwide regulatory filings related thereto; and (v) remain a back-up supplier to the new manufacturer (if any) throughout the time period set forth in Section E of Annex “D” attached hereto or any successive Manufacturing Services Agreement between the Parties.

3.2. In the event that BTG breaches any of its obligations to Savient under this Section 3, in addition to any other remedies that may be available to Savient in law or equity, BTG shall, promptly upon Savient’s request, cooperate and collaborate with Savient in applying to the OCS for Savient to carry out the work in question through a third party. Nothing in the foregoing should be construed as relieving BTG from its contractual obligations pursuant to Section 3.1, and Annexes “C” and “D” attached hereto.

4. **Technology Transfer**

Subject to the approval of the OCS, Savient shall be entitled to request BTG to render to Savient and/or its third party manufacturer technical assistance relating to the transfer of the Puricase Technology or the […] Technology. The terms and conditions upon which BTG shall be obligated to render such assistance in relation to the Puricase Technology are set out in Annex “E” attached hereto.

5. **Compliance with Law for the Encouragement of Research and Development in Industry and the Regulations, Rules and, Procedures Promulgated Thereunder (collectively, the “Law”)**

5.1. BTG hereby confirms and acknowledges that as from the Closing BTG and/or the Buyer (as the case may be) shall be fully responsible for the payment of Royalties pursuant to the Law in relation to income derived from the Divested Products and income derived by BTG from the commercial exploitation of a […] Product pursuant to the license granted to it by Savient pursuant to Section 6.2 below, and BTG hereby agrees to indemnify Savient for any liability that may be imposed upon it by the OCS in relation thereto. BTG shall provide Savient with copies of its semi-annual reports to the OCS in relation to the payment of such Royalties, together with evidence of payment. Moreover, BTG shall notify Savient of any audit conducted by the OCS in respect thereto and the result of such audit, and provide Savient with copies of any written audit report. BTG has been using the […] Technology in the production of caroboxpeptidase as of February 2005, and Royalties pursuant to

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the Law in relation to income derived from carboxypeptidase are thus payable to the OCS. As there is uncertainty as to whether these Royalties should be allocated to OCS file 27141 (Puricase) and/or OCS file 10281 (APA), it is hereby agreed that BTG and Savient shall mutually refer the question of the allocation of such Royalties and the relevant background information to Keren Tmurah at the OCS (“Keren Tmurah”) within 30 days of this Agreement, and Keren Tmurah’s directives shall be binding upon the Parties.

5.2. Savient hereby confirms and acknowledges that as from the Closing Savient shall be fully responsible for the payment of Royalties pursuant to the Law in relation to income derived by Savient from Puricase, Puricase Technology, a […] Technology and hereby agrees to indemnify BTG for any liability that may be imposed upon it by the OCS in relation thereto.

5.3. Due to the fact that BTG shall remain a conduit for the payment of Royalties as set forth in Section 5.2, and in order to ensure Savient’s compliance with the requirements of the Law, Savient irrevocably and unconditionally undertakes to periodically provide BTG with the funds required for making such payments of Royalties in a timely manner. In furtherance thereof:

5.3.1. Savient shall provide BTG with semi-annual reports on its development and commercialization activities in respect of Puricase, Puricase Technology, the […] Technology, and any other information related thereto, that may be requested by the OCS from time to time, for conveyance to the OCS, as required. Such reports shall be accompanied by a financial report signed by Savient’s Chief Financial Officer showing the calculation of the amounts due to the OCS pursuant to the Law in respect of the period covered by the said report and the funds necessary to make the appropriate payments to the OCS, it being understood and agreed, however, that the funds will be transferred by Savient to BTG by no later than 15 (fifteen) days before timely payment has to be made by BTG to the OCS. Such financial reports shall be certified by an independent auditor, once a year, at Savient’s expense.

5.3.2. Savient shall keep complete, accurate and correct books of account and records consistent with sound business and US generally accepted accounting

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principles and practices, in such form and in such details as to enable the verification and the determination of the amounts due to the OCS in respect of Puricase, Puricase Technology, the [...] Products and the [...] Technology. Savient shall retain such books of account for 7 (seven) years after the end of each calendar year.

5.4. BTG hereby undertakes to irrevocably and unconditionally remit the funds received from Savient pursuant to Section 5.3.1 above to the OCS in a timely manner, without any set-offs, deductions or withholdings of any nature.

5.5. BTG and Savient shall comply with any request by the OCS to conduct, *inter alia*, an audit at Savient. In such event, BTG and/or the OCS shall be entitled to appoint a representative to inspect, during normal business hours, and to take copies of Savient’s books of accounts, records and other documentation to the extent relevant or necessary for the ascertainment or verification of the amounts due to the OCS under the Law, at Savient’s expense.

6. [...] Patents

6.1. In addition to BTG’s rights in relation to the [...] Technology, as set out in Section 2.2 above, Savient hereby grants BTG and its Affiliates an irrevocable, fully paid-up, transferable, non-royalty-bearing, perpetual, worldwide, exclusive, unconditional license, under the [...] Patents, to offer for sale, sell and import Divested Products and HA. Nothing in the foregoing shall be construed as a representation on BTG’s part, that such license, or the rights set out in Section 2.2, are required in order to develop, manufacture or commercialize any or all of the Divested Products or HA.

6.2. Savient hereby grants BTG and its Affiliates a non-transferable, royalty-bearing, perpetual, worldwide nonexclusive, unconditional (save for the reasonable consideration to be paid for commercialization rights hereunder) license, under the [...] Patents to offer for sale, sell and import [...] Products, it being understood and agreed, however, that the royalties that will be due and payable by BTG to Savient in respect of the commercialization rights and other terms and conditions of such license, shall be subject to the negotiation, in good faith, of a mutually acceptable license agreement containing normal and customary terms for transactions of a similar nature (the “[...] License Agreement”). Should the Parties fail to execute the [...] License Agreement within 90 (ninety) days of either Party

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initiating such negotiations, then the matter may be referred for resolution by either Party, in accordance with the provisions and the procedures attached hereto as Annex F. Nothing in the Parties’ failing to execute the […]***…] License Agreement or the initiation or conduct of any such procedures shall bar BTG from exercising the license granted to it pursuant to this Section 6.2 pending the decision of the expert. Nothing in the foregoing shall derogate from the terms and conditions of any existing supply, manufacturing or development agreement between the Parties.

6.3. Should Savient decide to abandon a […]***…] Patent at any time during the first 5 (five) years following the Closing; Savient undertakes to notify BTG in writing at least 60 (sixty) days prior to the date on which such […]***…] Patent would become finally abandoned in the absence of action on the part of the party prosecuting or maintaining such patent. Savient shall afford BTG the right, during such 60 (sixty) day period, to acquire such patent application or patents. Should the Parties fail to reach a mutually acceptable agreement as to the terms and conditions upon which BTG may acquire such patent applications or patents, Savient shall be entitled to abandon the same.

7. **BTG-271**

7.1. Prior to the Closing, Savient shall either (a) transfer the patent applications listed in Annex “G” attached hereto (the “BTG-271 Patents”) to a third party and arrange with the OCS for a full release of BTG’s obligation to pay royalties to the OCS with respect to subsequent sales in relation thereto or (b) transfer the BTG-271 Patents to BTG.

7.2. Subject to OCS approval, BTG undertakes to relinquish its rights in the BTG-271 project under the OCS Letter in the event that the BTG-271 Patents are transferred to a third party prior to the Closing or as envisaged under Section 7.3 below.

7.3. Notwithstanding the foregoing, should negotiations between Savient and Eager BioGroup Ltd., a corporation registered in Israel, or any affiliated company registered in Israel and controlled by Prof. Max Herzberg, be ongoing at the time of the Closing, Savient shall have an additional period of 90 (ninety) days from the Closing in order to finalize such transaction (the “Eager Transaction”), and Savient shall bear the cost of the BTG-271 Patents throughout such time period. Should the Eager Transaction not be consummated with OCS approval within such time period, for any reason whatsoever, then the BTG-271 Patents shall be transferred to BTG.

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7.4. Should the BTG-271 Patents be transferred to BTG, then BTG-271 shall be treated as a “Divested Product” for purposes hereof.

8. **Promoter Patents**

8.1. BTG hereby grants Savient a fully paid-up, non-royalty-bearing, perpetual, worldwide nonexclusive license, with the right to sub-license, under the patents and patent applications listed in Annex “H” attached hereto (the “Promoter Patents”), to use the Osm B promoter claimed therein to make, have made, use, offer for sale, sell and import Puricase, it being understood and agreed, however, that the manufacture of Puricase outside of Israel is subject to the approval of the OCS.

8.2. BTG shall favorably consider any request by Savient to expand the scope of the license granted to it under Section 8.1. In such circumstances, the Parties shall negotiate in good faith with a view towards entering into a mutually acceptable license agreement containing normal and customary terms for transactions of a similar nature.

8.3. Should BTG decide to abandon any of the Promoter Patents at any time during the first 5 (five) years following the Closing, BTG undertakes to notify Savient in writing, at least 60 (sixty) days prior to the date on which such Promoter Patent would become finally abandoned in the absence of action on the part of the party prosecuting or maintaining such patent. BTG shall afford Savient the right, during such 60 (sixty) day period, to acquire such patent application or patents. Should the Parties fail to reach a mutually acceptable agreement as to the terms and conditions upon which Savient may acquire such patent applications or patents, BTG shall be entitled to abandon the same.

9. **Indemnification**

Each Party shall indemnify, hold harmless and defend the other Party and its officers, directors and employees against damages, costs and expenses (including reasonable attorney’s fees) incurred as a result of such Party’s failure to comply with its undertakings under this Agreement.

10. **Term: Effect of Termination**

10.1. This Agreement shall enter into force and effect upon the Closing and shall continue to be in force for as long as the Puricase Technology and the […] Technology is in use by either Party.

***Confidential Treatment Requested***
10.2. Should the Divestiture Agreements be terminated without the Closing taking place, for any reason whatsoever, this Agreement shall be null and void.

10.3. The termination of this Agreement for whatever cause shall not prejudice or affect the accrued rights and obligations of either Party.

11. Disclosure of Information

11.1. BTG and its Affiliates shall not furnish copies of documents, patents, patent applications, copyrights, drawings, specifications, bills of materials, devices, equipment, prototypes and other information relating to the Puricase Technology other than as contemplated by this Agreement (and other than to any of their respective Affiliates) and shall not, without the prior approval of Savient, disclose such information to any third party, except to the extent that such disclosure is necessary for BTG’s manufacture of Puricase for Savient, and then only if (i) such disclosure is subject to the same limitations on the recipient as on BTG, and (ii) such limitations are set forth in a written agreement in form and substance satisfactory to Savient. “Affiliate”, as used herein, means, any corporation which controls, is controlled by, or is under common control with, BTG, following the Closing. A corporation shall be deemed to control another corporation if it owns, directly or indirectly, more than 50% (fifty percent) of the voting shares, or has the power to elect more than half the directors, of such other corporation. For purposes of this Section 11.1, “Puricase Technology” shall not include information which is in or becomes, part of the public domains through no act or omission by BTG or any of its employees.

11.2. No publication with respect to any activity undertaken pursuant to a Development Program shall be made, nor any manuscript submitted for publication, without the prior review and written approval of Savient such approval not to be unreasonably withheld.

11.3. The Parties agree that remedies at law may be inadequate to protect against breach of this Section 11, and in case of such a breach BTG hereby consents to the granting of injunctive relief, whether temporary, preliminary or final, in favor of Savient without proof of actual damages.

11.4. The provisions of this Section 11 shall survive the termination or expiration of this Agreement.
12. **Non - Compete**

From the Closing Date until the expiration of the later to expire (following issuance) of the Puricase Patents; BTG agrees not to, and shall cause its Affiliates not to, use the Puricase Technology to manufacture, promote, market or sell any Competing Product in the Territory, or to license or sublicense the Puricase Technology to any third party. As used in this Agreement, “Competing Product” shall mean any prescription pharmaceutical product that (i) contains uricase as an active ingredient or (ii) has a primary use in a particular country, based on a majority of prescription use in such country, for the treatment of gout (in any form). As used in this Agreement, “Territory” shall mean, collectively, every country in the world.

13. **Governing Law and Dispute Resolution**

13.1. This Agreement and any disputes hereunder shall be governed by and construed in accordance with the laws of the State of New York, United States of America, without giving effect to any choice or conflict of law provision or rule that would cause the application of any other laws.

13.2. Save as provided in Section 6.2 hereof, any disputes, claims or controversies between the Savient and BTG in connection with this Agreement, including any question regarding its formation, existence, validity, enforceability, performance, interpretation, breach or termination (any such dispute, claim or controversy, a “Dispute”), shall be finally resolved by binding arbitration.

13.3. Any arbitration hereunder shall be conducted under the Rules of Arbitration of the London Court of International Arbitration. The arbitration shall be conducted in the English language before three arbitrators chosen according to the following procedure: within 20 (twenty) days after commencement of the arbitration, each of Savient and BTG shall appoint one arbitrator, and within 20 (twenty) days after the appointment of both such arbitrators, the two arbitrators so chosen shall choose the third arbitrator. If the two arbitrators chosen by Savient and BTG cannot agree on the choice of the third arbitrator within a period of 20 (twenty) days after their appointment, then the third arbitrator shall be appointed by the London Court of International Arbitration.

13.4. Each of the arbitrators shall be a lawyer or former judge. The chairman of the three arbitrators shall have experience arbitrating disputes in the pharmaceutical industry.

13.5. Any arbitration that would otherwise be conducted pursuant to this Section 13 that relates to the subject matter of any arbitration
conducted pursuant to Section 10.15 of the SPA shall be combined into a single arbitration before the same panel of three arbitrators, conducted in accordance with Section 10.15 of the SPA.

13.6. Each of the Asset Buyer and the Seller hereby irrevocably waives all rights to trial by jury in any Dispute.


14. **Miscellaneous**

14.1. Unless the context explicitly dictates otherwise, all references herein to “patents” and/or “patent applications” herein shall be deemed to include any disclosures, continuations, continuations-in-part, divisionals, provisionals, PCT applications, reissuances, revisions, substitutions, conversions, renewals, extensions, prolongations, and re-examinations thereof, any technology and inventions covered thereby, and any corresponding international, regional and national applications.

14.2. From time to time after the date hereof and prior to the Closing, the Parties may modify and/or replace any of Annexes C, D or E hereto, which modified or replaced Annexes shall automatically constitute part of this Agreement.

14.3. Nothing in this Agreement or in the Divestiture Agreements shall derogate from BTG’s rights under the Technology Transfer Agreement effective February 1, 1998, pursuant to which BTG acquired Savient’s process for the manufacture of sodium hyaluronate (“HA”), as described and claimed in U.S. Patent No. 4,780,414, and the related patent applications, patents, trademarks and domain names listed in Annex “I”. Savient and its employees shall provide BTG, without compensation, with the necessary authorizations, powers of attorney and other documents and assistance reasonably requested by BTG from time to time to record the assignment of said intellectual property rights from Savient to BTG.

14.4. This Agreement constitutes the entire agreement between Savient and BTG with respect to the subject matter hereof, and supersedes any prior agreements or understandings between Savient and BTG with respect to such matters.

14.5. Each Party agrees to execute, acknowledge and deliver such further documents and instruments and do any other acts, from time to time, as may be reasonably necessary, to effectuate the purposes of this Agreement.
14.6. Neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned by either Party without the prior written consent of the other Party hereto, except that either Party may assign its rights hereunder to any entity that acquires all or substantially all of such Party’s business or assets (provided that no such assignment shall relieve the assigning Party of its obligations hereunder, and the assigning Party shall remain primarily liable for such obligations). Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

14.7. All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly delivered four Business Days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one Business Day after it is sent by overnight delivery via a reputable national courier service, in each case to the intended recipient as set forth below:

If to Savient:

Savient Pharmaceuticals Inc.
One Tower Center, 14th Floor
East Brunswick, New Jersey 08816, USA
Telecopy: +1-732-418-9065
Attention: Philip K. Yachmetz, Esq.

If to BTG:

Bio-Technology General (Israel) Ltd.
Kiryat Weizmann
Building 17
Rehovot 76326, Israel
Telecopy: +972-8-9409041
Attention: Dr. Dov Kanner

A “Business Day” shall be any day other than (i) a Saturday or Sunday or (ii) a day on which banking institutions located in New York, New York, United States of America or in Israel are permitted or required by law, executive order or governmental decree to remain closed.

Any Party may give any notice, request, demand, claim, or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy,
telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the Party for whom it is intended. Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Party notice in the manner herein set forth.

14.8. Savient and BTG may mutually amend or waive any provision of this Agreement at any time. No amendment or waiver of any provision of this Agreement shall be valid unless the same shall be in writing and signed by both of the Parties.

14.9. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the body making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified.

14.10. Except as otherwise specifically provided to the contrary in this Agreement, each of the Parties shall bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

14.11. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original; but such counterparts shall together constitute but one and the same instrument.

[Intentionally Left Blank]
IN WITNESS WHEREOF the Parties hereto have set their signatures as of the date first mentioned above.

/s/ Christopher Clement  
SAVIENT PHARMACEUTICALS, INC.

By: Christopher Clement  
Title: President and Chief Executive Officer

/s/ Philip K. Yachmetz  
BIO-TECHNOLOGY GENERAL (ISRAEL) LTD.

By: Philip K. Yachmetz  
Title: Director

List of Annexes:

Annex “A”  OCS letter  
Annex “B”  Puricase Patents  
Annex “C”  Development and Regulatory Work - Puricase  
Annex “D”  Term Sheet for Manufacture of Puricase  
Annex “E”  Term Sheet for Technology Transfer  
Annex “F”  Expert Procedures  
Annex “G”  BTG-271 Patents  
Annex “H”  List of osmB promoter patents/patent applications  
Annex “I”  List of HA Patents, Trademarks and Domain Names
Annex A

OCS letter
July 15, 2003

Mr. Avi Feldman, Esq.
General Counsel to the
Office of the Chief Scientist
Ministry of Industry, Trade and Labor
4 Mevo Hamatmid Street
Jerusalem 91021

Dear Mr. Feldman,

Re: Bio-Technology General (Israel) Ltd. (‘BTG Israel’)

We have been informed of the meeting that took place in Jerusalem on June 15, 2003 with the participation of representatives of the Chief Scientist (the ‘CS’) and BTG Israel.

We understand that during the course of the meeting, the parties resolved certain issues that arose in relation to CS-approved R & D programs at BTG Israel (the ‘Approved Programs’) as follows:

1. BTG Israel will have title to all future Approved Programs, relating to new projects.

2. BTG Israel will have an exclusive irrevocable and perpetual right from us to conduct R&D with technology developed in the course of Approved Programs which are completed or ongoing, excluding clinical trials that BTG Israel is not in a position to monitor from Israel; and

3. Except as otherwise approved by the CS, BTG Israel will have an exclusive right from us to manufacture in Israel products developed through Approved Programs.

We understand that the CS will not unreasonably withhold its consent to the conduct of such R&D activities outside of Israel if BTG Israel is capable to carry out such activities, or the manufacture of such products outside of Israel, if commercially unfeasible or if BTG Israel is unable to carry out such activities.

We also understand it was agreed that upon receipt of our agreement to the foregoing, funds withheld by the CSO upon the 2002 audit as well as funds that would otherwise have been payable in 2002 (if properly spent and reported) will be immediately released to BTG Israel.
On the basis of such understandings, and without waiving any rights that we may have from time to time under the Law for the Encouragement of Research and Development in Industry, we hereby confirm our agreement to the understandings set out above.

Respectfully yours,

/s/ Sim Fass

Savient Pharmaceuticals, Inc.
By: Sim Fass
Title: Chairman & CEO

cc: Mr. Amos Efrati
    Mr. Shaul Freilich
    Deputies to the Chief Scientist
    Y. Baratz
    D. Kanner
    R. Shaw
1. New Applications

1.1. Puricase

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1.2. Protein Purification

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***Confidential Treatment Requested
Annex C

Development and Regulatory Work
Puricase

The following outline summarizes the key elements of ongoing development work and regulatory services relating to Puricase which will be required from BTG as from the Closing, certain elements of which are required under agreement with the OCS. This outline will form the basis of a detailed work plan covering these activities, which will be concluded prior to the Closing. It is anticipated that the detailed work plan when completed, will include a specific list of deliverables and a timetable for performance and delivery.

While every effort has been utilized to make this outline as comprehensive as possible, certain activities shown here may need to be expanded to include normal and customary related activities.

[...***...]

A total of two pages were omitted pursuant to a request for confidential treatment.

***Confidential Treatment Requested
Annex D

Term Sheet
Manufacturing Services

The following outline summarizes the key elements of manufacturing services that will be required from BTG as contract manufacturer with respect to the manufacturing Puricase (the “Product”), as required from BTG as from the Closing. This outline will form the basis of a detailed work plan covering these activities, which will be concluded prior to the Closing. It is anticipated that the detailed work plan when completed, will include a specific list of deliverables and a timetable for performance and delivery.

While every effort has been utilized to make this outline as comprehensive as possible, certain activities shown here may need to be expanded to include normal and customary related activities.

[...***…]

A total of five pages were omitted pursuant to a request for confidential treatment.

***Confidential Treatment Requested
Annex E

Term Sheet
Technology Transfer

The following outline summarizes the key elements of the technology transfer relating to Puricase which may be required from BTG, after the Closing. This outline will form the basis of a detailed work plan covering these activities, which will be concluded prior to the Closing. It is anticipated that the detailed work plan when completed, will include a specific list of deliverables and a timetable for performance and delivery.

While every effort has been utilized to make this outline as comprehensive as possible, certain activities shown here may need to be expanded to include normal and customary related activities.

These terms and conditions shall be binding upon the Parties, unless and until superseded by a definitive Technology Transfer Agreement and/or a detailed work plan:

[...***...]

***Confidential Treatment Requested
ANNEX F

Expert Procedures

Pursuant to Sections 2.5 and 6.2 of the Residual Rights Agreement:

[...***...].

***Confidential Treatment Requested
A total of three pages were omitted pursuant to a request for confidential treatment.
Annex H

osmB promoter patents/patent application

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***Confidential Treatment Requested
Annex I

List of HA Patents, Trademarks and Domain Names

1. Patents
   Refer to attached list

2. DesignRight Registrations
   2.2. Israel: Design 23832 - Filed January 22, 1995, Granted June 20, 1995; Expiration date January 22, 2010.

3. Trademarks
   Refer to attached list

4. DomainNames

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***Confidential Treatment Requested

1
Exhibit G

Product Specifications
## Summary of Release Testing of Bulk Uricase Intermediate

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***Confidential Treatment Requested***
## Summary of Release Testing of PEG-uricase API

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***Confidential Treatment Requested***
FIRST AMENDMENT TO COMMERCIAL SUPPLY AGREEMENT

THIS AMENDMENT is made and entered into this 24th day of September, 2007, (hereinafter the “Effective Date”).

BETWEEN: SAVIENT PHARMACEUTICALS, INC.
a Delaware corporation, (hereinafter “Savient”)

AND

BIO-TECHNOLOGY GENERAL (ISRAEL) Ltd.
an Israeli corporation, (hereinafter “BTG”)

WHEREAS:

Savient and BTG are parties to a Commercial Supply Agreement with an effective date of March 20, 2007, (hereinafter, the “Agreement”) pursuant to which BTG agreed to manufacture and supply a certain Bulk Product, as defined in the Agreement, to Savient, and Savient agreed to purchase such Bulk Product from BTG; and

Savient and BTG have held discussions relating to the modification and amendment of the Agreement to clarify a certain provision relating to the adjustment of Bulk Product Forecasts.

NOW THEREFORE in consideration of the mutual promises and agreements and covenants contained herein, the adequacy of such consideration has been agreed and acknowledged by each party, and in accordance with the provisions of Section 14.08 of the Agreement, the parties hereto agree as follows:

1. Definitions. All of the Definitions contained in Article 1 of the Agreement shall have the same meanings herein unless specifically stated otherwise. Any capitalized terms not specifically defined herein, shall have the same meaning ascribed to them as set forth in the Agreement.

2. Modification of Bulk Product Forecasts. Section 5.06 of the Agreement is hereby repealed in its entirety and is replaced with the following,

“Any Bulk Product Forecast that is not a Firm Order is to be considered a forecast or estimate to be used for planning purposes, and shall not be construed as a firm commitment by Savient to BTG and thus can be increased or reduced by Savient from time to time. Savient shall be entitled at any time up until and including the time that a Firm Forecast or Estimated Forecast becomes a Firm Order, to increase or decrease such monthly Firm Forecast or Estimated Forecast for Bulk Product, provided, however, such increases or decreases on a monthly basis shall not be greater than […]% of the originally forecasted quantity for such month, provided, however, (a) each month may not be increased and

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decreased more than one time, and, (b) any such monthly increase or decrease as contemplated herein shall be expressed in whole batch quantities of not less than one (1) batch. As a request by Savient to increase the quantity of Bulk Product in a Firm Forecast prior to its becoming a Firm Order may require longer lead times for delivery than requested by Savient, both Parties shall agree jointly on a new delivery date as close as possible to the requested date having due regard for BTG’s commercial commitments to Third Parties and its own production needs, such agreement to not be unreasonably withheld, conditioned or delayed. Once a Firm Forecast becomes a Firm Order, Savient may not reduce it, but may request that BTG increase the quantity of Bulk Product subject to a Firm Order and BTG shall use commercially reasonable efforts to fill the increased order.”

3. **No Modification.** Except as expressly provided for herein, the Agreement shall remain in full force and effect without amendment. If there is any conflict or inconsistency between this Amendment and the Agreement, this Amendment shall prevail. This Amendment contains the entire agreement between the parties hereto with respect to the subject matter contemplated herein and shall not be modified or amended except by a written instrument signed by both parties hereto.

**IN WITNESS WHEREOF,** the parties have caused this Amendment to be executed by their respective duly authorized officers as of the date first written above.

**SAVIENT PHARMACEUTICALS, INC.**

By: /s/Philip K. Yachmetz
Philip K. Yachmetz
Executive Vice President &
Chief Business Officer

**BIO-TECHNOLOGY GENERAL**
**(ISRAEL) Ltd.**

By: /s/Dov Kanner
Dov Kanner
Managing Director
SECOND AMENDMENT TO COMMERCIAL SUPPLY AGREEMENT

THIS SECOND AMENDMENT is made and entered into this 24th day of January, 2009, (hereinafter the “Effective Date”).

BETWEEN:

SAVIENT PHARMACEUTICALS, INC.
a Delaware corporation, (hereinafter “Savient”)

AND

BIO-TECHNOLOGY GENERAL (ISRAEL) Ltd.
an Israeli corporation, (hereinafter “BTG”)

WHEREAS:

Savient and BTG are parties to a Commercial Supply Agreement with an effective date of March 20, 2007, (hereinafter, the “Agreement”) pursuant to which BTG agreed to manufacture and supply a certain Bulk Product, as defined in the Agreement, to Savient, and Savient agreed to purchase such Bulk Product from BTG; and

Savient and BTG have subsequently amended the Agreement on September 24, 2007, (the “First Amendment”) and have issued a Letter Agreement dated July 30, 2008, (the “Letter Agreement”) pertaining to the Agreement; and

Savient and BTG desire to further amend the Agreement in accordance with the terms and conditions of this Second Amendment.

NOW THEREFORE in consideration of the mutual promises and agreements and covenants contained herein, the adequacy of such consideration has been agreed and acknowledged by each party, and in accordance with the provisions of Section 14.08 of the Agreement, the parties hereto agree as follows:

1. Definitions. All of the Definitions contained in Article 1 of the Agreement shall have the same meanings herein unless specifically stated otherwise. Any capitalized terms not specifically defined herein, shall have the same meaning ascribed to them as set forth in the Agreement.

2. Replacement of Exhibits to Agreement. The parties agree that the exhibits which are appended to this Second Amendment shall supersede and replace their counterparts as previously executed by and between the parties. For purposes of clarity the following exhibits to the Agreement are hereby repealed and replaced with the attached exhibits:

   i) ExhibitC, “Current Provisional Bulk Product Specifications”
   ii) ExhibitD, “Quality Agreement”
   iii) ExhibitG, “Product Specifications”
3. **No Modification.** Except as expressly provided for herein, the Agreement shall remain in full force and effect without amendment. If there is any conflict or inconsistency between this Amendment and the Agreement, this Amendment shall prevail. This Amendment contains the entire agreement between the parties hereto with respect to the subject matter contemplated herein and shall not be modified or amended except by a written instrument signed by both parties hereto.

**IN WITNESS WHEREOF,** the parties have caused this Amendment to be executed by their respective duly authorized officers as of the date first written above.

**SAVIENT PHARMACEUTICALS, INC.**

By: /s/Philip K. Yachmetz
    Philip K. Yachmetz
    Senior Vice President &
    General Counsel

**BIO-TECHNOLOGY GENERAL**
**ISRAEL) Ltd.**

By: /s/Dov Kanner
    Dov Kanner
    Managing Director
Exhibit C

Current Provisional Bulk Product Specifications
Table 1. Tests Performed on […]

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Table 2. Tests Performed on [...***...]

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Exhibit D

Quality Agreement
QUALITY ASSURANCE RESPONSIBILITY AGREEMENT

BETWEEN

SAVIENT PHARMACEUTICALS, INC.

AND

BIO-TECHNOLOGY GENERAL (ISRAEL) LTD.

(COMMERCIAL PHASE)

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ARTICLE 1
PURPOSE AND SCOPE:

1.01 Savient Pharmaceuticals, Inc. (“SAVIENT”) and Bio-Technology General (Israel) Ltd. (“BTG”) have entered into a Supply Agreement of (event date) herewith (the “Supply Agreement”).

This document (the “Quality Agreement”) defines the quality assurance responsibilities between SAVIENT and BTG. This Quality Agreement applies only to the manufacture and supply by BTG to SAVIENT of the Product (as defined in the Supply Agreement).

ARTICLE 2
DEFINITIONS:

2.01 Capitalized terms used but not otherwise defined in this Quality Agreement will have the meanings ascribed thereto in the Supply Agreement. For ease of reference, the following definitions from the Supply Agreement which are used in this Quality Agreement are copied in full below, amended where appropriate for the purposes of this Quality Agreement:

(i) “BLA” means a Biologics License Application filed with the FDA and/or any other application required for the purpose of marketing or selling or using a therapeutic or prophylactic product to be filed with a governmental agency in a non-U.S. country or group of countries, including, without limitation, a Product License Application or Marketing Authorization in the European Union.

(ii) “Bulk Product” shall mean the bulk solution of polyethylene glycol (PEG) conjugate of uricase ordered by Savient from BTG pursuant to the Supply Agreement.

(iii) “Bulk Product Specifications” shall mean the manufacturing and quality specifications for the Bulk Product, including, without limitation, unit descriptions established from time to time in accordance with section 3.01 of the Supply Agreement.

(iv) “Business Day” shall mean any day other than (i) Friday, Saturday or Sunday or (ii) a day on which banking institutions located in New York, New York, United States of America or in Israel are permitted or required by law, executive order or governmental decree to remain closed.

(v) “cGMP” shall mean current good manufacturing practices as set forth in Title 21, Parts 210 and 211 of the C.F.R. and 21 C.F.R. Part 312 (IND) and Part 314 (NDA), and 21 C.F.R. Part 600 (Biological Products), as established and amended by the FDA.

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“FDA” shall mean the United States Food and Drug Administration or, where applicable, its regulatory equivalent in a foreign jurisdiction.

“Facility” shall mean, as applicable, the Be’er Tuvia manufacturing facility located at Beer Tuvia Industrial Zone, POB 571, Kiryat Malachi 83104, Israel.

“IND” shall mean an Investigational New Drug application, as defined in 21 C.F.R. 312.3, and filed with the FDA or any equivalent foreign Regulatory Agency.

“Legal Requirements” shall mean (i) any present and future national, state, local or similar laws (whether under statute, rule, regulation or otherwise), (ii) requirements under permits, orders, decrees, judgments or directives, and requirements of applicable Regulatory Agencies (including, without limitation, cGMP) and (iii) regulations pertaining to BLAs (with respect to each of the foregoing, as amended or revised from time to time).

“Process” or “Processing” shall mean the act of purification, preparation, filling, testing and any other pharmaceutical manufacturing procedures, or any part thereof (including, but not limited to, product or process specifications, testing or test methods, raw material specifications or suppliers, equipment, etc.), relating to, as applicable, Bulk Product and Product.

“Product” shall mean pharmaceutical products containing Bulk Product ordered by Savient pursuant to the Supply Agreement.

“Regulatory Agency” shall mean with respect to the United States, the FDA, or, in the case of a country in the Territory other than the United States, such other appropriate regulatory agency with similar responsibilities.

In addition, the following definitions apply to this Quality Agreement:

(i) “Bulk Product” shall mean bulk solution of polyethylene glycol (PEG) conjugate of uricase in its final formulation which is in Process, and has been produced for sterilization, filling or other finishing activities.

(ii) “Filled Product” shall mean sterile Product that is in Process and has been filled into its final primary packaging for further labeling or packaging activities.

(iii) “Final Product” shall mean finished Product in its final packaged and labeled form which is ready for distribution to the marketplace or third party distributors for sale or clinical use.

(iv) “Release” shall mean control, approval and authorization of shipment.
ARTICLE 3

NOTIFICATION OF PROCESS DEVIATIONS AND DOCUMENTATION OF CHANGES:

3.01 BTG shall provide to SAVIENT, within [...] Business Days of BTG’s discovery of its occurrence, written notification of (i) any deviation from the Process as set forth in the Bulk Product Specifications and the BLA and any deviation from cGMP requirements, regulations and standards, and any event that represents an unexpected or unforeseeable event that may affect safety, purity or potency of Bulk Product; and (ii) any deviation in the quality (purity, physical and chemical properties) of the Bulk Product from the Bulk Product Specifications. Appendix I sets forth a list of examples of deviations from the Process, for purposes of illustration only, and is not intended to be comprehensive or definitive.

(i) BTG shall not conduct any retesting or reprocessing as the result of deviations described above without prior written authorization from SAVIENT Quality Assurance unless a delay of retesting or reprocessing would result in increased risk to the safety, purity or potency of the Bulk Product or Product.

3.02 Any changes to be made to this Quality Agreement in accordance with the provisions set out in this section 3 must be documented as an addendum to this Quality Agreement, and must be signed by authorized representatives from each of the BTG QA department and the SAVIENT QA department, in addition to authorized representatives from any other departments as may be specified in relation to the matters set forth in section 3.3 below. This Quality Agreement will be reviewed by BTG and SAVIENT on a periodic basis (approximately once per year) and revised as appropriate.

3.03 Change Control

(i) Specifications that control the Process for the manufacture, including packaging, holding, and test of Bulk Product and Product, must be signed by authorized representatives from BTG and SAVIENT Quality Assurance, SAVIENT Regulatory Affairs, and SAVIENT Manufacturing. Such documents include, but are not limited to Bulk Product Specifications (including specifications for intermediate), Product Specifications (including specifications for product, component and packaging). Changes to such documents must be signed by authorized representatives from SAVIENT Quality Assurance, SAVIENT Manufacturing and SAVIENT Regulatory Affairs.

(ii) Changes to additional documents that control the Process for the manufacture of Bulk Product and Product (including test methods, manufacturing procedures and batch records) must be assessed according to the BTG change control process described in section 3.4. Any change that would have an impact on the Process, Bulk Product or Product, or require submissions to or approvals from any Regulatory Agency must receive prior written approval by authorized representatives from SAVIENT Quality Assurance, SAVIENT Manufacturing and SAVIENT Regulatory Affairs. If there is no such impact, BTG may proceed with the change, but must notify SAVIENT Quality Assurance.
Assurance no later than […***…] days from the initiation of the BTG change control process. If SAVIENT does not agree with BTG’s assessment of impact, SAVIENT must respond to BTG no later than within […***…] days of receipt of notification.

(iii) The stability protocol as well as any changes to the stability protocol must be approved by SAVIENT QA and SAVIENT Regulatory Affairs.

(iv) Critical Raw Materials. The current specifications for Critical Raw Materials are attached as Appendix III. The Parties acknowledge and agree that these specifications may be amended from time to time by the supplier of the material. With respect to such amendments:

BTG shall notify SAVIENT as soon as reasonable practicable, but no later than within […***…] days of receipt of notification by BTG.

The Parties will meet and agree as to suitability of the material produced according to the amended specification for manufacture of the Bulk Product.

3.04 BTG will utilize a documented system of written procedures for the control of changes to documents relating to raw materials, packaging materials, labeling, suppliers, equipment, manufacturing methods, batch size, product, intermediates and raw materials specifications, sampling, analytical test methods and Release requirements and any other Processing by BTG, relating to the Bulk Product.

3.05 Any changes to any matter relating to the manufacture and supply of Bulk Product by BTG shall be governed by the procedures set out in the Supply Agreement at Article 3 in relation to changes to the Bulk Product Specifications, and Article 6 in relation to changes to the Process.

3.06 SAVIENT Regulatory Affairs will have responsibility for determining the regulatory impact of any proposed change. SAVIENT Regulatory Affairs will determine the classification and requirements for notification to, or approval by FDA. SAVIENT is responsible for communication of any changes to FDA. SAVIENT Regulatory Affairs will have responsibility to advise BTG of any changes to the BLA prior to submission.

BTG will ensure that changes are evaluated and qualified in accordance with all applicable ICH (International Conference on Harmonization) requirements in addition to all Legal Requirements, including but not limited to:

ICH Guideline Q5E Comparability of Biotechnological/Biological Products Subject to Changes in Their Manufacturing Process.

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ARTICLE 4
MATERIALS

4.01 Procurement of Components
BTG will procure all the components described in the Bulk Product Specifications in such quantities as may be necessary to meet Purchase Orders placed by SAVIENT pursuant to the Supply Agreement, and store the components in appropriate storage conditions under quarantine until tested.

4.02 Inspection and Testing of Materials
Upon receipt, BTG shall sample in accordance with acceptable statistical methods, inspect and test containers of all materials to be used in the Process or in connection with the supply and manufacture of Bulk Product on a batch-by-batch basis, in accordance with the Bulk Product Specifications.

4.03 Bulk Product
BTG will be responsible for ensuring that Bulk Product is manufactured, tested and stored in compliance with all applicable ICH guidance documents (including, without limitation, the guidance contained therein for master and working cell banks) in addition to all Legal Requirements. ICH Guidance includes, but is not limited to:

Q5D Quality of Biotechnological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products.

Q7A, Good Manufacturing Practices Guidance for Active Pharmaceutical Ingredients

4.04 Retention, Storage and Handling of Materials and Product Samples
BTG shall sample and retain such amounts of Bulk Product and of all materials to be used in the Process or in connection with the supply and manufacture of Bulk Product (“Retains”) except water, compressed gasses and any highly volatile compounds as set forth in Appendix II or as otherwise required in accordance with applicable Legal Requirements. BTG will store for five years, or such longer period as may be required in accordance with Appendix II or by Legal Requirement, sample Product and Retains for each batch or lot of intermediates and raw materials. Reasonably prior to the expiry of such retention period, or upon termination of this Quality Agreement, BTG shall offer all such materials to SAVIENT. Any labor costs of BTG employees and/or Third Party expenses incurred by BTG related to the transfer of such materials shall be reimbursed by SAVIENT in the manner and at the rates set forth on Exhibit B to the Supply Agreement.

A schedule of specific Retains, storage conditions and retention periods for Puricase® is listed in Appendix II.

4.05 Transmissible Spongiform Encephalopathy (TSE)
BTG will provide a written TSE declaration that all materials (including non-dedicated equipment) used in the manufacturing process are free from animal derived material. In addition, BTG must have available, on site, written TSE declarations from the supplier, where appropriate, of raw material used in the manufacturing process verifying exclusion
of animal derived material. If BTG is unable to provide the above declarations, BTG will comply with applicable TSE laws and regulations and will obtain all associated TSE documentation as requested by SAVIENT. This documentation may include a TSE Certificate of Suitability in accordance with European directive 75/318/EEC as amended by directive 1999/82/EEC, the note for guidance EMEA/410/01 rev2 as amended and AP-CSP(99)4, Appendix 2, as amended.

4.06 Supplier Audits

BTG and SAVIENT will provide each other with copies of supplier audit reports for materials used in the Process or manufacture of the Product.

ARTICLE 5
MANUFACTURING, PACKAGING, INSPECTION AND TEST:

5.01 The processing, packaging, and labeling of Bulk Product will be performed and documented by BTG. BTG will not subcontract any of the processing, packaging, and labeling functions except as may be permitted in accordance with the Bulk Product Specifications, and if so permitted, in accordance with the provision set forth in Section 2.05 of the Supply Agreement.

5.02 BTG shall not process or store Bulk Product in the same building in which BTG manufactures, stores or processes potentially hazardous substances (including, without limitation, certain antibiotics such as beta-lactam and cephalosporins, cytotoxic compounds, toxins or poisons such as pesticides or herbicides, (collectively, “Potential Contaminants”) unless the Potential Contaminants are stored or manufactured in contained environments and in compliance with all Legal Requirements and the Bulk Product is processed and stored in compliance with building, cleaning, validation and changeover requirements of all cGMPs and all Legal Requirements. BTG shall promptly notify SAVIENT if any of the Potential Contaminants are manufactured, processed or stored in any portion of the Facility which may result in the introduction of Potential Contaminants into the areas of such facilities where the Bulk Product is Processed. SAVIENT is aware that other products are processed in the Facility, the nature of those other products existing today and that certain equipment (multi-use equipment) is used in the processing of both the Bulk Product and these other existing products. SAVIENT has also had the opportunity to assess the risk to the Processing of Bulk Product of the use of such certain multi-use equipment with respect to the other existing products. However, in the instance where BTG intends to introduce a new product or substance to its Facility which is out of the matrix of existing products and use such multi-use equipment in the processing or handling of such new product or substance, SAVIENT will need to reassess the risks to the Processing of Bulk Product with this new product or substance utilizing the multi-use equipment. Therefore, whenever BTG plans to introduce a new product or molecular entity which is out of the matrix of existing products to equipment shared with Puricase production, BTG will provide no less than […] days prior notice of its intent, and will contemporaneously make supporting cleaning validation data/rationale available to SAVIENT. SAVIENT will make its assessment of the risk potential for adulteration of its own product through examination of cleaning validation.

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5.03 BTG will provide to SAVIEN T: a copy of all master batch record documents and production and control records, a Certificate of Analysis (PEG-uricase API and uricase), executed batch records and associated batch documentation, which shall include, without limitation: formulation records, label records, manufacturing records, environmental monitoring data, microbiological data, in-process and final analytical data, including lab control results, sterility data, deviations/out-of-specification reports and cleaning records for any critical product contact equipment (for example, fermentors or any other non-dedicated product contact equipment).

(i) Translation: BTG will provide an English translation of all such documents, including, without limitation, all reports, notes or comments on records that are not part of the master batch record but if any of the foregoing documents are only available in a language other than English, the Parties shall agree upon an English language template for such document(s), and BTG shall provide to Savient an English language translation of any deviations from the template(s). When required by SAVIEN T, translations shall be performed by an independent, translation firm. Translations by a third party firm must be verified by BTG to ensure translation of company or process specific language. Any labor costs of BTG employees and/or Third Party expenses incurred by BTG in relation thereto shall be reimbursed by SAVIEN T in the manner and at the rates set forth on Exhibit B to the Supply Agreement.

5.04 Upon request by SAVIEN T, BTG will provide access to additional records that are not normally part of the batch record but which bear a reasonable relation to the Bulk Product for SAVIEN T to review, which may include, without limitation, maintenance and use records, water testing data, training records, raw material release records, log books, receiving and shipping records, inventory records and vendor qualification records. Any labor costs of BTG employees and/or Third Party expenses incurred by BTG in relation thereto shall be reimbursed by SAVIEN T in the manner and at the rates set forth on Exhibit B to the Supply Agreement.

5.05 BTG will retain copies of all completed batch records for a minimum of […] years, or such longer period as may be required by Legal Requirement. Reasonably prior to the expiry of such retention period, or upon termination of this Quality Agreement, BTG shall offer such completed batch records to SAVIEN T. Any labor costs of BTG employees and/or Third Party expenses incurred by BTG related to the transfer of such materials shall be reimbursed by SAVIEN T in the manner and at the rates set forth on Exhibit B to the Supply Agreement.

5.06 Use of BTG Manufacturing Space for Bulk Product

BTG has allotted an amount of manufacturing floor space at the Facility for the Processing of Bulk Product (Purification Area in the Agreement). This space may be used for the production of other products subject to the following limitations:

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(i) BTG may use the Purification Area for alternate product manufacturing only during periods when the Purification Area is not used for the Processing of Bulk Product.

(ii) BTG adheres to all relevant cGMPs including, without limitation, procedures for prevention of mix-ups, prevention of contamination, labeling requirements, cleaning requirements and changeover requirements.

(iii) BTG shall not, under any circumstances utilize any equipment dedicated to the Processing of Bulk Product for such alternate product manufacturing.

(iv) BTG adheres to limits and procedures described in section 5.2 for Potential Contaminants.

ARTICLE 6

RELEASE AND SHIPMENT OF PRODUCT(S):

6.01 Bulk Product shall be Released in accordance with the procedures set forth in the Supply Agreement, together with the additional obligations described in this section of the Quality Agreement. BTG QA will review the records described in section 5.3 above. Following review and acceptance by BTG QA, BTG will send copies of these documents to SAVIENT QA. SAVIENT QA and Manufacturing will then review the documentation and notify BTG whether or not documentation is acceptable. If such documentation is not reasonably acceptable to SAVIENT, BTG will cooperate in taking such steps as SAVIENT may reasonably require to ensure that the documentation, and any Processing described therein complies with the Bulk Product Specifications and all Legal Requirements.

6.02 BTG QA will be responsible for the QC testing of Filled Product until such time as a third party laboratory has been qualified to perform such testing. BTG will provide a Certificate of Analysis and/or stability results for each batch that BTG tests. Savient QA will be responsible for the review of the manufacturing batch record for Filled Product, review of the Certificate of Analysis and Release of the Filled Product.

6.03 SAVIENT QA will be responsible for the Release of the Final Product.

6.04 Product shall be delivered in accordance with the provisions of Article 7 of the Supply Agreement.

6.05 BTG will not ship any SAVIENT products to any destination, as identified by SAVIENT, unless prior approval has been received from SAVIENT.

ARTICLE 7

DEVIATIONS IN PROCESS OR BULK PRODUCT:

In the event of a notification of a deviation by BTG in accordance with section 0 above, BTG shall investigate and fully document in English such deviation within […***…] days of its discovery. If BTG cannot resolve the deviation within the […***…]-day period, BTG will provide
weekly updates of the investigation progress. At SAVIENT’s request, BTG shall conduct such additional or more detailed investigation of the deviation as SAVIENT may reasonably instruct. Investigation documentation will be retained by BTG as part of the batch documentation for the batch affected. When a deviation has occurred, SAVIENT will have the final review and decision making responsibility as to the impact of the deviation on the Bulk Product or Product, which will include the disposition of affected lots.

ARTICLE 8
STORAGE OF PRODUCT(S):

Bulk Product will be stored under appropriate storage conditions and in a secure area to ensure that they comply with the Bulk Product Specifications, including all the label requirements, quality specifications and attributes as well as Legal Requirements.

ARTICLE 9
TRACEABILITY OF PRODUCT(S):

SAVIENT will be responsible for traceability of products to first consignee within the US. BTG will be responsible for traceability from the finished product lot number to raw material and component lots used in manufacture.

ARTICLE 10
CONFLICT OF TERMS:

To the extent that there exists any conflict between the terms of this Quality Agreement and the Supply Agreement, the latter shall prevail. To the extent that there exists any conflict between the terms of this Quality Agreement and any Legal Requirements, the latter shall prevail.

ARTICLE 11
COMPLIANCE WITH LAWS:

BTG will ensure that all of its activities pursuant to this Agreement are performed in accordance with all Legal Requirements (including cGMPs), the respective Bulk Product Specifications, conditions of the BLA, and BTG’s Standard Operating Procedures (SOPs). BTG will ensure that the Bulk Product supplied by it to SAVIENT shall not itself cause the Final Product to be adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act and regulations.
ARTICLE 12

INSPECTIONS:

Each party shall advise the other of any governmental communication, inspection or report, including, without limitation, that of any appropriate regulatory agency in any jurisdiction with responsibilities similar to those of the FDA in respect of the United States, any environmental agency, health agency or other governmental or administrative agency having jurisdiction over the Product or the Processing. The notifying party shall promptly notify the other party by fax and telephone, to the person and on the contact numbers set out below:

TO SAVIENT:

- Contact Name: Eric Nickerson, Senior Director Quality Assurance
- Telephone: 732-418-9300
- Fax: 732-418-0766

TO BTG:

- Contact Name: Yosefa Bilman, Senior Director Quality Assurance
- Telephone: 972-8-861-2007
- Fax: 972-8-861-2166
ARTICLE 13

OBSERVATION BY SAVIENT:

Observation by SAVIENT or its authorized representative shall be governed the following. Observation will be limited to [...] quality audit every [...] period if BTG receives a communication from any regulatory authority threatening license approval or supply of the Product due to compliance deficiencies at BTG facilities or if BTG was found to be in material non-compliance of this Agreement during or since the last quality audit. Person-in-Plant visits may be conducted at the discretion of SAVIENT during the manufacture of Bulk Product at BTG facilities. The frequency and duration of any additional visits must be agreed to by SAVIENT and BTG.

ARTICLE 14

ADVERSE EVENTS:

14.1 BTG will provide to SAVIENT within [...] of becoming aware, any information from any source that suggests an adverse event or serious adverse event has occurred. This information will include any adverse drug experience or reaction reports or any other information indicating that the product has any toxicity, sensitivity reactions or is otherwise alleged to cause illness or injury due to a possible product quality problem, adulteration or misbranding.

14.2 Quality Assurance Investigations. Upon notification to BTG that SAVIENT has received an SAE, AE, product complaint or inquiry regarding a Product supplied or incorporating a Bulk Product supplied, BTG shall conduct a quality assurance investigation to determine if any process or testing deviations or events may have contributed to the SAE, AE, product complaint or inquiry. BTG shall provide a written report on the results of the investigation to SAVIENT in not more than [...] days from SAVIENT’s notification. In cases where a more comprehensive investigation might be required, the Parties will jointly develop an investigation plan. BTG shall reasonably cooperate with SAVIENT and regulatory agencies regarding an investigation or inquiry that may be initiated by a regulatory agency or otherwise required in response to a consumer or healthcare professional. BTG shall further provide SAVIENT with all data or other information that SAVIENT may reasonably require in connection with any reports or correspondence that SAVIENT provides to the regulatory agency, consumer or healthcare professional relative to any such AE, SAE or product complaint. BTG shall make records accessible to SAVIENT for purposes of FDA or other regulatory agency inspection.

14.3 Exchange of Drug Safety Requests. The Parties shall immediately provide each other with copies of all drug safety requests from all governmental and other regulatory health authorities. Proposed answers affecting the Product will be exchanged between the Parties before submission and the Parties shall cooperate with respect to such answers. SAVIENT shall

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have the ultimate decision-making authority with respect to the answers relating to the Product. The Parties shall exchange decisions from applicable health authorities immediately.

ARTICLE 15

STABILITY:

BTG will perform the stability testing, data interpretation, reporting and updating of stability information to regulatory documents for the Product and Bulk Product and for Product until such time as a third party laboratory has been qualified to perform such testing. Stability related activities for which BTG is responsible shall be completed in accordance with the timing specified in stability protocols and BTG procedures.

ARTICLE 16

REGULATORY AFFAIRS:

Each Party shall advise the other Party of any regulatory action of which it is aware which would affect the Product in any country of the Territory.

ARTICLE 17

ANNUAL REPORT TO FDA:

BTG will prepare a summary of all changes to the product, production process, quality controls, equipment or facilities that have a potential to affect the identity, strength, quality, purity or potency of the Product. Such data will be prepared and sent to SAVIENT within thirty days of the end of the review period. BTG will also ensure that the results of all stability testing performed within the review period are sent to Savient within thirty days of the end of the review period.
| Approvals |
|-----------|----------|----------|----------|
| Print Name | Signature | Date |
| SAVIENT QA | Eric Nickerson | /s/Eric Nickerson | 19-FEB-2009 |
| BTG QA | Yosefa Bilman | /s/Yosefa Bilman | 19/02/09 |

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APPENDIX I

Listing of Example Deviations

The following is a non-exclusive list of deviations requiring notification in accordance with Article 3:

[…***…]

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APPENDIX II

Schedule of Retains, Storage Conditions and Retention Periods for Puricase®

The following is a list of the reserve/retention samples that are taken during the manufacturing processes of bulk uricase and PEG-uricase as well as from the final bulk uricase and the final bulk PEG-uricase (Bulk Product).

The document was prepared based on the following BTG QC SOPs:

[...***...]  
[...***...]  
[...***...]  
[...***...]

Table I details the reserve/retention samples that are taken during the manufacturing process of bulk uricase and from the final bulk uricase.

Table 2 details the reserve/retention samples that are taken during the manufacturing process of PEG-uricase and from the final bulk PEG-uricase (Bulk Product).

All IPC samples (including reserve/retention samples) are to be discarded after the Bulk Product is released by BTG QA.

Uricase retention and reserve samples will be kept for [...***...] after manufacturing. PEG-Uricase retention and reserve samples will be kept for [...***...] years after manufacturing.

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Table 1. Reserve/Retention Samples for Bulk Uricase (IPC and Final)

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### APPENDIX III

Critical Raw Materials Used in the Production of Recombinant Uricase and PEG-Uricase

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THIRD AMENDMENT TO COMMERCIAL SUPPLY AGREEMENT

THIS THIRD AMENDMENT is made and entered into this 1st day of July, 2010, (hereinafter the “Effective Date”).

BETWEEN:

SAVIENT PHARMACEUTICALS, INC.
a Delaware corporation, (hereinafter “Savient”)

AND

BIO-TECHNOLOGY GENERAL (ISRAEL) LTD.
an Israel corporation, (hereinafter “BTG”)

WHEREAS:

Savient and BTG are parties to a Commercial Supply Agreement with an effective date of March 20, 2007, (hereinafter, the “Agreement”) pursuant to which BTG agreed to manufacture and supply a certain Bulk Product, as defined in the Agreement, to Savient, and Savient agreed to purchase such Bulk Product from BTG; and

Savient and BTG have subsequently amended the Agreement on September 24, 2007, (the “First Amendment”) and on January 24, 2009, (the “Second Amendment”), and have issued a Letter Agreement dated July 30, 2008, (the “Letter Agreement”) pertaining to the Agreement; and

Savient and BTG desire to further amend the Agreement in accordance with the terms and conditions of this Third Amendment.

NOW THEREFORE in consideration of the mutual promises and agreements and covenants contained herein, the adequacy of such consideration has been agreed and acknowledged by each party, and in accordance with the provisions of Section 14.08 of the Agreement, the parties hereto agree as follows:

1. Definitions. All of the Definitions contained in Article 1 of the Agreement shall have the same meanings herein unless specifically stated otherwise. Any capitalized terms not specifically defined herein, shall have the same meaning ascribed to them as set forth in the Agreement.

2. Application of Capacity Reservation Fees. The parties agree that Section 5.01(ii)(D)(2) of the Agreement is hereby replaced in its entirety as follows:

“(2) be credited, inclusive of interest, by BTG on a per batch basis by providing a […***…]% discount on the value of each batch at the time of invoicing for Bulk Product purchased by Savient until it is fully utilized, provided however, except as otherwise provided in Sections 5.01(ii)(F), 5.01(ii)(G) and 5.01(ii)(H), any uncredited Processing Capacity Reservation Fee, inclusive of interest, which is

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remaining at the close of business on [***] due to a failure by Savient to take delivery of Bulk Product which conforms to the Commercial Bulk Product Specifications and which is ordered pursuant to a Bulk Product Forecast provided pursuant to Section 5.03 or an Amended Bulk Product Forecast provided pursuant to Section 5.06 and which is otherwise properly amended pursuant to Section 5.05 shall be forfeited by Savient to BTG. For purposes of clarity, the credit of the Processing Capacity Reservation Fee shall accrue upon the delivery of the Bulk Product by BTG to Savient and shall be reflected on the invoice which relates to the Bulk Product shipment in question; and”.

3. **No Modification.** Except as expressly provided for herein, the Agreement shall remain in full force and effect without amendment. If there is any conflict or inconsistency between this Amendment and the Agreement, this Amendment shall prevail. This Amendment contains the entire agreement between the parties hereto with respect to the subject matter contemplated herein and shall not be modified or amended except by a written instrument signed by both parties hereto.

**IN WITNESS WHEREOF,** the parties have caused this Amendment to be executed by their respective duly authorized officers as of the date first written above.

**SAVIENT PHARMACEUTICALS, INC.**

By: /s/Philip K. Yachmetz

Philip K. Yachmetz
Senior Vice President &
General Counsel

**BIO-TECHNOLOGY GENERAL (ISRAEL) LTD.**

By: /s/Dov Kanner

Dov Kanner
Managing Director

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FOURTH AMENDMENT TO COMMERCIAL SUPPLY AGREEMENT

THIS FOURTH AMENDMENT TO COMMERCIAL SUPPLY AGREEMENT (this “Fourth Amendment”) is made and effective as of this 21st day of March 2012, (hereinafter the “Amendment Effective Date”).

BETWEEN: SAVIENT PHARMACEUTICALS, INC.
               a Delaware corporation, (hereinafter “Savient”)

AND

BIO-TECHNOLOGY GENERAL (ISRAEL) LTD.
               an Israel corporation, (hereinafter “BTG”)

WHEREAS:

Savient and BTG are parties to a Commercial Supply Agreement with an effective date of March 20, 2007, (hereinafter, the “Agreement”, modified as provided in the next paragraph) pursuant to which BTG agreed to manufacture and supply a certain Bulk Product, as defined in the Agreement, to Savient, and Savient agreed to purchase such Bulk Product from BTG; and

Savient and BTG have subsequently amended the Agreement on September 24, 2007, (the “First Amendment”), on January 24, 2009, (the “Second Amendment) and on July 1, 2010, (the “Third Amendment”), and have issued a Letter Agreement dated July 30, 2008, (the “Letter Agreement”) pertaining to the Agreement; and

Savient and BTG desire to further amend the Agreement in accordance with the terms and conditions of this Fourth Amendment.

NOW THEREFORE in consideration of the mutual promises, agreements and covenants contained herein, the adequacy of such consideration has been agreed and acknowledged by each Party, and in accordance with the provisions of Section 14.08 of the Agreement, the Parties agree as follows:

1. Definitions. All of the Definitions contained in Article 1 of the Agreement shall have the same meanings herein unless specifically stated otherwise. Any capitalized terms not specifically defined herein, shall have the same meaning ascribed to them as set forth in the Agreement.

2. Addition and Replacement of Exhibits to Agreement. The Parties agree that the exhibits which are appended to this Fourth Amendment shall, as applicable, be added or supersede and replace their counterparts as previously executed by and between
the Parties. For purposes of clarity, the following exhibits to the Agreement are hereby repealed and replaced with the attached exhibits:

(a) Exhibit C-1, “Current Commercial Bulk Product Specifications” which are the current regulatory acceptance criteria and are added pursuant to Section 3.01(ii) of the Agreement;

(b) Exhibit C-2, “Modified Acceptance Criteria to be Used to Govern the Commercial Supply Agreement” […***…] (the “Modified Acceptance Criteria”); and

(c) Exhibit E, “Product Price” […***…].

3. Modified Payment Terms for Bulk Product. Savient and BTG acknowledge and agree that, due to additions or modifications to the Current Commercial Bulk Product Specifications, additional experience manufacturing Bulk Product may be required in order to provide a higher level of assurance that Bulk Product can be consistently manufactured in a manner that conforms to the Current Commercial Bulk Product Specifications as set forth in Exhibit C-1 hereto. […***…] As more fully set forth in clauses (a) through (c) herein below, Savient and BTG agree to share financial responsibility with respect to (x) certain Bulk Product manufactured by BTG under the Agreement […***…] and (y) Bulk Product manufactured by BTG under the Agreement beginning with the production of […***…] and ending after the completion of […***…] batches under this Agreement (the “[…***…] Specification Batches”). After completion of the […] specification batches the Current Commercial Bulk Product Specifications will be reassessed and the Parties will mutually agree on any revisions thereto deemed necessary or appropriate (which agreement shall not be unreasonably withheld, conditioned or delayed) for submission to Regulatory Authorities in whose territories KRYSTEXXA is licensed. After the acceptance by such Regulatory Authorities of any revisions to the Current Commercial Bulk Product Specifications as set forth in Exhibit C-1 hereto, unless the Parties mutually agree otherwise in writing, the risk of failed batches and payment terms set forth in the Agreement (as amended by Section 2(b) above) shall apply, in full force and effect, with respect to all future Bulk Product manufactured by BTG pursuant to the Agreement. During the pendency between the completion of the […] Specification Batches and the acceptance of any revisions to the Current Commercial Bulk Product Specifications by the pertinent Regulatory Authorities in whose territories KRYSTEXXA is licensed, the parties agree that BTG shall continue to manufacture batches of Bulk Product in accordance with the Modified Acceptance Criteria set forth in Exhibit C-2 and

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any nonconformities in any such batches shall be resolved in accordance with Section 3(b) of this Fourth Amendment.

(a) Within [***] business days after the full execution of this Fourth Amendment, Savient shall pay to BTG a one-time payment of [***] Dollars ($[***]), [***].

(b) With respect to any of the [***] Specification Batches of Bulk Product manufactured by BTG under the Agreement (unless extended by mutual written agreement of the Parties):

(i) If any of the [***] Specification Batches is deemed not to conform to the Current Commercial Bulk Product Specifications and (A) such non-conformance does comply with all of the Modified Acceptance Criteria and (B) such non-conformance is not attributable in any way to human error (each such batch a “Modified Acceptance Criteria Conforming Batch”), Savient shall pay BTG for such batch at a rate of [***] Dollars and [***] cents ($[***]) per gram (e.g., [***] Dollars and [***] cents ($[***])) on the basis of a [***] batch, rather than the Price. For purposes of clarity, human error may include, but is not limited to, the introduction of foreign material, improper connection of equipment, improper cleaning of equipment, and the failure to follow established SOPs and master batch records.

(ii) If any of the [***] Specification Batches is deemed not to conform to the Current Commercial Bulk Product Specifications and (A) such batch does not conform to the Modified Acceptance Criteria, or (B) such non-conformance is attributable in any way to human error caused by BTG, Savient shall have no liability to BTG with respect to such Bulk Product.

(iii) For any of the [***] Specification Batches deemed to conform to the Current Commercial Bulk Product Specifications, Savient shall pay BTG for such batch in accordance with the terms and conditions of the Agreement, including the then-current Price.

(c) Savient may, in its sole discretion, apply, on a batch-by-batch basis, [***] Dollar ($[***]) of the Processing Capacity Reservation Fee credit (or such greater amount agreed upon as the then current per batch Processing Capacity Reservation Fee credit due to the accrual of interest on the Processing Capacity Reservation Fee amount) toward any payment owed to BTG in accordance with clause (b) above.

In the event either Party determines that a batch of Bulk Product is a Current Commercial Bulk Product Non-Conforming Batch it shall promptly notify the other Party. If the other

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- 3 -
Party does not agree with such determination, the Parties shall investigate and fully document such non-conformance using typical out-of-specification investigation techniques performed to the mutual satisfaction of the Parties (in the case of specifications for which the analyses are not conducted at BTG, Savient shall enable BTG to review all data related to those analyses). If following such investigation the Parties do not agree whether a batch of Bulk Product is a Current Commercial Bulk Product Non-Conforming Batch, the Parties shall promptly appoint an independent specialist (appointed by mutual agreement between the Parties, which agreement shall not be unreasonably withheld, conditioned or delayed) who shall determine whether such batch of Bulk Product is a Current Commercial Bulk Product Non-Conforming Batch. In the absence of manifest error, the independent specialist’s decision shall be conclusive and binding on the Parties.

4. **Suspension of Manufacturing.** Without limiting the provisions of Section 5.08 of the Agreement, in the event that [... ***…]or more of the [...***…] Specification Batches (unless extended by mutual written agreement of the Parties) are deemed to be Modified Specification Non-Conforming Batches, then Savient may, in its sole discretion and without any penalty under the Agreement, suspend all manufacture of Bulk Product under the Agreement. In the event that manufacture of Bulk Product is suspended in accordance with the preceding sentence, Savient shall be released from its purchase obligations under Section 6.01 of the Agreement and no forecast or estimate shall be considered a Firm Order until such time as BTG demonstrates to Savient’s reasonable satisfaction that the manufacture of Bulk Product may be resumed with a reduced and manageable risk of the manufacture of Modified Specification Non-Conforming Batches.

5. **Remediation Plan.** Prior to the Amendment Effective Date, BTG and Savient (a) [...***…] and (b) mutually agreed to implement investigations of [...***…]. Appendix 1 sets forth the proposals for these investigations that have been agreed to by the Parties and BTG shall, after the Amendment Effective Date, promptly pursue such investigations and implement such changes which may be determined to be necessary to the Facility to Savient’s reasonable satisfaction. Savient and BTG shall agree on the terms and conditions for the implementation of the Facility Changes, and the allocation of costs, in accordance with Section 6.03. If Savient and BTG determine that Process Changes or Process development work is needed to prevent Modified Specification Non-Conforming Batches (as distinguished from equipment changes or work of general applicability to BTG’s manufacturing activities), the Parties shall agree on the terms and conditions for such additional Process development work in accordance with Section 6.02(iii).

6. **Submission of Data to the FDA.** BTG acknowledges that in accordance with the post-regulatory approval commitments made by Savient to the FDA with respect to the FDA’s approval of the Product, Savient is required to submit to the FDA revised specifications for Bulk Product and the supporting data therefore after the completion of the manufacture of the [... ***…] Specification Batches. BTG shall provide all information and assistance which is reasonably necessary or useful in the preparation of such submissions in accordance with Section 3.02. All documents to be supplied by BTG pursuant to this

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Section 6 shall be translated by BTG into the English language as may be necessary. Any labor costs of BTG employees shall be reimbursed by Savient in the manner and at the rates set forth on Exhibit B to the Agreement.

7. **Savient Observation Rights.** During the Term, BTG shall make best efforts to accommodate Savient’s requests to visit the facility where the Bulk Product is manufactured and observe the manufacturing of the Bulk Product in order to ensure that the Process complies with Applicable Law and the Product Specifications. These visits will be at Savient’s sole cost and expense and will take place during normal business hours and upon [...] Business Days notice.

8. **Additional Agreement.** As an additional inducement to Savient for the execution of this Fourth Amendment, BTG and its parent company, Ferring B.V. will cause Ferring International Centre S.A. to execute, contemporaneously with the execution of this Fourth Amendment, the OsmB Promoter License Agreement in the form attached hereto as Appendix 2.

9. **No Modification.** Except as expressly provided for herein, the Agreement shall remain in full force and effect without amendment. If there is any conflict or inconsistency between this Amendment and the Agreement, this Amendment shall prevail. The Agreement, as modified by this Amendment, contains the entire agreement between the parties hereto with respect to the subject matter contemplated herein and shall not be modified or amended except by a written instrument signed by both parties hereto.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective duly authorized officers as of the date first written above.

SAVIENT PHARMACEUTICALS, INC. BIO-TECHNOLOGY GENERAL (ISRAEL) Ltd.

By: /s/Philip K. Yachmetz By: /s/Dov Kanner
Philip K. Yachmetz Dov Kanner
Senior Vice President & Managing Director General Counsel

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- 5 -
## Release Tests Performed on [***] ...

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- 7 -
**EXHIBIT C-2 to Fourth Amendment**

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***Confidential Treatment Requested***
EXHIBIT E to Fourth Amendment

Product Price

As and from […***…], the Price of the Product shall be as follows:

   (i)   For each gram, […***…] Dollars (USD$[…***…]) for any aggregated quantities of the Product up to and including […***…] ordered during any calendar year that commercial batches of Product are shipped, i.e. after the first commercial batch of Product has been shipped.

   (ii)  For each gram, […***…] Dollars (USD$[…***…]) for any aggregated quantities of the Product between […***…] and […***…] ordered during any calendar year as above; and

   (iii) For each gram, […***…] United States Dollars (USD$[…***…]) for any aggregated quantities of the Product equal to or greater than […***…] ordered during any calendar year as above.

The Parties agree that Savient will enter into a supply agreement with […***…], the supplier of […***…], and will order and pay for […***…] needed in Product manufacture on an ongoing basis. In the event that BTG purchases […***…] directly from […***…] or any other manufacturer, the cost of the […***…] will be invoiced to Savient.

Beginning on the […***…] anniversary of the date of receipt of the first commercial batch of Product by Savient, and on each successive […***…] thereafter, the Price of the Product shall increase by an amount equal to the average increase in the United States Consumer Pricing Index (CPI) over the immediately preceding […***…] period; such percentage increase shall be applied to each amount specified in (i) through (iii) above.

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This OsmB Promoter License Agreement (the “Agreement”) is entered into as of this 21st day of March, 2012, with a retroactive effective date of July 18, 2005 (“Effective Date”), between Savient Pharmaceuticals, Inc., a Delaware corporation (“Savient”) and Ferring International Centre S.A., a Swiss corporation (“FIC”).

Introduction

WHEREAS on March 23, 2005, Ferring B.V., FIC and Savient executed a Share Purchase Agreement and an Asset Purchase Agreement, and associated documents, which accomplished the sale of Savient’s global biologics manufacturing business comprising the transfer of all outstanding shares in Bio-Technology General (Israel), Ltd. (“BTG”) and certain defined assets from Savient to Ferring B.V. and FIC (the “BTG Divestiture”). Part of the BTG Divestiture included the transfer of certain intellectual property rights from Savient and BTG to FIC;

WHEREAS Savient and BTG entered into an Amended and Restated Residual Rights Agreement dated July 17, 2005, pursuant to which BTG performed certain manufacturing development and bulk product manufacturing activities pending the finalization of more definitive agreement relating to those activities and wherein the parties stated their intention to license certain intellectual property rights in certain patents from BTG to Savient in order to assure Savient’s rights and liabilities to manufacture the Puricase product, now known as pegloticase (the “RRA”);

WHEREAS, pursuant to the terms and conditions of the RRA, Savient and BTG entered into a Development Agreement (the “DA”) and Commercial Supply Agreement (the “CSA”), each dated March 20, 2007, both of which agreements upon their execution superseded and replaced, in relevant part, the RRA;

WHEREAS pursuant to the terms and conditions of the DA and CSA, in Sections 2.02 (iii) and 2.01(iii) respectively, BTG has granted, and has undertaken to cause its Affiliates to grant, to Savient a fully paid-up, royalty-free, non-exclusive license in the Territory (defined in each of the DA and CSA as meaning, collectively, each country of the world) to manufacture, have manufactured, produce, have produced, develop, have developed, use, have used, offer for sale, have offered for sale, sell, have sold, export, and have exported Bulk Product under the BTG Licensed Improvements and BTG Know-How, as each term is defined in the DA and CSA (collectively the “Pegloticase Licenses”);

WHEREAS the Closing of the transactions effectuating the BTG Divestiture occurred on July 18, 2005, upon which all right, title and interest in and to all intellectual property related to the global biologics manufacturing business of BTG, including the intellectual property defined in the DA and CSA as BTG Licensed Improvements and BTG Know-How transferred to and was vested in FIC (the “BTG IP”); and
WHEREAS, in view of FIC’s ownership of the BTG IP, Savient and FIC desire to execute this Agreement in order to effectuate and perfect the Pegloticase Licenses granted by BTG on and in accordance with the terms and conditions as follows.

NOW THEREFORE in consideration of the recitals in the Introduction above, the covenants and agreements herein, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

ARTICLE 1

As used herein, the following terms shall have the meanings ascribed to them as follows:

1.1 “Affiliate” shall mean any person or entity controlling, controlled by or under common control with a party to this Agreement.

1.2 “Patents” shall mean those patents listed in Exhibit 1, all foreign counterparts thereto, and any disclosures, continuations, continuations-in-part, divisionals, provisional, PCT applications, reissues, revisions, substitutions, conversions, renewals, extensions, prolongations, and reexaminations thereof, any technology and inventions covered thereby, and any corresponding international, regional and national applications, whether existing at present or in the future.

1.3 “Pegloticase” shall mean [...***…].

1.4 “Territory” shall mean, collectively, each country in the world.

1.5 Capitalized terms used but not specifically defined herein shall have the meaning ascribed to them in the DA and CSA.

ARTICLE 2

2.1 Grant of License. FIC hereby grants to Savient a fully paid-up, royalty-free, non-exclusive license in the Territory to manufacture, have manufactured, produce, have produced, develop, have developed, use, have used, offer for sale, have offered for sale, sell, have sold, export, and have exported Pegloticase bulk product under the intellectual property owned by FIC which embodies the BTG Licensed Improvements and BTG Know-How, as each term is defined in the DA and CSA, including, without limitation the Patents. Such license includes the right to sublicense solely for the purposes of effectuating the rights granted to Savient hereunder. To the extent necessary or required, upon request by Savient, FIC shall execute, and shall cause its Affiliates to execute, any such additional documentation as may be necessary in order to give effect to this license grant.

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- 4 -
ARTICLE 3
This Agreement shall commence as of the Effective Date, and continue in full force and effect until the expiration date of the last to expire of the Patents or other patents which embody BTG Licensed Improvements or BTG Know-How.

ARTICLE 4
4.1 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof; and supersedes any prior agreements or understandings, whether oral or written, between the parties and their respective Affiliates with respect to such matters.

4.2 **Modification.** No modification of the terms hereof shall be effective except by a written instrument signed by both parties.

4.3 **Severability.** The invalidity or unenforceability of any term or provision of this Agreement shall not effect the other terms and provisions, and such invalid or unenforceable term or provision will, in all events be construed and enforced to the fullest extent permissible under applicable law.

4.4 **Assignment.** Either party may assign this Agreement and its rights and obligations hereunder, provided that any such assignee agrees to be bound by the terms, conditions and covenants of such assigning party hereunder. The Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and permitted assigns.

4.5 **Dispute Resolution.** Any dispute arising between the parties with respect to any provision of this Agreement or any matter relating to the performance of either party hereunder shall first attempt to be resolved if reasonably possible by good faith negotiation between designated executives of each party. In the event of such dispute, the parties shall promptly designate respective executives who shall then confer in good faith in an attempt to resolve the dispute before any further action is commenced. In the event no mutual resolution is possible using the foregoing method, either party may require the other party to submit to non-binding mediation using a recognized dispute resolution entity before court litigation is commenced.

4.6 **Order of Precedence.** In the event of a conflict or inconsistency that relates to the subject matter hereof between any terms of this Agreement and the DA, CSA or RRA, and in each such instance the Exhibits thereto, the terms of this Agreement shall take precedence over any conflicting terms in the earlier agreements.

4.7 **Governing Law.** This Agreement shall be deemed to have been made in the State of New York, and will be construed and enforced and under and governed by the internal laws of such state, without giving effect to conflicts of laws principles.
4.8 **Counterparts.** This Agreement may be signed in any number of counterparts, any of which shall constitute an original and all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each party has caused it duly authorized representative to execute this Agreement on the date first written above, effective as of the Effective Date.

**Savient Pharmaceuticals, Inc.**

/s/ Philip K. Yachmetz  
By: Philip K. Yachmetz  
Title: SVP & General Counsel

**Ferring International Centre S.A.**

/s/ Lars Peter Brunse  
By: Lars Peter Brunse  
Title: EVP Technical Operations
**EXHIBIT 1 to OsmB Promoter License Agreement**

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- 7 -
SUPPLY AGREEMENT

Dated: August 3, 2015

between

CREALTA Pharmaceuticals LLC

and

NOF CORPORATION
SUPPLY AGREEMENT

This SUPPLY AGREEMENT (“Agreement”) is made and entered into on the 3rd day of August, 2015 by and between CREALTA Pharmaceuticals LLC., a Delaware limited liability company with offices at 150 S. Saunders Rd., Suite 130, Lake Forest, IL 60045, U.S.A. (“CREALTA”), and NOF CORPORATION, a corporation duly organized under the laws of Japan, located at 20-3, Ebisu 4-chome, Shibuya-ku, Tokyo, 150-6019, Japan (“NOF”).

WITNESSETH:

WHEREAS CREALTA is a specialty pharmaceutical company undertaking the research, development, manufacturing, and marketing of therapeutic products for the treatment of diseases;

WHEREAS NOF carries on the business of manufacture and supply of pharmaceutical materials, and has certain proprietary technology of the Activated PEG (as defined below); and

WHEREAS NOF is willing to supply the Activated PEG to CREALTA and CREALTA is willing to accept and purchase such supply from NOF on the terms and conditions contained herein.

NOW THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Agreement the Parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 “Activated PEG” shall mean [...***…] further details of which are set out in the Specification (as defined below).

1.2 “Affiliate” shall mean a company that, directly or indirectly, through one or more intermediates, controls, is controlled by, or is under common control with the company specified. For the purpose of this definition, control shall mean the direct or indirect ownership of more than fifty percent (50%) or, if not more than fifty percent (50%), the maximum percentage as allowed by applicable law of (i) the stock of shares entitled to vote for the election of directors or (ii) ownership interest.

1.3 “BLA” shall mean a regulatory application filed with a governmental agency in a country or a group of countries for the purpose of lawfully marketing, selling, distributing, importing, exporting, manufacturing, developing or using a therapeutic or prophylactic product for the treatment or prevention of a disease or physical condition; A BLA shall include, without limitation, a Product License Application or Marketing Authorization in the European Union, and a Biologics License Application or a New Drug Application in the United States.

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1.4 “cGMP” shall mean the current principles and guidelines of good manufacturing practice and general biologics product standards as contained in US Federal Food Drug and Cosmetic Act at 21CFR (Chapters 210, 211, 600 and 610) in relation to the production of pharmaceutical intermediates and active pharmaceutical ingredients, as interpreted by ICH Harmonized Tripartite Guideline, Good Manufacturing Practice Guide for Active Pharmaceutical Ingredients, Q7A, as shown in detail on the Quality Agreement as each may be amended from time to time, all subject to any arrangements, additions or clarifications agreed from time to time between the Parties in the Quality Agreement. In the event that there exists any difference or discrepancy between the Quality Agreement on one hand and above principles, guidelines and standards on the other, the Quality Agreement shall prevail.

1.5 “Effective Date” shall mean the date of this Agreement first referenced above.

1.6 “FDA” shall mean the United States Food and Drug Administration.

1.7 “Force Majeure” shall mean any unforeseeable occurrence beyond the reasonable control of a Party that prevents the performance by that Party of any of its obligations hereunder arising from or attributable to acts, events, non-happenings, omissions, accidents or any other similar cause which is unforeseeable and beyond the reasonable control of such Party.

1.8 “Legal Requirements” shall mean (i) any present and future national, state, local or similar laws (whether under statute, rule, regulation or otherwise) and (ii) requirements under permits, orders, decrees, judgments or directives, and requirements of applicable Regulatory Agencies (including, without limitation, cGMP) (with respect to each of the foregoing, as amended or revised from time to time).

1.9 “Party” shall mean either CREALTA or NOF, as is appropriate in the given context and the plural shall mean both CREALTA and NOF.

1.10 “Quality Agreement” shall mean the list of responsibilities of the Parties relating to cGMP activities, a copy of which is attached hereto as Exhibit D and incorporated herein by reference. The Quality Agreement shall be updated from time to time by mutual written agreement of the Parties.

1.11 “Quarterly” shall mean a period of three (3) consecutive months commencing on 1 January, 1 April, 1 July, and 1 October in each calendar year during the Term of this Agreement.

1.12 “Regulatory Agency” shall mean with respect to the United States, the FDA, or, in the case of a country in the Territory other than the United States, such other appropriate regulatory agency with similar responsibilities.

1.13 “CREALTA Products” shall mean […***…].

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1.14 “Specification” shall mean the agreed upon procedures, requirements, standards and other items set forth in the attached Exhibit A which is incorporated herein by reference. Exhibit A shall be updated from time to time by mutual written agreement of the Parties hereto.

1.15 “Third Party” shall mean any person or party other than CREALTA, NOF and their respective Affiliates.

1.16 “Year” shall mean the twelve (12) month period commencing on the Effective Date and any subsequent anniversary of the Effective Date.

1.17 References to the singular shall be deemed to include the plural and vice versa.

1.18 References to statutory provisions shall include the same as amended or re-enacted from time to time, whether before or after the date hereof.

ARTICLE 2

COMMENCEMENT OF SUPPLY

2.1 Intentionally Blank.

2.2 Commencement of Supply. The commencement of supply of Activated PEG pursuant to this Agreement shall not occur until such a time as CREALTA shall have submitted to NOF a Forecast (as defined below), where such Forecast shall include a Firm Order (as defined below) which shall not require delivery of any Activated PEG in less than […] from the date of the submission of the Firm Forecast (hereafter the, “Supply Commencement Date”).

ARTICLE 3

MANUFACTURE AND SUPPLY

3.1 Manufacture and Supply. In furtherance of the manufacturing CREALTA Products to be used as a drug or device for the treatment of […] or other diseases and conditions involving […] (hereinafter, the “Field”), NOF agrees to manufacture and supply the Activated PEG to CREALTA or CREALTA's designated agent in accordance with the terms of this Agreement and CREALTA agrees not to use, transfer or otherwise dispose of the Activated PEG for any other purpose. NOF further confirms that all orders placed by CREALTA for the Activated PEG will be manufactured under cGMP. The parties agree that the nominal batch size for the production of Activated PEG pursuant to this Agreement shall be approximately […]; CREALTA shall provide Forecasts (as hereinafter defined) for Activated PEG and place orders in quantities no less than […] per shipment.

3.2 Forecasting and Orders. CREALTA shall forecast and order the Activated PEG as follows:

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(a) Not less than [. . .] prior to the Supply Commencement Date and Quarterly thereafter, CREALTA shall provide to NOF a rolling [. . .] forecast, starting from the Supply Commencement Date, of its expected quarterly requirements for the Activated PEG (“Forecast”), the first [. . .] of which shall be binding (a “Firm Forecast”) and the last [. . .] of which shall be non-binding. The Forecast will include the required delivery dates and delivery locations for the Activated PEG, such delivery dates to be no sooner than [. . .] days from the date of transmission of the Forecast to NOF. The Forecast will be updated Quarterly by CREALTA. The non-binding portions of the Forecast, the last [. . .], may be modified by CREALTA plus or minus [. . .]% upon each quarter becoming a Firm Forecast provided, however, that the total amount of the non-binding portions of the Forecast may not increase or decrease by [. . .], plus or minus, within such non-binding [. . .] period unless the parties shall agree otherwise.

(b) Within [. . .] days of receipt of the Forecast and each quarterly updated Forecast, NOF shall reply in writing whether it will agree to meet the required Forecast and delivery dates. If, despite the use of best commercial efforts, NOF projects that it is unable to agree to the Forecast or updated Forecast and delivery dates set forth therein, the Parties shall use their reasonable efforts to agree to a revised Forecast and delivery dates. Provided, however, that NOF shall not modify the delivery dates for any Firm Forecast previously accepted by NOF unless there has been an increase or decrease to the quantity specified by CREALTA in the updated Forecast. Additionally, the parties agree that time is of the essence in resolving any dispute arising hereunder and shall use their best efforts to agree upon a revised Forecast as soon as possible.

(c) CREALTA shall place binding written purchase orders setting forth delivery dates of each quarter for the Activated PEG based on the Firm Forecast and updated Firm Forecasts at least [. . .] before the agreed upon delivery date (“Firm Order”).

3.3 Delivery. NOF shall deliver such quantities of Activated PEG to CREALTA as agreed upon by the parties in accordance with the terms of Section 3.2 herein; such quantities shall be delivered on or before the dates agreed upon by the Parties in accordance with Section 3.2. Promptly after shipment of the Activated PEG to CREALTA, NOF shall notify shipping information to CREALTA in writing by invoice or other documentation. Delivery shall be [. . .] (Incoterms 2000) or to such other location as may be directed by CREALTA in the applicable Firm Order. NOF shall ship the Activated PEG, properly packaged and labeled in accordance with the Specifications, to CREALTA or CREALTA’s designee. If the Activated PEG is not delivered in accordance with this Agreement, both Parties agree to consult with each other to rectify the non-delivery within [. . .] days after receiving request for consultation from either Party.

3.4 Delivery Documentation. Prior to shipping the Activated PEG as set forth in Section 3.3, NOF shall send to CREALTA a Certificate of Analysis (“C of A”) certifying the conformance of the
Activated PEG to the Specification and with all warranties set forth in ARTICLE 4, which C of A will be signed by the head of the Quality Assurance unit at NOF’s manufacturing facility. The C of A shall be sent to the attention of CREALTA’s designated party from time to time prior to the release of the shipment by NOF. Provided, however, that CREALTA shall refer to and state the above requirements on every Firm Orders. The original C of A shall accompany the shipment of the Activated PEG. NOF shall have the responsibility of authorizing the release of any Activated PEG ordered and prior to shipment of the Activated PEG NOF shall supply the C of A to CREALTA as set forth above.

3.5 **Minimum Purchase.** There are no minimum yearly purchase requirements.

3.6 **Intentionally Blank.**

3.7 **Supply Failure.** In the event that NOF is unable to supply at least […***…] percent ([…***…]% of CREALTA’s Firm Forecast quantities (hereinafter, a “Supply Failure”), then both parties agree to meet and use their best efforts to solve such Supply Failure.

3.8 **Exclusivity of Purchase and Supply.** CREALTA agrees that for CREALTA Products, it shall procure Activated PEG from NOF on an exclusive basis and shall not purchase or otherwise procure Activated PEG from any Third Party during the Term of the Agreement; provided, however, that in the event a Supply Failure shall occur, CREALTA shall have the right, but not the obligation, to obtain such quantities of Activated PEG as it may require for such a period of time until the Supply Failure has been remedied to CREALTA’s reasonable satisfaction.

**ARTICLE 4**

**QUALITY**

If there is any inconsistency between any provision of this ARTICLE 4 and that of the Quality Agreement, the latter shall prevail.

4.1 **Quality Control.**

(a) NOF shall perform, or cause to be performed, quality control tests and procedures in accordance with the Quality Agreement to verify that each batch of the Activated PEG conforms to the Specification.

(b) NOF will make available to CREALTA any other relevant information, documents and/or data pertaining to the manufacturing and testing of the Activated PEG. In addition, if the Activated PEG deviates from the Specification, the variance and non-conformance data and records shall promptly be reported in writing to CREALTA.

4.2 **Rejection.** Within […***…] days following the day on which CREALTA or CREALTA’s designated agent, as the case may be, receives delivery of the Activated PEG or the C of A (whichever is the later), CREALTA shall have the right to reject the Activated PEG batch (or part

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4.3 Failure to Conform. If any batch of the Activated PEG fails to conform to the Specification or otherwise fails to conform to the warranties set forth in ARTICLE 5 for any reason, CREALTA shall, at NOF's election (a) return such batch to NOF at NOF's direction and expense within [...***... days following the date of written notice of rejection by CREALTA pursuant to Section 4.2, or (b) destroy such batch and provide to NOF certification of such destruction in a form reasonably acceptable to both NOF and CREALTA.

4.4 Refund. Payment for any Activated PEG shall not be deemed acceptance if at a later date such batch is rejected pursuant to Section 4.2 or fails to conform pursuant to Section 4.3, and NOF shall refund the price of all rejected Activated PEG to CREALTA within [...***... days of the rejection of the Activated PEG.

4.5 Samples and Records. NOF shall prepare and keep batch records and shall retain samples, properly stored in accordance with the Quality Agreement, from each batch of the Activated PEG manufactured by NOF. NOF shall comply with cGMP in retaining the records and samples. NOF shall comply with any other reasonable record keeping and sample retention requirements set forth in ARTICLE 6. Subject to the confidentiality obligations set out in ARTICLE 6, CREALTA or its designee shall have access to all such records and samples on reasonable notice and during normal business hours. In the event CREALTA requires further records or documentation, other than those to be maintained by NOF as described above, to file applications to a Regulatory Authority, NOF will assist CREALTA in the preparation of such records and documentation to the extent requested by CREALTA and at CREALTA’s expense.

4.6 Presence at Facility. CREALTA shall have the right, from time to time, to assign a reasonable number of its employees or representatives to visit NOF’s manufacturing facility and any other relevant location (e.g., warehouse) for [...***... days per Year (or such other period as may be agreed by the Parties in the event of any material non-compliance by NOF with the terms of this Agreement or in the manufacture of the Activated PEG). The presence of CREALTA’s employees or representatives shall not relieve NOF of any of its obligations under this Agreement.
5.1 **Warranties.** NOF hereby covenants, represents and warrants to CREALTA that:

(a) On the date of shipment from Japan of the Activated PEG sold by NOF to CREALTA hereunder and until acceptance by CREALTA pursuant to the terms of this Agreement, the subject Activated PEG will comply with all requirements of this Agreement and shall comply with the Specification and conform to the information shown on the C of A and reports provided for the particular batch according to Section 3.4 hereof; additionally, such Activated PEG shall have not less than [...***…] expiry dating on the date of shipment from NOF to CREALTA or CREALTA’s designee.

(b) To the best knowledge of NOF, no technology used in the manufacture of Activated PEG is the subject of any third party intellectual property rights but NOF shall not warrant that the Activated PEG and the technology shall be free from any claims of infringement upon patents and any other intellectual property rights of any third party.

(c) At the time that title to the subject shipment of Activated PEG passes to CREALTA pursuant to the terms of this Agreement, NOF shall have good title thereto which shall pass to CREALTA free and clear of any and all liens, encumbrances, or any other possessory or financial interests.

(d) **Permits.** NOF has and shall maintain all necessary licenses, permits and registrations for the manufacture of the Activated PEG and supply of the same hereunder.

5.2 **Consequential Damages.** In no event shall either Party be liable, whether under this Agreement or otherwise, for any indirect or consequential damages (including without limitation loss of profits, loss of opportunity, interruption of business, loss of goodwill, and the costs of cover), suffered by the other Party and arising out of any breach of this Agreement or out of any dispute relating thereto.

5.3 **Indemnity by CREALTA.** CREALTA shall defend, indemnify and hold NOF, NOF’s Affiliates and their directors, officers, employees and agents (collectively “NOF INDEMNITEES”) harmless for all losses, liabilities, damages and expenses (including reasonable attorney’s fees and costs) resulting from all claims, demands, actions and other proceedings by any third party to the extent arising from: (a) the breach of any representation, warranty or covenant of CREALTA contained in this Agreement; (b) the research, development, manufacturing, commercialization or marketing of CREALTA Products; or (c) the negligence, recklessness or willful misconduct of CREALTA in the performance of its obligations under this Agreement.

5.4 **Indemnity by NOF.** NOF shall defend, indemnify and hold CREALTA, CREALTA’s Affiliates, and their directors, officers, employees and agents (collectively “CREALTA INDEMNITEES”) harmless for all losses, liabilities, damages and expenses (including reasonable attorney’s fees and costs) resulting from all claims, demands, actions and other proceedings by any third party to the extent arising from: (a) the breach of any representation, warranty or covenant of NOF

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5.5 **Exclusion from CREALTA Indemnity.** The Parties agree that the Activated PEG supplied hereunder will be used solely for the purpose of manufacturing CREALTA Products. The Parties further agree that the indemnity given by CREALTA in relation to CREALTA Products in Section 5.3(b) above shall not apply if the claim, demand, action or other proceeding can reasonably be shown by CREALTA to be solely due to NOF’s fault in the manufacture of the Activated PEG to CREALTA under this Agreement.

5.6 **Indemnification Procedures.** A Party seeking indemnification under this ARTICLE 5 (the “INDEMNIFIED PARTY”) shall give prompt notice of the claim to the other Party (the “INDEMNIFYING PARTY”) and, provided that the INDEMNIFYING PARTY is not contesting the indemnity obligation, shall permit the INDEMNIFYING PARTY to control any litigation relating to such claim and disposition of any claim as the settlement or disposition relates to the INDEMNIFIED PARTY being indemnified under this ARTICLE 5, and the INDEMNIFYING PARTY shall not settle or otherwise resolve any claim without prior notice to, and the consent of, the INDEMNIFIED PARTY, if such settlement involves any remedy other than the payment of money by the INDEMNIFYING PARTY, such consent not to be unreasonably withheld, delayed or denied. The INDEMNIFIED PARTY shall cooperate with the INDEMNIFYING PARTY in its defense of any claim for which indemnification is sought under this ARTICLE 5, at the INDEMNIFYING PARTY’s expense.

5.7 **Insurance.** Each Party, at its own expense, shall maintain (with a reputable insurer or through self-insurance) comprehensive general liability insurance, including product liability insurance, in the amount of [...***...] US dollars ($[...***...]) per occurrence. Each Party shall maintain such insurance from the Effective Date, and shall from time to time provide copies of certificates of such insurance to the other Party upon its request.

5.8 **Limitation on Liability.** Notwithstanding the foregoing provisions to the contrary, both Parties agree that NOF’s liability arising from or in connection with any claim under this Agreement including Section 5.5 above and/or relative to the Activated PEG shall be limited to [...***...] US dollars ($[...***...]) for any particular Year in which such claim is made against NOF.

5.9 Each Party warrants that:

(a) It has full corporate right, power and authority to enter into this Agreement and to perform its respective obligations under this Agreement;

(b) The execution and delivery of this Agreement by such Party and the performance of such Party’s obligations hereunder (a) do not conflict with or violate any requirement of applicable laws or regulations existing as of the effective date and applicable to such Party and (b) do not conflict with, violate, breach or constitute a default under, and are not

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prohibited or materially restricted by, any contractual obligations of such Party or any of its Affiliates existing as of the effective date; and

(c) Such party is duly authorized, by all requisite corporate action, to execute and deliver this Agreement and the execution, delivery and performance of this Agreement by such Party does not require any shareholder action or approval or the approval or consent of any Third Party, and the person executing this Agreement on behalf of such Party is duly authorized to do so by all requisite corporate action.

5.10 **No Warranty.** NOF gives no warranties in respect of the Activated PEG other than as expressly provided in this ARTICLE 5.

**ARTICLE 6**

**CONFIDENTIALITY**

6.1 **Confidentiality.** Except to the extent expressly authorized by this Agreement or otherwise agreed to in writing by the Parties, the Parties agree that, for the Term of the Agreement and for […***…] Years thereafter, the receiving Party shall keep confidential and shall not publish or otherwise disclose, and shall not use for any purpose other than as provided in this Agreement, all confidential or proprietary information, data, documents or other materials supplied by the other Party under this Agreement and marked or otherwise identified as “Confidential” or, by necessary implication, considered confidential, including information derived from a site visit to NOF’s facility by CREALTA (hereinafter “Confidential Information”). Each Party shall use at least the same standard of care as it uses to protect its own Confidential Information to ensure that it, its Affiliates and sublicensees (or prospective sublicensees) and all of their employees, agents, and consultants only make use of Confidential Information for purposes as expressly authorized and contemplated by this Agreement and do not disclose or make any unauthorized use of such Confidential Information.

6.2 Notwithstanding the foregoing, the provisions of Section 6.1 hereof shall not apply to information or Confidential Information that the receiving Party can conclusively establish through contemporaneous written documentation:

(a) is in the public domain other than by acts of the receiving Party or its Affiliates in contravention of this Agreement;

(b) was permitted to be disclosed by prior written consent of the other Party;

(c) has become known to the receiving Party by a Third Party, provided such Confidential Information was not obtained by such Third Party directly or indirectly from the other Party on a confidential basis;

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(d) prior to disclosure under this Agreement, was already in the possession of the receiving Party, its Affiliates or sublicensees;

(e) is independently developed without use of the Confidential Information disclosed to it or its Affiliates by the other Party;

(f) is required to be disclosed by the receiving Party to comply with any applicable law, regulation or court order, or (in the case of CREALTA) to obtain authorisations to conduct clinical trials with, and to commercially market CREALTA Product(s), provided that the receiving Party shall provide prior notice of such disclosure to the other Party and take reasonable and lawful actions to avoid or minimize the degree of such disclosure.

6.3 No Confidential Information is to be disclosed or made available to an Affiliate, an agent, consultant, licensee, potential licensee or clinical investigator who is a Third Party, unless such Third Party who is to receive or have such Confidential Information made available to it shall:

6.3.1 be made aware of its confidential nature; and

6.3.2 be bound by confidentiality obligations similar to those under this Agreement.

Any breaches of the confidentiality obligations contained herein by such Affiliate or Third Party shall be considered to be breaches of such obligations by the Party whose Affiliate is to receive or have such Confidential Information made available to it or the Party who has retained such Third Party.

6.4 Notwithstanding the foregoing, in the event a receiving Party is required to make a disclosure of the other Party’s Confidential Information pursuant to Section 6.2 (f), it will, to the extent permitted by law, use its best efforts to give reasonable advance notice to the other Party of such disclosure and use its best efforts to secure confidential treatment of such information.

6.5 This Agreement. The Parties agree that the contents of this Agreement shall be considered Confidential Information of the Parties. The Parties will consult with each other and agree on the provisions of this Agreement to be redacted in any filings made by the Parties to the Securities and Exchange Commission or as otherwise required by law or regulation, such agreement not to be unreasonably withheld, delayed or denied; provided further that no redactions shall be requested or required which would make any filing contemplated hereunder untruthful or incomplete or otherwise incompliant with relevant Legal Requirements. Notwithstanding the foregoing, each Party shall have the right to disclose in confidence the material terms of this Agreement to the parties retained by such Party to perform legal, accounting or similar services and who have a need to know such terms in order to provide such services.

ARTICLE 7

PRICE AND PAYMENT

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7.1 **Supply Price.** The price payable by CREALTA to NOF for the Activated PEG manufactured and supplied by NOF pursuant to CREALTA's Firm Orders ("Supply Price") shall be as set out in Exhibit C, and the price for each order shall be calculated based on CREALTA's total Forecast for the Year in which the order is placed regardless of whether NOF shall complete delivery in the Year in which it is ordered. By way of example, if CREALTA's Forecast for a particular Year is for [...***...] of the Activated PEG, then orders placed during that Year will be charged at US $[...***...]. If at the end of any Year actual orders purchased by CREALTA do not fall within the applicable quantity range of the original Forecast, then the Price for the Activated PEG purchased during that Year shall be adjusted to reflect that actual volume of Activated PEG purchased by CREALTA, provided, however, if the actual amount purchased by CREALTA is less than Forecasted due to [...***...], then the Price for the Activated PEG purchased by CREALTA shall be based on [...***...]. Upon adjustment, if necessary, either CREALTA shall pay to NOF or NOF shall credit to CREALTA, as applicable, the balance based on the said adjustment. Any amounts owing by CREALTA to NOF pursuant to this provision shall be remitted within [...***...] days of CREALTA's receipt of a reconciliation statement which sets forth in specific detail the amounts purchased by CREALTA during the Year in question; any credits owing by NOF to CREALTA shall be applied to [...***...]. Provided, however, that CREALTA shall pay to NOF only such amount as corresponds with the amount of Activated PEG which is actually delivered to CREALTA or CREALTA's designee pursuant to the terms of this Agreement.

7.2 **Supply Price Modifications.** During each Year, both Parties agree to discuss in good faith and agree to any increases or decreases in the Supply Price for the following Year which are required as a result of any demonstrable change in circumstances directly related to the manufacture and supply by NOF of the Activated PEG under this Agreement. Any such agreed change to the Supply Price shall take effect on the first day of the following Year, provided that such agreed change to the Supply Price shall have been agreed upon no later than [...***...] days prior to the effective date of such change becoming effective. Unless otherwise agreed by both Parties in writing, the Supply Price shall not be increased or decreased more than once in each Year. Anything to the contrary notwithstanding, no increase to the Supply Price for any Year shall exceed the previous Years’ percentage increase in the United States Consumer Pricing Index.

7.3 **Payment.** NOF shall invoice CREALTA for the Activated PEG upon shipment pursuant to Section 3.3. CREALTA shall pay all undisputed amounts within [...***...] days of the date of receipt of a proper invoice from NOF. Without prejudice to any existing remedy NOF may have at law or contract, if CREALTA fails to pay on the due date any amount which is payable to NOF hereunder, then CREALTA shall pay to NOF interest on such amount from the date ***Confidential Treatment Requested 12
TERM AND TERMINATION

8.1 **Term.** Unless earlier terminated under the provisions hereof, the term of this Agreement (“Term of Agreement”) shall be the period of five (5) Years from the Effective Date.

8.2 **Material Breach.** Either Party may terminate the Agreement forthwith by notice in writing to the other Party if the other Party commits a material breach of this Agreement which (in the case of a breach capable of remedy) is not remedied within 30 days of the receipt by the other Party of notice identifying the breach and requiring its remedy.

8.3 **Insolvency.** Either Party may terminate the Agreement forthwith by notice in writing to the other Party if the other Party ceases for any reason to carry on business or compounds with or convenes a meeting of its creditors or has a receiver or manager appointed in respect of all or any part of its assets or is the subject of an application for an administration order or of any proposal for a voluntary arrangement or enters into liquidation (whether compulsorily or voluntarily) or undergoes any analogous act or proceedings under foreign law.

8.4 **Termination for Convenience.** Either Party may terminate this Agreement hereunder at any time without cause, on twenty-four (24) months prior written notice to the other Party.

8.5 **Intentionally Blank.**

8.6 **Effect of Termination on Additional Supply of Activated PEG.** If NOF terminates this Agreement pursuant to Section 8.4 or if CREALTA terminates this Agreement pursuant to Section 8.2 or Section 8.3, then NOF shall supply to CREALTA such amounts of Activated PEG that CREALTA shall order through the effective date of such termination in accordance with such Forecasts and Firm Forecasts as may be submitted according to the terms of this Agreement. Furthermore, at CREALTA's election, NOF agrees that it shall supply to CREALTA additional quantities of Activated PEG as CREALTA may require for up to an additional period of twenty-four (24) months subsequent to the effective date of termination, provided, however, CREALTA shall provide to NOF with Forecasts, Firm Forecasts and purchase orders setting forth the quantities of Activated PEG to be supplied by NOF pursuant to this provision, all in accordance with the terms of this Agreement.

8.7 **Intentionally Blank.**

8.8 **Survival.** The following Sections shall survive termination of this Agreement: 3.1, 3.2, 3.3, 3.4, Article 4, Article 5, Article 6, 7.1, 7.3, 8.6 and any other Section which by its wording implies that it is intended to survive the termination or expiration of this Agreement.
9.1 **Assignment.** Neither this Agreement, any rights nor any interest hereunder shall be assignable by either Party without prior written consent of the other Party, such consent not to be unreasonably withheld, except that this Agreement may be assigned by either Party without consent to a Third Party that acquires more than fifty percent (50%) of such Party’s assets. This Agreement shall be binding upon the successors and permitted assigns of the Parties and the name of a Party appearing herein shall be deemed to include the name of such Party’s successors and permitted assigns to the extent necessary to carry out the intent of this Agreement. Any assignment that does not comply with this Section shall be void.

9.2 **Further Actions.** Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

9.3 **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by courier services, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice, provided, however, that notices of a change of address shall be effective only upon receipt thereof):

If to CREALTA, addressed to:

CREALTA Pharmaceuticals LLC  
150 S. Saunders Rd., Suite 130  
Lake Forest, IL 60045 USA  
Attn: Sr. Director Global Supply Chain  
Fax: +01-847-234-0019

If to NOF, addressed to:

NOF CORPORATION  
Yebisu Garden Place Tower  
20-3, Ebisu 4-chome,  
Sibuya-ku, Tokyo, 150-6019, Japan  
Attention: DDS Development Department  
Fax: +81-3-5424-6769

9.4 **Amendment.** No amendment, modification or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.
9.5 **Waiver.** No provision of this Agreement shall be waived by any act, omission or knowledge of any Party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

9.6 **Descriptive Headings.** The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

9.7 **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Delaware, USA.

9.8 **Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

9.9 **No Publicity.** No oral or written release of any statement, information, advertisement, press release or publicity matter having any reference to either Party, express or implied, shall be used by the other Party or on the other Party's behalf, unless and until such matter shall have first been submitted to and received the approval in writing of the Party whose name is being used.

9.10 **Dispute Resolution.** All disputes, controversies or differences which may arise between the Parties hereto, out of or in relation to or in connection with this Agreement, which cannot be satisfactorily settled by the Parties, shall be finally settled by arbitration in the State of New York, the United State of America, pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceedings shall be conducted in the English language. The award shall be final and binding upon both Parties. Judgment upon the award may be entered in any court having jurisdiction thereof.

9.11 **Independent Contractors.** This relationship between Parties created by this Agreement is one of independent contractors and neither Party shall have the power or authority to bind or obligate the other except as expressly set forth in this Agreement.

9.12 **Force Majeure.** Neither Party shall be liable to the other for loss or damages or shall have any right to terminate this Agreement for any default or delay attributable to any Force Majeure, if the Party affected shall give prompt notice of any such Force Majeure to the other Parties. The Party giving such notice shall thereupon be excused from such of its obligations hereunder as it is thereby disabled from performing for so long as it is so disabled, provided, however, that such affected Party shall have used reasonable efforts to avoid such occurrence and to commence and continue to take reasonable and diligent actions to cure such Force Majeure.

9.13 **Entire Agreement.** This Agreement constitutes and contains the complete, final and exclusive understanding and agreement of the Parties and cancels and supersedes any and all prior
negotiations, correspondence, understandings and agreements, whether oral or written, between the Parties respecting the subject matter hereof.

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

Signed for and on behalf of
CREALTA Pharmaceuticals LLC

Signature /s/ Richard Crowley
Name: Richard Crowley
Position: Sr. VP operations and QA
Date: August 11, 2015

Signed for and on behalf of
NOF CORPORATION

Signature /s/ [***]
Name: [***]
Position: [***]
Date: August 5, 2015

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### Exhibit A: Specification

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<tr>
<th>Parameter</th>
<th>Specification</th>
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<td>[...***...]</td>
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There will be no minimum annual purchase quantities. The only obligation for purchase of activated PEG is specified in Section 3.2.
<table>
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<tr>
<th>Amount Purchased during Year (Forecast)</th>
<th>Price per [...***...] ordered during Year</th>
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***Confidential Treatment Requested
Exhibit D: Quality Agreement

Supplier Quality Assurance Agreement
for NOF Corporation
Version 1.0 (DRAFT)

CREALTA
PHARMACEUTICALS LLC

CREALTA Pharmaceuticals LLC
150 S. Saunders Rd., Suite 130
Lake Forest, IL 60045
1.0 Purpose and Scope

The following document defines the Quality Assurance (QA) responsibilities between CREALTA Pharmaceuticals LLC (CREALTA) and NOF Corporation (NOF). This agreement applies to all product(s) pursuant to the Supply Agreement entered into between CREALTA and NOF.

2.0 General

2.1. Approval of this Quality Agreement implies adherence by both parties to applicable regulatory requirements for the manufacture of pharmaceutical or biological products, or products used in finished drug products, as defined in 21 CFR Part 210 and the International Conference on Harmonization guidance Q7A, Good Manufacturing Practices for Active Pharmaceutical Ingredients.

2.2. NOF will make available to CREALTA any relevant information, documents, and/or data pertaining to the manufacturing and testing of product(s).

2.3. Effective date of this Quality Agreement is the date of the last approval signature.

2.4. CREALTA responsibilities or activities as stated in this Agreement shall in no way relieve NOF of any obligations under this Agreement.

2.5. All Agreement amendments must be documented as an addendum. All amendments must be approved, at a minimum, by CREALTA QA and NOF QA. Legal and Regulatory review and/or approval shall be considered.

3.0 Definitions

3.1. Business Day shall mean Monday through Friday excluding government holidays.

3.2. Deviation shall mean an event or result that is different from the expected event or result as defined in procedures.

3.3. Out of Specification (OOS) shall mean any intermediate or finished product test result that is different from the result defined in the specification.

4.0 cGMP Quality Systems and cGMP Activities

4.1. Manufacturing and Sampling

4.1.1. NOF shall manufacture and sample according to NOF approved procedures and batch records.

4.1.2. NOF shall sample and retain sufficient amounts of all product lots in accordance with current good manufacturing practices (cGMP).
4.2. Testing and Conformance

4.2.1. NOF will test all product(s) intended for use by CREALTA or CREALTA’s third-party contractors per validated and NOF approved methods.

4.2.2. NOF will ensure test results are compared to, and meet, approved product specification.

4.2.3. All OOS and atypical results will be managed according to NOF approved deviation procedures.

4.3. Stability

4.3.1. NOF shall perform the appropriate stability testing to ensure a minimum expiry period of [...***...] from the date of manufacture.

4.3.2. Stability testing and program shall be defined by NOF approved procedures.

4.4. Disposition

4.4.1. All products shall have a disposition status of Quarantine, Released / Approved, or Rejected.

4.4.2. Only products with a Released or Approved status shall be transferred to CREALTA or CREALTA third-party contractors (refer to Section 3.4 of the Supply Agreement).

4.4.3. CREALTA, or CREALTA’s third-party contractors, shall have the right to reject within [...***...] calendar days any lot/batch of product which fails to conform to the applicable specifications or otherwise fails to conform to warranties given by NOF set forth in ARTICLE 5 of the Supply Agreement, provided that the failure to conform is not due to any action or inaction on the part of CREALTA or CREALTA’s third-party contractors. Any such rejection shall be made in writing to NOF from CREALTA specifying the manner in which all or part of the batch fails to meet the requirements. Refer to Section 4 of the Supply Agreement for returning to NOF those lots/batches which fail to conform.

4.4.4. Disposition shall be controlled by NOF approved procedures.

4.5. Labeling

4.5.1. Products shall be appropriately labeled to ensure product identity, lot number, product code, expiration and/or retest date(s), handling and storage requirements.

4.5.2. Labeling shall be controlled by NOF approved procedures.

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4.6. Handling and Shipping

4.6.1. All products shall be handled and shipped in such a manner that shall ensure product quality.

4.6.2. Prior to shipping, all product containers will be inspected by NOF for integrity, cleanliness, and appropriate labeling.

4.6.3. Product shipped shall have a minimum remaining expiry of […]***…].

4.6.4. A Certificate of Analysis (C of A) will be provided for each product lot shipped (refer to Section 3.4 of the Supply Agreement).

4.6.5. C of A shall contain at least the product name, lot/batch number, tests, specifications, results, manufacturing date and location, expiration date/retest date, and appropriate approvals.

4.6.6. Handling and shipping shall be controlled by NOF approved procedures.

4.7. Change Control

4.7.1. Planned deviations made to the manufacturing process, testing, and other processes used to ensure product quality must be managed through a formal change management process or a formal deviation management process.

4.7.2. NOF will utilize a documented system for the control of changes to raw materials, packaging materials, suppliers, manufacturing facilities, equipment, manufacturing processes, batch size, specifications, sampling, testing, disposition requirements, and certificates of analysis.

4.7.3. Critical change shall be reviewed and approved by CREALTA QA, CREALTA Manufacturing, and CREALTA Regulatory in writing prior to implementation.

4.7.4. CREALTA Regulatory shall have the responsibility for determining the regulatory impact of any proposed change. CREALTA Regulatory will determine the classification and requirements for notification to, or approval by, the FDA.

4.7.5. CREALTA is responsible for communicating any changes to the FDA relative to the finished drug product and/or any application to which CREALTA is the sponsor.

4.7.6. NOF will ensure that all changes are evaluated and qualified in accordance with FDA and International Conference on Harmonization (ICH) guidance documents.

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4.8. Corrective Action / Preventive Action (CAPA)

4.8.1. NOF will have a formal CAPA program to ensure unplanned deviations are identified and corrected following occurrence, and potential deviations are identified and prevented prior to occurrence.

4.8.2. Critical unplanned deviation shall be communicated to CREALTA prior to the shipment to CREALTA.

4.8.3. Any unplanned deviation from the manufacturing process, testing, and other processes used to ensure product quality must be managed through a formal investigation system defined by procedures.

4.8.4. All unplanned deviations will be thoroughly and appropriately investigated in order to identify root cause(s) and corrective actions in a timely manner.

4.8.5. NOF will utilize a documented system for control of investigations and corrective and preventive action(s).

4.8.6. Unplanned deviations shall be identified prior to product disposition.

4.9. Audits

4.9.1. Internal
a. NOF shall have a formal internal audit process controlled by NOF approved procedures.

4.9.2. Supplier
a. CREALTA shall have the authority to audit NOF at most […] per calendar year.
b. Audits shall not exceed […] business days, unless otherwise agreed upon by NOF and CREALTA.
c. CREALTA has the authority to request additional audits should quality issues dictate. NOF shall make every reasonable attempt to accommodate such requests.
d. CREALTA shall provide NOF with a written report within […] business days following audit completion.
e. NOF shall provide CREALTA with a written response to the audit report detailing corrective / preventive action(s) within […] business days following receipt of CREALTA’s audit report.

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f. CREALTA shall review NOF’s response and provide written approval of action(s) or request additional information within [...] business days following the receipt of NOF’s response.

g. Reasonable attempts shall be made by both parties to reach an agreeable conclusion in a timely manner.

4.9.3. Regulatory

a. NOF will communicate within [...] business days any Regulatory audit observations that impact the quality of product(s) supplied to CREALTA or CREALTA third-party contractors.

4.10. Equipment and Facilities

4.10.1. Validation

a. All equipment and facilities used to manufacture and test products intended for transfer to CREALTA or CREALTA third-party contractors shall be validated to ensure adequacy for intended use.

b. NOF shall have a formal validation process that includes validation and re-validation requirements.

c. Validation shall be controlled by NOF approved procedures.

4.10.2. Maintenance

a. Equipment and facilities shall be maintained to ensure product quality.

b. NOF shall have a formal maintenance program that includes procedures defining periodic and preventive maintenance, documentation, and work orders.

c. Maintenance shall be controlled by NOF approved procedures.

4.10.3. Environment

a. The manufacturing and testing conducted by NOF shall be in suitably controlled environments, and will be regularly monitored for parameters critical to the process.

b. Facilities shall provide adequate space to prevent product mix-up and contamination.

c. Activities shall be controlled by NOF approved procedures.
4.11. Training

4.11.1. Personnel shall be trained on applicable procedures and systems.

4.11.2. NOF shall have a formal training program to ensure personnel are adequately trained and qualified to perform assigned activities.

4.11.3. Training shall be controlled by procedures.

4.12. Organization and Personnel

4.12.1. NOF shall have adequate staffing to ensure product quality, adherence to requirements, and management oversight.

4.12.2. Personnel shall have job descriptions.

4.12.3. The Quality Unit shall have the appropriate authority to ensure product quality and compliance.

4.13. Documentation

4.13.1. All GMP activities shall be governed by NOF QA reviewed and approved standard operating procedures.

4.13.2. All GMP activities shall be recorded.

4.13.3. NOF shall have formal systems to ensure GMP activities are recorded and that all GMP documents are maintained, controlled, and retained.

4.13.4. CREALTA, or CREALTA’s third-party contractors, shall have access to all documentation for the product(s) provided to CREALTA or CREALTA’s third-party contractors on reasonable notice and during normal business hours. Such requests shall be made during audits.

4.13.5. NOF will assist CREALTA or CREALTA’s third-party contractors when documents other than those typically maintained by NOF are required in case of requirement from regulatory authority.

4.13.6. Documentation shall be controlled by procedures.


4.14.1. NOF shall make reasonable effort to correct, in accordance with this agreement, all quality issues.

4.14.2. NOF and CREALTA shall communicate openly regarding quality issues and reasonable attempts at issue resolution shall be made.
4.14.3. Unresolved issues shall be elevated to the appropriate NOF and CREALTA leadership.

4.15. Product Review

4.15.1. Products shall be reviewed periodically to ensure a consistent, quality product is produced.

4.15.2. Documentation and system reviews shall be conducted periodically to ensure changes and corrective / preventive actions did not adversely impact product quality.
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<th>Effective Date</th>
<th>Version</th>
<th>Changes</th>
<th>Prepared By</th>
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29
Exhibit E: CREALTA Products

As used in this Agreement, “CREALTA Products” shall mean […***…].

***Confidential Treatment Requested

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THIS SUBLEASE (this “Sublease”) is made and entered into this 21 of August, 2015, by and between SOLO CUP OPERATING CORPORATION, a Delaware corporation (“Sublessor”) and HORIZON PHARMA USA, INC., a Delaware corporation (“Sublessee”).

RECITALS

A. Pursuant to a certain Office Lease Agreement dated August 26, 2008 (the “Lease”), by and between Sublessor, as lessee, and Lake Forest Landmark II, LLC, an Illinois limited liability company, the successor in interest to Opus North Corporation, an Illinois corporation, as lessor (“Prime Lessor”), Sublessor leased from Prime Lessor certain premises commonly known as Suites 150, 200, 300 and 400 and more particularly identified in the Prime Lease (the “Premises”) of the office building at 150 South Sanders Road, Lake Forest, Illinois (the “Building”) and located on the real property more particularly described in the Prime Lease (the “Property”), which Lease was amended by that certain First Amendment to Office Lease Agreement (the “First Amendment”) dated November 23, 2010 and that certain Second Amendment to Office Lease Agreement (the “Second Amendment”) dated August 30, 2012 (the Lease, First Amendment and Second Amendment are collectively referred to herein as the “Prime Lease”).

B. Sublessor desires to sublet to Sublessee the Premises containing approximately 133,218 square feet of net rentable area and a portion of the certain storage area leased to Sublessor located on the lower level of the Property as further described in the Prime Lease consisting of approximately 6,815 rentable square feet of storage space (the “Storage Area” and together with the Premises, collectively, the “Subleased Premises”), and Sublessee desires to sublet the Subleased Premises from Sublessor, all in accordance with the terms, covenants and conditions herein set forth.

AGREEMENT

IN CONSIDERATION of the foregoing recitals, the mutual covenants hereinafter set forth, and other good and valuable considerations, the receipt and sufficiency of which are hereby mutually acknowledged, it is agreed by and between the parties as follows:

1. DEMISE, POSSESSION AND TERM. Sublessor hereby subleases to Sublessee, and Sublessee hereby subleases from Sublessor, the Subleased Premises for a term (the “Term”) commencing on January 1, 2016 (the “Sublease Commencement Date”) and ending on the “Sublease Expiration Date” (as defined below), unless sooner terminated as provided herein. Sublessor shall deliver to Sublessee non-exclusive access to and Sublessor shall vacate the Subleased Premises other than the areas located on the second floor occupied by Sublessor including, without limitation, the Server Room and Associated Facilities, defined below (“Sublessor Space”) within one (1) business day after the date (the “Early Access Date”) on which the latest of the following events shall have occurred: (x) the full execution of this Sublease, and (y) the Prime Lessor consents to this Sublease and approves the Sublessee Improvements (as defined below). During the period of time from the Early Access Date until six (6) full weeks prior to the Sublease Commencement Date, Sublessee shall have the right to construct its Sublessee Improvements and to install its furniture, fixtures, equipment and other personal property and its data lines and other cabling in the Subleased Premises (other than the Sublessor Space). Sublessee shall not construct any Sublessee Improvements without first having obtained any permits or other approvals from all applicable governmental authorities required in connection with such construction of the Sublessee Improvements (collectively, the “Governmental Approvals”). Sublessor shall deliver to Sublessee exclusive possession of the Subleased Premises as of January 1, 2016. During the period from the date of full execution of this Sublease until the Early Access Date, Sublessor shall provide Sublessee

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with access to the Subleases Premises other than the Sublessor’s Space for inspections and for access in relation to the design and space planning for the Subleased Premises. During the period of time commencing upon the later of (a) six (6) full weeks prior to the Sublease Commencement Date and (b) the Early Access Date until the Sublease Commencement Date (the “FF&E Period”), Sublessor shall have fully vacated the Subleased Premises (other than the Sublessor Space) and Sublessee shall have the right to move and relocate its personal property and equipment into the Subleased Premises, construct any of the Sublessee Improvements and complete any related wiring and cable and otherwise make the Subleased Premises ready for its operations provided that Sublessee is in compliance with all terms and provisions of this Sublease, including, without limitation, with respect to insurance, except as provided in the next sentence.

During the FF&E Period, Sublessor shall reasonably cooperate with Sublessee in order for Sublessee to have non-exclusive access the Sublessor Space to begin construction of Sublessee’s improvements and installation of Sublessee’s furniture, fixtures, equipment and data and other lines. Notwithstanding the foregoing, Sublessor acknowledges and agrees that it was a material inducement for Sublessee to enter into this Sublease that as of the first day of the FF&E Period (the “Server Room Access Date”) that Sublessor provide Sublessee with such non-exclusive access and use of the server room and the equipment and data and communications lines, risers, towers, feeders, closets, facilities and other conduits necessary for the installation Sublessee’s data and other communications lines and equipment (collectively, the “Server Room and Associated Facilities”) to provide data and other communications for Sublessee throughout the Subleased Premises. Sublessee’s non-exclusive access to the Server Room and Associated Facilities prior to the Sublease Commencement Date shall at all times be subject to Sublessor’s use and occupancy of the Server Room and Associated Facilities and Sublessee shall not disrupt or interfere with Sublessor’s use and occupancy. Sublessee’s use and occupancy of the Server Room and Associated Facilities shall be limited to the use and occupancy as described on Schedule 2 attached hereto. In the event that Sublessee does not have such non-exclusive access to the Server Room and Associated Facilities as of the Server Room Access Date and Sublessor’s acts or omissions are substantially responsible for such delay (as opposed to the Third Party Conditions, as defined below), then Sublessee shall receive fifteen (15) calendar days of additional abatement of Base Rent (in addition to any other free or abated Base Rent that Sublessee is entitled to hereunder) and for each additional day after the Server Room Access Date that Sublessee is not permitted such non-exclusive access and use the Server Room and Associated Facilities Sublessee shall receive two (2) additional days of abated Base Rent. In the event that Sublessee has not fully vacated the Subleased Premises and transferred full possession of the Subleased Premises to Sublessee on the Sublease Commencement Date and Sublessor’s acts or omissions are substantially responsible for such delay (as opposed to any Third Party Conditions), then for each day after the Sublease Commencement Date that Sublessee has not received full possession of the entire Subleased Premises (including, without limitation, the Sublessor Space), then Sublessee shall receive one and one-half (1 and 1/2) days of additional abated Base Rent. In the event that Sublessor has not fully vacated the Subleased Premises and transferred full possession of the Subleased Premises to Sublessee within fifteen (15) calendar days after the Sublease Commencement Date and Sublessor’s acts or omissions are substantially responsible for such delay (as opposed to the Third Party Conditions), then for each day after such date that Sublessee has not received full possession of the entire Subleased Premises (including, without limitation, the Sublessor Space), then Sublessee shall receive two (2) days of additional abated Base Rent. Notwithstanding anything to the contrary contained herein, during the period of time from the Early Access Date until the Sublease Commencement Date, Sublessee shall only be responsible for paying for the pro rata portion separately metered utilities for the portions of the Subleased Premises in which Sublessee is constructing Sublessee Improvements and shall not be responsible for paying any other Additional Rent or Base Rent. For the purposes of this Sublease, “Third Party Conditions” shall mean any acts or omissions of any party other than Sublessor, including without limitation, Prime Lessor, Sublessee or any governmental authority, and for purposes of clarity, Third Party Conditions may include
Prime Lessor’s failure to approve Sublessee’s Improvements or to grant any other required approvals and/or the failure of Sublessee to obtain any Governmental Approvals.

1.1. **Sublease Expiration Date.** Sublease Expiration Date shall mean March 31, 2024. Notwithstanding the foregoing, in the event that Sublessee notifies Sublessor at least ninety (90) days prior to the Sublease Expiration Date that Sublessee does not intend to take title to the Furniture, then the Sublease Expiration Date shall instead be January 31, 2024 and Sublessor shall then be responsible for the removal of the Furniture per the terms of the Lease. In addition, in the event that Sublessee notifies Sublessor at least ninety (90) days prior to the Sublease Expiration Date that Sublessee does not intend to be responsible for the removal of Sublessor’s data lines and wiring in the Subleased Premises and all other removal and restoration obligations of Sublessor as tenant under the Prime Lease, then the Sublease Expiration Date shall instead be January 31, 2024 and Sublessor shall then be responsible for the removal of such data lines and wiring.

1.2. **Sublessor Representations and Warranties.** As an inducement to Sublessee to enter into this Sublease, to Sublessor’s knowledge, Sublessor represents and warrants with respect to the Subleased Premises that the following statements are true as of the date hereof:

1.2.1. The Prime Lease is in full force and effect and has not been amended or otherwise modified.

1.2.2. There exists under the Prime Lease no default by either party or event of default by either party, nor has there occurred any event which, with the giving of notice or passage of time or both, could constitute such a default or event of default by either party.

1.2.3. Sublessor has not received any notice of any requirements by any jurisdictional or environmental agency or department or any insurance company requiring any work to be performed at the Subleased Premises or that the Subleased Premises or the Building are in violation of applicable laws.

1.2.4. There are no oral modifications to the Prime Lease.

1.2.5. Sublessor has not assigned its interest in the Prime Lease or subleased or otherwise permitted any other parties to occupy any part of the Subleased Premises pursuant to any agreement that has not been terminated prior to the date hereof.

1.2.6. Lake Forest Landmark II, LLC, an Illinois limited liability company is the successor-in-interest to Opus Development Corporation, an Illinois corporation (formerly known as Opus North Corporation), as Prime Lessor.

1.2.7. Solo Cup Operating Corporation, a Delaware corporation is the Tenant under the Prime Lease.

1.2.8. For purposes of this Sublease, “Sublessor’s knowledge” or phrases of similar import shall mean the present, actual knowledge of Steven A. Mills without any duty of inquiry or investigation.

2. **RENT.**

2.1. **Base Rent.** Commencing on September 1, 2016 (the “Rent Commencement Date”), Sublessee shall pay to Sublessor, as base rent for the Subleased Premises, monthly rent (the “Base Rent”) for each calendar month or portion thereof during the Term of this Sublease in the amounts set forth on
Exhibit A attached hereto. Such Base Rent shall be due and payable, in advance and in equal monthly installments, on or before the first business day of each calendar month during the Term. On or before the Sublease Commencement Date, Sublessee shall pay to Sublessor the Security Deposit payable hereunder.

2.2. Additional Rent; Utilities. Commencing on the Rent Commencement Date, Sublessee shall pay to Sublessor, as additional rent for the Subleased Premises (excluding the Storage Space), a sum equal to all amounts due as “Additional Rent,” as defined in the Prime Lease and payable under the Prime Lease, including, without limitation, “Tenant’s Share of Expenses” with respect to “Property Taxes” and “Operating Expenses”, as each such term is defined in the Prime Lease, and the cost of any utilities paid by Sublessor, as tenant, to Prime Lessor under the Prime Lease with respect to the Term of this Sublease, provided however, Sublessee shall not be responsible for paying any Additional Rent that solely arises out of Sublessor’s default under the Prime Lease, Prime Lessor’s “gross up” of any “Operating Expenses” under the Prime Lease, but only to the extent the amount of Operating Expenses attributable to such “gross up” is available from Prime Lessor or results solely from Sublessor’s or its employees’ and agents’ negligence and willful misconduct. Sublessor agrees to use commercially reasonable efforts to obtain the “gross-up” detail described above from Prime Lessor. During the Term, Additional Rent payable pursuant to this Section 2.2 shall be paid within ten (10) days after Sublessee’s receipt of an invoice for such Additional Rent and at such other intervals as are required under the Prime Lease in the event that such payment is to be made directly to the Lessor by Sublessee, provided however, if such Additional Rent is not a regularly recurring monthly payment, except as otherwise set forth in this Sublease, Sublessee shall have thirty (30) days after receipt of an invoice therefor to pay it. All Base Rent, Additional Rent and any other sums due hereunder shall be paid in lawful money of the United States of America. Commencing on the Sublease Commencement Date, Sublessee shall be responsible for paying directly to any utility companies, prior to delinquency, all separately metered or separately charged utilities. For avoidance of doubt, Sublessee shall not be responsible for any Rent prior to the Rent Commencement Date, except for Rent arising out of Sublessee’s default. Sublessor acknowledges and agrees that Sublessee shall have the same rights to audit and review the Prime Lessor’s books and records as Sublessor does under the Prime Lease. In addition, Sublessor acknowledges and agrees that, subject to the terms and provisions of this Prime Lease, Sublessee shall have the same rights to audit and review the Sublessor’s books and records as Sublessor has to audit and review the Prime Lessor’s books and records under the Prime Lease relating solely to this Sublease.

2.3. Security Deposit. Within three (3) business days after the full execution and delivery of this Sublease, Sublessee shall deliver to Sublessor an irrevocable letter of credit (“L/C”) issued by Silicon Valley Bank (the “Issuer”) and in form and substance reasonably acceptable to Sublessor, in the amount of $2,000,000 (the “Security”), representing security for the performance by Sublessee of the covenants and obligations hereunder. In addition to any other items that Sublessor may reasonably require, the L/C shall: (a) name Sublessor as its beneficiary; (b) have an initial term of no less than one year; (c) automatically renew for one year periods unless the issuer provides Sublessor with at least 60 days’ advance written notice that the L/C will not be renewed; (d) permit partial draws; (e) the sole and exclusive condition to any draw on the L/C shall be that Sublessor certifies to the issuer that either or both of the following is/are true: (i) Sublessee is the debtor in a pending bankruptcy proceeding; and (ii) Sublessee is in an Event of Default; and (f) be transferable to any successor to Sublessor hereunder on as many occasions as desired. In the event that: (w) the expiration date of any L/C occurs before the Sublessee Expiration Date, (x) the issuer has advised Sublessor that the issuer will not automatically renew the L/C; (y) Sublessee fails to deliver to Sublessor at least forty-five (45) days prior to the expiration of such L/C either (A) an amendment thereto extending the expiration date of such L/C for not less than twelve (12) months, or (B) a new L/C, in form and substance in accordance with (a) through (f) above and otherwise satisfactory to Sublessor (in its reasonable discretion) or (z) (1) the credit rating of the Issuer is down-graded (from its rating in effect on the date on which the L/C is initially issued) by a
reputable rating agency such as Moody’s or Standard & Poor’s; (2) Sublessor advises Sublessee that, as a result of the Issuer down-
grade, Sublessor desires Sublessee to procure a new L/C from an Issuer reasonably acceptable to Sublessor, which new L/C shall be in
form and substance to satisfy the requirements of (a) through (f) above and otherwise satisfactory to Sublessor (in its reasonable
discretion); and (3) Sublessee fails to deliver such new L/C satisfying the requirements set forth in clause (2) above within forty-five
(45) days after Sublessor’s request, then in any of the instances described in (w) through (z), Sublessor may draw on the L/C then in
Sublessor’s possession, and thereafter (in addition to any other remedies available to Sublessor under this Sublease) apply the proceeds
of such L/C to cure the Event of Default. In the event that, upon the occurrence of any of the instances described in (w) through (z),
Sublessee delivers to Sublessor a new L/C that satisfies the requirements of this Section 2.3, then upon Sublessor’s receipt of such new
L/C, Sublessor shall promptly release the original L/C to Sublessee. If Sublessee fails to comply with any or all of its covenants or
obligations hereunder, Sublessor may, without notice to Sublessee, draw on the L/C and apply the proceeds in whatever manner
Sublessor deems appropriate, in addition to any and all other remedies available to Sublessor under this Sublease. In the event Sublessor
draws against the L/C, Sublessee shall, upon demand, at Sublessee’s option, immediately either (aa) deposit with Sublessor a sum equal
to amount drawn under the L/C or (bb) deliver to Sublessor an additional L/C in an amount equal to the amount drawn. If Sublessee
fully and faithfully complies with all the covenants hereunder, the Security (or any balance thereof) together with Sublessor’s written
consent to the cancellation of any and all outstanding L/Cs constituting part of the Security shall be delivered to Sublessee within thirty
(30) days after the last to occur of (1) the date the Term expires or terminates or (2) delivery to Sublessor of possession of the Subleased
Premises.

Sublessor may deliver the Security to any purchaser of Sublessor’s interest in the Subleased Premises or any successor Sublessor, if
applicable, whereupon Sublessor shall be discharged from any further liability with respect to the Security. In the event that Sublessor
exercises its right under the preceding sentence, Sublessee shall fully cooperate with Sublessor, in all reasonable respects, to cause the
L/C to be assigned and conveyed to, or reissued to, such purchaser or Successor Sublessor, as the case may be, and Sublessee shall bear
any expenses incurred in connection therewith. Notwithstanding the foregoing, in the event that Sublessee has paid all Base Rent and
Additional Rent as and when required by this Sublease for twelve consecutive calendar months and is not in an Event of Default, as
confirmed by Sublessor, then the L/C shall terminate and the original L/C shall be returned to Sublessee within ten (10) business days
thereafter.

2.4. General Provisions Regarding Payments. All Base Rent, Additional Rent and other fees, charges or amounts due
from Sublessee under this Sublease (collectively, the “Rent”) shall be paid promptly when due, without notice or demand, and without
offset or deduction for any reason whatsoever, to Sublessor at its address set forth in the notice provisions below, or to such other
person or at such other address as Sublessor may designate by notice to Sublessee. After an Event of Default described in
Section 12.1(a) herein, interest at the Default Rate (as defined herein) shall be payable on any past due Rent from the date due through
the date received by Sublessor (or its designated payee). Any such interest shall be considered Additional Rent due hereunder and paid
by Sublessee promptly upon demand.

3. SUBORDINATION; ATTORNMENT.

3.1. Subject to Prime Lease.

3.1.1. This Sublease is subject and subordinate in all respects to the Prime Lease, and, Sublessee shall be bound by, the
terms, conditions and provisions of the Prime Lease, except as altered, modified or otherwise agreed to herein and except for those
duties and obligations set forth in the Basic Terms 4, 5, 6, 7, 9, 10, 11, 12, 13 and 14 and the following Sections of the Prime Lease:
1.2.5, 1.5, 2.1,
3.8, 4.2, 9.3, 17, and the first sentence of Section 18.8. Notwithstanding anything to the contrary contained herein, no provision hereof granting Sublessee any power, right, benefit or privilege shall be operative or effective, if and to the extent that exercise or enjoyment of the same would constitute or result in any breach of or default under, or termination of, the Prime Lease. Sublessor shall request a Recognition Agreement (as defined in the Prime Lease) from the Prime Lessor for Sublessee that complies with Section 13.9 of the Prime Lease.

3.1.2. In the event of any termination or expiration of the Prime Lease during the Term for any reason, this Sublease shall automatically terminate contemporaneously with termination or expiration of the Prime Lease, and Sublessor and Sublessee shall be relieved of all liability and obligation hereunder, except for liabilities and obligations (i) under the indemnification and default provisions (including, without limitation, Sections 12, 13.2, 14 and 15) hereof, (ii) accruing prior to such termination, or (iii) on account of acts, omissions, conditions or circumstances occurring or obtaining prior to such termination. The liabilities and obligations, identified in clauses (i) through (iii) above are referred to herein as “Surviving Obligations.” Unless Sublessee is in a monetary Event of Default or a material non-monetary Event of Default, Sublessor agrees that Sublessor shall have no right to voluntarily terminate the Prime Lease without Sublessee’s consent, in its sole discretion, unless the Prime Lessor agrees to recognize this Sublease as a direct deal with the Sublessee.

3.1.3. Sublessor represents that it has provided Sublessee a complete and accurate copy of the Prime Lease. Sublessee acknowledges receipt of a complete and accurate copy of the Prime Lease, and represents that it has read and understood the Prime Lease. In the event of any conflict between the terms and provisions of the Prime Lease and those of this Sublease, the terms and provisions of the Prime Lease shall control, in all events (except with respect to the amounts of Base Rent and Additional Rent due hereunder). Subject to the terms of this Sublease, Sublessee shall, at its own cost and expense, fully observe, perform and comply with all of the obligations of Sublessor, as lessee, under the Prime Lease, to the extent that such obligations relate to the Subleased Premises, including, without limitation, obligations as provided in the Prime Lease with respect to use of the Subleased Premises, maintenance and alterations of the Subleased Premises and assignment and subletting. Subject to the terms of this Sublease, Sublessor shall, at its own cost and expense, fully observe, perform and comply with all of the obligations of lessee, under the Prime Lease, to the extent that such obligations have not been assumed by Sublessee as part of this Sublease. Sublessor shall not cause, or permit its agents, employees, contractors, invitees, subtenants, licensees, concessionaires or assigns (whether or not permitted hereunder) to cause, whether by act or omission, any breach of, default under or termination of the Prime Lease. Sublessor shall not cause, or permit its agents, employees or assigns (whether or not permitted hereunder) to cause, whether by act or omission, any breach of, default under or termination of the Prime Lease and Sublessor shall not enter into any amendments to or modifications of the Prime Lease that would, in effect, impose any greater duties and obligations upon Sublessee without the prior written consent of Sublessee.

3.1.4. As to all matters requiring the consent or approval of, or notice to, Prime Lessor under the Prime Lease, Sublessee shall not act without the prior written consent or approval of, or without notice to, as the case may be, both Prime Lessor and Sublessor, which consent from Sublessor shall not be unreasonably withheld, conditioned or delayed. All matters required under the Prime Lease to be satisfactory to or as prescribed by Prime Lessor shall be satisfactory to or as prescribed by both Prime Lessor and Sublessor.

3.1.5. Furthermore, Sublessor covenants not to take any action or do or perform any act or fail to perform any act which would result in the failure or breach of any of the covenants, agreements, terms, provisions or conditions of the Prime Lease on the part of the tenant. Whenever the consent of Prime Lessor shall be required by, or Prime Lessor shall fail to perform its obligations under, the Prime Lease, Sublessor agrees to use commercially reasonable efforts to obtain such consent and/or performance
on behalf of Sublessee. So long as Sublessee is not in any material default in the good faith reasonable opinion of Sublessor or as determined by Prime Lessor, Sublessor covenants as follows: (i) not to voluntarily terminate the Prime Lease unless and until Prime Lessor, has agreed in writing to continue this Sublease in full force and effect as a direct lease or sublease between Prime Lessor, and Sublessee upon and subject to the terms, covenants and conditions of this Sublease; (ii) not to modify the Prime Lease so as to adversely affect Sublessee’s rights or obligations hereunder; (iii) to take all commercially reasonable actions necessary to preserve the Prime Lease, including without limitation, the payment of rent and all other sums payable by Sublessor thereunder and (iv) to perform the covenants, agreements, terms, provisions or conditions contained in the Prime Lease and to comply with the terms of this Sublease. Sublessor shall indemnify, defend, protect and hold Sublessee harmless from all claims, reasonable, out-of-pocket costs and liabilities, including reasonable attorneys’ fees and costs, arising out of or in connection with the (i) breach by Sublessor of any of the covenants set forth in the immediately preceding sentence, and (ii) the use and/or occupancy of the Subleased Premises prior to the Delivery Date or Sublessee’s earlier occupancy of the Subleased Premises. If Sublessor fails, after using commercially reasonable efforts (which shall include bringing legal action in the event that Prime Lessor is not complying with its obligations under the Prime Lease as Sublessee’s sole cost of expense), to cause Prime Lessor under the Prime Lease, to observe and/or perform its obligations under the Prime Lease, upon prior notice to Sublessor, Sublessor shall non-exclusively assign to Sublessee Sublessor’s right under the Prime Lease, to enforce such provisions of the Prime Lease, and Sublessor, upon Sublessee’s reasonable request and at Sublessee’s sole cost and expense, shall reasonably cooperate with Sublessee in this regard.

3.1.6. Sublessor shall have the right to assign all or any part of its interest in this Sublease or the Prime Lease provided, however, that in the event of any such assignment, Sublessor shall not be released of its obligations under this Sublease and the original Sublessor shall be deemed to be jointly and severally liable with its successor in interest for any claims by made by Sublessee against Sublessor hereunder.

3.1.7. Without limiting the generality of the provisions of this Section 3 and for purposes of clarity, Sublessee hereby acknowledges and agrees that Sublessor has not conveyed to Sublessee any of the rights or benefits granted to Sublessor, as tenant, under Sections 1.2.5, 1.5 and Article 17 of the Prime Lease.

3.2. Subordination to Mortgage. Sublessee’s interest under this Sublease is and shall be subject and subordinate in all respects to any mortgage, trust deed or other method of financing now or hereafter placed against the Property, if required by the Prime Lessor. Sublessor shall provide Sublessee with a non-disturbance agreement in customary form from the Prime Lessor’s lender (the “Lender”) providing that in the event that Lender forecloses on the Property and provided that Sublessor is not in default after the expiration of applicable notice and cure periods under the Prime Lease that Sublessor’s use and occupancy of the Premises in accordance with the terms of the Prime Lease shall not be disturbed.

3.3. Subordination to Easements, Covenants and Restrictions. Sublessee’s interest under this Sublease is and shall be subject and subordinate in all respects to any easements, operating agreement, declarations of covenants, conditions and restrictions or similar documents of record now or hereafter affecting the Property or the Subleased Premises, provided that Sublessor shall not agree to any new easements, declarations of covenants, conditions and restrictions or similar documents of record, which will affect Sublessee’s use and occupancy and access to the Subleased Premises and parking, without first obtaining Sublessee’s prior consent unless otherwise required by the Prime Lease.

3.4. Attornment. In the event of a sale or assignment of (i) the Property or a portion thereof which includes the Subleased Premises or (ii) Sublessor’s leasehold estate therein by Prime Lessor or
Sublessor; or if the Property or said leasehold estate come into the possession of a mortgagee or other person, whether because of a mortgage foreclosure or otherwise, Sublessee shall (a) attorn to the purchaser, assignee, mortgagee or other person, (b) recognize the purchaser, assignee, mortgagee or other person as Prime Lessor or Sublessor, as the case may be, and (c) execute and deliver upon request any document or instrument reasonably requested to evidence further or confirm Sublessee’s attornment as set forth herein. In the event Prime Lessor elects to cause Sublessee to attorn to Prime Lessor pursuant to Section 3.1.2 above, Prime Lessor shall undertake the obligations of Sublessor under this Sublease from the time of the exercise of the option, but Prime Lessor shall not be (i) liable for any prepayment of rent more than one month prior to when it is due or any security deposit paid by Sublessee, (ii) liable for any previous act or omission of Sublessor under the Prime Lease or for any other defaults of Sublessor under this Sublease, (iii) subject to any defenses or offsets previously accrued which Sublessee may have against, or (iv) bound by any changes or modifications made to this Sublease without the written consent of Prime Lessor. Sublessor agrees that Sublessee shall pay any such rents and any other sums to Prime Lessor without any obligation or right to inquire as to whether such default exists and notwithstanding any notice from or claim from Sublessor to the contrary. Sublessee shall not have any right or claim against Sublessee for any such rents or any other sums so paid by Sublessee to Prime Lessor.

4. REPAIR AND CONFORMITY TO LAW. Sublessee is subleasing the Subleased Premises in “as is”, “with all faults” condition, without any representation or warranty of any kind from Sublessor, and acknowledges and agrees that Sublessor has no obligation to make any improvements, repairs, replacements or alterations in the Subleased Premises. Except as otherwise expressly provided for herein, Sublessee acknowledges that neither Sublessor nor any agent of Sublessor has made any representation as to the condition of the Subleased Premises or the suitability of the Subleased Premises for Sublessee’s intended use. Sublessee represents and warrants that it has made its own inspection of and inquiry regarding the condition of the Subleased Premises and is not relying on any representation of Sublessor with respect thereto. Except as otherwise expressly provided for in the Prime Lease as an obligation of Prime Lessor, Sublessee, at its own expense, shall keep the interior of the Subleased Premises, all mechanical and other systems serving the Subleased Premises exclusively, in neat, clean, safe and sanitary condition, and shall maintain all such parts of the Subleased Premises (and any portion of the Property damaged or destroyed by the act or omission of Sublessee, or its agents, contractors, employees, subtenants, licensees, invitees, concessionaires or assigns) in good repair and condition, except for ordinary wear and tear, and will take all action and will make all foreseen and unforeseen and ordinary changes, replacements and repairs which may be required to keep all such parts of the Subleased Premises (and any portion of the Property damaged or destroyed by the act or omission of Sublessee, or its agents, contractors, employees, subtenants, licensees, invitees, concessionaires or assigns) in good repair and condition and Sublessee shall be responsible for, and comply with, all maintenance and repair requirements of Sublessor under the Prime Lease. Any and all repairs and work done by Sublessee in or about the Subleased Premises shall be expediously completed, and all such repairs and work shall be performed in a good and workmanlike manner, using labor and materials of good quality. Sublessee will keep, maintain and occupy the Subleased Premises in conformity with the terms and provisions of the Prime Lease and all applicable laws, ordinances, rules and regulations (including, without limitation, those relating to building, zoning, health, fire, environmental protection and safety) of duly constituted authorities. In addition, Sublessee shall have the same right to use the riser space as Sublessor pursuant to Section 4.10 of the Prime Lease. In the event that Prime Lessor is not complying with its repair, maintenance and replacement obligations under the Prime Lease, Sublessor shall use commercially reasonable efforts to cause Prime Lessor to comply with such requirements.

5. USE. Sublessee shall not allow the Subleased Premises to be used for any purpose or in any manner that could increase the premium payable for any insurance thereon, nor for any purpose other than the use(s) permitted under the Prime Lease. Sublessee shall not, at any time, use or occupy, or suffer or permit anyone to use or occupy, the Subleased Premises or the Property, or do or permit anything to be
done in the Subleased Premises or the Property, in any manner that does or may (a) violate any Certificate of Occupancy for the Subleased Premises or the Property; (b) cause, or be liable to cause, injury to the Subleased Premises or the Property or any equipment, facilities or systems therein; (c) constitute a violation of the laws and requirements of any public authority or the requirements of insurance bodies; (d) impair or tend to impair the character, reputation, good will or appearance of the Subleased Premises or the Property; (e) impair or tend to impair the proper and economic maintenance, operation, and repair of the Subleased Premises or any other improvements, if any, situated on the Property or any equipment, facilities or systems therein; (f) violate any of the covenants and conditions or other provisions of the Prime Lease; (g) increase the fire hazard of the Subleased Premises or the Property or any other improvements, if any, situated on the Property; or (h) disturb or annoy the other occupants or customers of the Property.

6. **ASSIGNMENT AND SUBLETTING.**

6.1. **Prohibition.** Sublessee shall not (by operation of law or otherwise) sell, assign, mortgage, encumber, pledge, sublease or in any manner transfer or otherwise dispose of this Sublease or any interest therein, or all or any part of the Subleased Premises nor grant licenses, occupancy rights therein, without Sublessor’s prior written consent, which consent may not be unreasonably withheld, conditioned or delayed. Further, to the extent Prime Lessor’s consent is required under the Prime Lease for any Disposition (as defined below) by tenant under the Prime Lease, Sublessor’s and Prime Lessor’s consent shall be required for such Disposition, provided that Sublessor’s consent shall not be unreasonably withheld, conditioned or delayed. Consent by Sublessor to any such sale, assignment, mortgage, encumbrance, pledge, sublease, transfer, disposition, license, occupancy or lease (any “Disposition”) on any one occasion shall not obviate the necessity for obtaining consent to any subsequent Disposition. Notwithstanding anything contained in this Sublease to the contrary, Sublessee shall have the right to assign, sublet (all or any part of), license, occupancy or lease (any “Disposition”) or transfer the Sublease or any interest in or to the Subleased Premises to (i) a parent corporation or any subsidiary or affiliate of Sublessee (ii) to any entity which acquires or purchases all or a portion of the assets of Sublessee or the division or business unit of Sublessee of which this Sublease is a part or (iii) to any successor by way of merger, consolidation, inversion, stock or other equity interest purchase or transfer, spin-off, initial public offering or other transaction. Sublessor acknowledges and agrees that Sublessee shall be released from any rights and obligations that Sublessee’s assigns or otherwise transfers pursuant to clauses (ii) and (iii) above, shall not require the Sublessor’s consent, but shall require ten (10) business days’ prior notice to Sublessor and shall be subject to all requirements of the Prime Lease. In addition, Sublessor acknowledges and agrees that Sublessee’s permitted use of the Subleased Premises may include the short-term or interim use of a portion of the Subleased Premises by Sublessee’s customers or other parties with whom Sublessee has a business relationship (together, “Business Partners”) for purposes related to the conduct of Sublessee’s business operated in the Subleased Premises. Sublessee’s Business Partners shall be entitled to use the Subleased Premises for the uses permitted in this Sublease at no additional charge to Sublessee or sharing of revenues and occupancy of the Subleased Premises by such Business Partners shall not constitute an assignment or subletting for purposes of this Sublease except as otherwise provided in the Prime Lease and Sublessee and its Business Partners shall comply with all terms and provisions of the Prime Lease with respect to Prime Lessor’s rights related to such use. Subject to the terms and provisions of the Prime Lease, Sublessor shall have no right to recapture portions of the Subleased Premises or terminate the Sublease in the event that Sublessee seeks an assignment, sublease or other transfer of the Sublease or its Subleased Premises.

6.2. **Continuing Liability of Sublessee.** If any Disposition occurs (with or without Sublessor’s consent as herein required), Sublessor may collect rent and other amounts from any assignee and if Sublessee is in an Event of Default, Sublessor may collect rent from any sublessee, licensee or other occupant and apply the same to the Rent reserved by this Sublease, but no such Disposition or
collection of Rent shall be deemed a consent to such Disposition, or a waiver of any of Sublessee’s obligations under this Sublease, or an acceptance of such assignee, sublessee, licensee or other occupant as “Sublessee,” or a release of Sublessee from the performance or payment by Sublessee of any of its covenants, agreements or liabilities contained in this Sublease. Notwithstanding any Disposition (with or without consent), Sublessee shall remain fully liable for the performance of all terms, covenants and provisions of this Sublease.

7. **ALTERATIONS, ADDITIONS AND IMPROVEMENTS.** Except as required by Section 4 hereof, no alterations, additions or improvements shall be made to any part of the Subleased Premises without the prior written consent of Sublessor, which consent shall not be unreasonably withheld, conditioned or delayed and the consent of the Prime Lessor to the extent required by the Prime Lease. All permitted alterations, additions or improvements to the Subleased Premises (“Sublessee’s Work”) shall be made in compliance with any applicable terms and provisions of the Prime Lease, all applicable laws, ordinances, rules and regulations, and at the expiration or termination of the term of this Sublease for any reason, shall remain for the benefit of Sublessor or shall, at the request of Sublessor, be removed by Sublessee, at Sublessee’s sole cost, and Sublessee shall repair any damage caused by such removal. Notwithstanding the foregoing, Sublessee shall not be required to remove and/or restore any Sublessee Improvements (as hereinafter defined below) unless such removal is required by the Prime Lease, improvements which were in the Subleased Premises as of the Sublease Commencement Date or improvements which were made by Sublessor or Prime Lessor (collectively, the “Existing Alterations”). If such removal or restoration is required pursuant to the Prime Lease, Sublessor (at its sole cost) shall remove any and all Existing Alterations made to the Subleased Premises upon termination of this Sublease and shall restore the Subleased Premises to the condition required by the Prime Lease. For any other alterations, Sublessor shall notify Sublessee at the time of Sublessor’s and Prime Lessor’s consent (if required) whether such alterations will have to be removed and/or restored at the expiration of the Term. In the event that Prime Lessor does not require removal and/or restoration of such alterations at the expiration of the Term, then Sublessor shall also not require removal and/or restoration of such alterations. All permit, license and similar costs and fees (including, without limitation, costs of architectural renderings, sign elevation drawings, mechanical plans, and other plans and specifications) required by statute or ordinance and associated with Sublessee’s Work shall be paid by Sublessee. Any initial improvements (the “Sublessee Improvements”) to be made to the Subleased Premises by Sublessee shall be subject to the reasonable prior approval of Sublessor and the approval of the Prime Lessor in accordance with the terms and provisions of the Prime Lease and Sublessee shall be responsible for the removal of the Sublessee Improvements and the restoration of the Subleased Premises if and to the extent required by the Prime Lessor at the Sublease Expiration Date or earlier termination of this Sublease. During the period of design and construction of the Sublessee Improvements and installation of Sublessee’s furniture, fixtures and equipment, Sublessee shall not be required to pay Sublessor or Prime Lessor for, (1) contractor, subcontractor, consultants, and architect parking, (2) the use of freight elevator, restrooms, loading docks, or security, (3) charges for temporary power, lights, and HVAC (except as otherwise expressly provided for herein), (4) tap in fees to connect to the Building’s utility, security or health safety systems and equipment, or (5) supervisory, administrative or other fees regarding the management of such work and Sublessor shall pay such costs to the extent required by Prime Lease; provided, however, in the event Sublessee requests consent for any additional alterations or improvements, Sublessee shall be solely responsible for any costs and expenses related thereto.

8. **WAIVER.** Except for Sublessor’s or its agents’, contractors’, employees’ or invitees’ negligence and intentionally wrongful conduct or as otherwise expressly provided for herein, Sublessor and its agents and employees shall not be liable for, and, to the maximum extent permitted by law, Sublessee waives all claims against Sublessor for, damage or injury to persons, property or otherwise, including, without limitation, lost profits and consequential damages, sustained by Sublessee or any person claiming by, through or under Sublessee resulting from any accident or occurrence in or upon any portion of the
Subleased Premises or the Property including, without limitation, claims for damage resulting from: (a) any equipment or appurtenances becoming out of repair; (b) the failure to keep any part of the Property in repair; (c) injury done or caused by wind, water, or other natural element; (d) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring, gas or water pipes or equipment, steam pipes, stairs, porches, railings or walks or the installation or operation thereof; (e) broken glass; (f) the backing up of any sewer pipe or downspout; (g) the bursting, leaking or running of any tank, tub, washstand, water closet, waste pipe, drain or any other pipe or tank; (h) the escape of steam or hot water; (i) water, snow or ice upon (or coming through the roof of) the Subleased Premises or the Property; (j) the falling of any fixture, brick, roofing material, plaster or stucco; (k) damage to or loss by theft or otherwise of property of Sublessee or others; (l) acts or omissions of persons in the Subleased Premises or the Property, occupants of nearby properties, or any other person; (m) acts or omissions of owners of adjacent or contiguous property or of Sublessor, its agents or employees; and (n) nonperformance by Prime Lessor of any obligation, covenant or agreement contained in the Prime Lease. All property of Sublessee kept in the Subleased Premises or on the Property shall be so kept at Sublessee’s sole risk and except to the extent arising out of Sublessor’s or Prime Lessor’s or their employees’, contractors’ or agents’ negligence or willful misconduct, Sublessee shall and hereby does indemnify and hold Sublessor and Prime Lessor harmless from any and all claims arising out of damage to the same, including subrogation claims by Sublessee’s insurance carrier. The foregoing indemnity shall survive the termination or expiration of this Sublease.

9. **CASUALTY; CONDEMNATION.** If all or any part of the Subleased Premises are damaged or destroyed by fire or other casualty, or taken by condemnation or acquired by sale in lieu thereof, Sublessor shall have the rights and obligations of Prime Lessor under the Prime Lease, and Sublessee shall have the rights and obligations of Sublessor, as tenant under the Prime Lease. In the event of any such damage, destruction, taking, or acquisition, Sublessee shall be bound by any determination called for by the Prime Lease as to untenantability, materiality of any damage or destruction, or similar matters, whether reached by agreement between Prime Lessor and Sublessor or otherwise as provided in the Prime Lease. Sublessee shall not be entitled to any portion of any condemnation award or sale proceeds, or to any proceeds of any policy of insurance maintained by Prime Lessor or Sublessor, and shall not assert any separate claim therefor in any proceeding, if such claim would directly reduce Prime Lessor’s or Sublessor’s award. Subject to the terms and provisions of the Prime Lease, in the event of any fire or other casualty, all insurance proceeds payable under any insurance policy maintained by Sublessee with respect to its furniture, equipment, supplies and other personal property located in the Subleased Premises shall belong exclusively to Sublessee. Notwithstanding anything to the contrary contained herein, in the event that pursuant to the Prime Lease, Sublessor receives an abatement of rent related to such casualty and such casualty affects the Subleased Premises, Sublessor shall provide Sublessee with Sublessee’s equitable share of such abatement to applied to Sublessee’s Base Rent payable hereunder.

10. **ENTRY.** Sublessee shall have the right to enter upon the Subleased Premises at all reasonable times during ordinary business hours, upon at least one business day prior notice, (and, in the case of any emergency, at any time) to view the state and condition thereof, or to make any repairs or alterations which Sublessor may see fit to make, or to exercise any right or remedy of Sublessor hereunder, provided that Sublessor shall use reasonable efforts not to interfere with Sublessee’s business operations, but nothing in this Sublease shall be construed as obligating Sublessor to make repairs or alterations of any kind or nature to the Subleased Premises except as otherwise expressly provided in this Sublease and agrees to comply with Sublessee’s access, security and confidentiality procedures. Sublessee may reasonably designate a certain reasonable number of areas within the Subleased Premises as “Secured Areas” should Sublessee require such areas for the purpose of securing certain valuable property, such as its server room or Data room or confidential information. Sublessor may not enter such Secured Areas except in the case of an emergency or in the event of a Sublessor inspection, in which case Sublessor shall provide Sublessee with at least one (1) business days prior written notice and provided that Sublessor
complies with Sublessee’s rules and regulations regarding security, health and safety. Sublessee and its permitted assignees and sublessees shall have the right to use the Building’s card access system in accordance with the Prime Lessor’s requirements.

11. SERVICES.

11.1. Signs. During the Term of this Sublease, Sublessee shall have the exclusive right, at its sole cost and expense, subject to Section 4.6 of the Prime Lease, to signage rights to lobby, monument and Building signage and shall have the right to: (a) install its standard signage in the first-floor lobby of the Building and (b) install signage on the existing monument signs for the Building fronting on Route 60 and between the Building and the adjacent 100 building. Any signage to be installed by Sublessee pursuant to this subsection (b) shall be subject to the prior approval of any governmental authorities having jurisdiction over the Building, including, without limitation, the Village of Lake Forest (if applicable). All signage of Sublessee shall comply with the terms and provisions of the Prime Lease. In the event that Sublessee wishes to add signage to the exterior of the Building, Sublessor shall use commercially reasonable efforts to cooperate in obtaining Prime Lessor’s approval and shall execute any applications for any governmental approvals reasonably approved by Sublessor that are required for such signage.

11.2. Rooftop Rights. Sublessee shall have the right to use Sublessor’s “Tenant’s Rooftop Rights” as described in Section 4.7 of the Prime Lease, subject to all requirements and restrictions set forth in the Prime Lease.

11.3. Parking. Sublessee shall have the right to Sublessor’s parking rights, as tenant, under the Prime Lease, including, without limitation, Sublessor’s 46 executive underground parking spaces, subject to all requirements and restrictions set forth in the Prime Lease.

11.4. Generator. Sublessee shall have the same rights of Sublessor, as tenant, under the Prime Lease to install one or more electrical generators on the Property, at Sublessee’s sole cost and expense, subject to all requirements and restrictions set forth in the Prime Lease.

11.5. Kitchen. Subject to the terms and provisions of the Prime Lease and the consent of Prime Lessor if required, Sublessee shall have the right to install and operate a full kitchen in the Subleased Premises in accordance with the Sublessee Improvements, including, a black-iron exhaust and make-up air brought to the Subleased Premises.

11.6. Fitness Center. Subject to the terms and provisions of the Prime Lease and the consent of Prime Lessor if required, Sublessee shall have the right to install and operate a fitness center, including, without limitation, shower and restroom facilities, in the Subleased Premises for use by Sublessee and its employees and agents in accordance with the Sublessee Improvements.

11.7. Other Services. Sublessee shall have the same rights as Sublessor, as tenant, to any additional services required to be provided by Prime Lessor under the Prime Lease, including, without limitation, as provided for in Section 5.7, Article 6, Section 7.1, Section 13.6, Section 13.10 and Section 14.7 of the Prime Lease and the use of any common areas or amenities required to be provided by Prime Lessor under the Prime Lease, subject to all requirements and limitations set forth in the Prime Lease. In the event that Sublessee is not receiving any of such services, Sublessor shall use commercially reasonable efforts to cause Prime Lessor to deliver such services as required by the Prime Lease.
12. **DEFAULT; REMEDIES.**

12.1. **Events of Default.** It shall constitute an “Event of Default” hereunder if any or all of the following occur: (a) Sublessee fails to pay (x) any Base Rent hereunder, and said failure continues for two (2) business days after notice from Sublessor of such failure and (y) any Additional Rent hereunder and said failure continues for five (5) business days after notice from Sublessor of such failure; (b) Sublessee makes any Disposition of any right to or interest in this Sublease or the Subleased Premises, except as expressly permitted by Section 6 hereof; (c) Sublessee fails in the performance of or compliance with any of the agreements, terms, covenants or conditions in this Sublease (other than those referred to in the foregoing subparagraphs (a) and (b) of this Section) for a period of thirty (30) days after notice from Sublessor to Sublessee specifying the items in default, or in the case of a default which cannot, with due diligence, be cured within said thirty (30) day period, Sublessee fails to proceed within said thirty (30) day period to cure the same and thereafter to prosecute the curing of such default with due diligence (it being intended in connection with a default not susceptible of being cured with due diligence within said thirty (30) day period that the time of Sublessee within which to cure the same shall be extended for an additional thirty (30) day period); (d) there is instituted against Sublessee any proceeding in bankruptcy, insolvency or reorganization pursuant to any federal or state law now or hereafter enacted, which proceeding is not dismissed within sixty (60) days after the institution thereof, or any receiver or trustee is appointed for all or any portion of Sublessee’s business or property, or any execution or attachment is issued against Sublessee or any of Sublessee’s business or property or against the leasehold estate created hereby; (e) Sublessee makes an assignment for the benefit of creditors, or admits its inability to pay its debts as they become due, or is found to be unable so to pay its debts by any court of competent jurisdiction, or files a voluntary petition in bankruptcy or insolvency, or petitions for (or enters into) an arrangement for reorganization, composition or any other arrangement with Sublessee’s creditors under any federal or state law now or hereafter enacted; or (f) Sublessee causes Sublessor to be in Default under the Prime Lease, as the term Default is defined therein, provided that Sublessee shall have the same time to cure such event as Sublessor has pursuant to Prime Lessor. In the event any of Sublessee’s cure rights pursuant to this Section 12.1 exceed the rights of Sublessor, as tenant, under the Prime Lease, the cure rights and time periods therefor set forth in the Prime Lease shall control, provided that Sublessor shall promptly notify Sublessee of any notices of default that Sublessor either receives or sends regarding the Prime Lease.

12.2. **Remedies.** Upon the occurrence of any Event of Default, Sublessor shall have the immediate right, at its option, to pursue any one or more of the following remedies: (a) terminate this Sublease; (b) reenter and take possession of the Subleased Premises, and evict Sublessee and remove its property therefrom; (c) relet the Premises, and collect and retain all rents, charges, fees and other costs payable pursuant to such reletting; (d) any other remedy available to Prime Lessor under the Prime Lease in the event of a breach thereof or default thereunder by Sublessor; and (e) any other remedy available at law or in equity.

12.3. **Damages.** In the event Sublessor exercises its remedies under Section 12.2(a), (b) or (c) hereof, Sublessee shall pay to Sublessor, as part of Sublessor’s damages: (i) if Sublessor fails to relet the Subleased Premises, upon demand, an amount equal to the sum of all Rent provided for herein to be paid by Sublessee for the Term of the Sublease remaining from and after the Event of Default and (ii) if Sublessor relets the Subleased Premises, from time to time upon demand, the amount by which all Rent due from the date Sublessor terminates this Sublease exceed the rents, charges, fees and costs paid by a new tenant pursuant to the terms of such reletting, after deducting therefrom all reasonable costs of decoration, repairs, remodeling, alterations, advertising, brokers’ commissions and other items in connection with such reletting. Without limiting the generality of Section 14 hereof, all expenses and costs (including, without limitation, attorneys’ reasonable fees and costs) incurred by Sublessor in exercising any remedy provided for in this Section 12 shall be covered by the indemnification set forth in
Section 14 hereof, and Sublessee shall pay and/or reimburse Sublessor therefor, promptly upon demand, together with interest on any amounts paid by Sublessor at a per annum rate (the “Default Rate”) equal to the “prime” or “reference” rate of interest publicly announced as such, from time to time, by JP Morgan Chase NA, plus two percent (2.0%) per annum. All such damages shall be considered Additional Rent.

12.4. Sublessor’s Right to Cure. If (a) an Event of Default occurs, or (b) any breach hereof or default hereunder by Sublessee continues after the applicable notice and cure periods, or (c) any other event or state of affairs in or about the Subleased Premises or the Property constitutes a breach of or default under the Prime Lease which continues after the applicable notice and cure periods, or, in Sublessor’s reasonable determination, poses a significant risk of injury or damage to any person or property, or, in Sublessor’s reasonable determination, creates an unsightly condition, then Sublessor shall have the right, but not the obligation, at Sublessee’s sole cost and expense, to cure the same, and Sublessee shall pay and/or reimburse Sublessor for any expenses incurred by Sublessor in connection with such cure promptly upon demand therefor, together with interest on any amounts paid by Sublessor at the Default Rate from the date paid through the date reimbursed (inclusive of interest), all of which shall be considered Additional Rent.

12.5. Waiver. Sublessee hereby waives all notice of any election made by Sublessor hereunder, demand for rent, notice to quit, demand for possession, and any and all notices and demands whatsoever, except the notices of default and other notices explicitly required hereunder, of any and every nature which may or shall be required by any statute of the State where the Property is located relating to forcible entry and detainer, or any other statute, or by the common law or otherwise.

12.6. Sublessee’s Right to Cure. If (a) any breach hereof or default hereunder by Sublessor under this Sublease continues thirty (30) days after notice from Sublessee or in case of a default which cannot be cured within said thirty (30) day period, such period of the cure shall be extended for an additional thirty (30) days, or (b) any other event or state of affairs in or about the Subleased Premises or the Property constitutes a breach of or default under the Prime Lease which continues after the applicable notice and cure periods and such breach or default was not caused by Sublessee’s actions, or, in Sublessee’s reasonable determination, poses a significant risk of injury or damage to any person or property, then subject to the terms and provision of the Prime Lease, Sublessee shall have the right, but not the obligation, at Sublessor’s sole cost and expense, to cure the same, and Sublessor shall pay and/or reimburse Sublessee for any expenses incurred by Sublessee in connection with such cure promptly upon demand therefor, and if such amounts are not reimbursed to Sublessee within thirty (30) days after Sublessee’s receipt of an invoice therefor, or at Sublessor’s option, Sublessee shall have the right to offset Rent due hereunder by such amounts.

13. INSURANCE.

13.1. Types of Coverage. Sublessee shall, at all times during the Term, carry commercial general liability, commercial property and any other types of insurance as required of Sublessor, as tenant, under the Prime Lease, and Sublessee shall be required to comply with all insurance requirements of Sublessor, as tenant, under the Prime Lease. Sublessor, Prime Lessor and any mortgagee of the Property or of Sublessor’s leasehold estate under the Prime Lease shall each be named as an additional insured on such commercial general liability policies, which policies shall be written on an occurrence basis, be primary and not contributing with any coverage carried by Sublessor or Prime Lessor and which shall include contractual liability coverage. Each such policy of insurance shall not be subject to cancellation or modification (to no longer comply with the requirements herein) except after at least ten (10) days’ prior notice to Sublessor and the other additionally insured parties, and shall contain the insurer’s waiver of subrogation rights. Sublessee shall furnish Sublessor with a certificate of each such policy of insurance (in form and substance reasonably satisfactory to both Prime Lessor and Sublessor) or, at Sublessor’s
reasonable request, with the original of any such policy to the extent Sublessor requires additional insurance information than that contained in the applicable certificate of insurance, together with evidence satisfactory to Sublessor of payment of premiums therefor. Sublessor or its designee shall have the exclusive right to adjust any loss covered by any such policy of insurance to the extent it relates to the Subleased Premises and not the personal property of Sublessee.

13.2. **Waiver of Subrogation.** Sublessor and Sublessee and all parties claiming under them mutually release and discharge each other from all claims and liabilities arising from or relating to any casualty, hazard or other occurrence to, at or in connection with the Subleased Premises or the Property to the extent covered by insurance, and hereby waive any right of subrogation which might otherwise exist on account thereof; provided, however, that such waiver and release shall not operate in any case where the effect would be to invalidate such insurance coverage.

14. **INDEMNIFICATION.**

14.1. **Indemnification by Sublessee.** Except for Sublessor’s negligence or willful misconduct, Sublessee shall and hereby does protect, indemnify, defend and hold any and all of the Sublessor and its members, partners, officers, directors, employees and agents of Sublessor from and against any and all liabilities, losses, damages (actual, but not incidental, consequential or punitive), claims, suits, causes of action, settlements, judgments, out-of-pocket costs and expenses (including, without limitation, attorneys’ reasonable fees and costs) arising from, in connection with, or relating to: (a) any negligent act or omission of (including, without limitation, any breach of, or default under, this Sublease or the Prime Lease by) any or all of Sublessee or its agents, employees, contractors, invitees, subtenants, licensees, concessionaires or assigns; or (b) any default of Sublessee hereunder after the expiration of any notice and cure or grace period.

14.2. **Indemnification by Sublessor.** Except for Sublessee’s negligence or willful misconduct, Sublessor shall and hereby does protect, indemnify, defend and hold any and all of the Sublessor, the Prime Lessor and the respective members, partners, officers, directors, employees and agents of both the Sublessee and the Prime Lessor from and against any and all liabilities, losses, damages (actual, but not incidental, consequential or punitive), claims, suits, causes of action, settlements, judgments, costs and expenses (including, without limitation, attorneys’ reasonable fees and costs) arising from, in connection with, or relating to: (a) any injury to, or death of, any person, or damage to, or destruction of, any property, on or about the Subleased Premises or the Property caused by any or all of Sublessor or its agents, employees, contractors, invitees, subtenants, licensees, concessionaires or assigns; (b) any negligent act or omission of (including, without limitation, any breach of, or default under, this Sublease or the Prime Lease by) any or all of Sublessor or its agents, employees, contractors, invitees, subtenants, licensees, concessionaires or assigns; or (c) any default of Sublessor hereunder or under the Prime Lease.

15. **LIENS.** Sublessee agrees: (a) to pay promptly, when due, the entire costs of Sublessee’s Work or any other work performed by Sublessee; (b) to obtain from each contractor with whom Sublessee contracts for such work, prior to paying any amount to such contractor, a statement in writing under oath, or verified by affidavit, of the names of all parties furnishing materials and labor for such work and the amounts due, or to become due, to each and, at the time of payment, obtain from each contractor and from each such person or entity a waiver of lien in the amount paid to each; (c) to keep the Subleased Premises and the Property at all times free of liens and claims for liens for labor and materials for work undertaken by or on behalf of Sublessee, except to the extent that such work was performed by or for Prime Lessor or Sublessor; (d) to furnish Sublessor copies of all such sworn statements and waivers of lien; (e) at Sublessor’s written request, to only use contractors previously and reasonably approved in writing by Sublessor; (f) to perform such work in such manner as to ensure proper maintenance of good labor.
relationships; and (g) to defend, indemnify, save and keep both Sublessor and Prime Lessor harmless from and against all liability, losses, damages (actual, but not incidental, consequential or punitive), injury, claims, suits, actions, judgments and costs to any person or property occasioned by or growing out of such work. If any claim for a mechanics lien arises against any part of the Subleased Premises or the Property by reason of work undertaken by Sublessee, and such claim is not discharged as required by the Prime Lease, Sublessor may pay such claim and proceed to obtain the discharge and release thereof, and Sublessee shall pay Sublessor as Additional Rent (with interest thereon at the Default Rate) the amount paid by Sublessor to obtain the discharge and release thereof, together with court costs and reasonable attorneys’ fees, upon demand. Notwithstanding anything to the contrary contained herein, Sublessee may contest the validity of any charge or lien in good faith by appropriate proceeding, provided that (a) such contest could not result in any sale or forfeiture of the Property or any part thereof or interest therein, and (b) Sublessee shall furnish Sublessor with such security as Sublessor may reasonably request to ensure the ultimate payment, removal or discharge of such charge or lien.

16. COMPLIANCE WITH LAW.


16.1.1. Relevant Laws. “Relevant Laws” means all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, the Property or the subject matter of this Sublease, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Fair Labor Standards Act, the Foreign Investment In Real Subleased Premises Tax Act, Environmental Laws (defined below), and The Americans With Disabilities Act.

16.1.2. Environmental Laws. “Environmental Law” means any law or regulation by a governmental authority having jurisdiction over the Property, including, without limitation, substances regulated under the Resources Conservation Recovery Act, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 52 U.S.C. Section 9601 et seq., any state or local environmental law, or any common law theory based on nuisance or strict liability.


16.2. Covenants and Agreements.

16.2.1. Throughout the Term, Sublessee shall, at Sublessee’s expense, comply with all Relevant Laws related to Sublessee’s obligations herein, except to the extent that such compliance is Prime Lessor’s obligation pursuant to the Prime Lease. Except to the extent that such compliance is Prime Lessor’s obligation under the Prime Lease, Sublessee shall, at Sublessee’s expense, comply with all laws and requirements of any governmental or administrative authorities that have jurisdiction over the Property and that impose any violation, order or duty on Sublessor or Sublessee arising from any or all of: (a) Sublessee’s particular use of the Subleased Premises; (b) the manner or conduct of Sublessee’s business or operation of its installations, equipment or other property therein; (c) any cause or condition created by, or at the instance of, Sublessee; (d) breach of any of Sublessee’s obligations hereunder, regardless whether such compliance requires work that is structural or non-structural, ordinary or extraordinary, foreseen; and Sublessee shall pay all the costs, expenses, fines, penalties and damages that are imposed upon either or both of Sublessor and the Prime Lessor, by reason of; or arising out of, Sublessee’s failure to fully and promptly comply with and observe the provisions of this Section.

16.2.2. Sublessee shall promptly provide Sublessor copies of all communications, permits or agreements with any governmental authority or agency (federal, state or local) or any private
entity relating in any way to a violation of any Relevant Law regarding the Subleased Premises, Sublessee’s obligations under this Section and/or, to the presence, release, threat of release, placement on or in the Subleased Premises or the Property, or the generation, transportation, storage, use, treatment, or disposal at the Subleased Premises or the Property, of any Hazardous Substance.

17. **NOTICES.** Notices hereunder shall be sent by overnight delivery service (such as Federal Express, United Parcel Service, and the like) or by telecopy or by email, addressed as follows:

If to Sublessor:

SOLO CUP OPERATING CORPORATION
Attn.: Steve Mills
3120 Sovereign Drive, Suite 4B
Lansing, MI 48911
Fax: 517.244.3601
Email: steve.mills@dart.biz

With a copy to:

SOLO CUP OPERATING CORPORATION
Attn.: Jeffrey C. Hicks
Legal
500 Hogsback Road
Mason, MI 48854
Fax: 517.244.3989
Email: jeff.hicks@dart.biz

If to Sublessee prior to the Sublease Commencement Date:

HORIZON PHARMA USA, INC.
Attn.: Senior Vice President, Global Business Operations and Government Affairs
520 Lake Cook Road, Suite 520
Deerfield, IL 60015
rmetz@horizonpharma.com

with a copy to:

HORIZON PHARMA USA, INC.
Attn.: Executive Vice President, General Counsel
520 Lake Cook Road, Suite 520
Deerfield, IL 60015
bbeeler@horizonpharma.com

If to Sublessee on or after to the Sublease Commencement Date:

HORIZON PHARMA USA, INC.
Attn.: Senior Vice President, Global Business Operations and Government Affairs
150 South Sanders Road
Lake Forest, Illinois 60045
rmetz@horizonpharma.com
with a copy to:

HORIZON PHARMA USA, INC.
Attn.: Executive Vice President, General Counsel
150 South Sanders Road
Lake Forest, Illinois 60045
bbeeler@horizonpharma.com

All notices shall be deemed received on the day delivered (or the day on which delivery is refused or cannot be consummated due to addressee having vacated the premises, or otherwise).

18. **AUTHORITY.** This Sublease shall not be binding upon either party until executed by Sublessor and Sublessee. Each party executing this Sublease represents and warrants that the party signing on behalf of their respective entity is fully authorized and intends to bind, and does bind, their entity thereto by affixing his/her signature hereto.

19. **SURRENDER.** Upon the expiration of the Term or termination of this Sublease, Sublessee shall peaceably surrender to Sublessor complete and exclusive possession of the Subleased Premises, broom clean, in good order and repair, in a condition the same as or better than on the date hereof, ordinary wear and tear and unavoidable casualty or other damages for which Sublessee is expressly not responsible for hereunder excepted, and except as otherwise provided for herein, otherwise in the condition in which Sublessor, as tenant, is required to surrender the Subleased Premises under the Prime Lease. At that time, Sublessee shall deliver all keys to the Subleased Premises to Sublessor. Subject to the rights of the Prime Lessor under the Prime Lease, and provided that Sublessee is not in default of its obligations hereunder, Sublessee shall purchase all of the Furniture (as hereinafter defined in Section 23) on the Sublease Expiration Date for $1.00, unless Sublessee provides Sublessor with at least ninety (90) days notice prior to the Sublease Expiration Date of Sublessee’s election not to purchase the Furniture. In the event Sublessee purchases the Furniture, Sublessee shall be responsible for the payment of any taxes payable to any governmental authority with respect to such sale and upon payment of such $1.00 and request to Sublessor, Sublessor shall provide Sublessee a Bill of Sale to transfer Sublessor’s right, title and interest in such Furniture to Sublessee in a form reasonably acceptable to Sublessor and Sublessee.

20. **ESTOPPEL CERTIFICATES.** Sublessee shall, at any time and from time to time, as requested by Sublessor, execute and deliver to Sublessor (and to any existing or prospective mortgage lender, or other party reasonably designated by Sublessor), within ten (10) business days after the request therefor, an estoppel certificate in the form required by the Prime Lease or Prime Lessor, as the case may be. Any such statement delivered pursuant hereto shall be deemed a representation and warranty to be relied upon by the party requesting the certificate and by others with whom Sublessor may be dealing, regardless of independent investigation. At Sublessor’s option, Sublessee’s failure to deliver such statement within such time shall be an Event of Default under this Sublease or shall be conclusive upon Sublessee (i) that this Sublease has not been canceled or terminated; (ii) that the last date of payment of Rent and the time period covered by such payment is as set forth by Sublessor; (iii) that there are no existing breaches or defaults by Sublessor under this Sublease known to Sublessee; (iv) that there are no existing claims or defenses in favor of Sublessor against infringement of this Sublease; and (v) that other factual statements customarily included in estoppel certificates of tenants of first class office buildings in the northern suburban Chicago, Illinois office market as Landlord, any lender, prospective lender, investor or purchaser may reasonably request, are true as set forth by Sublessor. Sublessor shall, at any time and from time to time (but not more than one time in any calendar year), as requested by Sublessee, execute and deliver to Sublessee (and to any other party reasonably designated by Sublessee), within ten (10) business days after the request therefor, an estoppel certificate in the form required by the Prime Lease or Prime Lessor, as the case may be.
21. **MISCELLANEOUS.**

21.1. **Partial Invalidity.** The unenforceability, invalidity, or illegality of any provision of this Sublease shall not render any other provision hereof unenforceable, invalid or illegal. Any such unenforceable, invalid or illegal provision shall be limited to the minimum extent necessary to render it enforceable, valid and legal and enforced to the maximum extent permitted by law, or excised from this Sublease, as circumstances may require.

21.2. **Choice of Law.** This Sublease shall be construed and enforced in accordance with the internal laws of the state in which the Property is located, without regard to its conflict of laws or choice of law rules.

21.3. **Integration.** This Sublease constitutes the entire agreement of the parties with respect to the subject matter hereof, and there are no prior or contemporaneous oral or written representations, promises or agreements not expressly set forth herein. This Sublease may be amended or modified only by a written instrument signed by Sublessor and Sublessee.

21.4. **Binding Character.** Subject to Section 6 hereof, all of the terms and provisions of this Sublease shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors, transferees and assigns.

21.5. **Captions.** Section headings are included solely for convenience, do not constitute part of this Sublease, and do not modify, explain or fully or accurately describe the content of any section or provision of this Sublease.

21.6. **Holding Over.** Sublessee has no right to renew this Sublease or extend the Term or to hold over following expiration or termination of the Term, any of which shall constitute an immediate Event of Default (and no notice or grace period shall be applicable) hereunder entitling Sublessor to exercise all of its rights and remedies under Section 12 hereof. Acceptance of rent or other sums from Sublessee after expiration or termination of the Term shall not constitute consent to any holding over or agreement to any renewal or extension; provided, however, that, at Sublessor’s option, any holding over by Sublessee shall constitute Sublessee’s agreement to a tenancy from month to month, at one hundred fifty percent (150%) of the Rent payable hereunder during the Term, and otherwise on the terms of this Sublease. In no event and under no circumstances, however, may any holding over continue, at any cost whatsoever, beyond the expiration or termination of the term of the Prime Lease.

21.7. **Waivers; Consents.** No consent(s) to any proposed action of Sublessee, and no waiver(s) of, or failure to assert, any right or remedy hereunder, by Sublessor (and/or Prime Lessor) on any one or more occasions shall constitute a course of dealing or a consent to such action or a waiver of such right or remedy on any other occasion. No waiver shall be effective hereunder unless set forth in a writing signed by Sublessor. In the event that Prime Lessor’s consent or approval is required for an action that Sublessee wishes to take that is permitted under the Prime Lease, Sublessor agrees to use commercially reasonable efforts to cooperate with and assist in obtaining Prime Lessor’s consent or approval, as applicable, in accordance with the terms and provisions of the Prime Lease.

21.8. **Relationship of Parties.** Nothing contained herein is intended, nor shall it be construed, to evidence, confirm or create any relationship of principal and agent, partnership, joint venture, master and servant, or any other relationship between the parties hereto other than the relationship of sublessor and sublessee. The parties expressly disclaim the existence of any relationship between them other than as sublessor and sublessee.
21.9. **Recording.** Neither this Sublease, nor any memorandum or “short form” hereof, nor any notice of Sublessee’s interest hereunder, shall be recorded by Sublessee, and any such recording shall be deemed an Event of Default entitling Sublessor to exercise all of its rights and remedies under Section 12 hereof.

21.10. **Counterparts.** This Sublease may be executed in any number of identical counterparts, any of which may contain he signatures of less than all parties, but all of which together shall constitute a single instrument.

21.11. **Confidentiality.** Neither party shall issue or make any public announcement, press release or other public disclosure regarding this Sublease or its subject matter or the parties without the other party’s prior written consent, except for any such disclosure that is, either required for a party to comply with its rights and obligations under the Sublease, or which in the opinion of the disclosing party’s counsel, required by law or the rules of a stock exchange on which the securities of the disclosing party are listed. In the event a party is, in the opinion of its counsel, required to make a public disclosure by law or the rules of a stock exchange on which its securities are listed, such party shall submit the proposed disclosure in writing to the other party at least five (5) days prior to the date of disclosure for an opportunity to comment thereon.

21.12. **Brokers.** Sublessor represents and warrants to Sublessee that Sublessor has not dealt with any brokers, agents or similar representatives in connection with this transaction other than Sublessor’s Broker Colliers International, do Newmark Grubb Knight Frank, 27725 Stansbury Blvd, Suite 300, Farmington Hills, MI, 48334. Sublessee represents and warrants to Sublessor that Sublessee has not dealt with any brokers, agents or similar representatives in connection with this transaction other than CBRE, 321 N. Clark Street, Suite 3400, Chicago, IL 60654 (“Sublessee’s Broker”). Sublessor shall pay a real estate commission in the amount of $1,373,810.63 to CBRE within five (5) business days after the latest to occur of the following: full execution of this Sublease and Prime Lessor’s approval of this Sublease, and no commission will be deemed earned until then (the “Commission Agreement”). Sublessor shall have no liability or obligation of any kind with respect to any other broker for any brokerage commissions or fees due in connection with the transaction contemplated by this Sublease. Sublessor and Sublessee each hereby indemnifies and agrees to hold harmless the other from and against any and all losses, costs, damages and expenses (including reasonable attorneys’ fees) arising, resulting, sustained or incurred by the other by reason of any claim by any broker, agent, finder or other person or entity based upon any arrangement or agreement made or alleged to have been made by the indemnifying party in connection with the transaction contemplated under this Sublease. Within three (3) business days after the full execution and delivery of this Sublease, Sublessee shall deposit the commission amount (“Sublessee’s Broker's Commission”) owed to Sublessee’s Broker into a strict joint order escrow (the “Escrow”) with First American Title Insurance Company. In the event that Sublessee’s Broker’s Commission is not paid to Sublessee’s Broker upon Prime Lessor’s consent to this Sublease, then such funds held in such Escrow shall automatically be released to Sublessee’s Broker on Sublessee’s sole direction.

21.13. **Attorneys’ Fees.** If Sublessor or Sublessee shall commence an action against the other arising out of or in connection with this Sublease, the prevailing party shall be entitled to recover its costs of suit and reasonable attorney’s fees.

21.14. **Consent by Lessor.** THIS SUBLEASE SHALL BE OF NO FORCE OR EFFECT UNLESS CONSENTED TO IN ITS ENTIRETY BY PRIME LESSOR ON OR BEFORE THE SUBLEASE COMMENCEMENT DATE. In the event that Prime Lessor’s consent is not obtained for this Sublease within thirty (30) days after the time period required for such consent by Prime Lessor pursuant to Section 13.2 of the Prime Lease (the “Outside Consent Date”), either Sublessor or Sublessee
shall have the right to terminate this Sublease by written notice to the other party on or before the date that is ten (10) business days after the Outside Consent Date.

21.15. **Time.** Time is of the essence under this Sublease.

21.16. **Waiver of Jury Trial.** SUBLESSOR AND SUBLESSEE, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY ANY PARTY TO THIS SUBLEASE WITH RESPECT TO THIS SUBLEASE, THE SUBLEASED PREMISES, OR ANY OTHER MATTER RELATED TO THIS SUBLEASE OR THE SUBLEASED PREMISES.

21.17. **Electronic Signatures.** Delivery of executed counterpart documents by facsimile transmission, Adobe Corporation’s Portable Document Format, or other electronic transmission means shall be as effective as delivery of a manually executed counterpart hereof.

22. **OPTION FOR ADDITIONAL STORAGE SPACE.** From and after the Sublease Commencement Date, Sublessor hereby covenants and agrees that Sublessee shall have the right to use the Storage Space, subject to the requirements of the Prime Lease.

23. **USE OF FURNITURE.** From and after the Sublease Commencement Date, Sublessor hereby covenants and agrees that Sublessee shall have the right to use the furniture, equipment, workstations, telephone switch and handsets, chairs, file cabinets and other equipment located in the Subleased Premises owned by Sublessor (collectively, the “Furniture”), which Furniture is more particularly identified on Schedule 1 attached hereto and made a part hereof. Sublessee shall maintain such Furniture in its as is condition, subject to normal wear and tear and shall have the right to modify and/or rearrange the Furniture during the Term in accordance with the terms and provisions of the Prime Lease.

24. **SEPARATE MAILING ADDRESSES.** To the extent that Sublessee needs additional mailing addresses assigned to the Subleased Premises by the United States Postal Service for Sublessee’s business needs, to the extent that Prime Lessor consents to such additional mailing addresses, Sublessor shall also consent. In addition, Sublessor shall use commercially reasonable efforts to obtain Prime Lessor’s consent to such additional mailing addresses.

25. **COMMERCIAL RESPONSIBILITY EFFORTS.** For purposes of clarity, at any time Sublessor is required to use “commercially reasonable efforts” under this Sublease, such efforts shall not include litigation or the threat of litigation and Sublessor shall not be required to incur any material cost or expense, provided however, in the event that Sublessee agrees to pay Sublessor’s out of pocket costs related to Sublessor’s efforts to enforce Prime Lessor’s obligations under the Prime Lease, then if requested by Sublessee, Sublessor shall institute litigation or the threat of litigation or take such other reasonable enforcement actions as reasonably requested by Sublessee.

[Signature Page to Follow]

21
IN WITNESS WHEREOF, the parties hereto have caused this Sublease to be executed on the year and day first written above.

SUBLESSOR:

SOLO CUP OPERATING CORPORATION, a Delaware corporation

By: /s/ Francis X. Liesman
Name: Francis X. Liesman
Its: Vice President

SUBLESSEE:

HORIZON PHARMA USA, INC., a Delaware corporation

By: /s/ Timothy P. Walbert
Name: Timothy P. Walbert
Its: Chairman, President and CEO
### Base Rent for the Premises:

<table>
<thead>
<tr>
<th>Year</th>
<th>Annual Rent</th>
<th>Monthly Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016*</td>
<td>$1,865,052.00</td>
<td>$155,421.00</td>
</tr>
<tr>
<td>2017</td>
<td>$1,921,003.56</td>
<td>$160,083.63</td>
</tr>
<tr>
<td>2018</td>
<td>$1,978,633.68</td>
<td>$164,886.14</td>
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<td>2019</td>
<td>$2,037,992.64</td>
<td>$169,886.14</td>
</tr>
<tr>
<td>2020</td>
<td>$2,099,132.40</td>
<td>$174,927.70</td>
</tr>
<tr>
<td>2021</td>
<td>$2,162,106.48</td>
<td>$180,175.54</td>
</tr>
<tr>
<td>2022</td>
<td>$2,226,969.60</td>
<td>$185,580.80</td>
</tr>
<tr>
<td>2023</td>
<td>$2,293,778.76</td>
<td>$191,148.23</td>
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<tr>
<td>2024</td>
<td>$2,362,592.04</td>
<td>$196,882.67</td>
</tr>
</tbody>
</table>

* Note: Requirement to pay 2016 Base Rent shall commence on the Rent Commencement Date.

### Base Rent for the Storage Area:

<table>
<thead>
<tr>
<th>Year</th>
<th>Annual Rent</th>
<th>Monthly Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016*</td>
<td>$47,705.04</td>
<td>$3,975.42</td>
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<tr>
<td>2017</td>
<td>$49,136.16</td>
<td>$4,094.68</td>
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<tr>
<td>2018</td>
<td>$50,610.24</td>
<td>$4,217.52</td>
</tr>
<tr>
<td>2019</td>
<td>$52,128.60</td>
<td>$4,344.05</td>
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<tr>
<td>2020</td>
<td>$53,692.44</td>
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<td>$55,303.20</td>
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<td>$60,431.28</td>
<td>$5,035.94</td>
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* Note: Requirement to pay 2016 Base Rent shall commence on the Rent Commencement Date.
## Schedule 1

### List of Furniture

<table>
<thead>
<tr>
<th>Network Distribution and Wifi Gear</th>
<th>Quantity</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firewall</td>
<td>2</td>
<td>Cisco PIXFirewall 525</td>
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<tr>
<td>Line Card</td>
<td>3</td>
<td>WS-SUP32P-10GE</td>
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<td>WS-SUP720-3B</td>
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<tr>
<td>Router</td>
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<td>Switch</td>
<td>3</td>
<td>Cisco 6509 Catalyst</td>
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<td>Switch</td>
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<td>Switch</td>
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<td>Cisco 3560 Catalyst G24TS</td>
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<td>Cisco 37XX Catalyst</td>
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<td>Cisco VG224</td>
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<td>Voice Equipment</td>
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<td>Description</td>
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<td>Temperature alert Wifi edition</td>
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<td>Micro PXNplus</td>
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</table>

Schedule 2-1
Schedule 2

Use and Occupancy of Server Room and Associated Facilities

1) Sublessor will provide Sublessee’s personnel non-exclusive access to the second floor server room and basement network room at the Premises beginning on November 15, 2015. At that time, Sublessee shall have the right to begin installing technical infrastructure components (switches, routers, servers, etc.) in the space. Sublessee will have physical access to cages, racks, power, and existing infrastructure (patch panels for 3rd and 4th floor connectivity, etc.) to begin Sublessee Improvements. Prior to this access being given, a Sublessor I.T. network employee will thoroughly explain the workings of the IDF’s and all incoming and outgoing wiring and connectivity to the appropriate Sublessee personnel.

2) Sublessor shall have the right to use and occupy the Server Room and Associated Facilities and the basement network room to maintain connectivity and functionality. On or before November 15, 2015, Sublessor shall consolidate this equipment to one rack or cabinet in the server room on the 2nd floor of the Premises.

3) Sublessee agrees to not tamper with, “power-off”, modify, or otherwise disturb any equipment operated by Sublessor. Sublessor agrees to not tamper with, “power-off”, modify, or otherwise disturb any equipment operated by Sublessee. Both parties agree to keep confidential any information obtained about the other party or its business or operations as a result of this arrangement.

4) In order to build-out the Sublessee’s infrastructure at the Premises, Sublessee intends to engage with telecommunications partners (AT&T, XO, Comcast, etc.) to deliver network and telephone services to the Premises. These partners may need to access certain parts of the Building beginning in October to provision these services. Sublessor agrees, subject to Sublessee’s and its providers compliance with all requirements of the Prime Lease and upon reasonable prior written notice to Sublessor, to allow these carriers to work in the Building on behalf of Sublessee to facilitate this work. Prior to this access being given, a Sublessor I.T. network employee will thoroughly explain the workings of the MDF/DC and all incoming and outgoing wiring and connectivity to the appropriate Sublessee personnel.

5) Sublessor and Sublessee each agree to log access to the server room on the 2nd floor and basement network room, and to provide these access logs to the other party if requested.

6) Any technical configuration or physical infrastructure changes made by either party to the technology in the basement network room or 2nd floor server room shall be vetted and approved by representatives of Sublessor and Sublessee prior to any such changes being made. This is intended not to create an obstacle in service delivery or functionality, but to ensure that both parties are aware and agree to changes that could potentially impact the other party.

7) Neither Sublessor nor Sublessee shall discontinue provider service without a sync check with the other party to avoid accidental network connectivity shutdowns.

Schedule 2-2
THIS SUBLEASE CONSENT AND RECOGNITION AGREEMENT (this “Agreement”) is entered into as of October 2, 2015 (the “Effective Date”) by and among LAKE FOREST LANDMARK II, LLC, an Illinois limited liability company (“Prime Landlord”), SOLO CUP OPERATING CORPORATION, a Delaware corporation (“Sublandlord”), and HORIZON PHARMA USA, INC., a Delaware corporation (“Subtenant”).

RECITALS

A. Pursuant to that certain Office Lease Agreement, dated as of August 26, 2008 (as amended by that certain First Amendment to Office Lease Agreement, dated as of November 23, 2010, and that certain Second Amendment to Office Lease Agreement, dated as of August 30, 2012, collectively, the “Prime Lease”), between Opus North Corporation, the predecessor-in-interest to Prime Landlord, and Sublandlord (a copy of which is attached to this Agreement as Exhibit A), Prime Landlord is leasing to Sublandlord, and Sublandlord is leasing from Prime Landlord, certain premises consisting of 133,218 rentable square feet and commonly known as Suites 150, 200, 300 and 400 and approximately 6,815 rentable square feet of storage space (collectively, the “Leased Premises”) in the building known as Landmark of Lake Forest II and located at 150 South Saunders Road, Lake Forest, Illinois (the “Building”). The Leased Premises are more particularly described in the Prime Lease.

B. Pursuant to that certain Sublease, dated August 26, 2015 (the “Sublease”), between Sublandlord and Subtenant, a copy of which is attached to this Agreement as Exhibit B, Sublandlord has agreed to sublease the entire Leased Premises to Subtenant, as more particularly described in the Sublease.

C. Sublandlord is required by the terms of the Prime Lease to obtain the prior written consent of Prime Landlord to the Sublease, and Prime Landlord is prepared to consent to the Sublease and to agree upon the terms on which the Sublease may become a direct lease between Prime Landlord and Subtenant, all as more particularly set forth in this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Prime Landlord, Sublandlord and Subtenant agree as follows:

1. Defined Terms. Capitalized terms used and not otherwise defined in this Agreement shall have the meanings ascribed to them in the Prime Lease.

2. Consents.

(a) Prime Landlord hereby consents to the Sublease. Neither the Sublease nor this Agreement shall be construed to relieve Sublandlord of any liabilities or obligations whatsoever under the Prime Lease, and nothing in the Sublease shall be deemed to modify or amend the Prime Lease in any way, except as expressly set forth in this Agreement. Sublandlord shall continue to be liable to Prime Landlord for the full performance of all obligations of the tenant under the Prime Lease for the remainder of the Term. Sublandlord shall not dissolve or otherwise change its legal or corporate existence until Sublandlord has satisfied all such obligations and liabilities under the Prime Lease. Any dissolution by Sublandlord prior to its satisfaction of all such obligations and liabilities under the Prime Lease shall be deemed an immediate Event of Default without any further notice or opportunity to cure.
Prime Landlord further consents to the use by Subtenant of the portions of the Building affected by the rights granted to Subtenant pursuant to Section 11 of the Sublease pursuant to, and subject to all applicable requirements and restrictions set forth in, the applicable sections of the Prime Lease governing the corresponding rights of Sublandlord to use the same.

3. **Relationship of the Parties Prior to Recognition Event**. The provisions of this **Section 3** shall be applicable at all times prior to a Recognition Event.

   (a) Prime Landlord shall not be deemed to have any obligation to Subtenant under the Prime Lease, and Prime Landlord shall have no obligation to fulfill any term of the Sublease or to provide any rights thereunder, in each case, except to the extent expressly provided in this Agreement. Subtenant shall not have the direct right to enforce the Prime Lease against Prime Landlord, and Subtenant shall not have the right to proceed against Prime Landlord in Sublandlord’s name with respect to any matter arising under the Prime Lease.

   (b) Whenever the Prime Lease gives Prime Landlord a right of involvement, such as a right to approve, consent, cooperate or decide a certain matter, Prime Landlord shall have such right with respect to both Sublandlord and Subtenant. If Prime Landlord and Sublandlord disagree over any decision requiring both of their consents or approvals, Prime Landlord’s decision shall govern and control.

   (c) Prime Landlord shall be named as an additional insured on any insurance maintained by Subtenant under the Sublease.

   (d) If any Event of Default occurs, Prime Landlord may so notify Subtenant, and Subtenant shall thereafter pay all sums due under the Sublease directly to Prime Landlord on behalf, and for the account, of Sublandlord and such payment by Subtenant shall be deemed as if Subtenant had made such payment directly to Sublandlord, as between Sublandlord and Subtenant. Subtenant shall have the right to accept such notice from Prime Landlord and shall have no duty to inquire as to the correctness of such notice, and Prime Landlord shall not have any liability to Sublandlord in connection with the giving of such a notice, except to the extent that such notice were given in bad faith and without any reasonable cause. Sublandlord agrees that no acceptance of such rents from Subtenant shall be deemed a waiver by Prime Landlord of any failure of performance by Sublandlord under the Prime Lease nor a waiver of any right or remedy of Prime Landlord in connection with such failure of performance, although Prime Landlord shall credit any sums so received against the obligations of Sublandlord under the Prime Lease, applying such sums to the obligations most recently becoming due.

   (e) The initial improvements and alterations that are contemplated to be made to the Leased Premises (the “Initial Improvements”) shall constitute Consent Alterations, and shall therefore be subject to all requirements and restrictions set forth in Article 8 and any other applicable provisions of the Prime Lease (but, for the avoidance of doubt, the provisions of Article 17 shall be inapplicable thereto), including, without limitation, the requirement that Prime Landlord shall have approved the plans and specifications for the Initial Improvements.

4. **Recognition of Sublease Upon Recognition Event**.

   (a) The Sublease and all of Subtenant’s rights thereunder shall be subject and subordinate in all respects to the Prime Lease. Notwithstanding the foregoing, in the event of the termination of the Prime Lease for any reason other than expiration of the Term or as a result of a condemnation or a fire or other casualty in accordance with the terms of the Prime Lease (any
such other termination, a “Recognition Event”), (i) Subtenant shall attorn to Prime Landlord and perform all of Subtenant’s obligations under the Sublease directly to Prime Landlord, as if Prime Landlord were the sublandlord under the Sublease, and (ii) provided that, at the time of termination of the Prime Lease, Subtenant is not in default under the terms of the Sublease beyond any applicable cure period, Prime Landlord shall continue to recognize the estate of Subtenant created under the Sublease and the Sublease shall continue with the same force and effect as if Prime Landlord and Subtenant had entered into a lease as of the Recognition Event on the same provisions as those contained in the Sublease (including all applicable provisions of the Prime Lease incorporated therein by reference), other than as set forth in the remainder of this Section 4. Both Prime Landlord and Subtenant shall execute and deliver, at the other’s request, an instrument confirming Subtenant’s attornment and other obligations pursuant to this Agreement and Prime Landlord’s agreement to be bound by the terms of the Sublease as modified pursuant to this Agreement (or, at Prime Landlord’s option, enter into a new lease containing all of the terms and provisions of the Sublease as modified by this Agreement); provided, however, that no failure of either of them to do so shall affect the provisions or effect of this Agreement.

(b) From and after the date of a Recognition Event, but subject to the remainder of this Section 4, Prime Landlord shall have the same rights as against Subtenant as Sublandlord had under the Sublease, and Subtenant shall have the same rights as against Prime Landlord as it had as against Sublandlord under the Sublease. The foregoing and the other provisions of this Agreement notwithstanding, Prime Landlord shall not (i) be liable for, or required to cure, any event, occurrence or condition that preceded the Recognition Event or any act or omission of Sublandlord and/or its agents or contractors, provided, however, that nothing herein shall diminish Prime Landlord’s obligation to perform continuing obligations of Sublandlord under the Sublease from and after the date that Prime Landlord succeeds to the interest of Sublandlord under the Sublease, (ii) be subject to any offsets or defenses that Subtenant then has against Sublandlord, (iii) be bound by any prepaid rent, security deposit, or other prepaid sum that Subtenant has then previously paid in advance to Sublandlord, except to the extent the same was or is actually delivered to Prime Landlord, (iv) subject to Prime Landlord’s repair, maintenance and other obligations under the Prime Lease, have any obligation to Subtenant with respect to the condition of the Leased Premises as of the date of the Recognition Event, it being agreed that Subtenant shall be conclusively deemed to have accepted the condition of the Leased Premises as of the date of the Recognition Event irrespective of any then-existing breach by the Sublandlord of its obligations under the Sublease (all such breaches being hereby waived by Subtenant as against Prime Landlord, but not as against Sublandlord), (v) be bound by any restrictive covenant, restriction or other restriction on competition set forth in the Sublease, (vi) be obligated to perform any construction that is the obligation of the Sublandlord under the Sublease, (vii) be obligated to provide, pay for, or give Subtenant credit for any work or construction to be performed by Subtenant, however characterized under the Sublease, (viii) be bound by any amendment to the Sublease not expressly consented to by Prime Landlord in writing, and/or (ix) be bound by any obligation of Sublandlord to indemnify or defend Subtenant. In addition, other than as expressly provided in this Agreement, Subtenant shall not have any remedy against Prime Landlord which is excess of the remedies available to the Sublandlord against Prime Landlord for any breach by Prime Landlord of the Sublease or for any negligence or other wrongful act on the part of Prime Landlord, and all remedies of Sublandlord shall be limited in the same manner as the remedies of Sublandlord under the Prime Lease (including limitations on the types of assets of Prime Landlord out of which any claim against Prime Landlord may be satisfied and the parties against whom a claim could be made or liability imposed such that, notwithstanding Section 3.1.1 of the Sublease, the first sentence of Section 18.8 of the Prime Lease shall be applicable as between Prime Landlord and Subtenant following a Recognition Event).
(c) Upon a Recognition Event, the Sublease shall be deemed modified such that all references to “Sublessor” shall be deemed to refer to Prime Landlord, provided that, notwithstanding anything to the contrary in the Sublease and without limitation to the foregoing provisions of this Section 4, (i) Subtenant shall pay to Prime Landlord the Basic Rent payable by Sublandlord pursuant to the Prime Lease in lieu of the Base Rent (as defined in the Sublease), (ii) Subtenant shall pay the Rent and any other amount due to Sublandlord under the Sublease directly to Prime Landlord at its address set forth in Section 11 below and (iii) the following provisions of the Sublease shall be inapplicable and the subject matter thereof shall be governed solely by the applicable provisions of the Prime Lease: (A) all of Section 1, other than the first sentence of the initial paragraph thereof and the first sentence of Section 1.1, (B) Section 2, (C) all of Section 3.1, other than the first sentence of Section 3.1.1 (except that the reference to the first sentence of Section 18.8 of the Prime Lease shall be deemed to be deleted therefrom), (D) all of Section 3.4, other than the first sentence thereof, and (E) Sections 4 through 25.

(d) It is the intention of Subtenant and Prime Landlord that, although the Prime Lease terminates upon a Recognition Event, all references to the Prime Lease within the Sublease shall survive and be binding upon Prime Landlord and Subtenant and the obligations of Subtenant and Prime Landlord under the Sublease shall be interpreted as though the Prime Lease were still in effect. To the extent that, due to any provision of the Prime Lease, (i) the rights or obligations of Sublandlord, as tenant under the Prime Lease, would have been less or greater than those of Subtenant under the Sublease prior to the Recognition Event or (ii) the rights or obligations of Prime Landlord under the Prime Lease would have been less or greater than those of Sublandlord, as sublandlord under the Sublease, prior to the Recognition Event, such provision of the Prime Lease shall continue to be effective after the Recognition Event, such that the applicable rights and obligations of Subtenant and Prime Landlord under the Sublease are equivalent to the corresponding rights and obligations that Sublandlord and Prime Landlord, respectively, would have had had the Prime Lease continued in effect as a direct lease between Prime Landlord and Subtenant.

(e) Within ten (10) Business Days following a Recognition Event, Subtenant shall obtain all policies of insurance which were to have been obtained by Sublandlord under the Prime Lease with respect to the Leased Premises and the Building and shall deliver to Prime Landlord such evidence of such policies as would have been required of Sublandlord under the Prime Lease. Subtenant and its insurance carriers shall be bound by the covenants pertaining to waivers of subrogation contained in the Prime Lease with respect to all policies of property insurance maintained by Subtenant.

5. Termination of Sublease. Subtenant agrees that, if the Prime Lease is terminated and the same does not constitute a Recognition Event, then the Sublease shall be deemed to have been automatically terminated concurrently with the termination of the Prime Lease.

6. Modification of Prime Lease. Nothing in this Agreement shall be deemed to amend or otherwise modify the Prime Lease, except that Prime Landlord and Sublandlord hereby agree as follows:

(a) The Prime Lease is amended by deleting therefrom Section 1.2.5 and all text related to the subject matter thereof, including, without limitation, references in the Prime Lease to any extension of the Term or the Term, as extended.

(b) The Prime Lease is amended by deleting Section 1.5 therefrom.
7. **Direct Obligations of Subtenant.** Each of Article 15 and Section 18.19 of the Prime Lease shall be deemed to be applicable to the Sublease and the rights of Subtenant thereunder, and Subtenant agrees to comply with the terms of said Article 15 and Section 18.19 as if it were Sublandlord for purposes thereof, including, providing directly to Prime Landlord such documentation as is required to be provided by Sublandlord thereunder as and when the same is required to be delivered pursuant thereto.

8. **Representations and Warranties.**

   (a) Prime Landlord hereby represents and warrants to each of Sublandlord and Subtenant, as of the Effective Date, that (i) it is a limited liability company, duly formed and validly existing under the laws of the State of Illinois, (ii) it has and is duly qualified to do business in the State of Illinois, (iii) it has full limited liability company power and authority to enter into this Agreement and to perform all of its obligations hereunder, (iv) the person executing this Agreement on its behalf is duly and validly authorized to do so, (v) the Prime Lease constitutes the entire agreement between Prime Landlord and Sublandlord with respect to the Leased Premises and the copy of the Prime Lease attached hereto as Exhibit A is true, correct and complete, (vi) the Prime Lease is in full force and effect, (vii) no default exists on its part under the Prime Lease and, to its knowledge, there exists no circumstance that, but for the giving of notice or the passage of time, or both, would constitute a default on its part under the Prime Lease, and (viii) to its knowledge, no Event of Default or circumstance that, but for the giving of notice or the passage of time, or both, would constitute an Event of Default exists.

   (b) Sublandlord hereby represents and warrants to each of Prime Landlord and Subtenant, as of the Effective Date, that (i) it is a corporation, duly formed and validly existing under the laws of the State of Delaware, (ii) it has and is duly qualified to do business in the State of Illinois, (iii) it has full corporate power and authority to enter into this Agreement and to perform all of its obligations hereunder, (iv) the person executing this Agreement on its behalf is duly and validly authorized to do so, (v) the Prime Lease constitutes the entire agreement between Prime Landlord and Sublandlord with respect to the Leased Premises and the copy of the Prime Lease attached hereto as Exhibit A is true, correct and complete, (vi) the Sublease constitutes the entire agreement between Sublandlord and Subtenant with respect to the Leased Premises and the copy of the Sublease attached hereto as Exhibit B is true, correct and complete, (vii) each of the Prime Lease and the Sublease is in full force and effect, (viii) no Event of Default exists under the Prime Lease and, to its knowledge, there exists no circumstance that, but for the giving of notice or the passage of time, or both, would constitute an Event of Default, (ix) to its knowledge, no default exists on the part of Prime Landlord under the Prime Lease and, to its knowledge, there exists no circumstance that, but for the giving of notice or the passage of time, or both, would constitute a default on the part of Prime Landlord under the Prime Lease, (x) no default exists on its part under the Sublease and, to its knowledge, there exists no circumstance that, but for the giving of notice or the passage of time, or both, would constitute a default on its part under the Sublease, and (xi) to its knowledge, no default exists on the part of Subtenant under the Sublease and, to its knowledge, there exists no circumstance that, but for the giving of notice or the passage of time, or both, would constitute a default on the part of Subtenant under the Sublease.

   (c) Subtenant hereby represents and warrants to each of Prime Landlord and Sublandlord, as of the Effective Date, that (i) it is a corporation, duly formed and validly existing under the laws of the State of Delaware, (ii) it has and is duly qualified to do business in the State of Illinois, (iii) it has full corporate power and authority to enter into this Agreement and to perform all of its obligations hereunder, (iv) the person executing this Agreement on its behalf is duly and validly authorized to do so, (v) the Sublease constitutes the entire agreement between Sublandlord and Subtenant with respect to the Leased Premises and the copy of the Sublease

- 5 -
attached hereto as Exhibit B is true, correct and complete, (vi) the Sublease is in full force and effect, (vii) no default exists on its part under the Sublease and, to its knowledge, there exists no circumstance that, but for the giving of notice or the passage of time, or both, would constitute a default on its part under the Sublease, and (viii) to its knowledge, no default exists on the part of Sublandlord under the Sublease and, to its knowledge, there exists no circumstance that, but for the giving of notice or the passage of time, or both, would constitute a default on the part of Sublandlord under the Sublease.

9. **Effect of Agreement.** This Agreement shall not relieve Sublandlord of its obligation to obtain Prime Landlord’s consent to any assignment of the Prime Lease or any further sublease of all or part of the Leased Premises as and to the extent required by the Prime Lease. Prime Landlord and Subtenant agree that, notwithstanding anything to the contrary in the Prime Lease, the Sublease or this Agreement, the provisions of Article 13 of the Prime Lease shall be applicable to Subtenant and all references therein to “Tenant” shall be deemed to be references to Subtenant for purposes of evaluating any proposed Transfer (including a determination of whether the same is a Permitted Transfer) and any conditions thereto. By its execution of this Agreement, Sublandlord waives any right, claim or demand which Sublandlord may have against Subtenant by reason of Subtenant’s compliance with its obligations hereunder, including, without limitation, Subtenant’s complying with Prime Landlord’s direction to pay sums due to Sublandlord under the Sublease directly to Prime Landlord in accordance with Section 3(d) above.

10. **Brokerage Commissions.** Each of Sublandlord and Subtenant hereby agrees to indemnify, defend and hold Prime Landlord harmless from claims for any commission or finder’s fee charges by any real estate broker or other person or entity arising from an agreement, whether express or implied, between Sublandlord or Subtenant and such broker or other person or entity in connection with the execution of the Sublease, the making of this Agreement and/or any matter described in this Agreement (including, without limitation, the creation of a direct lease between Prime Landlord and Subtenant upon the occurrence of a Recognition Event).

11. **Notices.** All notices, demands and communications permitted or required to be given hereunder shall be in writing, and shall be delivered (a) personally, (b) by United States registered or certified mail, postage prepaid, (c) by Federal Express or other reputable courier service regularly providing evidence of delivery (with charges paid by the party sending the notice) or (d) by email. Any such notice to a party shall be addressed at the address set forth below (subject to the right of a party to designate a different address for itself by notice similarly given):

**Prime Landlord:**
Lake Forest Landmark II, LLC  
c/o Newsweb Corporation  
2401 N. Halsted Street, Suite 200  
Chicago, Illinois 60614  
Attention: Charley Gross  
Email: cgross@newsweb.com

**With a copy to:**
Perkins Coie LLP  
131 South Dearborn Street, Suite 1700  
Chicago, Illinois 60603  
Attention: Matthew A. Shebuski, Esq.  
Email: mshebuski@perkinscoie.com
<table>
<thead>
<tr>
<th>Sublandlord:</th>
<th>Solo Cup Operating Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3120 Sovereign Drive, Suite 4B</td>
</tr>
<tr>
<td></td>
<td>Lansing, Michigan 48911</td>
</tr>
<tr>
<td></td>
<td>Attention: Steve Mills</td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:steve.mills@dart.biz">steve.mills@dart.biz</a></td>
</tr>
<tr>
<td>With a copy to:</td>
<td>Solo Cup Operating Corporation</td>
</tr>
<tr>
<td></td>
<td>500 Hogsback Road</td>
</tr>
<tr>
<td></td>
<td>Mason, Michigan 48854</td>
</tr>
<tr>
<td></td>
<td>Attention: Jeffrey C. Hicks, Legal</td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:jeff.hicks@dart.biz">jeff.hicks@dart.biz</a></td>
</tr>
<tr>
<td>Subtenant:</td>
<td>Horizon Pharma USA, Inc.</td>
</tr>
<tr>
<td></td>
<td>520 Lake Cook Road, Suite 520</td>
</tr>
<tr>
<td></td>
<td>Deerfield, Illinois 60015</td>
</tr>
<tr>
<td></td>
<td>Attention: Senior Vice President, Global Operations and Government Affairs</td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:rmetz@horizonpharma.com">rmetz@horizonpharma.com</a></td>
</tr>
<tr>
<td>With a copy to:</td>
<td>Horizon Pharma USA, Inc.</td>
</tr>
<tr>
<td></td>
<td>520 Lake Cook Road, Suite 520</td>
</tr>
<tr>
<td></td>
<td>Deerfield, Illinois 60015</td>
</tr>
<tr>
<td></td>
<td>Attention: Executive Vice President, General Counsel</td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:bbeeler@horizonpharma.com">bbeeler@horizonpharma.com</a></td>
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</table>

Service of any such notice or other communications so made shall be deemed effective on the day of actual delivery (whether accepted or refused), as shown by the addressee’s return receipt, and if by certified mail, as confirmed by the courier service if by courier. Notices given by email transmission shall be deemed given on the date of receipt (if a Business Day), otherwise the first Business Day following receipt; provided, however, that a notice delivered by email transmission shall only be effective if such notice is also delivered by hand, deposited in the United States mail, postage prepaid, registered or certified mail, or given by nationally recognized private courier on or before two (2) Business Days after its delivery by email transmission unless waived by the recipient.

12. **Miscellaneous Provisions.**

   (a) **Waiver of Covenants, Conditions, or Remedies.** The waiver by one party of the performance of any covenant, condition, or promise under this Agreement shall not invalidate this Agreement, nor shall it be considered a waiver by it of any other covenant, condition, or promise under this Agreement. The waiver by any party or parties of the time for performing any act under this Agreement shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provision in this Agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.

   (b) **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Illinois.

   (c) **Further Assurances.** In addition to the documents and instruments to be delivered as herein provided, each of the parties hereto shall, from time to time at the request of any other
party, execute and deliver to such other party such other documents and shall take such other action as may be reasonably required to more effectively carry out the terms of this Agreement. The provisions of this Section 12(c) shall not be construed to require any party to take any action or execute any document which would be contradictory to, or inconsistent with, the terms of this Agreement.

(d) **Relationship.** Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create a relationship of principal and agent or a partnership or a joint venture among Sublandlord, Subtenant and Prime Landlord or between any two of them or between any one or more of them and any third party.

(e) **Successors and Assigns.** The terms, covenants and conditions of this Agreement shall apply to and bind the permitted successors and assigns of all the parties hereto.

(f) **Interpretation.** The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement or any amendments or exhibits to it or any document executed and delivered by either party in connection with this Agreement.

(g) **Severability.** If any provision of this Agreement is determined to be illegal or unenforceable, such determination shall not affect any other provisions of this Agreement and all such other provisions shall remain in full force and effect.

(h) **Final Agreement.** This Agreement, together with the provisions of the Sublease and the Prime Lease, contains the entire agreement among the parties hereto regarding the matters which are the subject of this Agreement, and all prior agreements, understandings or representations with respect to the subject matter of this Agreement are hereby superseded, terminated and cancelled in their entirety and are of no further force or effect. In the event of any conflict between the provisions of this Agreement and the provisions of the Prime Lease or the Sublease, the provisions of this Agreement shall prevail.

(i) **Amendments.** This Agreement may not be amended or otherwise modified except by a writing executed by each of Prime Landlord, Sublandlord and Subtenant.

(j) **Attorneys’ Fees.** If any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys’ fees and disbursements. Any such attorneys’ fees and other expenses incurred by any party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys’ fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

(k) **Time of the Essence.** Time is of the essence of this Agreement and of each provision hereof.

(l) **Counterparts; PDF.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and when taken together they shall constitute one and the same Agreement. The delivery of an executed counterpart of this Agreement by facsimile or as a
PDF or similar attachment to an e-mail shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

(m) **Incorporation of Exhibits.** All exhibit references herein and attached to this Agreement are hereby incorporated in this Agreement by reference.

(n) **Prime Landlord’s Costs.** Within five (5) days of receiving an invoice therefor, Sublandlord shall reimburse Landlord for all of its reasonable, out-of-pocket costs and expenses incurred in reviewing the Sublease and in preparing this Agreement, including Landlord’s reasonable attorney’s fees, provided that such costs, expenses and fees shall not exceed $7,500 in the aggregate. For the avoidance of doubt, the covenant contained in this subsection shall not be subject to the limitations set forth in Section 13.7 of the Prime Lease.
IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the Effective Date.

PRIME LANDLORD:
LAKE FOREST LANDMARK II, LLC, an Illinois limited liability company
By: NWB Real Estate Company, an Illinois corporation, its Managing Member

By:  /s/ Charles F. Gross
Name: Charles F. Gross
Title: President

SUBLANDLORD:
SOLO CUP OPERATING CORPORATION, a Delaware corporation
By:  /s/ Kevin M. Fox
Name: Kevin M. Fox
Title: Treasurer

SUBTENANT:
HORIZON PHARMA USA, INC., a Delaware corporation
By:  /s/ Timothy P. Walbert
Name: Timothy P. Walbert
Title: Chairman, President and CEO
EXHIBIT A

Prime Lease

[See Following Pages]
Opus North Corporation, an Illinois corporation — Landlord

and

Solo Cup Operating Corporation, a Delaware corporation — Tenant

Opus Landmark of Lake Forest II — Lake Forest, Illinois

Dated as of August 26, 2008 (with Effective Date as provided in Lease)
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Office Lease Agreement

This Office Lease Agreement is made and entered into as of the Effective Date by and between Opus North Corporation, an Illinois corporation, as Landlord, and Solo Cup Operating Corporation, a Delaware corporation, as Tenant.

Definitions

Capitalized terms used in this Lease have the meanings ascribed to them on the attached EXHIBIT “A.”

Basic Terms

The following Basic Terms are applied under and governed by the particular section(s) in this Lease pertaining to the following information:

1. **Premises:** Suites 150, 200, 300 and 400, consisting of approximately 133,218 rentable square feet (subject to Section 1.1 below) and located on the first, second, third and fourth floors of the Building. The Premises are depicted on the Floor Plan attached as EXHIBIT “C.” (See Section 1.1)

2. **Building:** Four-story office building at 150 South Saunders Road, Lake Forest, Illinois, consisting of approximately 160,085 rentable square feet and commonly known as Opus Landmark of Lake Forest II

3. **Lease Term:** 180 months (See Section 1.2), as the same may be extended as set forth herein

4. **Term Extension/Renewal Options:** Two five-year periods (See Section 1.2.5)

5. **Scheduled Delivery Date:** October 1, 2008 (See Section 1.2)

6. **Commencement Date:** April 1, 2009; provided, however, that if the Delivery Date does not occur on or before the Scheduled Delivery Date (as contemplated by Section 2.2 below), other than as a result of Tenant Delays, then the Commencement Date shall be the date that is six months after the Delivery Date.

7. **Basic Rent:**

<table>
<thead>
<tr>
<th>Months</th>
<th>Annual Basic Rent (based on 133,218 rentable square feet)/ Annual Basic Rent per rentable square foot of the Premises (See Section 2.1)</th>
<th>Monthly Installments of Basic Rent (based on 133,218 rentable square feet)</th>
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</thead>
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<tr>
<td>1</td>
<td>$2,464,533.00 (annualized)/ $18.50</td>
<td>$205,377.75</td>
</tr>
<tr>
<td>2 through 5</td>
<td>$-0-/$-0-</td>
<td>$-0-</td>
</tr>
<tr>
<td>6 through 12</td>
<td>$2,464,533.00 (annualized)/ $18.50</td>
<td>$205,377.75</td>
</tr>
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</table>
8. **Tenant’s Share of Expenses Percentage:**

83.217%, subject to adjustment in the event that the respective rentable areas of the Building and/or the Premises are subsequently modified (as provided in Section 1.1) so that Tenant’s Share of Expenses Percentage is equal to the percentage of the rentable square footage of the leaseable office area in the Building (excluding, without limitation, all Common Area), as determined by Landlord in accordance with BOMA Standards, represented by the rentable square footage of the Premises as also determined by Landlord in accordance with BOMA Standards.

9. **Improvement Allowance:**

$7,326,990 (i.e., $55.00 per rentable square foot of the Premises)

10. **Abatement:**

Basic Rent and Tenant’s Share of Expenses during Months 2 through 5 of the Term

11. **Current Property Manager/Rent Payment Address:**

Opus North Management Corporation
Suite 900
9700 Higgins Road
Rosemont, Illinois 60018-4713

12. **Address of Landlord for Notices:**

Opus North Corporation
Suite 900
9700 Higgins Road
Rosemont, Illinois 60018-4713
Attn: President

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<td>13.</td>
<td><strong>Address of Tenant for Notices prior to the Commencement Date:</strong></td>
</tr>
<tr>
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<td>Solo Cup Operating Corporation 1700 Old Deerfield Road Highland Park, Illinois 60035 Attn: General Counsel</td>
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<tr>
<td>14.</td>
<td><strong>Address of Tenant for Notices prior from and after the Commencement Date:</strong></td>
</tr>
<tr>
<td></td>
<td>Solo Cup Operating Corporation 150 South Saunders Road Lake Forest, Illinois 60045 Attn: General Counsel</td>
</tr>
<tr>
<td></td>
<td><strong>Broker(s):</strong></td>
</tr>
<tr>
<td></td>
<td>CB Richard Ellis, Inc. Cushman &amp; Wakefield of Illinois, Inc. (See Section 18.11)</td>
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ARTICLE 1
LEASE OF PREMISES AND LEASE TERM

Section 1.1 Premises. In consideration of the mutual covenants this Lease describes and other good and valuable consideration, Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, upon and subject to the terms, covenants and conditions set forth in this Lease. The rentable area of the Premises for purposes of this Lease is the rentable area specified in the Basic Terms. From and after the Effective Date, neither Landlord nor Tenant shall have any right to re-measure or re-calculate the rentable square footage of the Building or the Premises under this Lease, except that in the event of an actual reconfiguration, addition or modification to the Building and/or the Premises, Landlord shall re-determine the rentable area of the Building and/or the Premises, as applicable (as well as Tenant’s Share of Expenses Percentage), based on BOMA Standards. Tenant shall have the right to confirm the accuracy of any such re-determination of the rentable square footage of the Building and/or the Premises (as applicable) by Landlord. If Tenant disagrees with any such re-determination by Landlord, then Tenant may notify Landlord thereof within 60 days after Landlord provides notice to Tenant of any such re-determination. Thereafter, Landlord and Tenant shall work jointly and cooperatively to determine the appropriate extent of the applicable re-measurement (if any) based on BOMA Standards.

Section 1.2 Term, Delivery and Commencement.

Section 1.2.1 Commencement and Expiration of Term. The Term of this Lease is the period stated in the Basic Terms. The Term commences on the Commencement Date and, unless earlier terminated in accordance with the terms and conditions of this Lease, expires on the last day of the last calendar month of the Term.

Section 1.2.2 Tender of Possession; Delay in Tender of Possession.

Section 1.2.2.1 Tender of Possession. Landlord will tender possession of the entire Premises (and the other portions of the Property that Tenant has the right to use and/or occupy hereunder) to Tenant no later than the Scheduled Delivery Date specified in the Basic Terms. The actual date on which such delivery of possession occurs is herein called the “Delivery Date”; provided, however, that the Delivery Date will not occur prior to the Scheduled Delivery Date unless Tenant accepts delivery of possession, occupies or commences any construction activities or other work or business operations in the Premises prior to the Scheduled Delivery Date (any such date prior to the Scheduled Delivery Date on which Tenant accepts delivery of possession, occupies or commences any construction activities or other work or business operations in the Premises being the Delivery Date hereunder). For purposes of this Lease, Landlord’s tender of possession under this Lease will be effected and satisfied by Landlord’s delivery to Tenant of keys to the Premises, and Landlord’s permitting Tenant to access the Premises under this Lease. Landlord’s aforesaid tender of possession of the entire Premises (and the other portions of the Property that Tenant has the right to use and occupy hereunder) to Tenant will be for the purpose of permitting Tenant to (a) commence and perform construction of Tenant’s Improvements and the Other Tenant Work pursuant to Article 17, (b) install Tenant’s furniture, fixtures, equipment, personal property, trade fixtures and testing systems, and/or (c) use and occupy the Premises and the Property for all other purposes permitted under this Lease, including conducting Tenant’s business therein. Any occupancy of the Premises and/or the Property by Tenant prior to the Commencement Date of this Lease is herein called “Early Occupancy.” All of the terms and conditions of this Lease, other than the obligations to pay Basic Rent and Tenant’s Share of Expenses (which obligations to pay Basic Rent and Tenant’s Share of Expenses shall not commence until the Commencement Date), shall apply to any Early Occupancy by Tenant (including the obligation to pay all utility costs incurred by Tenant in connection with Tenant’s use and occupancy of the Premises during any period of Early Occupancy in accordance with Article 17), even though the Commencement Date will not yet have occurred.

Section 1.2.2.2 Delay in Tender of Possession. If Landlord fails, for any reason other than Tenant Delay or Force Majeure, to cause the Delivery Date to occur on or before the Scheduled Delivery Date, then this Lease will remain in full force and effect (except as expressly provided below); provided, however, that if the Delivery Date has not occurred by the date that is 30 days after the Scheduled Delivery Date, then (in addition to, and not in lieu of, the automatic extension of the Commencement Date resulting therefrom as provided in the Basic Terms) Landlord will credit to Tenant against Rent first becoming due under this Lease an amount equal to two days’ Basic Rent for each day of delay after the date that is 30 days after the Scheduled Delivery Date until the
Delivery Date occurs; and provided further, however, that in no event will Tenant be entitled to a credit against Rent in excess of an amount equal to 240 days of Basic Rent, even if the Delivery Date does not occur within 120 days after the Scheduled Delivery Date. For clarity, the parties acknowledge that any such credit will be in the amount of two times the daily Basic Rent payable with respect to first full month of the Term for which Tenant is responsible for paying Basic Rent (i.e., not two times the daily Basic Rent of $0 per rentable square foot allocable to months 2 through 5 of the Term). In addition, if the Delivery Date does not occur on or before the date that is one hundred 120 days after the Scheduled Delivery Date ("Termination Date"), then Tenant may terminate this Lease by delivering written notice of termination to Landlord not later than the earlier of (a) five Business Days after the Termination Date, or (b) the date on which the Delivery Date occurs. If Tenant timely delivers such notice of termination, then this Lease will terminate and the parties will have no further rights or obligations hereunder, except as expressly provided herein. Any failure by Tenant to timely deliver any such termination notice to Landlord (as provided above) will constitute a waiver of Tenant’s right to terminate pursuant to this Section 1.2.2.2, and this Lease will remain in full force and effect. For purposes of this Lease, the Scheduled Delivery Date will be extended to the extent Landlord’s failure to cause the Delivery Date to occur arises by reason of Tenant Delay or Force Majeure. Tenant’s rights under this Section 1.2.2.2 will be Tenant’s sole and exclusive rights and remedies against Landlord for any failure by Landlord to cause the Delivery Date to occur on or before the Scheduled Delivery Date.

Section 1.2.3 Commencement Date Memorandum. Within a reasonable time after the Commencement Date, Landlord will deliver to Tenant the Commencement Date Memorandum with all blanks relating to dates completed with dates that Landlord derives in accordance with this Lease. Tenant, within 10 Business Days after receipt thereof from Landlord, will execute and deliver to Landlord the Commencement Date Memorandum. The failure of either party to execute and/or deliver the Commencement Date Memorandum will not affect any obligation of the parties under this Lease.

Section 1.2.4 Limitation on Occupancy. Tenant will not occupy the Premises before the Delivery Date, but Landlord shall permit Tenant to have reasonable access to the Premises and Property prior to the Delivery Date in order to inspect the same, take measurements and perform similar activities, subject to Landlord’s reasonable scheduling requirements and such other reasonable limitations as Landlord may impose. However, subject to all of the terms, provisions and conditions of this Lease, Tenant will have the right to Early Occupancy of the Premises (and other portions of the Property which Tenant has the right to use and/or occupy hereunder) between the Delivery Date and the Commencement Date for the purposes set forth in (and subject to) Section 1.2.2; provided, however, that during such Early Occupancy, Tenant will not be obligated to pay any Basic Rent or any of Tenant’s Share of Expenses.

Section 1.2.5 Extension Options.

Section 1.2.5.1 Extension of Term. Provided that no monetary or material nonmonetary Event of Default exists at the time of exercise, Tenant may extend the Term for up to two consecutive periods of five years each. Tenant must exercise each such right of extension by delivering written notice of Tenant’s exercise at least 12, but not more than 18, months prior to the expiration of the then-current Term (as may have been extended). Each extension of the Term will be on the same terms, covenants and conditions as in this Lease, other than Basic Rent, which shall be determined as set forth below in this Section 1.2.5. Subject to this Section 1.2.5.1, Basic Rent for each extension period will be 95% of the fair market rental rate for such extension period, determined in relation to comparable (in quality, location and size) space located in the Building and/or in other first-class office facilities in the northern suburban Chicago, Illinois office market, and taking into account all relevant factors (including then market concessions (such as tenant improvement allowances and free rent) ("Fair Market Basic Rent"). Landlord will reasonably determine such Fair Market Basic Rent and deliver Landlord’s determination to Tenant at least 11 months prior to the expiration of the then-current Term. These extension rights are personal to Tenant and may not be assigned or transferred in any manner except in connection with an approved Transfer (or a Transfer or Permitted Transfer which does not require Landlord approval) under Article 13.

Section 1.2.5.2 Basic Rent Appraisal. If Tenant disputes Landlord’s determination of the Fair Market Basic Rent for an extension of the Term, Tenant will deliver notice of such dispute, together with Tenant’s proposed Fair Market Basic Rent, to Landlord within 10 Business Days after Tenant’s receipt of Landlord’s determination. The parties will then attempt in good faith to agree upon the Fair Market Basic Rent. If
the parties fail to agree within 10 Business Days after the delivery of Tenant’s notice of dispute, then either party will be entitled to give notice to the other electing to have the Fair Market Basic Rent selected by an appraiser as provided in this Section 1.2.5.2. Upon delivery and receipt of such notice, the parties will, within five Business Days thereafter, mutually appoint an appraiser who will select (in the manner set forth below) the Fair Market Basic Rent ("Deciding Appraiser"). The Deciding Appraiser must have at least five years of full-time commercial appraisal experience with projects comparable to the Property in the northern suburban Chicago, Illinois office market, and be a member of the American Institute of Real Estate Appraisers or a similar appraisal association. The Deciding Appraiser may not have any material financial or business interest in common with either Landlord or Tenant or their respective Affiliates. If Landlord and Tenant are not able to agree upon a Deciding Appraiser within such five Business Days, each party will within the next five Business Days thereafter separately select an appraiser meeting the criteria set forth above, which two appraisers will, within five Business Days after their selection, mutually appoint a third appraiser meeting the criteria set forth above to be the Deciding Appraiser. Within 10 Business Days after the appointment (by either method) of the Deciding Appraiser, Landlord and Tenant will submit to the Deciding Appraiser their respective determinations of Fair Market Basic Rent and any related information that Landlord or Tenant, as the case may be, wishes the Deciding Appraiser to consider. Within 20 days after such appointment of the Deciding Appraiser, the Deciding Appraiser will review each party’s submittal (and such other information as the Deciding Appraiser deems necessary) and will select, in total and without modification, the submittal presented by either Landlord or Tenant as the Fair Market Basic Rent. Subject to the previous sentence, if the Deciding Appraiser timely receives one party’s submittal, but not both, the Deciding Appraiser must designate the submitted proposal as the Fair Market Basic Rent for the applicable extension of the Term. Any determination of Fair Market Basic Rent made by the Deciding Appraiser in violation of the provisions of this Section 1.2.5.2 will be beyond the scope of authority of the Deciding Appraiser and will be null and void. If the determination of Fair Market Basic Rent is made by a Deciding Appraiser, Landlord and Tenant will each pay, directly to the Deciding Appraiser, 50% of all fees, costs and expenses of the Deciding Appraiser. Landlord and Tenant will each separately pay all costs, fees and expenses of their respective additional appraiser (if any) used to determine the Deciding Appraiser.

Section 1.3 Parking.

Section 1.3.1 Underground Parking. Subject to this Section 1.3, Landlord will make available to Tenant during the Term (and any period of Early Occupancy), at no additional cost to Tenant (other than Tenant’s payment of all Rent otherwise due under this Lease), all 46 automobile parking spaces in the Building’s underground parking area (“Tenant Reserved Spaces”), which Tenant Reserved Spaces will be for the exclusive use of Tenant. Landlord will not permit any person or entity other than Tenant to use the Tenant Reserved Spaces for any purpose during the Term (or any period of Early Occupancy).

Section 1.3.2 General Parking. In addition to the right to use the Tenant Reserved Spaces as set forth above, Landlord will make available to Tenant during the Term (and any period of Early Occupancy), at no additional cost to Tenant (other than Tenant’s payment of all Rent otherwise due under this Lease), 427 unreserved parking automobile parking spaces in the surface parking area at the Property (“Tenant Unreserved Spaces;” and together with the Reserved Spaces, “Tenant Parking Spaces”). The use of the Tenant Unreserved Spaces by Tenant shall be on a first-come, first-serve basis with the other tenants of the Building, and Landlord will not permit the use of parking spaces in the surface parking area at the Property such that Tenant would not have the use of all of Tenant’s Unreserved Spaces at all times. Landlord will dedicate (and appropriately designate) 12 of the Tenant Unreserved Spaces agrees for use by visitors and invitees of Tenant (“Visitor Parking Area”), and the Visitor Parking Area shall be in that portion of the Property’s surface parking area which is located closest to the Building.

Section 1.3.3 Parking Rights Generally. All Tenant Parking Spaces will be available to Tenant at all times during the Term (and any period of Early Occupancy), 24-hours per day, 7 days per week; provided, however, that Tenant’s use of the Tenant Unreserved Spaces will be available on a first come, first serve basis in common with the other tenants of the Building (as provided in Section 1.3.2). In addition, the use of all Tenant Parking Spaces will be subject to such reasonable rules and regulations as Landlord may from time to time institute (which rules shall in no event adversely affect Tenant’s use of the Tenant Parking Spaces in any material respect) and all Laws. Further, Landlord may reserve parking spaces in the surface parking areas in locations from time to time designated by Landlord, for the exclusive use of visitors to the Building and for the exclusive use of other tenants in the Building (and
their respective employees, licensees and invitees), so long as any such reservation by Landlord does not decrease the total number of the Tenant Unreserved Spaces.

Section 1.4 Storage. Subject to this Section 1.4, Landlord will let to Tenant, and Tenant will lease and hire from Landlord, during the entire Term, approximately 6,815 square feet of storage space on the lower level of the Building in the location shown on EXHIBIT "I" hereto ("Storage Space"). Tenant may use the Storage Space for storage of records as well as furniture, equipment, supplies, attics and other materials of the type customarily used by office building tenants. Landlord shall deliver possession of the Storage Space to Tenant on the Delivery Date, and Tenant shall have the right to use, and occupy the Storage Space prior to the Commencement Date upon the same terms and conditions as Tenant’s Early Occupancy of the Premises pursuant to Section 1.2.2. Tenant shall pay, as rent for its use and occupancy of the Storage Space, annual gross rental rate of $9.30 per gross square foot per year, to be increased by 2.5% for each year thereafter (“Storage Space Rent”), commencing on the Commencement Date (it being agreed that Tenant shall not be required to pay any Storage Space Rent in connection with any use or occupancy of the Storage Space prior to the Commencement Date). Tenant will pay the Storage Space Rent to Landlord, in advance, in equal monthly installments on the first day of each calendar month beginning on the Commencement Date; provided, however, that Tenant shall not be required to pay any Storage Space Rent with respect to months 2 through 5 of the Term (it being agreed that all Storage Space Rent for such period shall be fully abated). In addition, Tenant, at its sole cost and expense, will be responsible for replacing and paying for all lighting bulbs, tubes, ballasts and starters deemed necessary by Tenant for its use of Storage Space. Landlord shall provide such services (including electricity as part of Operating Expenses hereunder, but specifically excluding janitorial services) to the Storage Space as are customarily provided to storage space in comparable first-class office buildings in the northern suburban Chicago, Illinois office market. Tenant shall maintain the Storage Space in good and clean condition during the Term, subject to normal wear and tear, damage by fire or other casualty, Tenant's negligence or intentional misconduct. The releases and insurance, indemnity and liability provisions and waivers of the parties in this Lease apply to the Storage Space as if it were a part of the Premises. Tenant’s use of the Storage Space, at any time or from time to time during the Term, will be subject to all Laws and other Requirements.

Section 1.5 Right of First Offer. So long as no Event of Default then exists under this Lease, then subject to (a) the terms, provisions and conditions of this Section 1.5, and (b) the existing (as of the Effective Date) rights of Icon Clinical Research, Inc. (which is the other tenant in the Building as of the Effective Date), or its successors or assigns under its lease, Tenant will have the first right to be offered by Landlord the opportunity to lease any additional office space in the Building (“First Offer Space”). If at any time during the Term, Landlord intends to enter into negotiations for the lease of any First Offer Space (“Available Space”), Landlord will deliver written notice thereof to Tenant (“Available Space Notice”). Within 10 Business Days after Landlord’s delivery of any Available Space Notice, Tenant will, if at all, its written notice to Landlord that Tenant desires to enter into negotiations for its lease of the Available Space (“First Offer Election Notice”). If Tenant fails to deliver the First Offer Election Notice to Landlord within such 10-Business Day period, then Tenant will be conclusively deemed to have elected not to exercise its rights hereunder with respect to the Available Space, and (subject to the proviso at the end of this sentence) all of Tenant’s rights and all of Landlord’s obligations hereunder with respect to the Available Space will automatically terminate and be of no further force or effect; provided, however, that if following any such election (or deemed election) by Tenant not to exercise its rights under this Section 1.5 as to any Available Space, Landlord leases the Available Space to a person or entity other than Tenant, and the lease with such other tenant expires or otherwise terminates (including, without limitation, the expiration or other termination of all extension or renewal rights granted to such other tenant) prior to the expiration or earlier termination of the Term of this Lease, then Landlord, prior to offering such Available Space for lease to any other person or entity, will again offer the same to Tenant for lease as provided above in this Section 1.5, in which event Tenant’s rights under this Section 1.5 will again apply to such Available Space. Following Tenant’s timely delivery of its First Offer Election Notice, Landlord and Tenant will, diligently and in good faith, negotiate an amendment to this Lease with respect to Tenant’s lease of all, and not less than all, of the Available Space at a fair market rental rate and otherwise for the inclusion of the Available Space as part of the Premises under this Lease. If by the date which is 60 days after Landlord’s delivery of the Available Space Notice, Landlord and Tenant have not executed and entered into a binding written amendment as provided in this Section 1.5, then all of Tenant’s rights and all of Landlord’s obligations under this Section 1.5 with respect to the Available Space will automatically terminate and be of no further force or effect (subject to the proviso at the end of the fourth sentence of this Section 1.5). Anything in this Section 1.5 or elsewhere in this Lease to the contrary notwithstanding, Landlord will be under no obligation to construct any improvements within or with respect to the Available Space. The purpose of this Section 1.5 is to
provide notice to Tenant so that Tenant may be in a position to offer to lease any Available Space prior to others, and, anything in this Section 1.5 to the contrary notwithstanding, nothing in this Section 1.5 will be deemed to be a right of first refusal. At any time within 10 days after Landlord’s request therefor, Tenant will, without charge, certify by written instrument reasonably acceptable to Landlord and Tenant, whether Landlord has fulfilled its obligations under this Section 1.5 and whether Tenant has any further rights hereunder, or if Tenant believes, in good faith, that Landlord has not fulfilled one or more of its obligations hereunder, a written summary thereof. Tenant’s rights under this Section 1.5 are personal to Tenant and may not be assigned or transferred in any manner except in connection with an approved Transfer (or a Transfer or Permitted Transfer which does not require Landlord approval) under Article 13.

ARTICLE 2
RENTAL AND OTHER PAYMENTS

Section 2.1 Basic Rent. Tenant will pay Basic Rent in monthly installments to Landlord, in advance, without offset or deduction (except as expressly provided in this Lease), commencing on the Commencement Date and continuing on the first day of each and every calendar month after the Commencement Date during the Term; provided, however, that Basic Rent will abate during the second through fifth months of the Term, as provided in the Basic Terms. Tenant will make all Basic Rent payments to Landlord in care of Property Manager at the address specified in the Basic Terms or at such other place or in such other manner as Landlord may from time to time designate in writing. Tenant will make all Basic Rent payments without Landlord’s previous demand, invoice or notice for payment. Landlord and Tenant will prorate, on a per diem basis, Basic Rent for any partial month within the Term.

Section 2.2 Additional Rent. Article 3 of this Lease requires Tenant to pay Tenant’s Share of Expenses pursuant to estimates that Landlord delivers to Tenant. Tenant will make all payments of the estimated amount of Tenant’s Share of Expenses in accordance with Sections 3.3 and 3.4, as well as all other payments of Additional Rent in accordance with this Lease, without deduction or offset (except as expressly provided in this Lease); provided, however, that Tenant’s Share of Expenses will abate during the second through fifth months of the Term, as provided in the Basic Terms. Except as specifically set forth in this Lease, Tenant will pay all other Additional Rent which is not estimated under Sections 3.3 and 3.4 within 30 days after receiving Landlord’s written invoice for such Additional Rent. Tenant will make all Additional Rent payments to the same location and, except as provided herein, in the same manner as Tenant’s Basic Rent payments.

Section 2.3 Delinquent Rental Payments. If Tenant does not pay any installment of Basic Rent or Additional Rent when due, then Tenant will pay Landlord an additional amount equal to interest on the delinquent payment calculated at the Maximum Rate from the date when the payment was initially due through the date the payment is made; provided, however, that Tenant will not be assessed the late payment interest on the first two late payments in any calendar year if such payments are made within five days after Tenant’s receipt of notice of nonpayment from Landlord. Landlord’s right to such compensation for the delinquency is in addition to all of Landlord’s rights and remedies under this Lease, at law or in equity.

Section 2.4 Independent Obligations. Anything in this Lease to the contrary notwithstanding, except as expressly provided herein, (a) Tenant’s covenant and obligation to pay Rent is independent from any of Landlord’s covenants, obligations, warranties or representations in this Lease; and (b) Tenant will pay Rent without any right of offset or deduction, except as expressly provided herein.

Section 2.5 Rent Tax. Tenant will pay to Landlord all Rent Tax (if any) due on the payment of the Basic Rent by Tenant hereunder, which Rent Tax will be paid by Tenant to Landlord concurrently with each payment of Basic Rent made by Tenant to Landlord under this Lease. Tenant’s obligation to pay Rent Tax hereunder shall be without duplication of Tenant’s obligation to pay Tenant’s Share of Expenses, as provided in Article 3 below, or any other component of Rent (as provided herein).
ARTICLE 3
PROPERTY TAXES AND OPERATING EXPENSES

Section 3.1        Payment of Property Taxes and Operating Expenses. Tenant will pay, as Additional Rent and in the manner this Article 3 describes, Tenant’s Share of Expenses for each and every calendar year of the Term. If the Term includes any partial calendar years, or Tenant is otherwise required under this Lease to pay Tenant’s Share of Expenses for only part of a full calendar year, then Landlord will prorate Tenant’s Share of Expenses for the applicable calendar year on a per diem basis based on the number of days of the Term within such calendar year or period within which Tenant is required to pay Tenant’s Share of Expenses (as applicable).

Section 3.2        Estimation of Tenant’s Share of Expenses. Landlord will deliver to Tenant a written estimate (as reasonably determined by Landlord) of the following for each calendar year of the Term: (a) Property Taxes, (b) Operating Expenses, (c) Tenant’s Share of Expenses, and (d) the annual and monthly Additional Rent attributable to Tenant’s Share of Expenses. Such estimate shall include a reasonably detailed breakdown of each category of expense which comprises Expenses, and the manner in which Landlord’s estimate of Tenant’s Share of Expenses has been calculated.

Section 3.3        Payment of Estimated Tenant’s Share of Expenses. Tenant will pay the amount that Landlord reasonably estimates as Tenant’s Share of Expenses under Section 3.2 for each and every calendar year of the Term in equal monthly installments, in advance, commencing on the Commencement Date and continuing on the first day of each and every month during the Term (subject to the full abatement of Tenant’s Share of Expenses with respect to months two through five of the Term, as provided herein). Landlord hereby notifies Tenant that Landlord’s good faith, but non-binding estimate of Expenses for the first calendar year of the Term (i.e., 2009) will equal the amount of $8.00 (approximately $5.80 in Operating Expenses and approximately $2.20 in Property Taxes) multiplied by the total rentable square footage of the Building. If Landlord has not delivered the estimates to Tenant by the first day of January of any subsequent applicable calendar year, then Tenant will continue paying Tenant’s Share of Expenses based on Landlord’s estimates for the previous calendar year. When Tenant receives Landlord’s estimates for the current calendar year, Tenant will pay the estimated amount (less amounts that Tenant paid to Landlord in accordance with the immediately preceding sentence) in equal monthly installments over the balance of such calendar year, with the number of installments being equal to the number of full calendar months remaining in such calendar year.

Section 3.4        Re-Estimation of Expenses. Landlord may re-estimate Property Taxes, Operating Expenses and Tenant’s Share of Expenses for any calendar year from time to time during the Term but shall not do so in a manner that would result in an increase in such estimates more frequently than twice during any such calendar year. In such event, Landlord will re-estimate the monthly Additional Rent attributable to Tenant’s Share of Expenses to an amount sufficient for Tenant to pay the re-estimated monthly amount over the balance of the calendar year. Landlord will notify Tenant of the re-estimate at least 30 days in advance of the effective date thereof, and Tenant will pay the re-estimated amount in the manner provided in the last sentence of Section 3.3.

Section 3.5        Confirmation of Tenant’s Share of Expenses.

Section 3.5.1    Landlord’s Statement. No later than 120 days after the end of each calendar year within the Term, Landlord will determine the actual amount of Property Taxes, Operating Expenses and Tenant’s Share of Expenses for the expired calendar year, and will deliver to Tenant a written statement of such amounts (“Landlord’s Statement”); provided, however, that Landlord shall use commercially reasonable efforts to deliver each Landlord’s Statement to Tenant within 90 days after the end of each calendar year within the Term. Each Landlord’s Statement shall be binding on Landlord once delivered (except as provided in Section 3.5.2), and shall contain a reasonably detailed breakdown of the various components of Expenses, showing how Tenant’s Share of Expenses was determined. If Tenant paid less than the actual amount of Tenant’s Share of Expenses specified in Landlord’s Statement, Tenant will pay the difference to Landlord as Additional Rent within 30 days after its receipt of Landlord’s Statement in the manner Section 2.2 describes. If Tenant paid more than the actual amount of Tenant’s Share of Expenses specified in Landlord’s Statement, Landlord will, at Tenant’s option, either (a) refund the excess amount to Tenant within 30 days after delivery of Landlord’s Statement, or (b) credit the excess amount against Tenant’s next due monthly installment or installments of Rent; provided, however, that if Tenant elects to require Landlord to provide such credit for any such excess in lieu of refunding the same to Tenant, but the amount
of such credit is in excess of the amount of Rent due for the balance of the Term, then Landlord shall pay the amount by which the total amount of the credit exceeds the remaining Rent to Tenant within 30 days after the end of the Term. If Landlord is delayed in delivering any Landlord’s Statement to Tenant, such delay does not constitute a waiver of either party’s rights under this Section 3.5. The respective obligations of Landlord and Tenant to reconcile the payment of Tenant’s Share of Expenses, as set forth above, shall survive the expiration of the Term or sooner termination of this Lease for a period of one year.

Section 3.5.2 Audit Rights. If Tenant desires to audit Landlord’s determination of the actual amount of Tenant’s Share of Expenses for any calendar year, Tenant must deliver to Landlord written notice of Tenant’s election to audit within 12 months after Landlord’s delivery of Landlord’s Statement under Section 3.5.1. If such notice is timely delivered, Tenant (but not any subtenant) may, at Tenant’s sole cost and expense, cause a reputable certified public accountant or other appropriate, reputable professional to audit Landlord’s records relating to such amounts. Such audit will take place during regular business hours at a time and place reasonably acceptable to Landlord (which may be the location where Landlord or Property Manager maintains the applicable records). Tenant’s election to audit Landlord’s determination of Tenant’s Share of Expenses is deemed withdrawn unless Tenant completes and delivers the audit report to Landlord within 90 days after the date Tenant delivers its notice of election to audit to Landlord under this Section, except to the extent that any such failure to complete the audit report within such time period results from Landlord’s failure to make its records relating to Tenant’s Share of Expenses available to Tenant and its designated accountant or consultant within a time frame that reasonably enables Tenant to cause the completion of such audit report within such 90-day period. If the audit report shows that the amount Landlord charged Tenant for Tenant’s Share of Expenses was greater than the amount this Article 3 obligates Tenant to pay, unless Landlord reasonably contests the audit by delivering written notice of such dispute to Tenant within 60 days after Landlord’s receipt of the audit report from Tenant, Landlord will refund the excess amount to Tenant, together with interest on the excess amount (computed at the Maximum Rate from the date Tenant delivers its dispute notice to Landlord), within 30 days after Landlord receives a copy of the audit report. If the audit report shows that the amount Landlord charged Tenant for Tenant’s Share of Expenses was less than the amount this Article 3 obligates Tenant to pay, Tenant will pay to Landlord, as Additional Rent, the difference between the amount Tenant paid and the amount determined in the audit. Pending resolution of any audit under this Section, Tenant will continue to pay to Landlord all estimated amounts of Tenant’s Share of Expenses in accordance with Section 3.1. In addition, if Tenant’s audit discloses that Landlord overcharged Tenant for Tenant’s Share of Expenses by more than 5%, then Landlord will pay Tenant’s reasonable, third party out-of-pocket costs for the audit, not to exceed 10% of the overcharged amount. If requested by Landlord, Tenant will execute a reasonable and customary confidentiality agreement prior to conducting any audit of Tenant’s Share of Expenses. If Landlord timely disputes any audit report of Tenant as aforesaid, then Landlord and Tenant will work diligently to resolve the same.

Section 3.6 Personal Property Taxes. Tenant, prior to delinquency, will pay all taxes (if any) charged against Tenant’s trade fixtures and other personal property located at the Property. The parties will use all reasonable efforts to have such trade fixtures and other personal property of Tenant taxed separately from the Property. If any of Tenant’s trade fixtures and other personal property are taxed with the Property, Tenant will pay the taxes attributable to Tenant’s trade fixtures and other personal property to Landlord as Additional Rent within thirty 30 days after Landlord’s written invoice therefor is delivered to Tenant, in which event Landlord shall pay such taxes to the appropriate governmental authority(ies) prior to delinquency. Tenant’s payment of the taxes described in this Section 3.6 shall not be in duplication of Tenant’s obligation to pay any component of Tenant’s Share of Expenses.

Section 3.7 Landlord’s Right to Contest Property Taxes. Landlord shall pay all Property Taxes when due directly to the appropriate governmental authorities prior to delinquency. Landlord may, but is not obligated to (except as expressly provided below in this Section 3.7), contest the amount or validity, in whole or in part, of any Property Taxes in accordance with applicable law. In the event of any such contest, Landlord will provide Tenant with notice of such contest concurrently with Landlord’s delivery of such notice to the applicable governmental entity. If Property Taxes are reduced (or if a proposed increase is avoided or reduced) because Property Taxes are contested, Landlord may include in its computation of Property Taxes the costs and expenses incurred in connection with such contest, including without limitation reasonable attorney’s fees, up to (but not exceeding) the amount of any Property Tax reduction obtained in connection with the contest or any Property Tax increase avoided or reduced in connection with the contest, as the case may be. Landlord will contest Property Taxes if and to the extent such contest is commercially reasonable, but Tenant may not contest Property Taxes.
Notwithstanding the foregoing, if Tenant requests that Landlord contest Property Taxes, Landlord shall be under no obligation to contest the same (unless such contest is commercially reasonable, as aforesaid); provided, however, that if Landlord elects not to contest the same following Tenant’s request, then Landlord will provide Tenant with reasonable documentation from Landlord’s property tax advisor to support Landlord’s decision not to contest the same. Landlord shall use commercially reasonable efforts to forward to Tenant, in a timely manner, all material correspondence or other material information relating to assessments of the Property or Property Taxes that Landlord receives from any governmental body and that Landlord has filed with any governmental body relating to assessments of the Property or Property Taxes.

Section 3.8 Adjustment for Variable Operating Expenses. Anything in this Article 3 or elsewhere in this Lease to the contrary notwithstanding, if less than 95% of the rentable area of the Building is occupied at any time during any calendar year pursuant to leases under which the terms have commenced for such calendar year, then Landlord may reasonably and equitably adjust its computation of Operating Expenses for such calendar year to include all components of Operating Expenses (if any) which vary based on occupancy. Such adjustment will be in an amount equal to Landlord’s reasonable estimate of the amount that such components of Operating Expenses would have been had 95% of the rentable area of the Building been occupied at all times during such calendar year pursuant to leases under which the terms had commenced for such calendar year. If at any time or from time to time any components of Operating Expenses relate to (a) services or benefits that are received by Tenant but not all other tenants in the Building; (b) costs that are incurred by Landlord solely, or in disproportionate amounts, as a result of Tenant’s particular use or occupancy of the Premises or Property as compared to other tenants in the Building; or (c) services, benefits or costs that are otherwise received or incurred in differing amounts by, for or as a result of Tenant’s particular use or occupancy of the Premises or Property as compared to other tenants of the Building, then Landlord may, in Landlord’s reasonable discretion, adjust Landlord’s computation of such components of Operating Expenses to equitably allocate such components of Operating Expenses among Tenant and the other tenants of the Building, as applicable, in amounts Landlord reasonably determines to be proportionate to the amounts of such services, benefits and costs received by or incurred for or as a result of Tenant and each such other tenant. Tenant’s payments, if any, pursuant to the preceding sentence shall not be in duplication of Tenant’s obligation to pay Tenant’s Share of Expenses pursuant to this Article 3 or to pay any other component of Additional Rent to Landlord as provided in any other provisions of this Lease (including Section 4.1), and if Landlord proposes to adjust any component(s) of Operating Expenses in the manner provided in the preceding sentence, Landlord shall provide prior written notice thereof to Tenant.

ARTICLE 4

USE

Section 4.1 Permitted Use. Tenant will not use the Premises for any purpose other than general and administrative office, training, storage and cafeteria uses, and any/or other lawful purposes (“Permitted Use”). Tenant will not conduct such Permitted Use of the Premises, or allow such Permitted Use to be conducted by any Tenant Parties, in violation of any Requirements or in any manner which would (a) violate any certificate of occupancy affecting the Property; (b) make void or voidable any insurance that Landlord is required to maintain under this Lease with respect to the Property; or (c) constitute a public or private legal nuisance or waste; provided, however, that that it is acknowledged that the use of the Premises generally for general and administrative offices, training, storage and cafeteria uses in accordance with the other provisions of this Lease will not be deemed to violate the terms of this Section 4.1. Tenant will not use the Common Area in any manner that is inconsistent with the Permitted Use nor in any manner that unreasonably interferes with the use of the Property by other occupants or users of the Property (it being agreed that the Permitted Use and the exercise of Tenant’s rights under this Lease will not be deemed to constitute a violation of the terms of this sentence). If Tenant’s particular use or occupancy of the Premises or Property (other than for general and administrative offices, training or storage uses) causes or requires Landlord to incur any unusual or extraordinary costs or expenses (including, without limitation, costs for any (i) special governmental permits, (ii) special maintenance, monitoring, inspection or reporting requirements which are, in all event, required as a result of Laws first enacted after the Commencement Date, or changes to existing Laws first enacted after the Commencement Date, (iii) additional insurance premiums, surcharges, policies or coverages, or (iv) other matters required solely as a result of Tenant’s particular use or occupancy of the Premises or Property), Landlord may bill Tenant directly therefor and Tenant will pay all such cost and expense so billed to Landlord as Additional Rent. During any period within the Term that Tenant is not occupying and operating the Premises
(excluding any such period during which the Premises are being repaired or restored in connection with a casualty, and then only excluding the portion of the Premises being repaired or restored), Tenant will keep those portions of the Premises visible from the Common Area from appearing abandoned, including, without limitation, keeping such areas lighted during Business Hours, free of stored materials, clean and otherwise maintained such that it is not apparent that business is not being conducted therein.

Section 4.2 Acceptance of Premises. Except as expressly set forth herein, (a) Tenant acknowledges that neither Landlord nor any agent, contractor or employee of Landlord has made any representation or warranty of any kind with respect to the Premises, the Building or the Property, specifically including, without limitation, any representation or warranty of suitability or fitness of the Premises, Building or the Property for any particular purpose; and (b) Tenant’s occupancy of the Premises establishes Tenant’s acceptance of the Premises, the Storage Space, the Building and the Property in an “AS IS — WHERE IS” condition.

Section 4.3 Increased Insurance. To the extent that Tenant’s specific use of the Property (as opposed to the use of the Property generally for general and administrative office, training, storage and cafeteria uses) causes an increase in the premium of any insurance policy that Landlord is required to carry with respect to the Premises or the Property under this Lease, then Tenant will reimburse Landlord for such increased premium charges within 30 days after Tenant’s receipt of an invoice from Landlord therefor.

Section 4.4 Laws/Building Rules. This Lease is subject to all Laws. A copy of the current Building Rules is attached to this Lease as EXHIBIT “E.” Landlord may amend the Building Rules from time to time in Landlord’s reasonable discretion, but not in a manner that would materially and adversely interfere with Tenant’s rights under this Lease or Tenant’s use or occupancy of the Premises, Common Areas and other portions of the Property that Tenant has the right to use and/or occupy hereunder (and/or to gain access to and from the same).

Section 4.5 Common Area. Landlord grants Tenant the non-exclusive right, together with all other occupants of the Building, and their respective agents, employees and invitees, to use Common Area, and any and all basement areas that are appurtenant to the Property from time to time, during the Term (and any period of Early Occupancy), subject to this Lease and all Requirements. Landlord, at Landlord’s sole and absolute discretion, may make changes to the Common Area; provided, however, that (a) in the event such changes would materially and adversely affect Tenant’s use of the Premises and other portions of the Property as provided under this Lease, then Landlord will not make such changes without obtaining Tenant’s prior written consent (which consent may be granted or withheld in Tenant’s sole discretion), and (b) Landlord shall not make changes or Alterations that would affect, in any material respect, the appearance of the main lobby, the exterior of the Building or Property, the elevators of the Building, or the stairways serving the Premises, without obtaining Tenant’s prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed). Subject to the terms of the preceding sentence, Landlord’s rights regarding Common Area include, without limitation, the right to (i) restrain unauthorized persons from using Common Area; (ii) temporarily close any portion of Common Area (A) for repairs, improvements or Alterations, (B) to discourage unauthorized use, (C) to prevent dedication or prescriptive rights, or (D) for any other reason that Landlord deems sufficient in Landlord’s reasonable judgment; (iv) change the shape and size of Common Area; (v) add, eliminate or change the location of any improvements located in Common Area and construct buildings or other structures in Common Area; and (vi) impose and revise Building Rules concerning use of Common Area, including, without limitation, any parking facilities comprising a portion of Common Area. Notwithstanding the foregoing, Landlord will not exercise such rights in a manner that unreasonably interferes with Tenant’s access to and use of the Premises and other portions of the Property which Tenant has the right to use and occupy hereunder, nor in a manner that is materially inconsistent with Tenant’s rights under this Lease (including Section 4.6).

Section 4.6 Signs. The provisions of this Section 4.6 will govern and control over any contrary or inconsistent provisions of the Building Rules (including, without limitation, Building Rule No. 1).

Section 4.6.1 Building Signage. Tenant will have the right to install exterior identification signage of Tenant (i) on the façade of the Building in the location(s) specified on EXHIBIT “J-1” attached hereto, but only if and to the extent that such façade signage is permitted by the City and under all applicable Laws (“Façade Signage”), and (ii) on the monument sign outside of the Building (“Building Monument Sign”) in the location(s) thereon specified on EXHIBIT “J-2” attached hereto (collectively, “Exterior Tenant Signage”), in
both cases at Tenant’s sole cost and expense (the cost of which may, at Tenant’s sole option, be defrayed in whole or in part from the Improvement Allowance). Landlord shall keep and maintain the Exterior Tenant Signage in good condition, order and repair, and Tenant shall reimburse Landlord for Landlord’s Actual Costs incurred in connection therewith from time to time within 30 days after receipt of Landlord’s invoices therefor (it being agreed that such costs shall not be included in Operating Expenses). Upon the expiration of the Term (or sooner termination of this Lease) Tenant, at its sole cost and expense, must remove the Exterior Tenant Signage from the Building, and repair any damage to the Building resulting from such removal. Any such Exterior Tenant Signage installed by Tenant shall comply with Landlord’s reasonable signage criteria (which shall in no event prohibit Tenant from displaying its name and logo on any signage in accordance with all Laws, but may include reasonable limitations on the size and configuration of such display consistent with EXHIBITS “J-1”, “J-2”, “J-3(a)” and “J-3(b)” attached hereto) and all applicable Requirements, and the installation thereof by Tenant shall be performed in accordance with the terms of this Lease (including, without limitation, Articles 8 or 17, as applicable). During the period that commences on the Effective Date and ends upon the expiration of the Term (or earlier termination of this Lease), Landlord shall not install or maintain, or permit any other person or entity (including any other tenant of the Building) to install or maintain, any identification signage on the façade of the Building, it being agreed that the façade Signage shall constitute the exclusive signage located on the façade of the Building during such period. Except for the Exterior Tenant Signage and identification signage reserved for use by other tenants and occupants of the Building on the Building Monument Sign as shown on EXHIBIT “J-2,” Landlord shall not, during the period that commences on the Effective Date and ends upon the expiration of the Term (or earlier termination of this Lease), install or maintain, or permit any other person or entity to install or maintain, any identification signage on the Building Monument Sign.

Section 4.6.2 Interior Identification Signage. Landlord will provide to Tenant the following (collectively, “Interior Common Area Tenant Signage”) (a) exclusive tenant identification signage as specified on either, but not both of, EXHIBIT “J-3(a)” or EXHIBIT “J-3(b),” as Tenant may elect, on the wall of the first-floor lobby of the Building (i.e., no other person or entity, including any tenant of the Building, will have the right to install or maintain signage in the lobby of the Building, other than identification sign adjacent to the entry door of the premises of any other tenant with premises on the first floor of the Building), and as specified in Section 4.6.3 (“Tenant’s Lobby Signage”), (b) elevator vestibule tenant identification signage on each floor of the Premises on which other tenants occupy space, (c) Building Standard (or otherwise, at Tenant’s sole cost and expense) tenant identification signage adjacent to the main entry door of the Premises on each floor of the Building, and (d) standard building lobby directory listing in a quantity and proportion to the rentable square footage of the Premises relative to the rentable square footage of other tenants in the Building. In addition, Tenant will have the right, at Tenant’s sole cost and expense, to install tenant identification signage on each floor of the Premises that Tenant occupies exclusively (i.e., no other tenants on such floor) (“Interior Exclusive Floor Tenant Signage”), and Tenant, at its sole cost and expense, must remove all such Interior Exclusive Floor Tenant Signage prior to the expiration or earlier termination of this Lease, and repair any damage to the Building or the Property resulting from the removal of such signage (subject to the terms of Section 10.3.2). Landlord will maintain all Interior Common Area Tenant Signage in good condition, order and repair, and Tenant shall reimburse Landlord for Landlord’s Actual Costs incurred in connection therewith from time to time within 30 days after receipt of Landlord’s invoices therefor (it being agreed that such costs shall not be included in Operating Expenses); provided, however, that Landlord may elect to include such costs as Operating Expenses, in which case Tenant will not be obligated to pay Landlord directly therefor under this sentence. Tenant, at its sole cost and expense, shall maintain any Interior Exclusive Floor Tenant Signage in good condition, order and repair. Except as expressly permitted under this Section 4.6.2, Tenant will not install in the Premises any other interior sign, decoration or advertising material of any kind which is readily visible from the exterior of the Building.

Section 4.6.3 Tenant Reception Desk. Tenant shall have the right (but not the obligation) to install a reception desk in the first floor of the Premises, adjacent to the first floor main lobby of the Building, and the related entrance door improvements and signage on the wall of the first-floor lobby of the Building, all as shown on EXHIBIT “J-4” attached hereto (collectively, “Tenant Reception Desk”). The size, materials and appearance of any such Tenant Reception Desk shall be mutually acceptable to Landlord and Tenant, but in any event shall be consistent with the design and appearance of the main lobby of the Building, except as otherwise depicted on EXHIBIT “J-4.”
Section 4.7  Tenant’s Rooftop Rights.  Subject to this Section 4.7, Tenant may use a portion of the roof of the Building selected by Tenant and reasonably acceptable to Landlord (which area shall consist of at least Tenant’s Percentage Share of Expenses of the total area of the roof which is reasonably available for the installation of rooftop equipment, machinery and facilities) to install, operate and maintain the following (collectively, “Rooftop Equipment”): (i) microwave dishes or similar antennae and/or other equipment/infrastructure for telecommunications solely for Tenant’s use, (ii) equipment and facilities (which may include condensers) which provide supplemental cooling to the Premises and Tenant’s property located therein, and (iii) security equipment of Tenant (which may include cameras and other monitoring devices), at Tenant’s sole cost and expense and free of any charge from Landlord. Tenant’s installation, maintenance, replacement and removal of any Rooftop Equipment must comply with all Requirements, the requirements of any Building roof warranties (provided that Landlord has provided Tenant with true and correct copies of any such roof warranties), all provisions of Article 8 governing Alterations (or Article 17 governing Tenant’s Improvements, if applicable), and the other terms and conditions of this Lease. Among other things, any structural support for the Rooftop Equipment that Landlord reasonably determines is required for the installation of the Rooftop Equipment will be at the sole cost and expense of Tenant, and the installation, operation and maintenance of the Rooftop Equipment will not, among other things, pierce the roof or roof membrane or otherwise cause any material damage to the roof or structural support of the Building, or materially interfere with the operation of any existing Building systems or equipment or with any systems or equipment of other tenants in the Building existing at the time of Tenant’s installation of the Rooftop Equipment. Landlord shall not interfere with, nor shall Landlord permit any other person or entity (including any other tenant of the Building) to interfere with, Tenant’s installation, operation and maintenance of the Telecommunications Equipment. Tenant shall obtain and thereafter maintain any governmental approvals required for the Rooftop Equipment. Tenant will be allowed reasonable access to the Rooftop Equipment area for the purpose of maintaining and servicing Tenant’s Rooftop Equipment. All Rooftop Equipment will remain the personal property of Tenant, will be located and maintained at Tenant’s sole cost and risk, and must be properly removed by Tenant at the end of the Term pursuant to the provisions of Article 16. The provisions of this Section 4.7 will govern and control over any contrary or inconsistent provisions of the Building Rules (including, without limitation, Building Rule No.3).

Section 4.8  Tenant’s Generators.  Subject to this Section 4.8, Tenant will have the right, at Tenant’s sole cost and expense, to install one or more electrical generators (the size and design of which and also the number of which, if more than one, to be subject to Landlord’s reasonable approval) in a location on the Property which is reasonably acceptable to Landlord and Tenant, together with a pad and enclosure for each such generator, ancillary above ground fuel storage tanks and facilities, electrical switches and such pipes, lines, conduits and other facilities which may be required in order to connect such generator to the Premises and Building transformer(s). Tenant’s installation, maintenance, replacement and removal of any such generators must comply with all Requirements, all provisions of Article 8 governing Alterations (or Article 17 governing Tenant’s Improvements, if applicable), and the other terms and conditions of this Lease. Any such generators will remain the personal property of Tenant, will be installed, operated and maintained at Tenant’s sole cost and risk, and must be properly removed by Tenant at the end of the Term pursuant to the provisions of Article 16.

Section 4.9  Telecommunications.  Landlord shall provide one point of entry (in the basement) into the Building for Tenant’s telecommunications, as such point of entry exists as of the Effective Date and as described on the outline specifications set forth on Exhibit “F” hereto (“Outline Specifications”). Upon Tenant’s written request, Landlord, at no cost or expense to Landlord, shall take commercially reasonable steps to allow for any telecommunications service provider selected by Tenant to provide telecommunications service to the Building for Tenant’s operations. Tenant shall have the exclusive right to gain access to and use the telecommunications rooms and closets located on the second, third and fourth floors of the Building, and the non-exclusive right (in common with the other tenants of the first floor of the Building) to gain access to and use the telecommunications rooms and closets on the first floor of the Building, in each case for purposes of installing, maintaining and operating Tenant’s telecommunications equipment and facilities therein; provided, however, that nothing in this Section 4.9 shall prevent Landlord from accessing any of the same in order to perform Landlord’s obligations under this Lease, so long as such access does not materially and adversely interfere with Tenant’s access thereto or the use of Tenant’s equipment located therein.

Section 4.10  Riser Space.  Landlord will provide Tenant with access to and through the Building’s telecommunications room(s) and shaft space leading to such telecommunications room(s) to the Premises and from the Premises (including, without limitation, from the Tenant Reception Desk) to the roof of the Building, in each
case which is reasonably sufficient for Tenant’s needs, for Tenant’s telecommunications requirements. Landlord will also provide such shaft space for Tenant’s supplemental cooling requirements, and to the Building switch gear and Tenant’s UPS and generator system for Tenant’s emergency power requirements. Such shaft space will comply with the specifications described in EXHIBIT “F” and will be asbestos-free.

ARTICLE 5
HAZARDOUS MATERIALS

Section 5.1 Compliance with Hazardous Materials. Tenant will not cause any Hazardous Materials to be brought upon, kept or used on the Property in a manner or for a purpose prohibited by any Hazardous Materials Law. Tenant, at its sole cost and expense, will comply with all Hazardous Materials Laws and prudent industry practice related to any Hazardous Materials Tenant causes to be present in, on or under the Property (“Tenant Responsibility Hazardous Materials”); provided, however, that Tenant Responsibility Hazardous Materials shall not include any such materials that are released at the Property (or any neighboring property) to the extent that such release is caused by Landlord’s negligence or intentional misconduct. If Landlord so requests from time to time, Tenant will inform Landlord of any Hazardous Materials that Tenant has brought to the Property (other than small quantities of office cleaning or other office supplies as are customarily contained in normal office equipment (including copy machines) and/or are customarily used by a tenant in the ordinary course in a general office facility). On or before the expiration or earlier termination of this Lease, Tenant, at its sole cost and expense, will remove from the Property (regardless of whether any Hazardous Materials Law requires removal), in compliance with all Hazardous Materials Laws, all Tenant Responsibility Hazardous Materials. If and to the extent Tenant brings to the Property any Hazardous Materials in excess of normal quantities of Hazardous Materials contained in customary office equipment (such as, without limitation, copy machines) or otherwise customarily used in normal use (such as, without limitation, cleaning supplies), then upon Landlord’s written request, Tenant will promptly deliver to Landlord reasonable documentation disclosing the nature and quantity of any such Hazardous Material Tenant has located at the Property, and (if available) evidencing the legal and proper handling, storage and disposal of such Hazardous Materials kept at or removed or to be removed from the Property by Tenant. Any such documentation that lists (or is required to list) a party as the responsible party for the Hazardous Materials listed therein will list Tenant or its agent as the responsible party as to any Tenant Responsible Hazardous Materials, and will not attribute responsibility for any such Tenant Responsible Hazardous Materials to Landlord or Property Manager. Tenant will comply with and is solely responsible for all reporting and warning obligations required under Hazardous Materials Laws arising from the presence of any Tenant Responsible Hazardous Materials at the Property. Such reporting and warning obligations are the sole responsibility of Tenant regardless of whether Hazardous Materials Law permit or require Landlord to report or warn. Unless otherwise required by applicable Law, Tenant will not take any remedial action in response to the presence of any Hazardous Materials in on, under or about the Property, nor enter into any settlement agreement, consent decree or other compromise with respect to any Claims relating to or in any way connected with Hazardous Materials in, on, under or about the Property, without first notifying Landlord of Tenant’s intention to do so and affording Landlord reasonable opportunity to investigate, appear, intervene and otherwise assert and protect Landlord’s interest in the Property.

Section 5.2 Notice of Actions. Tenant will notify Landlord of any of the following actions affecting Landlord, Tenant or the Property which result from or in any way relate to any Tenant Responsibility Hazardous Materials, promptly after receiving notice of the same: (a) any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened under any Hazardous Materials Law; (b) any Claims made or threatened by third parties relating to any Tenant Responsibility Hazardous Materials; and (c) any reports, records, letters of inquiry and responses, manifests or other documents made by any person or entity, including, without limitation, Tenant, to or from any environmental agency relating to any Tenant Responsibility Hazardous Materials, including, without limitation, any complaints, notices, warnings or asserted violations.

Section 5.3 Tenant’s Hazardous Materials Indemnification. Subject to the terms of Sections 10.3.2 and 18.8, Tenant releases and will indemnify, defend (with counsel reasonably acceptable to Landlord), protect and hold harmless the Landlord Parties from and against any and all Claims whatsoever arising or resulting, in whole or in part, directly or indirectly, from the presence, treatment, storage, transportation, disposal, release or management of any Tenant Responsibility Hazardous Materials in, on, under, upon or from the Property (including, without limitation, water tables and atmosphere), but only to the extent arising from Tenant’s use or occupancy of
the Premises or Property, and only to the extent the same constitute Tenant Responsibility Hazardous Materials, as described in Section 5.1. The obligations of Tenant under this Article survive the expiration or earlier termination of this Lease.

Section 5.4 Landlord’s Hazardous Materials Representations. To Landlord’s knowledge, there are no Hazardous Materials which exist or are located on, in, under or over the Land or any other portions of the Property, except as may be disclosed in that certain Phase I Environmental Site Assessment report prepared by URS Corporation (URS Project No. 25366347.00001), dated November 20, 2006 (a copy of which has been provided to Tenant), in that certain Phase I Environmental Site Assessment Report prepared by Hygienetics Environmental Services, Inc. (Project No. 3163.012), dated June 1996 (a copy of which has also been provided to Tenant), or in any of the other materials forwarded by Landlord’s counsel to Tenant’s counsel under e-mail correspondence dated August 1, 2008, and except for normal quantities of Hazardous Materials located in the equipment providing services to the Building which are customarily incorporated into such equipment at comparable first-class office buildings in the north suburban Chicago, Illinois area, in full compliance with Environmental Laws, and in a manner which does not constitute a health or safety risk.

Section 5.5 Landlord’s Hazardous Materials Indemnification. To the fullest extent allowable under the Laws, but subject to the terms of Sections 10.3.1 and 18.8, Landlord releases and will indemnify, protect, defend (with counsel reasonably acceptable to Tenant) and hold harmless the Tenant Parties from and against any and all Claims whatsoever arising or resulting, in whole or in part, directly or indirectly, from the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under, upon or from the Property (including water tables and atmosphere), but only to the extent caused by Landlord. The obligations of Landlord under this Article survive the expiration or earlier termination of this Lease.

Section 5.7 Remediation if Neither Party Obligated. If Hazardous Materials in violation of Hazardous Materials Laws which neither Landlord nor Tenant is obligated under this Lease to remediate are discovered upon the Property, Tenant may notify Landlord thereof and request that Landlord bring the Property (or such portion thereof as may contain or impact the Premises) into compliance with Hazardous Materials Laws at Landlord’s cost. Landlord will notify Tenant, within 30 days of receiving Tenant’s notice (or such longer period, not to exceed 90 days, as may reasonably be necessary to evaluate such Hazardous Materials), whether Landlord intends to voluntarily perform such remediation. If Landlord so elects, Landlord will promptly and diligently proceed to effect such remediation. If Landlord declines, Tenant will, within 30 days after receiving Landlord’s notice, elect by written notice to Landlord either to (a) promptly and diligently bring the Property (or such portion thereof as may contain or impact the Premises) into compliance with Hazardous Materials Laws, at Tenant’s sole cost; (b) remain in the Premises without remediation; or (c) provided such Hazardous Materials endanger persons or property in or about the Premises or materially adversely interfere with Tenant’s use of the Premises, terminate this Lease effective on a date specified in such notice (but no fewer than 45, nor more than 120, days following delivery of such notice to Landlord). If Tenant fails to provide any such notice to Landlord within such 30-day period, Tenant shall be deemed to have elected to proceed under clause (b) of the preceding sentence. If Tenant elects to terminate, Landlord may, within 15 days of receiving Tenant’s termination notice, rescind such termination by notifying Tenant that Landlord will perform remediation reasonably sufficient to eliminate such endangerment and interference at Landlord’s sole cost. If Landlord so elects, Landlord will promptly and diligently proceed to effect such remediation.

ARTICLE 6 SERVICES

Section 6.1 Landlord’s Obligations. Landlord will provide the following services, the costs of which will be included in Operating Expenses (but only to the extent provided under the definition thereof):

Section 6.1.1 Janitorial Service. Landlord will provide janitorial service in the Premises and Common Areas, five times per week, 52 weeks per year (on Business Days), including cleaning, trash removal, necessary dusting and vacuuming, maintaining towels, tissue and other restroom supplies and such other work as is customarily performed in connection with nightly janitorial services in other first-class office facilities in the vicinity of the Building. Landlord will also provide periodic interior and exterior window washing and cleaning and waxing.
of uncarpeted floors in accordance with Landlord’s schedule for the Building. The janitorial services furnished to the Premises will be as generally described in, and performed in substantial compliance with, the specifications on the attached EXHIBIT “H.”

Section 6.1.2 Electrical Energy. Landlord will provide electrical energy to the Premises for lighting of 2.0 watts per square foot installed and for operating personal computers and other office machines and equipment for general office use of similar low electrical consumption plugged into electrical convenience outlets of 5.0 watts per square foot installed, and otherwise in accordance with the specifications set forth on EXHIBIT “F” attached hereto. Tenant will not use any equipment requiring electrical energy in excess of the above-described wattages without receiving Landlord’s prior written consent. Landlord will not withhold such consent unless Tenant’s proposed use in excess of the foregoing capacity would materially and adversely affect any Building systems, but Landlord may condition its consent on Tenant’s installing, or paying Landlord’s Actual Cost of installing, the equipment and facilities necessary to furnish such excess energy, and Tenant’s paying an amount equal to the actual average cost per unit of electricity applied to the excess use as reasonably determined either by an engineer selected by Landlord or by submeter installed at Tenant’s expense.

Section 6.1.3 Heating, Ventilation and Air Conditioning. During Business Hours, Landlord will provide balanced heating, ventilating and air conditioning to the Premises sufficient to maintain, in Landlord’s reasonable judgment, comfortable temperatures in the Premises (based on standard lighting and general office use only), but in all events sufficient to satisfy the criteria and specifications set forth on EXHIBIT “F” attached hereto. During other times, Landlord will provide heat and air conditioning in accordance with the foregoing standards upon Tenant’s reasonable advance notice (which advance notice will not be later than 3:00 p.m. on the day on which such additional service is requested, or 3:00 p.m. on the last Business Day before a day which is not a Business Day). Any such notice from Tenant need not comply with the formal notice requirements of this Lease, but may instead (without limitation) be made by telephone to the office of the Building, or by e-mail to any on-site representative of Landlord or Property Manager. Tenant will pay Landlord, as Additional Rent, for such extended service on an hourly basis, initially at the rate of $75.00 per hour per floor; provided, however, that such rate may be reasonably increased from time to time during the Term based on Landlord’s reasonable estimates of its increased costs for such service, but not more than $5.00 per year. If extended service is not a continuation of the service Landlord furnished during Business Hours, Landlord may require Tenant to pay for a minimum of three hours of such service.

Section 6.1.4 Water. Landlord will provide hot and cold water from standard building outlets for lavatory, restroom and drinking purposes in accordance with the specifications described in EXHIBIT “F.”

Section 6.1.5 Elevator Service. The parties acknowledge that Tenant is the sole tenant of the second through fourth floors of the Building, and that the Building consists of only four floors. Accordingly, Tenant will be permitted to prohibit (through the use of electronic “lock out” technology in the elevators), at Tenant’s sole cost and expense, access via the elevators to the second through fourth floors of the Building; provided, however, that Landlord and other tenants of the Building will have access to such elevators in order to access the lower level of the Building. All elevators may be used by Tenant for both freight and passenger elevators, but if used by Tenant for freight elevator purposes, Tenant shall take reasonable preventative measures to avoid damage thereto. Tenant shall also have the right to use the fire stairs connecting the floors of the Premises and first floor of the Building as convenience stairs (in addition to use for fire and life safety purposes).

Section 6.1.6 Security. Landlord shall provide a security system for the Property as described on EXHIBIT “F” attached hereto. In addition, Tenant, at Tenant’s sole cost and expense, shall have the right to provide and install its own security system for the Premises (“Tenant’s Security System”), which may include, without limitation, the installation and maintenance of the following, together with all associated equipment and facilities: (a) components of such security system (which may include security card readers) within the elevators and fire stairs described in Section 6.1.5 (and subject to the rights of others described therein), (b) an electronic security alarm system, security card readers, intercom system and camera system to protect entry and emergency and exterior doors as well as glass areas of the Premises, (c) emergency call stations and/or outdoor cameras in the parking areas at the Property, and (d) equipment and facilities which enable Tenant to monitor the Building-wide fire and life safety systems from the Premises. Landlord will have no liability for any failure or other breach of Tenant’s Security System and Landlord’s prior reasonable consent shall be required to the extent that any portion of Tenant’s Security System adversely affects the base Building systems, or otherwise adversely affects the structural,
mechanical, electrical, plumbing, fire/life safety or heating, ventilating and air conditioning systems of the Building. Tenant’s Security System will at all
times be maintained, repaired and replaced as needed by Tenant at Tenant’s sole cost and expense. Landlord may require that Tenant’s Security System be
integrated with the Building’s security system. Tenant’s Security System will in no event interfere with Landlord’s ability to access the Premises as and when
necessary in order for Landlord to fulfill Landlord’s obligations under this Lease. Tenant’s Security System will at all times comply with any and all
applicable Laws. Tenant will remove those portions of Tenant’s Security System located outside of the Premises from the Property on or before the expiration
or sooner termination of this Lease, and Tenant, at Tenant’s sole cost and expense, will repair any damage to the Property resulting from such removal.
Neither Landlord nor Tenant will be liable for any breach of security in respect to the Premises, Building or Property whatsoever. The provisions of this
Section 6.1.6 will govern and control over any contrary or inconsistent provisions of the Building Rules (including, without limitation, Building Rule No.8).

Section 6.1.7 Loading Dock. Tenant will have access at all times during the Term (and any period of Early Occupancy) to the Building’s
loading dock area for Tenant’s deliveries, at no additional rent or other charge to Tenant. During its moves into and out of the Premises, Tenant will be
titled to the use of the loading dock area on a priority basis and at no additional rent or other charge to Tenant.

Section 6.1.8 Bicycle Parking. During the Term (and any period of Early Occupancy), Tenant shall have the right to use a portion of the
underground parking garage at the Building mutually acceptable to Landlord and Tenant, or, if Tenant so elects, another portion of the Property reasonably
acceptable to Landlord and Tenant, for purposes of parking bicycles.

Section 6.1.9 General Access. Subject to the Building Rules and other reasonable security restrictions (which shall in no event materially
and adversely affect Tenant’s rights of use and access hereunder), and except for events of Force Majeure, Landlord shall allow Tenant to have access to the
Building and Property (including, without limitation, pedestrian and vehicular access to the parking areas) on a 24 hours per day, 7 days per week and 365
days per year basis.

Section 6.2 Tenant’s Obligations. Tenant is solely responsible for paying directly to the applicable utility companies, prior to delinquency, all
separately metered or separately charged utilities, if any, to the Premises or to Tenant. Such separately metered or charged amounts are not Operating
Expenses. Except as expressly provided in this Lease (including Sections 6.1 and Article 17), Tenant will also obtain and pay for all other utilities and
services that Tenant requires with respect to the Premises (including, without limitation, hook-up and connection charges).

Section 6.3 Other Provisions Relating to Services.

Section 6.3.1 Standards; Untenantability. All services to be provided by Landlord hereunder will be provided in compliance with all
applicable Laws and in a manner consistent with first class office buildings of similar age in the northern suburban Chicago, Illinois office market. Landlord
is not required to provide any heat, air conditioning, electricity or other service in excess of that permitted by voluntary or involuntary governmental
guidelines or any Laws. Except as expressly provided to the contrary in this Lease, no interruption in, or temporary stoppage of, any of the services this
Article 6 describes is to be deemed an eviction or disturbance of Tenant’s use and possession of the Premises, nor does any interruption or stoppage relieve
Tenant from any obligation this Lease describes, render Landlord liable for damages or entitle Tenant to any Rent abatement. Notwithstanding the foregoing
or anything to the contrary contained in this Lease, if there is an interruption in utilities, electric power or essential services which is (a) specific to the
Building and/or the Property (as opposed to an interruption or curtailment in utilities, electric power or essential services which extends beyond the Building
or Property), (b) causes the Premises to be untenantable, and (c) is not caused by an event of Force Majeure, then Tenant will be entitled to deliver Landlord a
notice stating that if the untenantability caused by the interruption is not cured within 72 hours of Landlord’s receipt of such notice, Tenant will be entitled
to an abatement of Basic Rent as provided in this Section. If Tenant properly delivers such an abatement notice to Landlord, and the untenantability caused
by the aforesaid interruption in utilities, electric power or essential services is not remedied within 72 hours after Landlord receives Tenant’s abatement
notice, then Tenant shall therefor be entitled to an abatement of Basic Rent (in proportion to the portion of the Premises rendered untenantable by the
interruption in utilities, electric power or essential services) until such utilities, electric power or essential services are restored.
Section 6.3.2 Other Provisions. Landlord has the right, in its reasonable discretion, to select the provider of any utility or service to the Property and to determine whether the Premises or any other portion of the Property may or will be separately metered or separately supplied; provided, however, that Tenant shall have the right to select its own provider of telecommunications services for the Premises (it being agreed that if Tenant fails to select any such telecommunications service provider, Tenant shall have the right to approve any such telecommunications service provider proposed by Landlord). Landlord reserves the right, from time to time, to make reasonable and non-discriminatory modifications to the above standards for utilities and services, so long as such modifications do not reduce such utilities and services below what is required under the specifications contained in EXHIBIT “F”, and are not materially inconsistent with the standards set forth in the first sentence of Section 6.3.1.

Section 6.4 Tenant Devices. Tenant will not, without Landlord’s prior written consent, use any apparatus or device in or about the Premises which causes substantial noise, odor or vibration that would constitute a nuisance to other tenants of the Building or neighboring properties. Except in connection with any Tenant’s Improvements or other Alterations installed by Tenant in accordance with Articles 17 and 8 respectively, Tenant will not connect any apparatus or device to electrical current or water except through the electrical and water outlets that Landlord installs in the Premises.

ARTICLE 7 MAINTENANCE AND REPAIR

Section 7.1 Landlord’s Obligations. Except as otherwise provided in this Lease, Landlord will keep and maintain the following in good, clean and fully operative order, condition and repair, and in compliance with all applicable Requirements, reasonable wear and tear excepted: (a) the footings, foundations, slabs, floors, columns, exterior walls, exterior windows, plate glass, exterior doors, roof and all structural systems and elements of the Building (including the structural integrity thereof); (b) the electrical, lighting, mechanical (including elevators), plumbing, heating and air conditioning systems, facilities and components serving the Premises and the Building to the extent the same are Building Standard or constitute Landlord Improvements (or Landlord’s replacements thereof), other than those portions thereof that are located entirely within the Premises and serve no party other than Tenant; (c) light bulbs, tubes, ballasts and starters to the extent the same are Building Standard or constitute Landlord Improvements (or Landlord’s replacements thereof), (d) demising walls in the Building (other than those installed by Tenant, and excluding the interior surfaces of such walls located within the Premises or the premises of any other tenant), and (e) Common Area (subject to and in accordance with all other terms and conditions of this Lease relating to Common Area), including the surface area of any walls, windows, doors and plate glass within the Common Area. Tenant will reasonably cooperate with Landlord to facilitate the performance of Landlord’s obligations under this Section 7.1, including any entry by Landlord into all or any portion of the Premises and the temporary relocation of items of Tenant’s personal property, all as Landlord may determine is reasonably necessary to properly perform such obligations; provided, however, that Landlord will not materially and adversely interfere with Tenant’s use of the Premises during any such entry or temporary relocation. Notwithstanding the foregoing, if Tenant reasonably determines that any such temporary relocation of tenant’s personal property proposed by Landlord would materially and adversely affect Tenant’s use of the Premises, Tenant shall have the right to object to the same, in which event Landlord shall not be permitted to require such relocation; provided, however, that in the event Tenant so objects to such temporary relocation of Tenant’s personal property, and Landlord is not reasonably able to perform Landlord’s obligations set forth in this Section 7.1 without such relocation of Tenant’s personal property, then Landlord will not be required to perform such obligations unless and until Tenant permits such relocation. Landlord’s repair and maintenance obligations under this Section are subject to the provisions of Articles 11 and 12 of this Lease regarding any casualty or Taking. The costs and expenses incurred by Landlord in performing its obligations under this Section will be included in Operating Expenses (but only to the extent provided under the definition thereof). In all events, (a) Landlord will perform Landlord’s obligations under this Section 7.1 in a manner so as to reasonably minimize interference with Tenant’s operations within the Premises, and (b) Tenant agrees to reasonably cooperate with Landlord in connection with such performance.
Section 7.2 Tenant's Obligations.

Section 7.2.1 Maintenance of Premises. Except for Landlord’s obligations described in Section 7.1 and any janitorial services provided by Landlord under Article 6, Tenant, at Tenant’s sole cost and expense, will keep and maintain the Premises in good, clean, sanitary, neat and fully operative condition and repair, reasonable wear and tear excepted, which obligations of Tenant will include, without limitation, the maintenance, repair and replacement of all: (a) interior surfaces of exterior walls and demising walls within the Premises; (b) interior walls, moldings, partitions, and ceilings within the Premises; (c) carpeting within the Premises; (d) nonstructural interior components within the Premises; (e) interior windows, plate glass and doors within the Premises; (f) kitchen or break-room fixtures, appliances and equipment within the Premises; and (g) Tenant’s personal property. Tenant will also perform the repair or replacement of any waste or excessive or unreasonable wear and tear to the Premises or Property caused by Tenant. Any repairs or replacements performed by Tenant pursuant to this Section must be at least equal in quality and workmanship to the original work and be in accordance with all Laws. Tenant’s repair and maintenance obligations under this Section are subject to the provisions of Article 11 and Article 12 of this Lease regarding any casualty or Taking.

Section 7.2.2.1 Alterations Required by Laws. If, as a result of the enactment of a new applicable Law after the Commencement Date, or a change in existing applicable Laws which first occurs after the Commencement Date, any governmental authority requires any Alteration to the Building or the Premises solely as a result of Tenant’s particular use of the Premises (as opposed to use of the Premises generally for general and administrative office, training and storage uses) or as a result of any Alteration to the Premises made by or on behalf of Tenant, Tenant will pay the actual, reasonable cost of all such Alterations. If any such Alterations are Structural Alterations, Landlord will make the Structural Alterations; provided, however, that Landlord may require Tenant to reimburse Landlord for Landlord’s Actual Cost thereof promptly after Landlord’s completion of the same. If the Alterations are not Structural Alterations, Tenant will make the Alterations at Tenant’s sole cost and expense in accordance with Article 8 (or Article 17, if the same constitute Tenant’s Improvements). Any other Alterations to the Property which may be required by Laws shall be made by Landlord, at Landlord’s expense (subject to inclusion in Operating Expenses, to the extent included in the definition thereof).

Section 7.2.2.2 Certain Capital Costs Relating to Cafeteria. Anything in this Lease (including, without limitation, anything in Section 7.2.2.1 and/or clause (q) of the definition of “Operating Expenses” in EXHIBIT “A”) to the contrary notwithstanding, the provisions of this Section 7.2.2.2 will govern and control with respect to capital improvements which are required in order for the cafeteria, if any, that Tenant constructs or maintains in the Premises, to comply with changes in Laws or the interpretation or enforcement thereof first enacted after the Commencement Date (all such required capital improvements, if any, are herein collectively called “Required Cafeteria Improvements”). If any Required Cafeteria Improvements are to be performed, and Tenant does not elect to modify its cafeteria (or the use thereof) in a manner which eliminates the need for the Required Cafeteria Improvements, then Tenant (at its election) shall either (a) perform the Required Cafeteria Improvements itself at Tenant’s cost pursuant to Section 7.2.2.1 (provided, however, that to the extent the Required Cafeteria Improvements constitute Structural Alterations, Landlord shall have the right to perform the same rather than Tenant pursuant to Section 7.2.2.1), in which case the same shall be governed in all respects by the terms of Section 7.2.2.1, or (b) notify Landlord that Tenant requests that Landlord perform the Required Cafeteria Improvements pursuant to this Section 7.2.2.2, which notice shall set forth both a reasonably detailed description of the Required Cafeteria Improvements and of the reasons for the necessity thereof. Upon Landlord’s receipt of a notice from Tenant pursuant to clause (b) of the preceding sentence, and Landlord’s reasonable confirmation of the necessity thereof in order to comply with the aforesaid changes in Laws, Landlord will construct the Required Cafeteria Improvements in a commercially reasonable and diligent manner, subject to Force Majeure and Tenant Delays. Landlord’s Actual Costs for the design and construction of the Required Cafeteria Improvements (“Required Cafeteria Improvement Costs”) shall be initially paid by Landlord, and Tenant shall reimburse Landlord therefor either, at Tenant’s election, (y) promptly after receipt of an invoice therefor from Landlord after the Required Cafeteria Improvements are completed, as provided in Section 7.2.2.1 (as though the same constituted Structural Alterations performed by Landlord thereunder), or (z) on a deferred basis, amortized over the useful life (as reasonably determined by Landlord) of the Required Cafeteria Improvements (including reasonable charges for interest on the unamortized amount) on a straight-line basis, in which event Tenant will pay such amortized Required Cafeteria Improvement Costs on the first day of each month during the balance of the Term (or until the earlier payment in full of all such amortized Required Cafeteria Improvement Costs), provided, however, that in no
event shall Tenant have the right to reimburse Landlord on a deferred basis as provided in clause (z) of this sentence for any amount in excess of $150,000.00 of Required Cafeteria Improvement Costs (it being agreed that Tenant shall be required to reimburse Landlord for any Required Cafeteria Improvement Costs in excess of $150,000.00 in the manner provided in clause (y) of this sentence). If Tenant elects to reimburse Landlord for Required Cafeteria Improvement Costs on a deferred basis as provided in clause (z) of the preceding sentence, then after Landlord’s initial written invoice, statement or notification to Tenant of the monthly installment for any such amortized Required Cafeteria Improvement Costs, no further statements will be required, and Tenant will make the monthly payments thereof as if the same were a part of Tenant’s Share of Expenses. If at the expiration or earlier termination of this Lease (including, without limitation, any extensions of the Term under Section 1.2.5), there remain any unamortized Required Cafeteria Improvement Costs which have not been paid by Tenant to Landlord, then within 30 days after such expiration or earlier termination, Tenant will pay to Landlord an amount equal to any such unamortized and unpaid Required Cafeteria Improvement Costs which are in excess of $10,000.00 (i.e., so that Landlord is responsible for, and only for, the first $10,000.00 of any such then-unamortized and unpaid Required Cafeteria Improvement Costs). Landlord’s and Tenant’s respective rights and obligations under this Section 7.2.2.2 will survive any the expiration or earlier termination of this Lease.

ARTICLE 8
CHANGES AND ALTERATIONS

Section 8.1 Landlord Approval. Tenant will not make any Structural Alterations to the Premises without Landlord’s written consent, which consent may be granted or withheld in Landlord’s sole and absolute discretion. Tenant will not make any other Alterations without Landlord’s prior written consent, which consent Landlord will not unreasonably withhold or delay; provided, however, that no such consent shall be required (but Tenant must still notify Landlord or Property Manager thereof, in writing, except where the other Alterations are de minimis, which written notice may be given by e-mail if made to Property Manager) in connection with any such non-Structural Alterations to the extent: (i) the same are solely decorative in nature, including, without limitation, painting and carpeting (regardless of cost), or (ii) the costs of the same do not exceed $100,000 in any single instance, but in the case of this clause (ii) Tenant will provide Landlord with notice of Tenant’s intent to perform such non-Structural Alterations prior to so performing, except that, in the case of an emergency or hazardous condition, only such notice as is practical under the circumstances shall be required. Any Alterations which require Landlord’s consent hereunder are referred to herein as “Consent Alterations.” Along with any request for Landlord’s consent to any Consent Alterations, Tenant will deliver to Landlord plans and specifications for the Consent Alterations and names and addresses of all prospective contractors for the Alterations. In addition, in connection with any Consent Alterations proposed by Tenant that would cost in excess of $250,000 in the aggregate, Landlord shall have the right to condition its consent to such Consent Alterations upon receipt from Tenant either (at Tenant’s election): (i) reasonable financial information to establish that Tenant has a reasonably sufficient net worth and credit to pay for the completion of the Alterations, or (ii) payment and performance bonds in an amount not less than the full cost of the Alterations. Landlord shall deliver notice of its consent or withholding of consent in connection with any Consent Alterations proposed by Tenant within 10 Business Days after Landlord receives notice of the same from Tenant (which notice of Landlord shall, in the case of a withholding of consent, contain a description of the reasons for Landlord’s withholding of consent), it being agreed that if Landlord fails to deliver any such notice within such 10-Business Day period, Tenant may deliver a second written notice to Landlord advising of such failure, and if Landlord thereafter fails to deliver notice of its consent or withholding of consent within two Business Days of Landlord’s receipt of such second notice, Landlord shall be conclusively deemed to have consented to the proposed Consent Alterations. If Landlord approves (or is deemed to have approved) the proposed Consent Alterations, Tenant will, before commencing the Consent Alterations, deliver to Landlord certificates evidencing the insurance coverages required by Section 8.2, copies of all necessary permits and licenses required to perform the Consent Alterations, and such other information relating to the Consent Alterations as Landlord reasonably requested in issuing its consent to the same. Tenant, at its sole cost and expense, will remove any Consent Alterations Tenant constructs without obtaining Landlord’s approval as provided in this Article 8 within 30 days after Landlord’s written request and will thereafter fully and promptly repair and restore the Premises and Property to its previous condition, subject to Section 10.3.2. No approval or inspection of Alterations by Landlord constitutes any representation or agreement by Landlord that the Alterations comply with sound architectural or engineering practices or with all applicable Laws, and Tenant is solely responsible for ensuring such compliance. Tenant will provide Landlord with copies of “as built” drawings of such Consent Alterations completed by Tenant.
or Tenant’s contractors, to the extent that the Consent Alterations in question are of the type for which “as built” drawings are customarily prepared, promptly after such drawings are prepared by Tenant’s contractors. Tenant will construct all Alterations or cause all Alterations to be constructed (a) in the case of Consent Alterations, by a general contractor that Landlord approves in its reasonable discretion, (b) in a good and workmanlike manner, (c) in compliance with all Laws, (d) in accordance with all orders, rules and regulations of the Board of Fire Underwriters having jurisdiction over the Premises and any other body exercising similar functions, and (e) in compliance with Landlord’s commercially reasonable rules and regulations applicable to third party contractors, subcontractors and suppliers performing work at the Property.

Section 8.2 Tenant’s Responsibility for Cost and Insurance. Except as otherwise expressly provided in this Lease, Tenant will pay the cost and expense of all Alterations made by or on behalf of Tenant, including, without limitation, for any painting, restoring or repairing of the Premises or the Property (subject to Section 10.3.2). If, in connection with any Consent Alterations proposed by Tenant that would affect the Building systems and/or structure of the Building, Landlord requires (in its reasonable discretion) that plans and specifications for such Consent Alterations be reviewed by any third party technical consultants (it being agreed that any such third party consultant selected by Landlord shall be reasonably acceptable to Tenant), then Tenant will pay Landlord’s Actual Cost of retaining such third party consultants, but in no event shall Tenant be required to pay any other fee, cost or expense for any review, inspection and engineering time incurred by or at the request of Landlord in connection with any Alterations. Prior to commencing the Alterations, Tenant will obtain and/or require: (a) builder’s “all risk” insurance in an amount at least equal to the value of the Alterations, (b) evidence that Tenant or its contractors has in force commercial general liability insurance insuring against construction related risks, in at least the form, amounts and coverages required of Tenant under Article 10, and (c) all necessary permits and licenses for such Alterations. The insurance policies described in clauses (a) and (b) of this Section 8.2 must name Landlord, Landlord’s lender (if any; provided that the identity of such lender has been provided to Tenant) and Property Manager as additional insureds, specifically including completed operations.

Section 8.3 Construction Obligations and Ownership. Landlord will have the right, upon reasonable advance notice to Tenant, which shall be at least 24 hours in advance (except in the case of an emergency or hazardous condition, in which case only such notice as is reasonable under the circumstances shall be required), and at Landlord’s sole cost and expense, to inspect and observe the performance of any Alterations by Tenant during construction, but in no event shall Landlord interfere with, delay or impede such performance. After completing the Alterations, Tenant will furnish Landlord with customary contractor affidavits, lien waivers and receipted bills covering all labor and materials expended and used in connection with the Alterations. Tenant will remove any Alterations that Tenant constructs in violation of this Article 8 within 10 days after Landlord’s written request and in any event prior to the expiration or earlier termination of this Lease. All Alterations that Tenant makes or installs (which, for clarity, shall exclude telephone, computer and other wiring and cabling and Tenant’s trade fixtures, personal property, furniture and equipment) become the property of Landlord and a part of the Building immediately upon installation; provided, however, that upon the expiration or earlier termination of this Lease, Tenant shall have the right, in its sole discretion, to either remove from the Premises, or leave in place at the Premises and surrender to Landlord, any Alterations made by Tenant, other than the items described in clauses (a) through (d) in Section 16.1 or as expressly provided in this Lease, and except to the extent that: (i) such Alterations constitute Non-Standard Alterations, and (ii) Landlord notified Tenant, concurrently with Landlord’s approval of such Non-Standard Alterations, that Landlord would either require Tenant to remove or leave in place at the Premises such Non-Standard Alterations (in which event Tenant shall comply with the terms of such notice from Landlord at the end of the Term).

Section 8.4 Liens. Tenant will pay all costs for Alterations performed by it and will keep the Premises and Property free from any liens arising out of work performed for, materials furnished to or obligation incurred by Tenant. Within 30 days after written notice from Landlord, Tenant shall remove any such lien or encumbrance by bond or otherwise, or provide a title insurance endorsement (or other security (e.g., a letter of credit)) reasonably satisfactory to Landlord, and covering all costs of defense, in which case Tenant shall not be deemed to be in breach and shall have the right to contest in good faith or otherwise deal with such lien claims as Tenant deems best. If Tenant shall fail to do so, Landlord may, after delivery of notice to Tenant of Landlord’s intent so to act, bond over, insure over, or pay the amount necessary to remove such lien or encumbrance. In each case, the amount so paid by Landlord in connection with such failure (including, without limitation, reasonable
attorneys’ fees and costs) shall be deemed Additional Rent under this Lease payable within 30 days after Tenant’s receipt of an invoice therefor.

Section 8.5 Application. Notwithstanding anything to the contrary in the foregoing, the terms of this Article 8 shall govern the performance, construction and installation of any Alterations constructed by Tenant after the completion of the Tenant’s Improvements and Other Tenant Work only, and shall not (except as expressly set forth in Article 17) apply to the performance, construction or installation of the Tenant’s Improvements or Other Tenant Work (it being acknowledged that Article 17 addresses and governs such performance, construction and installation of the Tenant’s Improvements and Other Tenant Work).

ARTICLE 9
RIGHTS RESERVED BY LANDLORD

Section 9.1 Landlord’s Entry. Landlord and its authorized representatives may at all reasonable times and upon reasonable notice to Tenant (which shall be at least 24 hours in advance, except in the case of an emergency or hazardous condition, in which event only such notice as is practical under the circumstances shall be required) enter the Premises to: (a) inspect the Premises; (b) show the Premises to prospective purchasers and mortgagees; (c) show the Premises to prospective tenants (but only during the last 15 months of the Term or during the continuance of an Event of Default); (d) post notices of non-responsibility or other protective notices available under the Laws, but only during the performance of Alterations by Tenant; or (e) exercise and perform Landlord’s rights and obligations under this Lease. Landlord shall not materially and adversely interfere with Tenant’s use of the Premises in exercising Landlord’s rights under this Section 9.1. Landlord’s entry into the Premises, if made in compliance with this Section 9.1; provided, however, that Tenant acknowledges that Landlord’s entry pursuant to clause (e) may require Tenant to temporarily vacate portions of the Premises; provided, however, Tenant shall coordinate with Tenant to determine a mutually agreeable time, the duration and the extent of such entry, all of which shall be reasonably acceptable to Landlord and Tenant. Tenant agrees that Landlord’s entry into the Premises is not to be construed as a forcible or unlawful entry into, or detainer of, the Premises or as an eviction of Tenant from all or any part of the Premises. Subject to the terms of this Section 9.1, Tenant will also permit Landlord (or its designees) to erect, install, use, maintain, replace and repair pipes, cables, conduits, plumbing and vents, and telephone, electric and other wires or other items, in, to and through the portions of the Premises that are located behind the ceilings, floors and walls of the Premises, if Landlord determines that such activities are necessary or appropriate for properly operating and maintaining the Building, so long as such activities do not materially and adversely interfere with Tenant’s use or occupancy of the Premises or damage, unreasonably interfere with or obstruct any of Tenant’s Alterations, personal property and trade fixtures or equipment. In all events, (i) Landlord will exercise Landlord’s rights under this Section 9.1 in a manner so as to reasonably minimize interference with Tenant’s operations within the Premises, and (ii) Tenant agrees to reasonably cooperate with Landlord in connection with Landlord’s exercise of such rights.

Section 9.2 Control of Property. Landlord reserves all rights respecting the Property and the Premises not specifically granted to Tenant under this Lease (including Tenant’s rights under Section 4.5 above), including, without limitation, the right to: (a) change the street address of the Building; provided, that Landlord will not designate a name for the Building or change the current name of the Building without the prior written consent of Tenant (which may be granted or withheld in Tenant’s reasonable discretion); (b) designate and approve all types of signs, window coverings, lighting and other aspects of the Premises and its contents that may be visible from the exterior of the Building (subject in all events to Tenant’s rights (including signage rights) set forth in this Lease); (c) grant any party the exclusive right to conduct any business or render any service in the Building, provided that such exclusive right to conduct any business or render any service in the Building does not prohibit Tenant or any then current subtenant, assignee or other transferee of Tenant from any permitted use granted under this Lease or any then-current use by such party (so long as such use is permitted by this Lease); (d) prohibit Tenant from installing vending or dispensing machines of any kind in or about the Premises other than those that Tenant installs in the Premises solely for use by Tenant; (e) close the Building after Business Hours, except that Tenant may access the Premises after Business Hours in accordance with such reasonable rules and regulations as Landlord may prescribe from time to time for security purposes, and the terms of this subsection (e) shall in no event interfere with Tenant’s ability to access the Building 24 hours per day, 7 days per week in accordance with this Lease; (f) install, operate and maintain security systems which monitor, by closed circuit television or otherwise, all persons entering or
leaving the Building; (g) impose reasonable security procedures designed to limit and control access to the Building by unauthorized persons; (h) install and maintain pipes, ducts, conduits, wires and structural elements in the walls or above the ceiling within the Premises that serve other parts or other tenants of the Property, provided, however, that no such installation and maintenance shall materially and adversely interfere with anything contained therein serving the Premises; and (i) retain and receive master keys or pass keys to the Premises and all doors in the Premises, provided that Tenant shall have the right to designate certain areas of the Premises to be secure areas to which Landlord is not permitted access, in which event Landlord shall only be provided with keys to such secure areas to the extent required by applicable Laws. If Landlord changes the address of the Building, and such address change is not required by governmental authorities, then Landlord shall reimburse Tenant for the actual, reasonable cost of replacement stationery, business cards and similar items incurred by Tenant by reason thereof (not to exceed $20,000). Anything in this Section 9.2 or elsewhere in this Lease to the contrary notwithstanding, Landlord is not responsible for the security of persons or property on the Property or for the breach of any security-related services, and Landlord is not and will not be liable in any way whatsoever for any breach of security, except to the extent caused by the willful misconduct of Landlord. The provisions of this Section 9.2 will govern and control over any contrary or inconsistent provisions of the Building Rules (including, without limitation, Building Rule No.8).

Section 9.3 Lock Box Agent/Rent Collection Agent. Landlord, from time to time, may designate a lock box collection agent or other person to collect Rent by written notice thereof to Tenant. Tenant’s payment of Rent to the lock box collection agent or other person in accordance with such notice from Landlord shall fully satisfy Tenant’s obligations to make such payment to Landlord (Landlord hereby expressly authorizing Tenant to make such payments in accordance with such notice), and such payment is deemed to have been made (a) as of the date the lock box collection agent or other person receives Tenant’s payment (if the payment is not dishonored for any reason); or (b) if Tenant’s payment is dishonored for any reason, the date of such dishonor. If Tenant pays any amount to the lock box collection agent or other person other than the actual amount due Landlord, then (x) Landlord’s or Landlord’s agent’s receipt or collection of such amount does not constitute an accord and satisfaction, (y) Landlord is not prejudiced in collecting the proper amount due Landlord (or in pursuing any rights or remedies available under this Lease, at law or in equity as a result of Tenant’s failure to pay the full amount when due), and (z) Landlord may retain the proceeds of any such payment, whether restrictively endorsed or otherwise, and apply the same toward amounts due and payable by Tenant under this Lease.

ARTICLE 10
INSURANCE AND CERTAIN WAIVERS AND INDEMNIFICATIONS

Section 10.1 Tenant’s Insurance Obligations. Tenant, at all times during the Term and during any Early Occupancy period, at Tenant’s sole cost and expense, will maintain the insurance that this Section 10.1 describes.

Section 10.1.1 Liability Insurance. Commercial general liability insurance (providing coverage at least as broad as the current ISO form) with respect to the Premises and Tenant’s activities in the Premises and upon and about the Property, on an “occurrence” basis, with single limit coverage of $5,000,000 (which limit may be covered in part through the use of excess and/or umbrella insurance), and with a commercially reasonable deductible (as reasonably determined by Tenant). Such insurance must include, without limitation, specific coverage provisions or endorsements (a) for broad form contractual liability insurance insuring Tenant’s obligations under this Lease; (b) naming Landlord and Property Manager as additional insureds by an “Additional Insured—Managers or Lessors of Premises” endorsement (or equivalent coverage or endorsement); (c) waiving the insurer’s subrogation rights against all Landlord Parties; (d) providing that the insurer will endeavor to provide Landlord with at least 30 days’ prior written notice of material modification, cancellation, non-renewal or expiration (and in all events will provide, as opposed to endeavor to provide, prior written notice of material modification, cancellation, non-renewal or expiration thereof); (e) expressly stating that Tenant’s insurance will be provided on a primary and non-contributory basis as to any liability insurance maintained by Landlord, and (f) providing that the insurer has a duty to defend all insureds under the policy (including, without limitation, additional insureds), and that defense costs are paid in addition to and do not deplete the policy limits. If Tenant provides such liability insurance under a blanket policy, the insurance must be made specifically applicable to the Premises and this Lease on a “per location” basis.
Section 10.1.2  Property Insurance.  At Tenant’s option, property insurance on Tenant’s trade fixtures and other personal property within the Premises and at the Property and business income insurance covering loss of income from Tenant’s business in the Premises.

Section 10.1.3  Other Tenant’s Insurance.  Such other insurance as may be required by any Laws from time to time or may reasonably be required by Landlord from time to time and generally required of tenants in similar space in similar office buildings in the area in which the Premises is located.

Section 10.1.4  Miscellaneous Tenant’s Insurance Provisions.  All of Tenant’s insurance will be written by companies rated at least A/VII by A.M. Best Insurance Service. Tenant will deliver a customary certificate evidencing such insurance, or other evidence of insurance reasonably satisfactory to Landlord, (a) on or before the commencement of any Early Occupancy of the Premises by Tenant, (b) not later than the expiration of any current policy or certificate, and (c) at such other times as Landlord may reasonably request. If Tenant elects to provide evidence of insurance by certificate, Tenant will deliver an ACORD Form 27 (or equivalent) certificate. Tenant’s insurance must permit waiver of subrogation as provided in Section 10.3.1.

Section 10.1.5  Tenant’s Failure to Insure.  Anything in this Lease (including, without limitation, any notice and cure rights that this Lease provides to Tenant) to the contrary notwithstanding, if Tenant fails to provide Landlord with evidence of insurance as required under Section 10.1.4, and if such failure is not cured by Tenant within five Business Days of Landlord’s notice thereof, Landlord may, but is not obligated to, without further demand upon Tenant or notice to Tenant and without waiving or releasing Tenant from any obligation contained in this Lease, obtain such insurance for Landlord’s benefit. In such event, Tenant will pay to Landlord, as Additional Rent, all of Landlord’s Actual Costs incurred in obtaining such insurance. Landlord’s exercise of its rights under this Section 10.1.5 does not relieve Tenant from any default under this Lease.

Section 10.1.6  No Limitation.  The establishment of minimum insurance requirements is not a representation by either party that such limits are sufficient and does not limit either party’s respective liability under this Lease in any manner.

Section 10.2  Landlord’s Insurance Obligations.  Landlord will at all times during the period which commences on the Effective Date and ends upon the expiration or sooner termination of the Term, maintain the insurance that this Section 10.2 describes. All premiums and other costs and expenses Landlord incurs in connection with maintaining such insurance are Operating Expenses (except to the extent excluded therefrom in the definition thereof).

Section 10.2.1  Property Insurance.  Property insurance on the Building in an amount not less than the full insurable replacement cost of the Building insuring against loss or damage by fire and such other risks as are covered by a standard ISO Special Form policy, and specifically including customary and commercially reasonable amounts of rent loss insurance. Landlord, may, in its reasonable discretion, obtain such additional coverages or endorsements as Landlord deems appropriate or necessary, including, without limitation, insurance covering foundation, grading, excavation and debris removal costs; business income insurance; boiler and machinery insurance; ordinance or laws coverage; earthquake insurance; flood insurance; and other coverages. Landlord may maintain such insurance in whole or in part under blanket policies, but in such event the insurance must be made specifically applicable to the Property on a “per location” basis. Such insurance will cover all Alterations (including Tenant’s Improvements) after they have been installed at the Property; provided, however, that Landlord’s obligation so to insure Tenant’s Improvements after they have been installed at the Property but prior to the Commencement Date (if applicable) is subject to Tenant’s delivery to Landlord of the written notice which would effect the conclusion of the Build-Out Period under Section 11.3.

Section 10.2.2  Liability Insurance.  Commercial general liability insurance against claims for bodily injury, personal injury, and property damage occurring at the Property in such amounts as Landlord deems necessary or appropriate. Such liability insurance will protect only Landlord and, at Landlord’s sole option, Landlord’s lender and some or all of the Landlord Parties, and does not replace or supplement the liability insurance that this Lease obligates Tenant to carry.
Section 10.2.3  Miscellaneous Landlord’s Insurance Provisions. If Tenant so requests, Landlord will deliver to Tenant from time to time reasonable evidence of the insurance required of Landlord hereunder.

Section 10.3  Waivers and Releases of Claims and Subrogation.

Section 10.3.1  By Tenant. To the fullest extent allowable under the Laws, Tenant, on behalf of Tenant and its insurers, waives, releases and discharges the Landlord Parties from all Claims for any casualty or other damage (expressly excluding (a) any waste or excessive or unreasonable wear and tear, or (b) any loss, destruction or damage arising or resulting from the placement, disposal or release of Hazardous Materials in, on, under, about or from the Property by either Landlord or Tenant (collectively, the “Excluded Items”), which shall not be governed by this Section 10.3.1 to the Premises, Property or Tenant’s trade fixtures or other personal property, and any resulting loss of use or business interruption, regardless of the cause even if such casualty or other damage (expressly excluding the Excluded Items, which shall not be governed by this Section 10.3.1) is caused by the negligent or intentional acts, omissions, or misconduct of any Landlord Party. Tenant will look only to any insurance coverage Tenant may elect to maintain (regardless of whether Tenant actually obtains any such coverage or whether such coverage is sufficient) with respect to the Claims Tenant is waiving, releasing and discharging under this Section 10.3.1. Any property insurance Tenant maintains must permit or include a waiver of subrogation in favor of the Landlord Parties consistent with the provisions of this Section 10.3.1.

Section 10.3.2  By Landlord. To the fullest extent allowable under the Laws, Landlord, on behalf of Landlord and its insurers, waives, releases and discharges the Tenant Parties from all Claims for any casualty or other damage (expressly excluding the Excluded Items, which shall not be governed by this Section 10.3.2) to the Premises, Property or Landlord’s trade fixtures or other personal property, and any resulting loss of use or business interruption, regardless of the cause even if such casualty or other damage (expressly excluding the Excluded Items, which shall not be governed by this Section 10.3.2) is caused by the negligent or intentional acts, omissions, or misconduct of any Tenant Party. Landlord will look only to any insurance coverage Landlord is required to maintain or may elect to maintain (regardless of whether Landlord actually obtains any such coverage or whether such coverage is sufficient) with respect to the Claims Landlord is waiving, releasing and discharging under this Section 10.3.2. Any property insurance Landlord maintains must permit or include a waiver of subrogation in favor of the Tenant Parties consistent with the provisions of this Section 10.3.2.

Section 10.3.3  Limitation on Waiver. The provisions of Sections 10.3.1 and 10.3.2 apply only with respect to the Landlord Parties and the Tenant Parties and do not limit or waive, release or discharge any Claims that either Landlord or Tenant may have against any “third-party” person or entity (including without limitation any contractor, service provider, agent, licensee, or invitee which is not a Landlord Party or a Tenant Party) arising from any casualty or other damage to the Premises, Property, Tenant’s personal property or Landlord’s personal property (as applicable) caused by any such third party.

Section 10.4  Tenant’s Indemnification of Landlord. Except for any Claims expressly waived or limited by Landlord elsewhere in this Lease (including, without limitation, Sections 10.3.2 and 18.8), to the fullest extent allowable under the Laws, Tenant releases and will indemnify, protect, defend (with counsel reasonably acceptable to Landlord) and hold harmless the Landlord Parties from and against all Claims brought against Landlord by any third parties arising from (a) any accident, injury, occurrence or damage in or to the Premises, except to the extent caused by Landlord’s negligence or intentional misconduct; and (b) to the extent caused by Tenant’s negligence or intentional misconduct, any accident, injury, occurrence or damage in, on or to the Property (other than within the Premises (which is governed by clause (a) of this sentence)).

Section 10.5  Landlord’s Indemnification of Tenant. Except for any Claims expressly waived or limited by Tenant elsewhere in this Lease (including, without limitation, Sections 10.3.1 and 18.8), to the fullest extent allowable under the Laws, Landlord releases and will indemnify, protect, defend (with counsel reasonably acceptable to Tenant) and hold harmless the Tenant Parties from and against all Claims brought against Tenant by any third parties arising from (a) any accident, injury, occurrence or damage in or to the Property (other than within the Premises), except to the extent caused by Tenant’s negligence or intentional misconduct; and (b) to the extent caused by Landlord’s negligence or intentional misconduct, any accident, injury, occurrence or damage in, on or to the Premises.

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ARTICLE 11
DAMAGE OR DESTRUCTION

Section 11.1 Tenantable Within 180 Days. Subject to Section 11.3 (with respect to any casualty damage which occurs during the Build-out Period), if fire or other casualty renders the whole or any material part of the Premises untenantable and Landlord determines (in Landlord’s reasonable discretion) that it can make the Premises tenantable within 180 days after the date of the casualty, then Landlord will notify Tenant that Landlord will within such 180-day period repair and restore the Building and the Premises to as near their condition prior to the casualty as is reasonably possible. Landlord will provide the notice within 60 days after the date of the casualty. In such case, this Lease remains in full force and effect; provided, however, that Basic Rent and Tenant’s Share of Expenses for the period during which the Premises are untenantable will abate pro rata (based upon the rentable area of the untenantable portion of the Premises as compared with the rentable area of the entire Premises). Landlord’s notice will specify the anticipated date the Premises could be made tenantable. If both (a) such anticipated completion date is more than 60 days after the date of Landlord’s notice, and (b) less than 12 months will remain in the Term upon such completion date, then either Landlord or Tenant may elect to terminate this Lease by notifying the other within 15 days after the date of Landlord’s notice, which termination will be effective 60 days after the date of such notice of termination.

Section 11.2 Not Tenantable Within 180 Days. Subject to Section 11.3 (with respect to any casualty damage which occurs during the Build-out Period), if fire or other casualty renders the whole or any material part of the Premises untenantable and Landlord determines (in Landlord’s reasonable discretion) that it cannot make the Premises tenantable within 180 days after the date of the casualty, then Landlord will so notify Tenant within 30 days after the date of the casualty and may, in such notice, terminate this Lease effective on the date that is 60 days after the date of Landlord’s notice. If Landlord fails to provide such notice of termination within such 30-day period, then Landlord’s right to terminate under this Section 11.2 will automatically expire and be of no further force or effect whatsoever. If Landlord does not terminate this Lease as provided in this Section 11.2, then Tenant may terminate this Lease by notifying Landlord within 30 days after the date of Landlord’s notice, which termination will be effective 60 days after the date of Tenant’s notice. If Tenant fails to provide such notice of termination within such 30-day period, then Tenant’s right to terminate under this Section 11.2 will automatically expire and be of no further force or effect whatsoever.

Section 11.3 Pre-Commencement Date Casualty. Anything in this Lease to the contrary notwithstanding, if fire or other casualty—any time during the period (“Build-Out Period”) that is after the Delivery Date and before the earlier of (i) the date on Tenant delivers written notice to Landlord that Tenant’s Improvements have been completed and installed hereunder, and (ii) the Commencement Date, renders the whole or any material part of the Premises or the Building untenantable, then (a) Landlord will be responsible (subject to this Section 11.3), if necessary, for the repair and restoration of Landlord’s Improvements in the Building in accordance with this Section 11.3, and (b) Tenant will be responsible (subject to this Section 11.3), if necessary, for the repair and restoration of Tenant’s Improvements. If Landlord determines (in Landlord’s reasonable discretion) that it can so repair and restore Landlord’s Improvements in the Building within 360 days after the date of the casualty, then Landlord will notify Tenant that Landlord will within such 360-day period so repair and restore Landlord’s Improvements to as near their condition prior to the casualty as is reasonably possible. Landlord will provide the notice within 60 days after the date of the casualty, and Landlord’s notice will specify the anticipated date the repair and restoration of Landlord’s Improvements in the Building will be substantially completed. If the aforesaid fire or other casualty renders the whole or any material part of the Premises or the Building untenantable and Landlord determines (in Landlord’s reasonable discretion) that it cannot repair and restore Landlord’s Improvements in accordance with this Section 11.3 within 360 days after the date of the casualty, then Landlord will so notify Tenant within 30 days after the date of the casualty and may, in such notice, terminate this Lease effective on the date that is 60 days after the date of Landlord’s notice. If Landlord fails to provide such notice of termination within such 30-day period, then Landlord’s right to terminate under this Section 11.3 will automatically expire and be of no further force or effect whatsoever. If Landlord does not terminate this Lease as provided in this Section 11.3, then Tenant may terminate this Lease by notifying Landlord within 30 days after the date of Landlord’s notice, which termination will be effective 60 days after the date of Tenant’s notice. If Tenant fails to provide such notice of termination within such 30-day period, then Tenant’s right to terminate under this Section 11.3 will automatically
expire and be of no further force or effect whatsoever. If this Lease is not terminated under this Section 11.3 following a fire or other casualty during the Build-Out Period, then this Lease will remain in full force and effect, and Landlord will, at Landlord’s sole cost and expense, repair and restore Landlord’s Improvements in the Building to as near their condition prior to the fire or other casualty as is reasonably possible, with all commercially reasonable diligence and speed (subject to Tenant Delays); provided, however, that the Commencement Date will be delayed until the date which is the earlier of (a) the date which is six months after the date on which Landlord has substantially completed the repair and restoration of Landlord’s Improvements, or (b) the date on which Tenant, using commercially reasonable diligence and speed, has substantially completed Tenant’s Improvements (including any repair or restoration thereof); and provided further, however, that the length of the initial Term will remain at 180 months, from and after the delayed Commencement Date. If Landlord determined that Landlord’s Improvements in the Building could be repaired and restored within 360 days, but Landlord fails, for any reason (other than Tenant Delays), to complete such repair and restoration within such 360-day period, then Tenant shall have the right to terminate this Lease by notice to Landlord given at any time within the 30-day period immediately following the expiration of such 360-day period but prior to Landlord’s repair and restoration of Landlord’s Improvements in the Building.

Section 11.4 Insufficient Proceeds. Anything in this Article 11 to the contrary notwithstanding, if a fire or other casualty shall occur that causes damage to the Property costing in excess of $1,000,000 to repair and this Article 11 would otherwise obligate Landlord to repair such damage to the Premises or Building, and either (i) such casualty is (in whole or in part) not covered by the property insurance which Landlord is required to maintain under this Lease and the uninsured portion of such casualty (not including any deductible or self-insured retention) exceeds $1,000,000, or (ii) in connection with such casualty, Landlord’s Mortgagee (if any) requires that in excess of $1,000,000 of insurance proceeds that would otherwise have been payable for purposes of repair or restoration of the Property instead be paid to (or at the direction of) Landlord’s Mortgagee for purposes other than the repair or restoration of the Property, then (in the case of either (i) or (ii)), Landlord may, by notifying Tenant within 60 days after the casualty, terminate this Lease effective on the date that is 60 days after the date of Landlord’s notice. If Landlord fails to provide such notice of termination within such 60-day period, then Landlord’s right to terminate under this Section 11.4 will automatically expire and be of no further force or effect whatsoever, and Landlord will proceed to repair and restore the Property in accordance with the terms of this Article 11.

Section 11.5 Landlord’s Repair Obligations. In the event of a fire or other casualty described in Sections 11.1 or 11.2 (but not in Section 11.3), if this Lease is not terminated under Sections 11.2 or 11.4 following a fire or other casualty, then this Lease will remain in full force and effect and Landlord will, at Landlord’s sole cost and expense, repair and restore the Premises and the Property (including all Tenant’s Improvements and other Alterations made by or on behalf of Tenant) to as near their condition prior to the fire or other casualty as is reasonably possible, with all commercially reasonable diligence and speed (subject to Tenant Delays). Notwithstanding the foregoing, if the fire or other casualty occurs after the completion and installation of Tenant’s Improvements but prior to the Commencement Date, but the Build-Out Period has nonetheless not ended because of a failure by Tenant to deliver the written notice referenced in the first sentence of Section 11.3, Landlord will be obligated to repair and restore Tenant’s Improvements if and only to the extent insurance proceeds therefor are available to Landlord at no additional cost. If Landlord determined that the Premises and Property could be restored within 180 days, but Landlord fails, for any reason (other than Tenant Delays), to complete such repair and restoration within such 180-day period, then Tenant shall have the right to terminate this Lease by notice to Landlord given at any time within the 30-day period immediately following the expiration of such 180-day period but prior to Landlord’s restoration of the Premises and Property. Basic Rent and Tenant’s Share of Expenses for any period during which the Premises are untenantable as a result of any casualty (regardless of whether such casualty gives rise to a termination right in favor of Tenant or Landlord under this Lease) will abate on a per diem basis commencing on the date of the casualty and ending on the date on which the Premises and Property (or applicable portion thereof) are restored to a tenantable condition (including the availability of reasonable access to and from the same); provided, however, that if only a portion of the Premises is untenantable, then any such abatement will be pro rata (based upon the rentable area of the untenantable portion of the Premises from time to time as compared with the rentable area of the entire Premises), and Tenant will continue to pay Basic Rent and Tenant’s Share of Expenses for any portion of the Premises which is untenantable. In no event is Landlord obligated to repair or restore any Alterations that have not been previously disclosed to Landlord or Property Manager, and approved by (but only if such approval is required hereunder) Landlord, or any personal property or trade fixtures of Tenant. Landlord will,
if necessary, equitably adjust the Basic Rent and Tenant’s Share of Expenses Percentage to account for any reduction in the rentable area of the Premises or Building resulting from a casualty.

Section 11.6 Rent Apportionment Upon Termination. If either Landlord or Tenant terminates this Lease under this Article 11, Landlord will apportion Basic Rent and Tenant’s Share of Expenses on a per diem basis, and Tenant will pay the Basic Rent and Tenant’s Share of Expenses to (a) the date of the fire or other casualty if the event renders the Premises completely untenanted, or (b) if the event does not render the Premises completely untenanted, the effective date of such termination (provided, however, that if a portion of the Premises is rendered untenanted, but the remaining portion is tenantable, then, except as provided in Section 10.3.2, Tenant’s obligation to pay Basic Rent and Tenant’s Share of Expenses abates pro rata (based upon the rentable area of the untenanted portion of the Premises divided by the rentable area of the entire Premises) from the date of the casualty and Tenant will pay the unabated portion of the Rent to the date of such termination).

Section 11.7 Exclusive Casualty Remedy. The provisions of this Article 11 are the parties’ sole and exclusive rights and remedies as against each other in the event of a casualty. To the extent permitted by Laws, each party waives (as against the other party only) the benefits of any Law that provides any abatement or termination rights (by virtue of a casualty) not specifically described in this Article 11.

ARTICLE 12
EMINENT DOMAIN

Section 12.1 Termination of Lease. If a Condemning Authority notifies Landlord that the Condemning Authority will effect a Taking of all or any material part of the Property, Landlord will notify Tenant and Tenant will reasonably determine whether the Taking will render the Premises and/or other portions of the Property which Tenant has the right to use hereunder (including parking areas) unsuitable for Tenant’s intended purposes. If Tenant reasonably concludes that the Taking will render the Premises and/or other portions of the Property which Tenant has the right to use hereunder unsuitable for Tenant’s intended purposes, Tenant will have the right to terminate the Lease by written notice to Landlord. The parties agree that (without limiting the reasons that such determination may be made by Tenant) a determination by Tenant that a Taking will render the Premises (or other portion of the Property, as applicable) unsuitable for Tenant’s intended purposes shall conclusively be deemed to be reasonable for purposes hereof if such Taking affects: (a) 10% or more of the rentable area of the Premises, or (b) 10% or more of the parking spaces which Tenant has the right to use under this Lease. If a Condemning Authority takes all or any material part of the Building or if a Taking reduces the value of the Property by 50% or more (as reasonably determined by Landlord), regardless of whether the Premises is affected and regardless of whether the Taking will render the Premises unsuitable for Tenant’s intended purposes, then Landlord, in Landlord’s sole and absolute discretion, by notifying Tenant prior to the date that the Condemning Authority takes possession of the portion of the Property taken, may terminate this Lease effective on the date that the Condemning Authority takes possession of the portion of the Property taken. In the event of any termination of this Lease pursuant to this Section 12.1: (i) Landlord and Tenant will document such termination, (ii) this Lease will terminate as of the earlier of the date the Condemning Authority takes possession of the portion of the Property taken or the date on which the Premises (or other applicable portion of the Property) first becomes unsuitable for Tenant’s intended purposes, and (iii) Tenant will pay Rent to the date of termination.

Section 12.2 Landlord’s Repair Obligations. If this Lease does not terminate with respect to the entire Premises under Section 12.1 and the Taking includes a portion of the Premises, then this Lease automatically terminates as to the portion of the Premises taken as of the date that the Condemning Authority takes possession of the portion taken. Landlord will, at its sole cost and expense, restore the remaining portion of the Premises to a complete architectural unit with all commercially reasonable diligence and speed and will reduce the Basic Rent for the period after the date the Condemning Authority takes possession of the portion of the Premises taken to a sum equal to the product of the Basic Rent provided in this Lease multiplied by a fraction, the numerator of which is the rentable area of the Premises after the Taking and after Landlord restores the Premises to a complete architectural unit, and the denominator of which is the rentable area of the Premises prior to the Taking. Landlord will also equitably adjust Tenant’s Share of Expenses Percentage for the same period to account for the reduction in the rentable area of the Premises or the Building resulting from the Taking. Tenant’s obligation to pay Basic Rent and Tenant’s Share of Expenses will abate on a proportionate basis with respect to that portion of the Premises.
remaining after the Taking that Tenant is unable to use during Landlord’s restoration for the period of time that Tenant is unable to use such portion of the Premises.

Section 12.3 Tenant’s Participation. Landlord is entitled to receive and keep all damages, awards or payments with respect to the Property resulting from or paid on account of a Taking. Accordingly, Tenant waives and assigns to Landlord any interest of Tenant in any such damages, awards or payments. Tenant shall be entitled to receive an award for damages to, or Taking of, Tenant’s personal property, trade fixtures and/or equipment, and for moving expenses; provided, however, that Tenant has no right to receive any award for its interest in this Lease or for loss of leasehold.

Section 12.4 Exclusive Taking Remedy. The provisions of this Article 12 are the parties’ sole and exclusive rights and remedies as against each other in the event of a Taking. To the extent permitted by Laws, each party waives (as against the other party only) the benefits of any Law that provides such party any abatement or termination rights or any right to receive any payment or award (by virtue of a Taking) not specifically described in this Article 12.

ARTICLE 13
TRANSFERS

Section 13.1 Restriction on Transfers. Tenant shall not, without Landlord’s prior written consent (which consent shall not be unreasonably withheld), assign, mortgage or otherwise transfer all or any part of Tenant’s leasehold estate, and/or sublet the Premises to any other person or entity (collectively called “Transfer”). Notwithstanding anything to the contrary contained herein, neither (i) the transfer of stock or other voting or ownership interests in Tenant or any of its Affiliates (including any merger or consolidation involving Tenant or any of its Affiliates), nor (ii) a Permitted Transfer (as hereinafter defined) shall constitute a “Transfer” for purposes hereof, and shall not require Landlord’s consent. For purposes hereof, a “Permitted Transfer” shall mean: (a) any assignment of this Lease to any Affiliate of Tenant, (b) any assignment or sublease executed in connection with a sale or transfer of all or substantially all of the assets of the Tenant or an Affiliate of Tenant, (c) any assignment or sublease to any entity formed or “spun off” from Tenant by distribution or transfer of ownership interests to Tenant’s direct or indirect owner(s) or any entity which is then an Affiliate of Tenant (or similar transaction), and/or (d) any sublease and/or other permission to use the Property (or any portion thereof) to (1) any Affiliate of Tenant and/or (2) any Tenant Party and/or any contractor, consultant, service provider joint venture partner or client of Tenant which is occupying space in the Premises for purposes related to the conduct of Tenant’s business therein.

Section 13.2 Consent of Landlord. Within 10 Business Days after Landlord’s receipt from Tenant of a request for Landlord’s consent to a proposed Transfer requiring Landlord’s consent hereunder, Landlord shall have the following options: (a) to consent to such proposed assignment or subletting; or (b) to refuse to consent to such assignment or subletting, it being agreed that any such refusal of consent must be reasonable (as described in Section 13.8). If Landlord fails to notify Tenant within such 10-Business Day period whether Landlord will consent or refuse to consent to a proposed assignment or sublease, then Tenant may deliver a second written notice to Landlord advising of such failure, and if Landlord thereafter fails to notify Tenant of Landlord’s consent or refusal to consent within two Business Days of Landlord’s receipt of such second notice, Landlord will be conclusively deemed to have consented to such proposed Transfer.

Section 13.3 No Release. No Transfer or Permitted Transfer shall relieve Tenant (or any transferee of Tenant) from primary liability as a principal and not as a surety under the terms of this Lease.

Section 13.4 Profits. Subject to the last sentence of this Section 13.4, if Landlord consents to any Transfer, Tenant will pay to Landlord, as Additional Rent, 50% of the Excess Consideration received by Tenant in connection with such Transfer. For purposes hereof, “Excess Consideration” means the rent or other consideration received by Tenant in connection with a Transfer after deduction therefrom for reasonable costs incurred by Tenant in connection with such Transfer, including reasonable improvement allowances, costs for additional improvements (including demising walls) installed in the portion of the Premises subject to such Transfer, and leasing commissions. Notwithstanding the foregoing, the terms of this Section 13.4 shall not apply to the transfer of stock.
or other voting or ownership interests in Tenant or any of its Affiliates (including any merger or consolidation involving Tenant or any of its Affiliates) nor to any Permitted Transfer.

Section 13.5 Default. If a monetary or material non-monetary Event of Default under this Lease should occur while the Premises or any part of the Premises are assigned, sublet or otherwise transferred, Landlord, in addition to any other remedies provided for within this Lease or by law, may at its option collect directly from the transferee all rent or other consideration becoming due to Tenant under the Transfer and apply these monies against any sums due to Landlord by Tenant; and Tenant authorizes and directs any transferee to make payments of rent or other consideration direct to Landlord upon receipt of notice from Landlord. No direct collection by Landlord from any transferee should be construed to constitute a novation or a release of Tenant or any guarantor of Tenant from the further performance of its obligations in connection with this Lease.

Section 13.6 Tenant Security Interests. Nothing contained herein shall be deemed to prevent or limit Tenant from leasing, engaging in a sale-leaseback for, and/or granting security interests to any third party in any of its personal property, fixtures and/or equipment at the Property or any services produced by Tenant at the Premises, which may include (without limitation) a lease or sale-leaseback of Tenant’s personal property, fixtures and/or equipment at the Property to a tax-exempt and/or governmental entity for purposes of abating or reducing personal property or other taxes payable with respect thereto.

Section 13.7 Costs. Tenant will pay to Landlord, as Additional Rent, all reasonable costs and expenses Landlord incurs in connection with any Transfer requiring Landlord’s consent hereunder, including, without limitation, reasonable attorneys’ fees and costs, regardless whether Landlord consents to the Transfer; provided, that such costs shall not exceed $1,000 for any single Transfer or proposed Transfer.

Section 13.8 Landlord’s Consent Standards. For purposes of this Article 13, Landlord’s consent to a Transfer will be deemed reasonably withheld if, in Landlord’s good faith judgment, any one or more of the following apply: (a) in the case of an assignment, the proposed assignee does not have the financial strength to perform the Tenant’s obligations under this Lease; (b) either the proposed transferee, or any Affiliate of the proposed transferee, occupies or is negotiating with Landlord to lease space in the Building; (c) the proposed transferee does not have a good business reputation; (d) the subject space is only a portion of the Premises and the configuration thereof (or of the balance of the Premises) would not comply with Laws; (e) the transferee is a government (or agency or instrumentality thereof); or (f) an Event of Default exists under this Lease at the time Tenant requests consent to the proposed Transfer.

Section 13.9 Lease Recognition Agreement. Landlord agrees, upon request of Tenant, to execute and deliver a lease recognition and non-disturbance agreement in form and substance reasonably satisfactory to Landlord (“Lease Recognition Agreement”) with respect to each Qualified Sublease (as hereinafter defined). Tenant shall, upon request of Landlord and as a condition to Landlord executing a Lease Recognition Agreement, submit to Landlord sufficient information to enable Landlord to verify that the sublease for which a Lease Recognition Agreement is being requested is a Qualified Sublease. For purposes hereof, a “Qualified Sublease” shall mean a sublease which is executed after the date hereof with a subtenant who is a person or entity which has a credit rating or creditworthiness (taking into account any security deposit, letter of credit or other credit enhancement provided by such subtenant) which is reasonably acceptable to Landlord.

Section 13.10 Collateral Access Agreements. Notwithstanding anything to the contrary contained in this Lease, and without limiting the terms of Section 13.6, Tenant shall have the right to pledge, mortgage, assign, convey or grant security interests in all or any part of Tenant’s personal property, fixtures and/or equipment at the Premises to any persons or entities (each, a “Tenant’s Property Security Party”) for purposes of evidencing and/or securing any financing of Tenant or its Affiliates. Landlord acknowledges that, as of the date of this Lease, certain Tenant’s personal property, fixtures and/or equipment may be subject to security interests in favor of the existing lenders of Tenant and/or its Affiliates, and that the grantee of any such currently existing security interests is a Tenant's Property Security Party. Any Tenant’s Property Security Party shall have the right to exercise its rights and/or remedies with respect to Tenant’s personal property, fixtures and/or equipment without the consent of Landlord. Further, in the event of a default under the financing arrangements between Tenant or its Affiliates and any Tenant’s Property Security Party, or a termination of this Lease for any reason (including by reason of an Event of Default), a termination of Tenant’s right of possession hereunder, or any rejection of this Lease by Tenant in a
bankruptcy of Tenant, Landlord shall permit a Tenant’s Property Security Party to enter the Premises after such default, termination or rejection (as applicable) for purposes of removing from the Premises the Tenant’s personal property, fixtures and/or equipment in which such Tenant’s Property Security Party has a security interest; provided, however, that any such entry after any such default, termination or rejection (as applicable) shall be pursuant to terms and conditions mutually and reasonably acceptable to Landlord and such Tenant’s Property Security Party (such terms and conditions to include, in the event of a termination of this Lease or rejection of this Lease in a bankruptcy of Tenant, (x) a reasonable outside date by which Tenant’s Property Security Party must remove the Tenant’s personal property, fixtures and/or equipment in which such Tenant’s Property Security Party has a security interest ("Tenant’s Personal Property Removal Outside Date"), and (y) a requirement that Tenant’s Property Security Party pay rent to the Landlord upon terms and provisions mutually and reasonably acceptable to Landlord and the Tenant’s Property Security Party, which rent shall be at the same rate as the rental rate in effect under this Lease as of the date of the termination or rejection of this Lease (as applicable)). If Tenant’s Property Security Party fails to so remove Tenant’s personal property, fixtures and/or equipment from the Premises by the mutually agreed upon Tenant’s Personal Property Removal Outside Date, then, in accordance with Section 16.1, (i) all Tenant’s personal property, fixtures and/or equipment not removed on or before the Tenant’s Personal Property Removal Outside Date is deemed abandoned and (ii) Landlord may remove all such abandoned property from the Property and cause its transportation and storage in a public warehouse or elsewhere at the cost and for the account of Tenant, and if Tenant fails to pay the storage charges therefor Landlord may cause such property to be sold or otherwise disposed of without further obligation or any accounting to Tenant. Landlord agrees, from time to time, to execute and deliver to Tenant or any Tenant’s Property Security Party commercially reasonable collateral access agreements, waivers, subordinations of liens and such other reasonable documents as any Tenant’s Property Security Party may require in order to evidence and/or secure the rights described in this Section.

ARTICLE 14
DEFAULTS; REMEDIES

Section 14.1  Events of Default. The occurrence of any of the following constitutes an “Event of Default” by Tenant under this Lease (Landlord and Tenant agree that the notices required by this Section 14.1 are intended to satisfy any and all notice requirements imposed by the Laws and are not in addition to any such requirements):

Section 14.1.1  Failure to Pay Rent. Either or both of (a) Tenant’s failure to pay Basic Rent or any monthly installment of Tenant’s Share of Expenses amount as and when due and such failure is not cured within five Business Days after Landlord notified Tenant of Tenant’s failure to pay such Rent when due; or (b) Tenant’ failure to pay any other Additional Rent amount as and when due and such failure continues for 10 Business Days after Landlord notifies Tenant of Tenant’s failure to pay such Rent when due.

Section 14.1.2  Failure to Perform. Tenant breaches or fails to perform any of Tenant’s nonmonetary obligations under this Lease and the breach or failure continues for a period of 30 days after Landlord notifies Tenant of Tenant’s breach or failure; provided, however, that if Tenant cannot reasonably cure its breach or failure within a 30-day period, then Tenant’s breach or failure is not an Event of Default if Tenant commences to cure its breach or failure within the 30-day period and thereafter diligently pursues the cure to completion. Notwithstanding the foregoing, Tenant is not entitled to any extension of the foregoing 30-day cure period in connection with any such breach or failure by Tenant if such breach or failure cannot be cured by Tenant.

Section 14.1.3  Intentionally Omitted.

Section 14.1.4  Other Defaults. The occurrence of any one or more of the following: (a) Tenant makes a general assignment or general arrangement for the benefit of creditors; (b) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by Tenant; (c) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed against Tenant and is not stayed, dismissed or vacated within 60 days; (d) a trustee or receiver is appointed to take possession of all or substantially all of Tenant’s assets or of Tenant’s interest in this Lease and such appointment is not stayed, dismissed or vacated within 60 days; or (e) all or substantially all of Tenant’s assets or Tenant’s interest in this Lease is subjected to attachment, execution or other judicial seizure not stayed, discharged or vacated within 60 days. If a court of competent jurisdiction determines
that any act described in this Section 14.1.4 does not constitute an Event of Default, and the court appoints a trustee to take possession of the Premises (or if Tenant remains a debtor in possession of the Premises) and such trustee or Tenant Transfers Tenant’s interest hereunder, then Landlord is entitled to receive, as Additional Rent, the amount by which the Rent (or any other consideration) paid in connection with the Transfer exceeds the Rent otherwise payable by Tenant under this Lease.

Section 14.2 Remedies. Upon the occurrence of any Event of Default, Landlord, at any time and from time to time, and without preventing Landlord from exercising any other right or remedy, may exercise any one or more of the remedies below. Landlord shall, in all events, use commercially reasonable efforts to mitigate its damages following the occurrence of an Event of Default.

Section 14.2.1 Termination of Tenant’s Possession; Re-Entry and Reletting Right. Terminate Tenant’s right to possess the Premises by any lawful means (and without breach of the peace) without terminating this Lease, in which event Tenant will immediately surrender possession of the Premises to Landlord. Unless Landlord specifically states that it is terminating this Lease, Landlord’s termination of Tenant’s right to possess the Premises is not to be construed as an election by Landlord to terminate this Lease or Tenant’s obligations and liabilities under this Lease. In such event, this Lease continues in full force and effect (except for Tenant’s right to possess the Premises), and Tenant continues to be obligated for and must pay all Rent as and when due under this Lease. If Landlord terminates Tenant’s right to possess the Premises, Landlord is not obligated to reenter, but may re-enter the Premises and (subject to the terms of Section 13.10) remove all persons and property from the Premises by any lawful means (and without breach of the peace). Landlord may store any property that Landlord removes from the Premises in a public warehouse or elsewhere at the cost and for the account of Tenant. If Landlord terminates Tenant’s right of possession of the Premises without terminating this Lease, as provided in this Section 14.2.1, then Landlord shall use commercially reasonable efforts to relet the Premises to a third party or parties for Tenant’s account. Tenant shall be liable to Landlord for all Re-entry Costs and must pay Landlord the same within five days after Landlord’s notice to Tenant. Landlord may relet the Premises for a period shorter or longer than the remaining Term. If Landlord relets all or any part of the Premises, Tenant will continue to pay Rent when due under this Lease, and Landlord will refund to Tenant the Net Rent that Landlord actually receives from the reletting up to a maximum amount equal to the Rent that Tenant paid which came due after Landlord’s reletting. If the Net Rent that Landlord actually receives from reletting exceeds such Rent, Landlord will apply the excess sum to future Rent due under this Lease. Landlord may retain any surplus Net Rent remaining at the expiration of the Term.

Section 14.2.2 Termination of Lease.Terminate this Lease effective on the date that Landlord specifies in its termination notice to Tenant. Upon termination, Tenant will immediately surrender possession of the Premises to Landlord. If Landlord terminates this Lease, Landlord may recover from Tenant, and Tenant will pay to Landlord on demand all damages that Landlord incurs by reason of Tenant’s default, including, without limitation, (a) all Rent due and payable under this Lease as of the effective date of the termination; (b) any amount necessary to compensate Landlord for any detriment proximately caused Landlord by Tenant’s failure to perform its obligations under this Lease or which in the ordinary course would likely result from Tenant’s failure to perform, including, without limitation, any Re-entry Costs, (c) an amount equal to the amount by which the present worth, as of the effective date of the termination, of the Basic Rent for the balance of the Term remaining after the effective date of the termination (assuming no termination) exceeds the present worth, as of the effective date of the termination, of a fair market basic rent for the Premises for the same period (as Landlord reasonably determines the fair market basic rent), and (d) Tenant’s Share of Expenses to the extent that Landlord is not otherwise reimbursed therefor, but only to the extent incurred by Landlord. For purposes of this Section 14.2.2, Landlord will compute present worth by utilizing a discount rate of 8% per annum. Nothing in this Section 14.2.2 limits or prejudices Landlord’s right to prove and obtain damages in an amount equal to the maximum amount allowed by Laws, regardless of whether such damages are greater than the amounts set forth in this Section 14.2.2.

Section 14.2.3 Self-Help. Perform the obligation on Tenant’s behalf without waiving Landlord’s rights under this Lease, at law or in equity and without releasing Tenant from any obligation under this Lease. Tenant will pay to Landlord, as Additional Rent, all Landlord’s Actual Costs that Landlord incurs on Tenant’s behalf under this Section 14.2.3.
Section 14.2.4  Other Remedies.  Any other right or remedy available to Landlord under this Lease, at law or in equity.

Section 14.3  Costs.  Without duplication of any other amounts payable by Tenant to Landlord hereunder, and subject to Section 18.8 below, Tenant will reimburse and compensate Landlord on demand and as Additional Rent for Landlord’s Actual Costs incurred by Landlord in connection with or resulting from an Event of Default, regardless of whether suit is commenced or judgment is entered. Such loss includes, without limitation, all reasonable legal fees, costs and expenses (including, without limitation, paralegal fees and other professional fees and expenses) that Landlord incurs investigating, negotiating, settling or enforcing any of Landlord’s rights or remedies or otherwise protecting Landlord’s interests under this Lease. Without limiting the foregoing (but without duplication), Landlord is entitled to reimbursement of all of Landlord’s Actual Costs, including, without limitation, reasonable attorneys’ fees and paralegal and other reasonable professional fees and expenses, that Landlord incurs in connection with protecting its interests in any bankruptcy or insolvency proceeding involving Tenant, including, without limitation, any proceeding under any chapter of the Bankruptcy Code, by exercising and advocating rights under Section 365 of the Bankruptcy Code, by proposing a plan of reorganization and objecting to competing plans, and by filing motions for relief from stay. Such fees and expenses are payable on demand, or, in any event, upon assumption or rejection of this Lease in bankruptcy.

Section 14.4  Waiver and Release by Tenant.  Tenant waives and releases all Claims that Tenant may have resulting from Landlord’s re-entry and taking possession of the Premises pursuant to this Article 14 by any lawful means and removing and storing Tenant’s property as permitted under this Lease, regardless of whether this Lease is terminated. No such reentry which is made in accordance with this Article 14 is to be considered or construed as a forcible entry by Landlord.

Section 14.5  Landlord’s Default.  Landlord will not be in default under this Lease unless Landlord breaches or fails to perform any of Landlord’s obligations under this Lease and the breach or failure continues for a period of 30 days after Tenant notifies Landlord in writing of Landlord’s breach or failure; provided, however, that if Landlord is not able through the use of commercially reasonable efforts to cure the breach or failure within such 30-day period, Landlord’s breach or failure is not a default as long as Landlord commences to cure its breach or failure within the 30-day period and thereafter diligently pursues the cure to completion.

Section 14.6  No Waiver.  Except as specifically set forth in this Lease, no failure by Landlord or Tenant to insist upon the other party’s performance of any of the terms of this Lease or to exercise any right or remedy upon a breach thereof, constitutes a waiver of any such breach or of any breach or default by the other party in its performance of its obligations under this Lease. No acceptance by Landlord of full or partial Rent from Tenant or any third party during the continuance of any breach or default by Tenant of Tenant’s performance of its obligations under this Lease constitutes Landlord’s waiver of any such breach or default. No acceptance by Tenant of full or partial amounts owed from Landlord or any third party during the continuance of any breach or default by Landlord of Landlord’s performance of its obligations under this Lease constitutes Tenant’s waiver of any such breach or default. Except as specifically set forth in this Lease, none of the terms of this Lease to be kept, observed or performed by a party to this Lease, and no breach thereof, are waived, altered or modified except by a written instrument executed by the other party. One or more waivers by a party to this Lease is not to be construed as a waiver of a subsequent breach of the same covenant, term or condition. No statement on a payment check from a party to this Lease or in a letter accompanying a payment check is binding on the other party. The party receiving such check, with or without notice to the other party, may negotiate such check without being bound to the conditions of any such statement.

Section 14.7  Waiver of Landlord’s Lien.  Landlord does hereby waive and release any and all rights and interests (whether previously or now existing, or arising in the future) in and to any lien (whether possessory, statutory or otherwise, and including any rights of levy or distraint for rent) on, against or with respect to any assets, trade fixtures, equipment or other property of Tenant and/or any other person or entity which may, from time to time, have any such assets, trade fixtures, equipment or other property located at the Property. Landlord agrees that it will, from time to time upon Tenant’s request, execute and deliver to Tenant such documents and instruments as Tenant may reasonably request in order to confirm that Landlord has no lien or lien rights with respect to any such assets, trade fixtures, equipment or other property of Tenant (or of any such other person or entity described in the preceding sentence).
ARTICLE 15
CREDITORS; ESTOPPEL CERTIFICATES

Section 15.1  Subordination. Subject to this Section 15.1, this Lease, all rights of Tenant in this Lease, and all interest or estate of Tenant in the Property, are subject and subordinate to the lien of any Mortgage. Tenant, within 10 Business Days after Landlord’s written request therefor, will execute and deliver to Landlord or to any Mortgagor any document reasonably acceptable to Tenant that is required to confirm the self-effectuating subordination of this Lease, as provided in this Section 15.1, to the lien of any Mortgage. Notwithstanding anything to the contrary contained herein, the subordination of this Lease, the rights of Tenant in this Lease, and Tenant’s interest and estate in the Property, to any Mortgage executed and delivered after the Effective Date as provided in this Section 15.1 is expressly conditioned upon the holder of any Mortgage agreeing that as long as no Event of Default is continuing under this Lease, the holder of the Mortgage will not disturb Tenant’s rights of possession under this Lease. The lien of any existing or future Mortgage will not cover Tenant’s trade fixtures or other personal property of Tenant located in or on the Premises or Property. Tenant and Landlord have executed and delivered to Landlord’s existing Mortgage holder a subordination, non-disturbance and attornment agreement in the form of EXHIBIT “K” attached hereto (“SNDA Agreement”). Landlord has caused the Mortgage holder to execute the SNDA Agreement and to return the executed SNDA Agreement to Tenant on or before the Effective Date. No later than 30 days after the execution and delivery of any future Mortgage, Landlord will execute and deliver to Tenant, and will use commercially reasonable efforts to cause the holder of such future Mortgage to execute and deliver to Tenant, an SNDA Agreement with respect to such Mortgage either in the form of EXHIBIT “K” attached hereto or otherwise in form and substance mutually and reasonably acceptable to Tenant and such future Mortgage holder (and to Landlord, if Landlord is a party thereto).

Section 15.2  Attornment. If any ground lessor, holder of any Mortgage at a foreclosure sale or any other transferee acquires Landlord’s interest in this Lease, the Premises or the Property, Tenant will attorn to the transferee of or successor to Landlord’s interest in this Lease, the Premises or the Property (as the case may be), and will recognize such transferee or successor as landlord under this Lease. Tenant waives the protection of any statute or rule of law that gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Premises upon the transfer of Landlord’s interest.

Section 15.3  Mortgagee Protection Clause. Tenant will give the holder of any Mortgage, in the manner provided for the giving of notices under this Lease or as provided in the SNDA Agreement, at the same time as Tenant notifies Landlord, a copy of any notice of default that Tenant serves on Landlord, provided that Landlord or the holder of the Mortgage previously notified Tenant (by way of notice of assignment of rents and leases or otherwise) of the address of such holder. Tenant further agrees that such holder shall have the same period of time afforded to Landlord under this Lease within which to cure Landlord’s default (which cure period shall run concurrently with the cure period afforded to Landlord hereunder); provided, however, that if Landlord, Tenant, and such holder enter into any separate agreement regarding the matters addressed in Sections 15.1, 15.2 and 15.3 (including an SNDA), then to the extent of any conflict or inconsistency between the provisions of such separate agreement and the provisions of Sections 15.1, 15.2 and 15.3, the provisions of such separate agreement shall control.

Section 15.4  Estoppel Certificates.

Section 15.4.1  Contents of Tenant Estoppel Certificates. Upon Landlord’s written request, Tenant will execute, acknowledge and deliver to Landlord a written statement in form mutually and reasonably satisfactory to Landlord and Tenant certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been any modifications, that the Lease is in full force and effect, as modified, and stating the modifications); (b) that this Lease has not been canceled or terminated; (c) the last date of payment of Rent and the time period covered by such payment; (d) whether there are then existing any breaches or defaults by Landlord under this Lease known to Tenant, and, if so, specifying the same; (e) specifying any existing claims or defenses in favor of Tenant against the enforcement of this Lease that are known to Tenant; and (f) such other factual statements customarily included in estoppel certificates of tenants of first class office buildings in the northern suburban Chicago, Illinois office market as Landlord, any lender, prospective lender, investor or purchaser may reasonably
request. Tenant will deliver the statement to Landlord within 10 Business Days after Landlord’s request. Landlord may give any such statement by Tenant to any lender, prospective lender, investor or purchaser of all or any part of the Property, if such party is specified in the estoppel certificate, and any such specified party may rely upon such statement.

Section 15.4.2 Failure to Deliver. If Tenant does not deliver the statement referenced in Section 15.4.1 to Landlord within 10 Business Days of receiving Landlord’s draft statement, as provided in Section 15.4.1 above, Landlord may give Tenant a second written notice for such statement. If Tenant fails to deliver the statement within three Business Days of receiving Landlord’s second written request, then Tenant will be estopped from later contesting any inaccuracy (as to factual matters only, and not modifications to the Lease, if any) contained in the draft statement delivered from Landlord to Tenant.

ARTICLE 16 TERMINATION OF LEASE

Section 16.1 Surrender of Premises. Tenant will surrender the Premises to Landlord at the expiration or earlier termination of this Lease in broom clean condition and repair, consistent with Tenant’s maintenance obligations under this Lease, reasonable wear and tear, acts of Landlord, damage by casualty or Taking excepted, and otherwise in its then “as-is” condition. Tenant will, upon such expiration or earlier termination, surrender all keys to the Premises to Property Manager or to Landlord at the office of the Building, or as Landlord or Property Manager may otherwise direct. Tenant will also inform Landlord of all combinations on locks, safes and vaults, if any, which Tenant has left in the Premises or on the Property. Tenant will at such time remove (a) all of Tenant’s personal property and trade fixtures from the Premises, (b) all cabling which was placed in the Premises as part of Tenant’s Improvements or any Alterations, or otherwise by Tenant, (c) all Exterior Tenant Signage, all Interior Exclusive Floor Tenant Signage, all Rooftop Equipment and all emergency generators installed by or for Tenant, and (d) those Non-Standard Alterations installed by Tenant that Landlord required be removed concurrently with Landlord’s approval of the plans therefor pursuant to Section 8.3, and (e) any other Tenant’s Improvements and Alterations which Tenant, in its sole discretion, elects to remove from the Premises and/or Property; it being agreed that, other than the items described in clauses (a) through (d) above or as expressly provided in this Lease, Tenant shall have the right, at the expiration or sooner termination of the Term, to either remove from the Premises or Property or leave at the Premises or Property, any Tenant’s Improvements and Alterations installed by or on behalf of Tenant at the Property, at Tenant’s sole election, so long as the floor, wall and ceiling surfaces of the Premises are left finished and enclosed. Subject to Section 10.3.2, Tenant will promptly repair any damage to the Premises caused by such removal. Subject to the terms of Section 13.10, all property of Tenant not removed on or before the last day of the Term is deemed abandoned, unless Tenant is then in occupancy of the Premises pursuant to a month-to-month lease as described in Section 16.2, in which event such property may remain in the Premises subject to the terms of said month-to-month lease. Landlord may remove any such abandoned property from the Premises upon termination of this Lease, and to cause its transportation and storage for Tenant’s benefit, all at the sole cost and risk of Tenant. Landlord will not be liable for damage, theft, misappropriation or loss thereof or in any manner in respect thereto.

Section 16.2 Holding Over. If Tenant possesses the Premises after the Term expires or is otherwise terminated without executing a new lease, but with Landlord’s written consent, then Tenant is deemed to be occupying the Premises as a tenant from month-to-month, subject to all provisions, conditions and obligations of this Lease applicable to a month-to-month tenancy and any other reasonable conditions of Landlord’s consent, except that (a) Basic Rent will equal 125% of the Basic Rent payable by Tenant on the last day of the Term for the first three months after the expiration of the Term, and 150% of the Basic Rent payable by Tenant on the last day of the Term for any period thereafter, and (b) either Landlord or Tenant may terminate the month-to-month tenancy at any time upon 30 days’ prior written notice to the other party. Subject to this Section 16.2, if Tenant possesses the Premises after the Term expires or is otherwise terminated without executing a new lease and without Landlord’s written consent, then Tenant is deemed to be occupying the Premises as a tenant at sufferance (for clarity, not a month-to-month or a year-to-year tenant) without claim of right (but subject to all terms and conditions of this Lease) and, in addition to Tenant’s liability for failing to surrender possession of the Premises as provided in Section 16.1, Tenant will pay Landlord a charge for each day of occupancy (i) for the first three months after expiration of the Term at the rate of 125% of Tenant’s then-existing Rent (prorated on a daily basis for each day of such...
occupancy), and (ii) thereafter beginning with the fourth month after expiration of the Term at the rate of 150% of Tenant’s then-existing Rent (prorated on a daily basis for each day of such occupancy). Notwithstanding, the foregoing, upon written notice delivered to Landlord at least 12 months prior to the end of the Term, Tenant may remain in possession of the Premises for up to three months after the expiration of the Term (such period to be specified in Tenant’s written notice), subject to all of the terms and conditions of this Lease, including, without limitation, Tenant’s payment of the then-existing Basic Rent. To the fullest extent allowable under the Laws (but subject to Section 18.8 with respect to the first 60 days of any holdover), Tenant will indemnify, protect, defend (with counsel reasonably acceptable to Landlord) and hold harmless the Landlord Parties from and against any Claims resulting from Tenant’s failure or delay in surrendering the Premises upon the expiration or earlier termination of this Lease without Landlord’s written consent. Nothing contained in this Section 16.2 will limit Landlord’s right to lawfully terminate Tenant’s right to possess the Premises in the event Tenant holds over in the Premises without Landlord’s written consent.

ARTICLE 17
CONSTRUCTION OF TENANT’S IMPROVEMENTS

Section 17.1 Landlord’s Improvements. Tenant will accept Landlord’s Improvements in the “AS IS, WHERE IS” condition existing as of the Delivery Date, subject only to Landlord’s obligations expressly set forth in this Section 17.1 or elsewhere in this Lease (and subject to any casualty or condemnation occurring prior thereto, which will be addressed by Articles 11 and 12, respectively). In the event that (a) Landlord’s Improvements have not been completed in substantial accordance with the applicable portions of the Outline Specifications and in accordance with all applicable Laws as of the Delivery Date, and (b) either (i) in the event of any such deficiencies (i.e., failure to meet the standard described in clause (a)) in those portions of Landlord’s Improvements which are within the Premises, Tenant delivers written notice thereof to Landlord within 60 days after the Delivery Date, or (ii) in the event of any such deficiencies in Landlord’s Improvements which are outside of the Premises, Tenant delivers written notice thereof to Landlord within 480 days after the Delivery Date, then Landlord will correct such deficiencies so that the applicable portion or portions of Landlord’s Improvements (i.e., the portions which do not meet the standard described in clause (a)) will function in a manner equivalent to that which would have been achieved but for the subject deficiencies, or such that the same comply with Laws as of the Delivery Date, as applicable. Further, in the event that (y) any of Landlord’s Improvements have not been completed in substantial accordance with the applicable portions of the Outline Specifications and in accordance with all applicable Laws, and (z) such deficiencies (i.e., failure to meet the standard described in clause (y)) would constitute latent defects under applicable Illinois law, then subject to the requirements of Illinois law as to latent defects, Landlord will correct such deficiencies so that the applicable portion or portions of Landlord’s Improvements will function in a manner equivalent to that which would have been achieved but for the subject deficiencies, or such that the same comply with Laws as of the Delivery Date, as applicable. Landlord will perform any work required in order to correct deficiencies pursuant to this Section 17.1 at Landlord’s sole cost and in a commercially reasonable diligent, good and workmanlike manner, taking into account (if applicable) Tenant’s schedule for the construction of Tenant’s Improvements. Nothing contained in the foregoing will be deemed to limit the obligations of Landlord under Articles 6 and 7, except as expressly set forth in the foregoing or in Articles 6 and 7.

Section 17.2 Tenant’s Obligations Regarding Construction of Tenant’s Improvements. Tenant will construct, or will cause the construction of, Tenant’s Improvements in accordance with this Article 17. Tenant will, in good faith, permit Landlord to bid, in equitable competition, with other third-party contractors to be Tenant’s General Contractor for the construction of Tenant’s Improvements.

Section 17.3 Space Plan and Construction Drawings and Specifications.

Section 17.3.1 Space Plan. Tenant will engage Tenant’s Architect to develop and design a space plan (“Space Plan”) for Tenant’s Improvements, which shall show, in reasonable detail, the design and appearance of the finishing material Tenant will use in connection with installing Tenant’s Improvements. Tenant will provide Landlord with the Space Plan for Landlord’s reasonable approval, which approval shall not be unreasonably withheld, and shall be conclusively deemed to have been granted unless Landlord objects to the same by written notice to Tenant within 10 Business Days after Tenant delivers the same to Landlord. Any such objection to the Space Plan by Landlord shall state, with reasonable detail, the reasons for Landlord’s objections thereto, and
Landlord hereby agrees that it will not object to the Space Plan unless the same contemplates Tenant’s Improvements that would (a) not be compatible with the Building and the mechanical components of the Building, or would materially exceed or materially and adversely affect the structural integrity of the Building, or any part of the heating, ventilating, air conditioning, plumbing, mechanical, electrical, communication or other systems of the Building; (b) include the use of materials that are not of good quality, (c) be visible from the exterior of the Building and would detrimentally affect the first class appearance of the exterior portions of the Property (it being agreed, however, that identification signage of Tenant contemplated or permitted by Section 4.6 which conforms with all Requirements and which includes only the name and/or logo of Tenant shall not be deemed, under any circumstances, to violate the terms of this clause (c)); (d) materially increase the cost of operation or maintenance of any of the material systems of the Property (unless Tenant agrees to pay such increased cost); or (e) not conform to any applicable Requirements (“Tenant’s Improvements Approval Criteria”).

Section 17.3.2 Construction Drawings and Specifications. After Landlord receives and has approved (or is deemed to have approved) Tenant’s Space Plan, Tenant will cause Tenant’s Architect to prepare proposed construction drawings and specifications (“Proposed Construction Drawings and Specifications”). Tenant will provide Landlord with the Proposed Construction Drawings and Specifications for Landlord’s reasonable approval, which approval shall not be unreasonably withheld, and shall be conclusively deemed to have been granted unless Landlord objects to the same by written notice to Tenant within 10 Business Days after Tenant delivers the same to Landlord. Any such objection to the Proposed Construction Drawings and Specifications by Landlord shall state, with reasonable detail, the reasons for Landlord’s objections thereto, and Landlord hereby agrees that it will not object to the Proposed Construction Drawings and Specifications unless the same do not comply with the Tenant’s Improvements Approval Criteria. If Landlord properly disapproves the Proposed Construction Drawings and Specifications, Tenant will provide appropriately revised Proposed Construction Drawings and Specifications to Landlord for approval (or disapproval) until Landlord has reasonably approved (based on and subject to the standards and deadlines set forth above in this Section 17.3.2) the Proposed Construction Drawings and Specifications (as finally approved, “Construction Drawings and Specifications”). Upon Landlord’s approval of the Proposed Construction Drawings and Specifications, and of any Tenant-requested revisions thereto, Landlord may reasonably require, as a condition to its approval, that Tenant remove any Non-Standard Alterations contemplated thereby at the end of the Term.

Section 17.3.3 Changes to Construction Drawings and Specifications. After Landlord’s approval, no significant changes, modifications or alterations may be made to the Construction Drawings and Specifications (“Change Orders”) without Landlord’s prior written consent, which consent will not be unreasonably withheld, and shall be conclusively deemed to have been granted unless Landlord objects to the same by written notice to Tenant within 10 Business Days after Tenant delivers the same to Landlord. Landlord hereby agrees that it will not object to any Change Orders unless the same do not comply with the Tenant’s Improvements Approval Criteria.

Section 17.3.4 Building Standard. Tenant will utilize Building Standard items or items of equal or higher quality, to assure the consistent quality and appearance of the Building. In cases in which the criteria set forth in EXHIBIT “G” hereto applies to such items, no use of items other than Building Standard (or items of equal or higher quality) will be permitted in the Space Plan or the Construction Drawings and Specifications without Landlord’s consent. Landlord will not approve any deviations that Landlord reasonably believes (a) do not conform to applicable codes, ordinances and other Requirements or are disapproved by any governmental agency, or (b) require services materially beyond the level normally provided to other tenants in the Building (unless Tenant agrees in writing to pay for the same). No approval by Landlord of any deviation constitutes an acknowledgment by Landlord that such deviations are in conformance with applicable codes, ordinances and other Laws.

Section 17.3.5 Landlord’s Approval Rights. Landlord may withhold its approval of the Space Plan, the Construction Drawings and Specifications, or any Change Orders requested by Tenant only if the same require work which does not satisfy the Tenant’s Improvements Approval Criteria.
Section 17.4 Costs of Tenant’s Improvements.

Section 17.4.1 Improvement Allowance. Landlord shall, from and after the Effective Date, make available to Tenant the Improvement Allowance for purposes of paying the costs of Tenant’s Improvements and Other Tenant Work, and for the other purposes specified herein. Tenant may use the Improvement Allowance to pay any cost or expense related in any way to Tenant’s design, construction, use or occupancy of the Premises (and/or the other areas of the Property that Tenant has the right to use pursuant to the Lease), including, without limitation, costs and expenses of the design and construction of Tenant’s Improvements and/or Other Tenant Work, the purchase, moving and installation of any fixtures, furniture, furniture systems or equipment of Tenant, any Change Orders, moving expenses, and/or amounts to be paid to any architect, engineer, project coordinator, construction consultant, or similar consultant. Tenant shall be entitled to a Rent reduction for any part of the Improvement Allowance not used by Tenant which shall be applied as a credit against the Rent first becoming due (in order of payment) after Tenant’s completion (as determined by Tenant) of all Tenant’s Improvements. In the alternative, at Landlord’s sole discretion, Landlord will pay all or any part of the unused Improvement Allowance directly to Tenant, in lieu of the aforesaid Rent credit. Anything in this Lease to the contrary notwithstanding, Tenant will be required to expend not less than $40.00 per rentable square foot of the Premises on the construction of Tenant’s Improvements.

Section 17.4.2 Total Costs. “Total Costs” means all costs reasonably incurred by Tenant in connection with (a) the construction and installation of Tenant’s Improvements, and (b) any other measures taken by Tenant which may be reasonably required to accomplish the construction of Tenant’s Improvements, including, without limitation, Tenant’s procurement of bonds, insurance and governmental permits. In addition, Tenant will reimburse Landlord for any reasonable costs incurred by Landlord in connection with its review of the proposed Construction Drawings and Specifications, and any other plans, drawings or the like related to Tenant’s Improvements.

Section 17.4.3 Cost Quotation. Promptly after Landlord’s approval of the Construction Drawings and Specifications, Tenant will provide to Landlord a computation, along with reasonable supporting documentation, setting forth Tenant’s estimate of the Total Costs relating to Tenant’s Improvements (“Cost Quotation”) based upon the approved Construction Drawings and Specifications. If the Cost Quotation exceeds the Improvement Allowance, Tenant will be responsible for paying the cost by which the Cost Quotation exceeds the Improvement Allowance (“Excess Costs”) (or Tenant shall revise the Construction Drawings and Specifications subject to Landlord’s approval as set forth above), so that the Cost Quotation is either (i) no more than the Improvement Allowance, or (ii) in excess of the Improvement Allowance by an amount of Excess Costs that Tenant agrees in writing to pay. The failure of Tenant so to respond within the five-Business Day period will be deemed to be Tenant’s agreement to pay all of the Excess Costs. In the event that the Excess Costs are greater than $250,000, Landlord shall have the right to require, as a condition precedent to Tenant’s proceeding with the construction of Tenant’s Improvements, either (at Tenant’s election): (i) reasonable financial information to establish that Tenant has a reasonably sufficient net worth and credit to pay for the completion of Tenant’s Improvements, or (ii) payment and performance bonds in an amount not less than the full amount of the Excess Costs.

Section 17.4.4 Payment of Improvement Allowance. The Improvement Allowance shall be paid by Landlord to Tenant, or if requested by Tenant, to Tenant’s contractors, Tenant’s Architect and/or any other vendors of Tenant identified by Tenant, in each case, on a progress payment basis in accordance with Tenant’s written instructions, no later than the end of the calendar month next following the calendar month within which written requisitions therefor (together with all other accompanying documentation required below in this Section 17.4.4) are delivered to Landlord by Tenant (each written requisition, together with all other accompanying documentation required below in this Section 17.4.4, being herein referred to as a “Tenant Requisition”), which Tenant Requisitions shall be submitted by Tenant to Landlord from time to time, but no more frequently than monthly. Each Tenant Requisition shall: (i) state the amount of such Tenant Requisition, (ii) state the amount payable to each of Tenant’s contractors, Tenant’s Architect and Tenant’s other vendors (and, if such amounts are to be paid directly to any Tenant’s contractors, Tenant’s Architect or other vendor of Tenant, the mailing address thereof), and (iii) list the invoices to be paid or reimbursed (it being understood that if the total amount of such invoices shall exceed the amount of such Tenant Requisition then Tenant shall be responsible for the payment of the balance thereof). Each Tenant Requisition shall be accompanied by (1) the invoices so listed, (2) with respect to invoices from Tenant’s contractors, a certificate signed by Tenant’s Architect certifying that the work represented by
such invoices has been performed substantially in accordance with the plans therefor, and (3) sworn statements from such Tenant’s contractors and other payees having any lien rights (and, if reasonable and customary, from Tenant), lien waivers (covering the calendar month or other 30-day period for which payment or reimbursement is sought pursuant to the applicable Tenant Requisition) from Tenant’s General Contractor and 30-day trailing lien waivers (covering the calendar month or other 30-day period immediately preceding the month or period for which payment or reimbursement is sought pursuant to the applicable Tenant Requisition) from all other Tenant’s contractors and other payees having any lien rights, all in customary form; provided, however, that as a condition precedent to the payment of the last $666,090.00 of the Tenant Requisition (or any portion of such last $666,090.00), will also deliver to Landlord, in form and substance reasonably satisfactory to Landlord: (a) a Certificate of Substantial Completion duly executed by Tenant’s Architect certifying as to the completion and installation of all of Tenant’s Improvements; (b) a final Certificate of Occupancy for the Premises, provided, however, that if such Certificate of Occupancy is not available at the time of the final Tenant Requisition, then Tenant may deliver the same as soon as practicable after the substantial completion of Tenant’s Improvements; (c) duly executed final and unconditional lien waivers and such other affidavits, certificates, information, and data as may be requested by Landlord from all general contractors, subcontractors and materialmen performing the work for any of Tenant’s Improvements; (d) such documentation as Landlord deems reasonably necessary to obtain an endorsement to the policy of title insurance insuring Landlord and Landlord’s lender, if any; (e) as applicable, copies of all warranties and guaranties relating to Tenant’s Improvements together with duly executed assignments thereof to Landlord, provided, however, that if any of such copies are not available at the time of the final Tenant Requisition, then Tenant may deliver the same as soon as practicable, but in no event more than 30 days, after the substantial completion of Tenant’s Improvements; (f) a CADD file (or, at Tenant’s election, a file in another format reasonably acceptable to Landlord) containing the final as-built plans and specifications for Tenant’s Improvements, provided, however, that if any of such as-built plans and specifications are not available at the time of the final Tenant Requisition, then Tenant may deliver the same as soon as practicable, but in no event more than 30 days, after the substantial completion of Tenant’s Improvements; and (g) such other information and documentation as Landlord may reasonably request to evidence the proper, lien-free completion of Tenant’s Improvements. For clarity, the parties agree that the terms of the preceding sentence shall not apply to any portion of the Tenant Allowance which Tenant elects to apply as a credit against Rent (as provided in Section 17.4.1). If Tenant has fulfilled all of its obligations hereunder (i.e., if Tenant has fulfilled all of its obligations hereunder with respect to the payment thereof), or any portion thereof, within 10 Business Days after the date the same is due, and so long as there is no Event of Default hereunder, then Tenant shall have the right to give Landlord a second written notice (“Offset Exercise Notice”) requesting payment of such amounts. In the event that Landlord fails to fully pay such amounts within five Business Days after such Offset Exercise Notice is provided to Landlord, any such unpaid amounts, together with interest thereon at the Maximum Rate from the date such payment was initially due, may be offset by Tenant against the next installment of Rent then due Landlord hereunder (in order of payment) until all such unpaid amounts and interest thereon have been either fully offset or paid by Landlord in full. The foregoing rights of offset are in addition to all of Tenant’s rights and remedies under this Lease, at law or in equity. The terms of this Section 17.4.5 shall be binding upon any purchaser or transferee of Landlord’s interest in this Lease, regardless of whether the same relate to matters occurring prior to such purchase or transfer, and upon any holder of a Mortgage, regardless of whether the same relate to matters occurring prior to the date of the Mortgage (as applicable) thereof, or prior to the date of the exercise or enforcement of any rights or remedies thereunder or in any way relating thereto (including any foreclosure or deed in lieu of foreclosure).

Section 17.5  Construction of Tenant’s Improvements and Tenant Work.

Section 17.5.1  Construction of Tenant’s Improvements. Tenant will hire a general contractor with demonstrated expertise and experience in the construction of tenant improvement projects similar to Tenant’s Improvements and otherwise reasonably acceptable to Landlord in all respects ("Tenant’s General Allowance.

Section 17.4.5  Failure to Pay Improvement Allowance. If Landlord fails, for any reason, to pay the Improvement Allowance due to Tenant hereunder (i.e., if Tenant has fulfilled all of its obligations hereunder with respect to the payment thereof), or any portion thereof, within 10 Business Days after the date the same is due, and so long as there is no Event of Default hereunder, then Tenant shall have the right to give Landlord a second written notice (“Offset Exercise Notice”) requesting payment of such amounts. In the event that Landlord fails to fully pay such amounts within five Business Days after such Offset Exercise Notice is provided to Landlord, any such unpaid amounts, together with interest thereon at the Maximum Rate from the date such payment was initially due, may be offset by Tenant against the next installment of Basic Rent then due Landlord hereunder (in order of payment) until all such unpaid amounts and interest thereon have been either fully offset or paid by Landlord in full. The foregoing rights of offset are in addition to all of Tenant’s rights and remedies under this Lease, at law or in equity. The terms of this Section 17.4.5 shall be binding upon any purchaser or transferee of Landlord’s interest in this Lease, regardless of whether the same relate to matters occurring prior to such purchase or transfer, and upon any holder of a Mortgage, regardless of whether the same relate to matters occurring prior to the date of the Mortgage (as applicable) thereof, or prior to the date of the exercise or enforcement of any rights or remedies thereunder or in any way relating thereto (including any foreclosure or deed in lieu of foreclosure).
Section 17.5.2 Construction of Tenant's Improvements. If Landlord so requests in writing, Tenant will deliver to Landlord copies of any construction contracts, contractor safety programs, necessary permits and licenses and such other information relating to the construction as Landlord reasonably requests, and which are in Tenant’s possession or control. Tenant will also deliver to Landlord (a) reasonable evidence that Tenant or Tenant’s General Contractor has in force builder's “all risk” insurance for Tenant’s Improvements for the insurable value thereof, and naming Landlord as a loss payee as its interest may appear; and (b) reasonable evidence that Tenant and each of Tenant's contractors have in force liability insurance insuring against construction related risks in at least the form, amounts and coverages required of Tenant under Article 10 and naming Landlord and Property Manager as additional insureds (specifically including coverage for completed operations). Tenant will not commence construction before delivering the evidence of insurance set forth in the preceding sentence. Tenant will cause Tenant’s Improvements and any Tenant Work to be constructed and performed (i) during times and in a manner reasonably determined by Landlord to minimize interference with any other tenants’ use and enjoyment of the Property, and (ii) in compliance with Landlord’s reasonable rules and regulations applicable to third-party contractors, subcontractors and suppliers performing work at the Property.

Section 17.5.3 Liens and Claims. The terms of Section 8.4 of this Lease shall apply to the performance of the Tenant’s Improvements.

Section 17.5.4 Other Tenant Work. “Other Tenant Work” means all finish work and decoration and other work desired by Tenant and not included within Tenant’s Improvements as set forth in the approved Construction Drawings and Specifications, which may include the installation of computer systems, telephone systems, telecommunications systems, fixtures, furnishings and equipment. All Other Tenant Work will be designed, furnished and installed by Tenant at Tenant’s sole cost and expense; provided, however, that Tenant may use the Improvement Allowance to defray any cost or expense related to the Other Tenant Work. If applicable, the Other Tenant Work will be subject to Article 8 with respect to Alterations.

Section 17.5.5 Conformance with Laws. All Tenant’s Improvements and Other Tenant Work must be done in conformance with all applicable Laws. Any necessary permits and other authorizations from appropriate governmental agencies (when required) for Tenant’s Improvements and Other Tenant Work must be obtained by Tenant at Tenant’s sole cost and expense (but any such costs may be paid from the Improvement Allowance as provided above). Any Tenant’s Improvements or Other Tenant Work not in conformance with Laws must be promptly corrected, replaced, or brought into compliance with such applicable codes, ordinances and other Laws at Tenant’s sole cost and expense. No failure by Landlord to object to any such non-conforming Tenant’s Improvements or Other Tenant Work relieves Tenant from its obligations or imposes any responsibility or liability therefor upon Landlord. Notwithstanding anything to the contrary contained in this Section 17.5.5 (or elsewhere in this Lease), in no event shall Tenant be responsible for obtaining any authorizations, permits or approvals necessary for the use or occupancy of the Property for general and administrative office, training and storage uses, generally (as opposed to any permits or approvals required for Tenant’s specific construction activities at the Property, which shall be the responsibility of Tenant, as provided in this Section 17.5.5).

Section 17.5.6 Landlord’s Inspections. Landlord will have the right, upon reasonable advance notice to Tenant, which shall be at least 24 hours in advance (except in the case of an emergency or hazardous condition, in which case only such notice as is reasonable under the circumstances shall be required), and at Landlord’s sole cost and expense, to inspect and observe the performance of Tenant’s Improvements during construction, but in no event shall Landlord materially interfere with, delay or impede such performance. Any such
notice from Landlord need not comply with the formal notice requirements of this Lease, but may instead (without limitation) be made by telephone to Tenant, or by e-mail to Tenant’s Representative or Tenant’s Representative’s designee. Notwithstanding such rights, Landlord is under no obligation to inspect or supervise construction of any of Tenant’s Improvements or Other Tenant Work, and no inspection by Landlord will be construed as a representation that Tenant’s Improvements or Other Tenant Work (a) are in compliance with the Construction Drawings and Specifications; (b) are or will be free from faulty or defective materials or workmanship; or (c) are in conformance with any Requirements.

Section 17.5.7 Responsibility for Function and Operation. Tenant will be responsible for the function and operation of all Tenant’s Improvements, regardless of whether approved by Landlord or installed by Landlord at Tenant’s request, but Landlord shall be responsible for insuring all Tenant’s Improvements after completion thereof, as provided in Section 10.2.1. Landlord’s preparation, review or approval of any design or construction documents will not constitute any representation or warranty as to the adequacy, efficiency, performance or desirability of Tenant’s Improvements in the Premises.

Section 17.5.8 Construction Warranty; Deliveries Upon Completion.Tenant will cause Tenant’s General Contractor to warrant Tenant’s Improvements against defects to both Tenant and Landlord for a period of not less than one year after substantial completion. Such warranty may be given in Tenant’s General Contractor’s then standard form of warranty.

Section 17.5.10 Fees. If, in connection with any Tenant’s Improvements or Other Tenant Work proposed by Tenant that would affect the Building systems and/or structure of the Building, Landlord requires (in its reasonable discretion) that plans and specifications for such Tenant’s Improvements or Other Tenant Work be reviewed by any third party technical consultants (it being agreed that any such third party consultant selected by Landlord shall be reasonably acceptable to Tenant), then Tenant will pay Landlord’s Actual Cost of retaining such third party consultants, but in no event shall Tenant be required to pay any other fee, cost or expense for any review, inspection and engineering time incurred by or at the request of Landlord in connection with Tenant’s Improvements or Other Tenant Work.

Section 17.6 Construction Representatives.

Section 17.6.1 Tenant’s Representative. Tenant has designated Lori Foster as the representative of Tenant having authority to give and receive all notices, consents, approvals and directions regarding Tenant’s Improvements ("Tenant’s Representative"). Tenant may change its representative under this Article 17 at any time by providing five days’ prior written notice to Landlord. All inquiries, requests, instructions, authorizations and other communications with respect to matters covered by this Article 17 from Landlord shall be made via telephone (if under Section 17.5.6) or e-mail by Landlord to Tenant’s Representative, with copies (which may be given by e-mail) to Tenant’s Executive Vice President—Supply Chain and to Randy Bartosh of Development Resources, Inc. (Tenant’s consultant), so long as in all cases, e-mail addresses have been provided to Landlord.

Section 17.6.2 Landlord’s Representative. Landlord has designated Jerry Ebert as its representative with respect to the matters set forth in this Article 17 at any time by providing five days’ prior written notice to Landlord. All inquiries, requests, instructions, authorizations and other communications with respect to the matters covered by this Article 17 from Tenant may be made to Landlord’s representative.

Section 17.7 Miscellaneous.

Section 17.7.1 Applicability. The terms of this Article 17 shall govern the construction and installation of Tenant’s Improvements and Other Tenant Work, and shall govern over any conflicting or inconsistent terms or provisions of Article 8 of this Lease with respect to such work. This Article 17 will not be deemed applicable to (a) any additional space added to the original Premises at any time, whether by the exercise of any options under this Lease or otherwise, or (b) any portion of the original Premises or any additions thereto in the event of a renewal or extension of the initial Term of the Lease, whether by the exercise of any options under this
Lease or any amendment or supplement thereto. The construction of any additions or improvements to the Premises not contemplated by this Article 17 shall be performed pursuant to the provisions of Article 8 of this Lease governing Alterations, and this Article 17 shall not be applicable thereto.

Section 17.7.2  Risk of Loss. All materials, work, installations and decorations of any nature brought upon or installed in the Premises prior to completion of Tenant’s Improvements will be at the risk of the party who brought such materials or items onto the Premises. Neither Landlord nor any party acting on Landlord’s behalf will be responsible for any damage or loss or destruction of such items brought to or installed in the Premises by Tenant prior to such date, except if caused solely by Landlord’s gross negligence or willful misconduct.

Section 17.7.3  Space Plan Allowance. In addition to the Improvement Allowance, Landlord shall pay to Tenant an allowance in the amount of $22,647.06 (“Space Plan Allowance”) for any costs incurred by Tenant for preparing the Space Plan and up to two revisions thereto. The Space Plan Allowance shall be paid by Landlord to Tenant within 30 days after Tenant provides Landlord with invoices describing the costs incurred by Tenant in connection with the Space Plan. In the event that Landlord fails to pay the Space Plan Allowance as and when due, Tenant shall have the same rights and remedies as with regard to Landlord’s failure to timely pay the Improvement Allowance, as provided herein. Tenant hereby acknowledges that, as of the Effective Date, Landlord has already paid to (or on behalf of Tenant) $12,625.00 of the Space Plan Allowance.

Section 17.7.4  Ownership. All Tenant’s Improvements that Tenant makes or installs (but, for clarity, excluding telephone, computer and other wiring and cabling and Tenant’s trade fixtures, personal property, furniture and equipment) become the property of Landlord and a part of the Building immediately upon completion; provided, however, that upon the expiration of the Term or sooner termination of this Lease, Tenant shall have the right, in its sole discretion (but subject to its obligations under Article 16), to either remove from the Premises, or leave in place at the Premises and surrender to Landlord, any Tenant’s Improvements made by Tenant, except to the extent that such Tenant’s Improvements: (i) constitute Non-Standard Alterations, and (ii) Landlord notified Tenant, concurrently with its approval of such Non-Standard Alterations, that Landlord would either require Tenant to remove or leave in place at the Premises such Non-Standard Alterations (in which event Tenant shall comply with the terms of such notice from Landlord at the end of the Term).

ARTICLE 18
MISCELLANEous PROVISIONS

Section 18.1  Notices. All Notices must be in writing and must be sent by personal delivery, United States registered or certified mail (postage prepaid) or by an independent overnight courier service, addressed to the addresses specified in the Basic Terms or at such other place as either party may designate to the other party by written notice given in accordance with this Section 18.1. All Notices shall be deemed to have been given upon receipt (or refusal of receipt) thereof.

Section 18.2  Transfers of Landlord’s Interest. If Landlord transfers or conveys fee title in and to the Property for any reason other than collateral security purposes (which collateral security purposes shall be deemed to include, for purposes hereof, any sale-leaseback or ground lease transaction or arrangement or similar transaction or arrangement), the transferor is automatically relieved of all obligations on the part of Landlord accruing under this Lease from and after the date of the transfer or conveyance, provided that the transferee assumes all of Landlord’s obligations accruing subsequent to the transfer or conveyance and further provided that the transferor delivers to the transferee any funds the transferor holds in which Tenant has an interest (such as a security deposit). Landlord’s covenants and obligations in this Lease bind each successive Landlord only during and with respect to its respective period of ownership. However, notwithstanding any such sale, conveyance or other transfer, each transferor and its respective “Landlord Parties” remain entitled to the benefits of Tenant’s releases and indemnity and insurance obligations (and similar obligations) under this Lease with respect to matters arising or accruing during such transferor’s period of ownership.

Section 18.3  Successors. The covenants and agreements contained in this Lease bind and inure to the benefit of Landlord, and its successors and assigns, bind Tenant, and its successors and assigns, and inure to the benefit of Tenant and its permitted successors and assigns.
Section 18.4 Captions and Interpretations. The captions of the articles and sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular includes the plural and the plural includes the singular.

Section 18.5 Relationship of Parties. This Lease does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between Landlord and Tenant other than that of landlord and tenant.

Section 18.6 Entire Agreement; Amendment. The Basic Terms and all exhibits, addenda and schedules attached to this Lease are incorporated into this Lease as though fully set forth in this Lease and together with this Lease contain the entire agreement between the parties with respect to the improvement and leasing of the Premises. All prior and contemporaneous negotiations, including, without limitation, any letters of intent or other proposals and any drafts and related correspondence, are merged into and superseded by this Lease. No subsequent alteration, amendment, change or addition to this Lease (other than to the Building Rules) is binding on Landlord or Tenant unless it is in writing and signed by the party to be charged with performance.

Section 18.7 Severability. If any covenant, condition, provision, term or agreement of this Lease is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms and agreements of this Lease, will not be affected by such holding, and will remain valid and in force to the fullest extent permitted by law.

Section 18.8 Landlord’s Limited Liability; Mutual Waiver of Consequential Damages. Tenant will look solely to Landlord’s interest in the Property and the rents, issues, profits and proceeds thereof (excluding those rents, issues, profits and proceeds which have been distributed in good faith by Landlord prior to the date of the Claim), for recovering any judgment or collecting any obligation from Landlord or any other Landlord Party. Tenant agrees that neither Landlord nor any other Landlord Party will be personally liable for any judgment or deficiency decree. Notwithstanding anything to the contrary contained in this Lease, neither party hereto shall be liable for, and each party, on behalf of itself and (in the case of Tenant) the Tenant Parties, and (in the case of Landlord) the Landlord Parties, and their respective successors and assigns, hereby waives any claim against the other (and the other’s Affiliates) for, any consequential or punitive damages (including loss of profits or business opportunity) arising under or in connection with this Lease; provided, however, that the foregoing consequential damages waiver shall not apply to Claims arising out of Tenant’s holding over in the Premises without Landlord’s consent for in excess of 60 days following the expiration of this Lease or sooner termination of the Term. The parties acknowledge, for clarity, that the foregoing waiver of consequential and punitive damages shall not apply to Third Party Indemnified Damages. For purposes hereof, “Third Party Indemnified Damages” shall mean consequential and punitive damages that are sustained by a third party (i.e., a person or entity which is not Landlord, Tenant, Property Manager or an Affiliate of any of them) from a party to this Lease (or another person or entity which is entitled to indemnification under this Lease) if such damages are the subject of an indemnity obligation of the other party to this Lease as set forth herein.

Section 18.9 Survival. All of the parties obligations under this Lease (together with interest on payment obligations at the Maximum Rate) accruing prior to expiration or other termination of this Lease survive the expiration or other termination of this Lease, subject to any maximum survival periods as may be set forth herein (including Section 3.5.1). Further, all of the parties’ respective release, indemnification, defense and hold harmless obligations under this Lease survive the expiration or other termination of this Lease, without limitation.

Section 18.10 Attorneys’ Fees. If either Landlord or Tenant commences any litigation or judicial action to determine or enforce any of the provisions of this Lease, the substantially prevailing party in any such litigation or judicial action (as determined by the arbiter of such litigation or action) is entitled to recover all of its costs and expenses (including, without limitation, reasonable attorneys’ fees, costs and expenditures) from the non-prevailing party.

Section 18.11 Brokers. Landlord and Tenant each represents and warrants to the other that it has not had any dealings with any realtors, brokers, finders or agents in connection with this Lease (except as may be specifically set forth in the Basic Terms) and releases and will indemnify, defend (with counsel reasonably
acceptable to the other), protect and hold harmless the other from and against any Claim based on the failure or alleged failure to pay any realtors, brokers, finders or agents (other than any brokers specified in the Basic Terms) and from any cost, expense or liability for any compensation, commission or charges claimed by any realtors, brokers, finders or agents (other than any brokers specified in the Basic Terms) claiming by, through or on behalf of it with respect to this Lease or the negotiation of this Lease. Landlord will pay any brokers named in the Basic Terms in accordance with the applicable listing agreement for the Property.

Section 18.12 Governing Law. This Lease is governed by, and must be interpreted under, the internal laws of the State. Any suit arising from or relating to this Lease must be brought in the County or, if the suit is brought in federal court, in any federal court appropriate for suits arising in the County; Landlord and Tenant waive the right to bring suit elsewhere.

Section 18.13 Time is of the Essence. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

Section 18.14 Joint and Several Liability. All parties signing this Lease as Tenant are jointly and severally liable for performing all of Tenant’s obligations under this Lease.

Section 18.15 Intentionally Omitted.

Section 18.16 Authority. Each party represents and warrants to the other that the person signing this Lease on behalf of such party is duly authorized to sign on behalf of and to bind such party hereto.

Section 18.17 Force Majeure. If either party is delayed in or prevented from performing any obligation under this Lease (excluding, however, the payment of money) by reason of Force Majeure, such party’s performance of such obligation will be excused for a period equal to the period of delay actually caused by the Force Majeure event. In no event will the occurrence of any event of Force Majeure excuse or suspend any of Tenant’s obligations to pay Rent under this Lease after the Commencement Date has occurred.

Section 18.18 Management. Property Manager is authorized to manage the Property. Landlord appointed Property Manager to act as Landlord’s agent for leasing, managing and operating the Property. The Property Manager then serving is authorized to accept service of process and to receive and give notices and demands on Landlord’s behalf.

Section 18.19 Financial Statements; Confidentiality.

Section 18.19.1 Financial Statements. Tenant will, within 10 Business Days after Landlord’s written request, at any time after the Effective Date until the termination of the Term (but not more than once per calendar year unless in connection with a bona fide sale or financing of the Building), make available to Landlord (in such format and manner as Tenant shall reasonably determine) Tenant’s most recent, audited annual financial statements (i.e., income statement and balance sheet) as Tenant may maintain in the ordinary course of Tenant’s business (“Financial Statements”). Landlord shall maintain the confidentiality of any and all financial information disclosed by Tenant (“Confidential Information”) in accordance with the terms of Section 18.19.2. Landlord acknowledges that if Tenant does not maintain annual audited financial statements separately from its consolidated Affiliates, then Tenant shall be permitted to satisfy its obligations under this Section 18.19.1 by providing Financial Statements for the consolidated group of companies that includes Tenant and its consolidated Affiliates, together with reasonable evidence as to the financial condition of the Tenant entity itself within such consolidated group (which evidence will consist of a statement or certificate from an officer of Tenant or a representative of Tenant’s accounting firm). If and so long as Tenant or any of Tenant’s consolidated Affiliates is/are a reporting company under the Securities and Exchange Act of 1934, as amended, or if Tenant or any of Tenant’s consolidated Affiliates otherwise file(s) reports with the Securities and Exchange Commission in compliance with the Securities and Exchange Act of 1934, as amended, then the foregoing requirements of this Section will be deemed to have been entirely satisfied by the filing by Tenant’s or Tenant’s consolidated Affiliate’s (as applicable) of Forms 10-K, 10-Q and annual reports with the SEC, and Tenant shall have no further obligation to make any financial disclosures to Landlord pursuant to this Lease; provided, however, that if Tenant’s Financial Statements are not separately included as part of any such filing, then Tenant will still be obligated to provide Landlord with reasonable evidence

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as to the financial condition of the Tenant entity itself within such consolidated group (which evidence will consist of a statement or certificate from an officer of Tenant or a representative of Tenant’s accounting firm).

Section 18.19.2 Confidentiality. Landlord agrees to maintain the Confidential Information in strict confidence and not to use the Confidential Information for its own benefit, or except as expressly provided herein, disclose the Confidential Information to third parties without the prior written consent of Tenant. Landlord understands, and will take reasonable measures to ensure that its directors, officers, employees and agents are aware, that such Confidential Information may constitute material non-public information under U.S. securities laws and regulations and will not transact in securities of Tenant based on the Confidential Information. Landlord will disclose the Confidential Information only to its directors, officers, employees, agents, prospective purchasers and lenders who have a need to know the Confidential Information to evaluate the creditworthiness of Tenant as a tenant in the Premises, and with respect to agents, prospective purchasers and lenders, only those who have agreed to substantially similar non-disclosure obligations as those contained herein. Landlord acknowledges that unauthorized disclosure or use of the Confidential Information by Landlord may cause irreparable harm and damage to the business of Tenant which may be difficult to ascertain and which may not be adequately compensated by damages at law. Therefore, Landlord agrees that, in the event of a breach or threatened breach of the terms of this Section 18.19.2, Tenant shall be entitled to an injunction prohibiting any unauthorized disclosure or use of the Confidential Information. Any such injunctive relief shall be in addition to, and not in lieu of, any other remedies available to Tenant at law or in equity.

Section 18.20 Quiet Enjoyment. Landlord covenants that Tenant will quietly hold, occupy and enjoy the Premises during the Term, subject to the terms and conditions of this Lease, free from molestation or hindrance by Landlord or any person claiming by, through or under Landlord, so long as no Event of Default on the part of Tenant shall be continuing under this Lease.

Section 18.21 Recording. Concurrently with the execution and delivery of this Lease, Landlord and Tenant shall execute and deliver a recordable memorandum or short form of this Lease, in form and substance reasonably acceptable to Landlord and Tenant. Tenant shall have the right to record any such memorandum or short form of this Lease against the Property at its sole cost and expense. In the event that any such memorandum or short form of this Lease is so recorded, then, within 10 days following the expiration of this Lease or sooner termination of the Term, Landlord and Tenant shall enter into such documentation as may be reasonably required to remove the same of record.

Section 18.22 Press Release. Landlord shall not issue or release any public notice, statement and/or press release or make any public comment concerning this Lease (including Landlord’s and Tenant’s negotiation and execution of this Lease or the individuals involved in the negotiation and execution of this Lease) until after Tenant has made a formal press release that Tenant has executed the Lease and without the prior written approval of Tenant (but nothing contained in the foregoing shall be construed to prohibit Landlord from making or issuing public statements merely to the effect that Tenant is the tenant of the Premises without providing further detail at any time after Tenant makes any such press release). Nothing contained in this Section 18.22 shall be deemed to (i) prohibit Landlord from disclosing that Tenant is the Tenant under this Lease to appropriate governmental officials as is reasonably required to obtain permits for Landlord’s Improvements prior to Tenant making any such press release, (ii) prohibit the disclosure of the terms of this Lease to a prospective purchaser or lender in connection with any sale or financing of the Property or any portion thereof (so long as the parties to whom the same are disclosed agree not to disclose the terms of the Lease), or (iii) prohibit or limit Landlord from making any disclosures that are required under Laws.

Section 18.23 Construction of Lease and Terms. The terms and provisions of this Lease represent the results of negotiations between Landlord and Tenant, each of which are sophisticated parties and each of which has been represented or been given the opportunity to be represented by counsel of its own choosing, and neither of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Lease must be interpreted and construed in accordance with their usual and customary meanings, and Landlord and Tenant each waive the application of any rule of law that ambiguous or conflicting terms or provisions contained in this Lease are to be interpreted or construed against the party who prepared the executed Lease or any earlier draft of the same. Landlord’s submission of this instrument to Tenant for examination or signature by Tenant does not constitute a reservation of or an option to lease and is not effective as a lease or
otherwise until Landlord and Tenant both execute and deliver this Lease. The parties agree that, regardless of which party provided the initial form of this Lease, drafted or modified one or more provisions of this Lease, or compiled, printed or copied this Lease, this Lease is to be construed solely as an offer from Tenant to lease the Premises, executed by Tenant and provided to Landlord for acceptance on the terms set forth in this Lease, which acceptance and the existence of a binding agreement between Tenant and Landlord may then be evidenced only by Landlord’s execution of this Lease.

Section 18.24 Certain Interpretational Rules. When this Lease provides that a party’s consent or approval shall not be “unreasonably withheld,” the phrase shall be deemed to include “conditioned or delayed” (in cases in which such words do not appear). Wherever in this Lease either Landlord’s or Tenant’s consent or approval is required, Landlord and Tenant each hereby acknowledges its duty to act in each such case reasonably, except where such party is expressly granted the right hereunder to act in its sole discretion. For purposes of this Lease, whenever the words “include,” “includes,” “including,” “e.g.,” or “for example” are used, they shall be deemed to be followed by the words “without limitation” (to the extent that such words do not, in fact, so follow).

Section 18.25 Waiver of Trial by Jury. LANDLORD AND TENANT EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS LEASE OR THE RELATIONSHIP BETWEEN THE PARTIES AS LANDLORD AND TENANT THAT IS TRIABLE OF RIGHT BY A JURY, AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

Section 18.26 Landlord Representations and Warranties. Landlord hereby represents and warrants to Tenant that, to Landlord’s knowledge (which for purposes of this Lease will mean the actual knowledge of Grady E. Hamilton or John Carlson, without independent inquiry or investigation): (a) Landlord has received no written notice of any breach, violation or default by Landlord or any other party under any Permitted Encumbrance existing on the Effective Date, which breach, violation or default remains uncured as of the Effective Date, and (b) all payments due from Landlord on or prior to the Effective Date under such Permitted Encumbrances have been paid by Landlord, and no such payments are currently delinquent or past due.

Section 18.27 Incentives. Landlord and Tenant agree that in the event that any incentives, rebates or other financial benefits or concessions are provided or made available to Landlord and/or for the benefit of the Property expressly and specifically by reason of Tenant’s lease, use or occupancy of the Property by any governmental authority having jurisdiction thereover (collectively, “Tenant-Specific Incentives”), then that portion of the Tenant-Specific Incentives which is allocable to Tenant (less any Landlord’s Actual Costs that Landlord shall have actually paid in connection with obtaining the Tenant-Specific Incentives, but in no event to exceed the amount of the Tenant-Specific Incentives, and less any amounts necessary to offset any uncured monetary Events of Default by Tenant) shall accrue solely to Tenant, and shall be for the sole and exclusive benefit of Tenant (including any Tenant-Specific Incentives which take the form of an abatement or reduction of any Property Taxes). However, anything in this Lease to the contrary notwithstanding, (a) Landlord and Tenant acknowledge and agree that there are no Tenant-Specific Incentives which are in existence as of the Effective Date, and (b) no Tenant-Specific Incentives will be permitted if the same will obligate or bind Landlord or the Property (or any portion thereof), without the prior written consent of Landlord, which consent will not be unreasonably withheld, conditioned or delayed.

Section 18.28 Recycling. Landlord shall reasonably cooperate with Tenant in any corporate recycling programs in which Tenant may from time to time participate, which shall include, without limitation, providing receptacles and pick-up service for any recyclable materials; provided, however, that if such cooperation or recycling program requires services from Landlord which are materially beyond the level normally provided to other tenants in the Building, then Tenant will pay the cost of such services directly to Landlord.

[Signatures on following page]
Landlord and Tenant each caused this Lease to be executed and delivered by its duly authorized representative to be effective as of the Effective Date.

**LANDLORD:**

Opus North Corporation, an Illinois corporation

By: /s/ Daniel G. Queenan

Name: Daniel G. Queenan

Title: Executive Vice President

Date of Execution by Landlord:

8/26/08

**TENANT:**

Solo Cup Operating Corporation, a Delaware Corporation

By: /s/ Robert Korzenski

Name: Robert Korzenski

Title: President & CEO
EXHIBIT “A”
DEFINITIONS

“ADA” means the accessibility requirements of Title III of the applicable provisions of the Americans with Disabilities Act of 1990, as amended from time to time.

“Additional Rent” means any charge, fee or expense (other than Basic Rent) payable by Tenant to Landlord under this Lease, however denoted.

“Affiliate” means, with respect to any person or entity, any other person or entity that, directly or indirectly, controls, is controlled by or is under common control such person or entity. For purposes of this definition, “control” means possessing the power to direct or cause the direction of the management and policies of the entity by the ownership of a majority of the voting interests of the entity.

“Alteration” means any change, alteration, addition or improvement to the Premises or Property. Alterations shall not, however, include the installation of personal property, furniture, fixtures or equipment at the Premises or Property.

“Bankruptcy Code” means the United States Bankruptcy Code as the same now exists and as the same may be amended, including any and all rules and regulations issued pursuant to or in connection with the United States Bankruptcy Code now in force or in effect after the Effective Date.

“Basic Rent” means the basic rent amounts specified in the Basic Terms.

“Basic Terms” means the terms of this Lease identified as the “Basic Terms” before Article 1 of the Lease.


“Building” means that certain office building now existing on the Land, currently commonly known as Opus Landmark of Lake Forest II, 150 South Saunders Road, Lake Forest, Illinois 60045, consisting of approximately 160,085 rentable square feet.

“Building Monument Sign” will have the meaning set forth in Section 4.6.1.

“Building Rules” means those certain rules attached to this Lease as EXHIBIT “E,” as Landlord may amend the same from time to time in accordance with this Lease.

“Building Standard” means the level of character, quality, design and finish as is described in EXHIBIT “G” attached hereto.

“Build-Out Period” will have the meaning set forth in Section 11.3.

“Business Days” means any day other than Saturday, Sunday or a legal holiday in the State.

“Business Hours” means Monday through Friday from 8:00 a.m. to 6:00 p.m. and on Saturdays from 8:00 a.m. to 1:00 p.m., excluding legal holidays in the State.

“Change Orders” will have the meaning set forth in Section 17.3.3.

“City” means the City of Lake Forest, Illinois.
“Claims” means all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses or expenses, including, without limitation, reasonable attorneys’ fees and the costs and expenses of enforcing any obligations under this Lease.

“Commencement Date” has the meaning set forth in the Basic Terms.

“Commencement Date Memorandum” means the form of memorandum attached to the Lease as EXHIBIT “D.”

“Common Area” means the parking area, driveways, lobby areas, multi-tenant corridors, landscaped areas, patios/terraces, and other areas (outside the Premises) of the Property that Landlord may designate from time to time as common area available to all tenants.

“Condemning Authority” means any person or entity with a statutory or other power of eminent domain.

“Confidential Information” will have the meaning set forth in Section 18.19.1.

“Consent Alterations” will have the meaning set forth in Section 8.1.

“Construction Drawings and Specifications” will have the meaning set forth in Section 17.3.2.

“Cost Quotation” will have the meaning set forth in Section 17.4.3.

“County” means Lake County, Illinois.

“Deciding Appraiser” will have the meaning set forth in Section 1.2.5.2.

“Delivery Date” will have the meaning set forth in Section 1.2.2.1.

“Early Occupancy” will have the meaning set forth in Section 1.2.2.1.

“Effective Date” means the date that Landlord executes this Lease, as indicated on the signature page.

“Event of Default” means the occurrence of any of the events specified in Section 14.1 of this Lease.

“Excess Consideration” will have the meaning set forth in Section 13.4.

“Excess Costs” will have the meaning set forth in Section 17.4.3.

“Excluded Items” will have the meaning set forth in Section 10.3.1.

“Expenses” means the total amount of Property Taxes and Operating Expenses due and payable with respect to the Property during any calendar year of the Term.

“Exterior Tenant Signage” will have the meaning set forth in Section 4.6.1.

“Façade Signage” will have the meaning set forth in Section 4.6.1.

“Fair Market Basic Rent” will have the meaning set forth in Section 1.2.5.1.

“Financial Statements” will have the meaning set forth in Section 18.19.1.

“Floor Plan” means the floor plan attached to the Lease as EXHIBIT “C.”

“Force Majeure” means acts of God; strikes; lockouts; labor troubles; inability to procure materials; inclement weather; governmental laws or regulations; casualty; orders or directives of any legislative, administrative, or judicial body or any governmental department; inability to obtain any governmental licenses, permissions or
authorities (despite commercially reasonable pursuit of such licenses, permissions or authorities); shortages of fuel or building materials; and other similar or
dissimilar causes beyond a party’s reasonable control. It shall be a condition of a party’s right to claim delay by Force Majeure that that party seeking to be
excused from performing (“Excused Party”) notify the other party in writing thereof. If such notice of the Excused Party is given within five Business Days
after the Excused Party has actual knowledge of a delay by Force Majeure, then such delay shall relate back to the actual commencement of such delay.
However, if the Excused Party fails to notify the other party of any such delay within the foregoing five-Business Day period, then the delay shall be deemed
to commence upon the date five Business Days prior to any such notification. The Excused Party shall also provide written notice of the estimated length of
any applicable delay as promptly as is reasonably practicable after its determination of the estimated length of delay. In each and every case of delay, the
Excused Party shall take reasonable measures to mitigate, and shall use commercially reasonable efforts to cause its contractors (if applicable) to mitigate, the
extent of delay caused by any event of Force Majeure (which shall, if the other party so requests, include the use of overtime labor), except, however, that to
the extent that the Excused Party would be required to bear any additional costs (which may include the use of overtime labor, if necessary) in order to
mitigate such delay or costs, the Excused Party shall be obligated to take such measures only if the other party has agreed in advance, in a form reasonably
acceptable to the Excused Party, to pay such additional costs.

“Hazardous Materials” means any of the following, in any amount: (a) any petroleum or petroleum product, asbestos in any form, urea formaldehyde and
polychlorinated biphenyls; (b) any radioactive substance; (c) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical
compound; and (d) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of “hazardous substances,”
“hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “solid
waste,” or words of similar import in any federal, state or local statute, law, ordinance or regulation now existing or existing on or after the Effective Date as
the same may be interpreted by government offices and agencies.

“Hazardous Materials Laws” means any federal, state or local statutes, laws, ordinances or regulations now existing or existing after the Effective Date that
control, classify, regulate, list or define Hazardous Materials or require remediation of Hazardous Materials contamination.

“Improvement Allowance” has the meaning specified in the Basic Terms.

“Improvements” means, collectively, Landlord’s Improvements and Tenant’s Improvements.

“Interior Common Area Tenant Signage” will have the meaning set forth in Section 4.6.2.

“Land” means that certain real property located at 150 South Saunders Road, Lake Forest, Illinois, and legally described on the attached EXHIBIT “B.”

“Landlord” means Opus North Corporation, an Illinois corporation, and its successors and assigns pursuant to Section 18.2 of this Lease at the time in
question. In any provision relating to the conduct, acts or omissions of “Landlord”, the term “Landlord” includes the then current Landlord under this Lease
and such Landlord’s agents, employees and contractors.

“Landlord Parties” means Landlord and Property Manager, their Affiliates and their respective officers, directors, partners, shareholders, members, managers,
agents and employees.

“Landlord’s Actual Cost” shall mean the reasonable actual cost and expense incurred by Landlord in furnishing a particular service or item under this Lease,
without any unreasonable profit or mark-up to Landlord on account thereof, including the reasonable cost of providing supplies, materials, third-party
contractors and (to the extent not included in Operating Expenses) Building personnel in furnishing such service or item.

“Landlord’s Improvements” means, collectively, a all improvements, equipment, facilities, amenities and other items described on EXHIBIT “F” attached
hereeto. Landlord’s Improvements do not include any corridor-related improvements which are located in the Premises or on the Premises-side of a common
corridor, all such corridor-related improvements being part of Tenant’s Improvements hereunder.
“Landlord’s Statement” will have the meaning set forth in Section 3.5.1.

“Laws” means any law, regulation, rule, order, statute, building code or ordinance of any governmental entity in effect on or after the Effective Date and applicable to the Property or the use or occupancy of the Property, including, without limitation, Hazardous Materials Laws.

“Lease” means this Office Lease Agreement, as the same may be amended or modified after the Effective Date.

“Lease Recognition Agreement” will have the meaning set forth in Section 13.9.

“Maximum Rate” means interest at a per annum rate equal to three percentage points in excess of the “prime rate” of interest then charged by Bank of America, N.A., Chicago, Illinois (or, if it is not then in existence, its successor, or if neither is then in existence, another reasonably comparable bank selected by Landlord), from the date when the same is due until the same will be paid, but if such rate exceeds the maximum interest rate permitted by law, such rate will be reduced to the highest rate allowed by law under the circumstances.

“Mortgage” means any mortgage, deed of trust, ground lease, “synthetic” lease, security interest or other security document of like nature that at any time may encumber all or any part of the Property and any replacements, renewals, amendments, modifications, extensions or refinancings thereof, and each advance (including future advances) made under any such instrument.

“Net Rent” means all rental Landlord actually receives from any reletting of all or any part of the Premises, less any Re-entry Costs.

“Non-Standard Alterations” mean (a) any structural Alterations not typically undertaken in comparable office space in the northern Chicago suburban office market and requiring extraordinary demolition costs for the removal thereof, but specifically not including beam cuts, slab penetrations or floor openings which are (in each case) 144 square inches in size or less, (b) any generators, condensers or similar equipment, (c) any raised flooring, and (d) any cafeteria equipment.

“Notices” means all notices, demands or requests that may be or are required to be given, demanded or requested by either party to the other as provided in the Lease.

“Offset Exercise Notice” will have the meaning set forth in Section 17.4.5.

“Operating Expenses” means (subject to the exceptions set forth below) all actual expenses which Landlord incurs during the Term in connection with maintaining, repairing and operating the Property, as determined by Landlord’s accountant in accordance with generally accepted accounting principles consistently followed, including without limitation the following:

(a) insurance premiums and commercially reasonable deductible amounts under any insurance policy (based upon deductible amounts under any insurance policies held by landlords of first-class office buildings of similar age in the northern Chicago suburban office market);

(b) maintenance and repair costs of the Building and Common Areas;

(c) steam, electricity, water, sewer, gas and other utility charges for the Common Areas;

(d) fuel used in Building systems serving the Common Areas and all tenants generally;

(e) lighting;

(f) window washing;
(g) janitorial services;

(h) trash and rubbish removal;

(i) property association fees and dues and all payments under any Permitted Encumbrance (except Mortgages) affecting the Property;

(j) wages payable to persons at the level of property manager and below whose duties are connected with maintaining and operating the Property (but only for the portion of such persons’ time allocable to the Property), together with all payroll taxes, unemployment insurance, vacation allowances and disability, pension, profit sharing, hospitalization, retirement and other so-called “fringe benefits” paid in connection with such persons (allocated in a manner consistent with such persons’ wages);

(k) amounts paid to contractors or subcontractors for work or services performed in connection with maintaining and operating the Property;

(l) all costs of uniforms, supplies and materials used in connection with maintaining, repairing and operating the Property;

(m) all services, supplies, repairs or other similar expenses for maintaining and operating the Property;

(n) non-capital (subject to clause (q) below) replacements required for the normal maintenance, repair and operation of the Property;

(o) operating, maintaining and repairing security and access control equipment and services;

(p) reasonable management fees (it being acknowledged and agreed that, as of the Effective Date, the management fee is 3% of the gross annual revenues for the Property, which fee is subject to adjustment by Landlord during the Term to the extent such adjusted fee is substantially similar to management fees being charged by landlords of properties which are reasonably similar to the Property) and the costs (including rental) of maintaining a building or management office in the Building, not to exceed the rate of Basic Rent paid by Tenant with respect to the Premises;

(q) capital improvements installed by Landlord (i) to comply with changes in Laws or the interpretation or enforcement thereof first enacted after the Commencement Date, or (ii) which have a reasonable expectation of reducing energy costs or other Operating Expenses, but only to the extent of the reasonably estimated savings realized, provided, however, that in computing Operating Expenses, Landlord will amortize the cost of such capital improvements (including reasonable charges for interest on the unamortized amount) over their useful life (as reasonably determined by Landlord) on a straight-line basis; and

(r) expenses Landlord incurs in connection with the maintenance, repair and operation of public sidewalks adjacent to the Property, any pedestrian walkway system (either above or below ground) and any other public facility to which Landlord or the Property is from time to time subject in connection with operating the Property.

Notwithstanding anything to the contrary contained herein, Operating Expenses do not include the following:

(aa) the cost of capital improvements to the Property, except as provided in clause (q) above;

(bb) marketing costs, leasing commissions and tenant expenses Landlord incurs in connection with leasing or procuring tenants or renovating space for new or existing tenants;
(cc) legal expenses incident to Landlord’s enforcement of any lease;
(dd) interest or principal payments (or any other payment) on any Mortgage of Landlord (except as allowed under clause (q) above);
(ee) any expense for which Landlord is entitled to reimbursement by another tenant other than as an Operating Expense;
(ff) the cost of any repairs, restoration or other work for which Landlord is directly reimbursed by insurance proceeds or Taking awards, warranties and/or from any other third parties (other than as an operating expense), and Landlord agrees to use commercially reasonable efforts to pursue from any such third parties any such reimbursement to which Landlord may be entitled;
(gg) any amount paid for products or services to an entity that is an Affiliate of Landlord, but only if and to the extent such amount exceeds the fair market value of such services and products;
(hh) the costs of any utilities which are separately metered to the Premises or to another tenant’s premises;
(ii) any fines or penalties imposed on Landlord for failing to timely perform its obligations under this Lease and/or costs or expenses for which Landlord is obligated to indemnify Tenant under this Lease;
(jj) salaries of employees above the grade of building manager and/or which are not related to the management, operation, repair or maintenance of the Property;
(kk) any ground rent or other amount payable under any ground lease (or similar instrument) now or hereafter affecting the Property;
(ll) any bad debt loss, rental loss, or reserves for bad debts or rental loss;
(mm) costs (other than the cost of routine maintenance and monitoring) of remediation of Hazardous Materials;
(nn) any costs which would allow Landlord a “double recovery” of any other costs for which Landlord is directly reimbursed other than as an Operating Expense;
(oo) any costs incurred by Landlord in connection with the construction of Landlord’s Improvements;
(pp) costs, fines, penalties or fees incurred due to Landlord’s failure to make any payment when due;
(qq) costs and expenses (including court costs, attorneys’ fees and disbursements) related to or in connection with disputes with any holder of a Mortgage or by or among any persons having an interest in the Landlord or the Building;
(rr) costs incurred in connection with a sale, lease or transfer (including testamentary transfers) of all or any part of the Building, or any interest therein, or of any interest in Landlord, or in any person comprising, directly or indirectly, Landlord or in any person having an equity interest, directly or indirectly in Landlord;
any cost attributable to the initial construction and development of the Building and other improvements on the Land, including: (i) the cost of any “tap fees” or one-time lump sum sewer or water connection fees for the Building payable in connection with the initial construction of the Building, and (ii) any costs due in connection with the development, installation and/or improvement of any of the streets, roads, drives or utilities (or facilities therefor) adjacent to, in the vicinity of or comprising part of the Property, including any costs due under that certain Illinois Route 60 and Saunders Road Intersection Improvement Agreement dated as of December 20, 2005 between the Landlord initially named in this Lease and the City of Lake Forest, any costs due under Sections 2.3 or 2.7 of that certain Cost Sharing and Maintenance Agreement dated as of November 29, 2000 among the Landlord initially named herein, Lake Forest Landmark Company LLC, and Amberly Woods, L.L.C., any costs due under Section 2 of that certain Amendment to Cost Sharing and Maintenance Agreement dated as of August 30, 2006 among the Landlord initially named herein, Lake Forest Landmark Company LLC, and Amberly Woods, L.L.C., and/or any costs due under Section 2 of that certain Second Amendment to Cost Sharing and Maintenance Agreement dated as of June 8, 2007 among the Landlord initially named herein, Lake Forest Landmark Company LLC, and Amberly Woods, L.L.C. (provided, however, that any payments or credits to or in favor of Landlord under any of the foregoing instruments or sections thereof, as applicable, will not reduce Operating Expenses or otherwise benefit Tenant);

costs and expenses incurred by Landlord associated with the operation of the business of the legal entity or entities which constitute Landlord (as opposed to operation of the Building);

depreciation of the Building or other improvements at the Property;

costs of Landlord’s defense of lawsuits against Landlord and any judgments or costs of settlement;

any costs (including legal fees and prepayment of any indebtedness) incurred in connection with any mortgaging, financing, refinancing or sale of the Building or any portion thereof;

acquisition or leasing costs of sculpture, paintings or other objects of art;

costs for repairing, replacing or otherwise correcting defects in the initial construction of the Building incurred within the first year of substantial completion of the Building shell;

charitable or political contributions;

administrative, management and engineering payroll expenses of Landlord or any agent of Landlord (other than the management fee described in the Lease);

any legal fees, costs and expenses incurred by Landlord in connection with any dispute involving Landlord or the Building;

Property Taxes and any items expressly excluded from Property Taxes as set forth in the definition of such term below (except for those excluded pursuant to clause (ff) of such definition); and

if and to the extent not included in the other exclusions from Operating Expenses set forth above, any (i) services or benefits that are received by any tenant of the Building (other than Tenant) but not Tenant; (ii) costs that are incurred by Landlord solely, or in disproportionate amounts, as a result of another tenant’s particular use or occupancy of its premises or the Property as compared to Tenant’s use of the Premises or Property; or (iii)
services, benefits or costs that are otherwise received or incurred in differing amounts by, for or as a result of another tenant’s particular use or occupancy of its premises or the Property as compared to Tenant’s use of the Premises or Property.

“Other Tenant Work” will have the meaning set forth in Section 17.5.4.

“Outline Specifications” will have the meaning set forth in Section 4.9.

“Permitted Encumbrances” means all Mortgages, liens, easements, declarations, encumbrances, covenants, conditions, reservations, restrictions which affect the Property and which: (i) are in effect on the Effective Date and listed in Chicago Title Insurance Company Title Commitment No. 1401 880006111, having an effective date of April 10, 2008 (and delivered to Landlord’s counsel by Tenant’s counsel under e-mail cover correspondence dated August 4, 2008), and/or (ii) first arise after the Effective Date; provided that no such matter which first arises after the Effective Date shall constitute a Permitted Encumbrance to the extent the same materially and adversely interferes with Tenant’s rights under the Lease.

“Permitted Transfer” will have the meaning set forth in Section 13.1.

“Permitted Use” will have the meaning set forth in Section 4.1.

“Premises” means that certain space situated in the Building shown and designated on the Floor Plan and described in the Basic Terms.

“Property” means, collectively, the Land, Building and all other improvements on the Land.

“Property Manager” means the property manager specified in the Basic Terms or any other agent Landlord may appoint from time to time to manage the Property.

“Property Taxes” means any general real property tax, improvement tax, assessment, special assessment, reassessment, in lieu tax, levy, charge, penalty or similar imposition imposed by any authority having the direct or indirect power to tax, including without limitation, (a) any city, county, state or federal entity, (b) any school, agricultural, lighting, drainage or other improvement or special assessment district, (c) any governmental agency, or (d) any private entity having the authority to assess the Property under any of the Permitted Encumbrances. The term “Property Taxes” does not include (aa) Landlord’s state or federal income, franchise, estate or inheritance taxes, (bb) excess profits taxes, gift taxes, capital stock taxes, transfer taxes, mortgage or intangible taxes or fees, (cc) fines, penalties and interest due to the delinquent payment by Landlord of any tax or assessment comprising taxes, (dd) other taxes to the extent applicable to Landlord’s general or net income (as opposed to taxes specific to rents, receipts or income attributable to ownership of or operations solely at the Building), net worth or capital, (ee) any costs which would allow Landlord a “double recovery” of any other costs for which Landlord is directly reimbursed other than as a Property Tax, (ff) Operating Expenses and any items expressly excluded from Operating Expenses as set forth in the definition of such term above (except for those excluded pursuant to clause (ccc) of such definition), or (gg) Rent Taxes. Property Taxes “for” or “with respect to” any period under this Lease shall mean the Property Taxes that are due and payable with respect to such period, regardless of when the same accrue (i.e., Property Taxes shall be determined on a “cash” basis). If Landlord is entitled to pay, and elects to pay, any of the above listed assessments or charges in installments over a period of two or more calendar years, then only such installments of the assessments or charges (including interest thereon) as are actually paid in a calendar year will be included within the term “Property Taxes” for such calendar year.

“Proposed Construction Drawings and Specifications” will have the meaning set forth in Section 17.3.2.

“Qualified Sublease” will have the meaning set forth in Section 13.9.

“Re-entry Costs” means all Landlord’s Actual Costs which Landlord incurs re-entering or reletting all or any part of the Premises after an Event of Default, including, without limitation, all Landlord’s Actual Costs which Landlord incurs (a) maintaining or preserving the Premises after an Event of Default; (b) recovering possession of the Premises, removing persons and property from the Premises (including, without limitation, court costs and
reasonable attorneys' fees) and storing such property; (c) reletting, renovating or altering the Premises, but only for office purposes; and (d) real estate commissions, advertising expenses and similar expenses paid or payable in connection with reletting all or any part of the Premises.

“Rent” means, collectively, Basic Rent and Additional Rent.

“Rent Tax” means any tax or excise on rents, all other sums and charges required to be paid by Tenant under this Lease, and gross receipts tax, transaction privilege tax or other tax, however described, which is levied or assessed by the United States of America, the state in which the Building is located or any city, municipality or political subdivision thereof, against Landlord in respect to the Basic Rent, Additional Rent or other charges payable under this Lease or as a result of Landlord’s receipt of such rents or other charges accruing under this Lease; provided, that “Rent Tax” does not include any of the items excluded from Property Taxes as set forth in clauses (aa) through (ee) of the definition thereof.

“Required Cafeteria Improvements” will have the meaning set forth in Section 7.2.2.2

“Required Cafeteria Improvement Costs” will have the meaning set forth in Section 7.2.2.2.

“Requirements” means, collectively, all Laws, together with all Building Rules and Permitted Encumbrances. Requirements shall not, however, include any terms or provisions of any Mortgage or ground lease or instrument similar to either of the foregoing.

“Rooftop Rights” will have the meaning set forth in Section 4.7.

“Scheduled Delivery Date” will have the meaning set forth in the Basic Terms.

“SNDA Agreement” will have the meaning set forth in Section 15.1.

“Space Plan” will have the meaning set forth in Section 17.3.1.

“Space Plan Allowance” will have the meaning set forth in Section 17.7.3

“State” means the State of Illinois.

“Storage Space” will have the meaning set forth in Section 1.4.

“Storage Space Rent” will have the meaning set forth in Section 1.4.

“Structural Alterations” means any Alterations that would materially and adversely affect the structural, mechanical, electrical, plumbing, fire/life safety or heating, ventilating and air conditioning systems of the Building.

“Taking” means the exercise by a Condemning Authority of its power of eminent domain on all or any part of the Property, either by accepting a deed in lieu of condemnation or by any other manner.

“Telecommunications Equipment” means a microwave dish or similar antenna for telecommunications that Tenant may maintain on the roof of the Building solely for Tenant’s personal use within the Premises and in accordance with Section 4. 7.

“Tenant” means the tenant identified in the Lease and such tenant’s permitted successors and assigns. In any provision relating to the conduct, acts or omissions of “Tenant,” the term “Tenant” includes the tenant identified in the Lease and such tenant’s agents, employees and contractors.

“Tenant Delay” means any delay caused or contributed to by Tenant or its agents, contractors or employees to the extent the same results from:
i. Tenant’s failure to give any authorization, response, approval or consent expressly required of Tenant under this Lease within any express time period required therefor as provided in this Lease; except to the extent that Tenant’s failure to give such authorization, response, approval or consent within any such time period expressly required herein results in Tenant’s deemed approval of or consent to the subject matter thereof; or

ii. any breach or violation by Tenant of the terms and provisions of the Lease, or any other failure by Tenant to comply with the terms of the Lease.

Notwithstanding the foregoing, it shall be a condition of Landlord’s right to claim any Tenant Delay that Landlord notify Tenant in writing thereof. If such notice of Landlord is given within five Business Days after Landlord has actual knowledge of a Tenant Delay, then the Tenant Delay shall relate back to the actual commencement of such Tenant Delay. However, if Landlord fails to notify Tenant of any such Tenant Delay within the foregoing five-Business Day period, then the Tenant Delay shall be deemed to commence upon the date five Business Days prior to any such notification. Landlord further agrees to provide Tenant with written notice of the estimated length of any applicable Tenant Delay as promptly as is reasonably practicable after Landlord’s determination of the estimated length of the delay. In each and every case of Tenant Delay, Landlord shall take reasonable measures to mitigate, and shall use commercially reasonable efforts to cause Landlord’s contractors to mitigate, the extent of delay caused by any Tenant Delay (which shall, if Tenant so requests, include the use of overtime labor), except, however, that to the extent that Landlord would be required to bear any additional costs (which may include the use of overtime labor, if necessary) in order to mitigate such delay or costs, Landlord shall be obligated to take such measures only if Tenant has agreed in advance, in a form reasonably acceptable to Landlord, to pay such additional costs.

“Tenant Parking Spaces” will have the meaning set forth in Section 1.3.2.

“Tenant Parties” means Tenant, its Affiliates and their respective officers, directors, partners, shareholders, members, managers and employees.

“Tenant Reception Desk” will have the meaning set forth in Section 4.6.3.

“Tenant Requisition” will have the meaning set forth in Section 17.4.4.

“Tenant Reserved Spaces” will have the meaning set forth in Section 1.3.1.

“Tenant Responsibility Hazardous Materials” will have the meaning set forth in Section 5.1.

“Tenant Unreserved Spaces” will have the meaning set forth in Section 1.3.2.

“Tenant’s Architect” means Partners by Design, or another architect selected by Tenant which is reasonably acceptable to Landlord.

“Tenant’s General Contractor” will have the meaning set forth in Section 17.5.1.

“Tenant’s Improvements” means all improvements to the Premises and Property which are made by or on behalf of Tenant in connection with Tenant’s initial use and occupancy of the Premises and Property (but not including Landlord’s Improvements).

“Tenant’s Improvements Approval Criteria” will have the meaning set forth in Section 17.3.1.

“Tenant’s Personal Property Removal Outside Date” will have the meaning set forth in Section 13.10.

“Tenant’s Property Security Party” will have the meaning set forth in Section 13.10.

“Tenant’s Representative” will have the meaning set forth in Section 17.6.1.

“Tenant’s Security System” will have the meaning set forth in Section 6.1.6.
“Tenant’s Share of Expenses” means the product obtained by multiplying the sum of the amount of Operating Expenses plus the amount of the Property Taxes, in each case due and payable during the period in question, by the Tenant’s Share of Expenses Percentage.

“Tenant’s Share of Expenses Percentage” means the initial percentage specified in the Basic Terms, as such percentage may be adjusted in accordance with the terms and conditions of this Lease.

“Term” means the initial term of this Lease specified in the Basic Terms and, if applicable, any renewal term then in effect.

“Termination Date” will have the meaning set forth in Section 1.2.2.2.

“Third Party Indemnified Damages” will have the meaning set forth in Section 18.8.

“Total Costs” will have the meaning set forth in Section 17.4.2.

“Transfer” has the meaning set forth in Section 13.1.

“Visitor Parking Area” will have the meaning set forth in Section 1.3.2.
EXHIBIT “B”
LEGAL DESCRIPTION OF THE LAND

PARCEL 1:

Lot 2 in Opus Landmark of Lake Forest Subdivision, being a subdivision of part of the East half of the East half of Government Lot 2 of the Northwest quarter of Section 1, Township 43 North, Range 11, East of the Third Principal Meridian according to the plat thereof recorded June 21, 2000, as Document No. 4542702, in Lake County, Illinois.

Except from the above described premises that portion of the land taken for Saunders Road by Plat of Dedication recorded May 4, 2006 as Document 5987992.

Also except from the above described premises that portion of the land taken for Saunders Road by Plat of Dedication recorded May 4, 2006 as Document 5987993.

PARCEL 2:

That portion of Saunders Road as vacated by the City of Lake Forest Ordinance No. 00-43 recorded December 22, 2000 as Document 4623821 and re-recorded May 4, 2006 as Document 5987986 and Plat of Vacation of Saunders Road recorded May 4, 2006 as Document 5987989, described as follows:

The East 60.00 feet of the South 679.00 feet of Lot 2 in Opus Landmark of Lake Forest Subdivision, being a subdivision of part of the East Y2 of the East of Government Lot 2 of the Northwest V. of Section I, Township 43 North, Range II East of the Third Principal Meridian, according to the plat thereof recorded June 21, 2000 as Document No. 4542702, in Lake County, Illinois.
Opus Landmark of Lake Forest - Phase II

Lake Forest, Illinois

Level Two

August 22, 2008
EXHIBIT “D”
FORM OF COMMENCEMENT DATE MEMORANDUM

Commencement Date Memorandum

THIS MEMORANDUM is made and entered into as of the ______ day of ____________, 20__ by and between Opus North Corporation, an Illinois corporation (“Landlord”), and Solo Cup Operating Corporation, a Delaware corporation (“Tenant”).

RECITALS:

1. Landlord and Tenant are party to a certain Office Lease Agreement dated as of August 26, 2008 (“Lease”), relating to certain premises (“Premises”) located in the building commonly known as “Opus Landmark of Lake Forest II,” located in Lake Forest, Illinois (“Building”).

2. Landlord and Tenant desire to confirm the Commencement Date (as such term is defined in the Lease) and the date the Term of the Lease expires.

ACKNOWLEDGMENTS:

Pursuant to Section 1.2.3 of the Lease and in consideration of the facts set forth in the Recitals, Landlord and Tenant acknowledge and agree as follows:

1. All capitalized terms not otherwise defined in this Memorandum have the meanings ascribed to them in the Lease.

2. The Commencement Date under the Lease is ________, 20__.

[Signatures on following page]
Landlord and Tenant each caused this Memorandum to be executed by its duly authorized representative as of the day and date written above. This Memorandum may be executed in counterparts, each of which is an original and all of which constitute one instrument.

**LANDLORD:**

Opus North Corporation, an Illinois corporation

By:

Name: __________________________

Title: __________________________

**TENANT:**

Solo Cup Operating Corporation, a Delaware corporation

By:

Name: __________________________

Title: __________________________
All terms used in these Building Rules which are not otherwise defined in these Building Rules shall have the meanings ascribed thereto as set forth in the Lease to which these Building Rules are attached. Landlord and Tenant hereby agree as follows with respect to Tenant’s use and occupancy of the Premises and Property, in each case, except as otherwise expressly provided in the Lease:

1. Any sign, lettering, picture, notice or advertisement installed on or in any part of the Premises and visible from the exterior of the Premises, will be installed at Tenant’s sole cost and expense, and in such manner, character and style as Landlord may approve in writing. In the event of a violation of the foregoing by Tenant, Landlord may, after reasonable prior notice to Tenant, remove the same without any liability and may charge the expense incurred by such removal to Tenant.

2. No awning or other projection will be attached to the outside walls of the Building. No curtains, blinds, shades or screens visible from the exterior of the Building or visible from the exterior of the Premises, will be attached to or hung in, or used in connection with any window or door of the Premises without the prior written consent of Landlord. Such curtains, blinds, shades, screens or other fixtures must be of a quality, type, design and color, and attached in the manner approved by Landlord.

3. Tenant, and its servants, employees, customers, invitees and guests, will not obstruct sidewalks, entrances, passages, corridors, vestibules, halls, elevators, or stairways in and about the Building which are used in common with other tenants and their servants, employees, customers, guests and invitees, and which are not a part of the Premises of Tenant. Tenant will not (a) place objects against glass partitions or doors or windows which would be unsightly from the Building corridors or from the exterior of the Building, (b) install equipment which would interfere with the operation of any device, equipment, radio, television broadcasting or reception from or within the Building or elsewhere, or (c) place or install any projections, antennas, aerials or similar devices inside or outside of the Premises or on the Building.

4. Tenant will not waste electricity, water or air conditioning and will cooperate fully with Landlord to insure the most effective operation of the Building’s heating and air conditioning systems and will refrain from attempting to adjust any Building HVAC controls other than unlocked room thermostats, if any, installed for Tenant’s use. Tenant will keep corridor doors closed.

5. Tenant shall make its own arrangements for protecting its space from theft, robbery and pilferage, which may include keeping doors locked and other means of entry to the Premises closed and secured after normal business hours.

6. Landlord will have the right to prohibit any advertising by Tenant which includes the Building and which in Landlord’s reasonable opinion tends to impair the reputation of the Building or its desirability as an office complex for office use, and upon written notice from Landlord, Tenant will refrain from or discontinue such advertising.

7. The Premises will not be used for lodging, sleeping or for any immoral or illegal purpose.

8. Unless expressly permitted by Landlord, no additional locks or similar devices will be attached to any door or window and no keys other than those provided by Landlord will be made for any door. If more than two keys for one lock are desired by Tenant, Landlord may provide the same upon payment by Tenant. Upon termination of this Lease or of Tenant’s possession, Tenant will surrender all keys of the Premises and will explain to Landlord all combination locks on safes, cabinets and vaults.

9. Any carpeting cemented down by Tenant will be installed with a releasable adhesive.
10. The water and wash closets, drinking fountains and other plumbing fixtures will not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, coffee grounds or other substances will be thrown therein. No person will waste water by interfering or tampering with the faucets or otherwise.

11. No bicycle or other vehicle, and no dog (other than seeing-eye dogs) or other animal will be allowed in offices, halls, corridors, or elsewhere in the Building.

12. Tenant will not throw anything out of the door or windows, or down any passageways or elevator shafts.

13. All loading, unloading, receiving or delivery of goods, supplies or disposal of garbage or refuse will be made only through entryways and elevators provided for such purposes.

14. All safes and other major equipment and articles which could adversely affect floor load tolerances in, or otherwise damage, the Building will be carried in or out of the Premises only at such time and in such manner as will be reasonably prescribed in writing by Landlord, and Landlord will in all cases have the right to specify the proper position of any such safe, equipment or article.

15. Canvassing, soliciting, and peddling in the building is prohibited and each Tenant will cooperate to prevent the same.

16. Tenants, and its servants, employees, customers, invitees and guests, will, when using the common parking facilities, if any, in and around the Building, observe and obey all signs regarding fire lanes and no parking zones, and when parking always park between the designated lines. Landlord reserves the right to tow away, at the expense of the owner, any vehicle which is improperly parked in a no parking zone. All vehicles will be parked at the sole risk of the owner, and Landlord assumes no responsibility for any damage to or loss of vehicles. No vehicles will be parked overnight (except on an occasional, short-term basis).

17. Persons entering or departing from the Building may be reasonably questioned as to their business in the Building (in a manner consistent with the first class character of the Building), and the right is reserved to require the use of an identification card or other access device and the registering of such persons as to the hour of entry and departure, nature of visit, and other information deemed necessary for the protection of the Building. All entries into and departures from the Building will take place through such one or more entrances as Landlord will from time to time reasonably designate. In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to reasonably restrict access to the Building during the continuance of the same by closing the doors or otherwise, for the safety of the tenants or the protection of the Building and the property therein. Landlord will in no case be liable for damages for any error or other action taken with regard to the admission to or exclusion from the Building of any person.

18. All entrance doors to the Premises will be locked when the Premises are not in use. All corridor doors will also be closed during times when the same are not in use and the air conditioning equipment in the Building is operating so as not to dissipate the effectiveness of the system or place an overload thereon.

19. Subject to the terms of the Lease, Landlord reserves the right at any time and from time to time to rescind, alter or waive, in whole or in part, any of these Rules and Regulations when it is deemed necessary, desirable, or proper, in Landlord’s reasonable judgment, for its best interest or for the best interest of the tenants of the Building.

20. In the event of any conflict between the terms, provisions and conditions of these Rules and Regulations and the terms, provisions and conditions of the Lease, the terms, provisions and conditions of the Lease will govern and control.
Outline Specification

Project
  OPUS LANDMARK OF LAKE FOREST II

Client
  OPUS NORTH CORPORATION

Location
  Lake Forest, Illinois

Date
  August 14, 2008

Base Building

GENERAL REQUIREMENTS

SCOPE:

This outline specification defines the scope of work for the design and construction of a 199,337 (including 6,815 SF storage area) gross square foot (approx.) resulting in approx. 160,085 rentable SF multi-tenant shell office building with an underground parking garage and storage area for Opus North Corporation (Client) on a site of approximately 15.75 acres in Lake Forest, Illinois.

Tenant Build-out design and construction work are provided under a separate scope of work, and are not within the scope of this shell and core specification.

Building Area

The four-story office building approximate gross square footage as defined in this specification is as follows:

<table>
<thead>
<tr>
<th>Floor</th>
<th>Gross Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower Level</td>
<td>32,552 s.f.</td>
</tr>
<tr>
<td>1st Floor</td>
<td>40,190 s.f.</td>
</tr>
<tr>
<td>2nd Floor</td>
<td>41,516 s.f.</td>
</tr>
<tr>
<td>3rd Floor</td>
<td>42,387 s.f.</td>
</tr>
<tr>
<td>4th Floor</td>
<td>42,692 s.f.</td>
</tr>
<tr>
<td>Total Gross Area</td>
<td>199,337 s.f.</td>
</tr>
</tbody>
</table>

Auto Parking:
- On-grade: 571 cars
- Below-grade: 46 cars
- Truck Docks: 1
- Trash Compactor Positions: 1

Common areas are defined as entrance lobby, elevators, electrical, telephone and mechanical rooms, toilet rooms, janitor’s closets, truck dock areas, stairs and exit corridors on first floor.

Building occupancy, for calculating exiting requirements is based on the following:

1,813 people (50% women)
Outline Specification

The work will be in accordance with Holabird & Root plans dated July 6, 2006.

General Conditions

GUARANTEES:

All materials and equipment incorporated into this project shall be new. The Contractor shall guarantee all work to be free from defects of workmanship and material for one (1) year after completion of the base building. The Contractor shall obtain a manufacturer’s standard roofing system warranty guaranteeing the roof to be free from leaks for a period often (10) years.

Permits, Licensing, Fees

Contractor will give to the proper authorities all notices required by law relative to the work of the project; obtain and pay for all building permits, licenses; and apply for other permits. Environmental use permits and permits required in conjunction with data processing or office activities will be the responsibility of the Client.

Codes

Contractor will be responsible for complying with local building codes and zoning ordinances which apply to the project, including the BOCA codes, Illinois Accessibility Code, ADA and the Occupational Safety and Health Act provisions applicable to construction sites.

Testing

A testing program involving soils, cast in place concrete, bituminous pavements, structural steel, roofing and other materials requiring testing will be developed and employed by Contractor during the course of the project.

Trade Name Reference

Identification herein of items by trade names indicates the quality standard; the words “or equal” are to apply to any such references.

Materials

All materials will be first quality, new materials unless specified otherwise. Colors and finishes will be selected from manufacturer’s standards.

Design and Engineering

Contractor in conjunction with Opus Architects & Engineers, Inc., and/or other consultants will cause to be prepared a complete set of base building working drawings to include civil, structural, architectural,
Outline Specification

plumbing, HVAC, electrical, fire protection, and landscape.

Site Development

Grading and Earth Work

Contractor will clear, strip, excavate, and rough and fine grade the site. The building elevation will be set to allow for a balanced cut and fill grading condition. Adequate grades will be set for drainage which will be handled by means of catch basins, storm sewers and surface run-off as appropriate. The scope of the earthwork and the foundation system design will be in accordance with soil borings and report prepared by GME Consultants, Inc., dated June 29, 2000.

The building foundation system will be conventional spread footing foundations and will be based on a soil bearing capacity of up to 6,000 PSF. As referenced in the above mentioned soils report, Geopiers will be used to provide the required bearing capacity.

All earthwork will be observed, tested, and approved by an independent soils engineer. Fill areas will be compacted to 95% standard Proctor in both the building and parking areas. Areas to receive bituminous paving outside the areas of the building structures will be graded for proper drainage.

Exterior Concrete Sidewalks, Curb and Gutter

Contractor will furnish and install all exterior concrete work. Concrete sidewalks will be unreinforced, standard gray, broom-finished unless otherwise noted. Contractor will also furnish integral concrete curb and gutter sections to border all asphalt areas.

Concrete apron at truck dock will consist of 8” concrete slab reinforced over 4” of CA6 base. Apron will be 60'-0” long by 25'-0” wide.

All exterior concrete work will be constructed using a 4,000 psi, air-entrained concrete mixture. All work will be jointed for thermal movements and placed on compacted material.

Bituminous Paving and Striping

The arrangement of the building, parking and truck maneuvering areas will be as shown on the drawings. The paved areas subject to car traffic and parking will consist of a 3” layer of Class I (IDOT Classification) bituminous over a 4” layer of bituminous aggregate mixture over a 6” base of granular base material. Paving in truck traffic areas will consist of 3” layer of Class I (IDOT Classification) bituminous over 10” of bituminous aggregate mixture.

All bituminous pavements will be striped to indicate parking stalls, handicapped parking locations, median lines, and traffic control features
Outline Specification

in accordance with the site design.

Approximately 46 parking stalls will be under cover on the lower level in a separate secured executive parking area with automobile access via a key card or remote controlled, motor operated overhead door. Wall around secured parking will be constructed of drywall and metal studs and/or unpainted cast in place concrete. Ventilation will be provided per code utilizing an exhaust fan and wall in-take louvers. A fire protection and lighting system will be included to meet municipal code requirements.

Telephone and Electric Utilities

Contractor will coordinate the service entrances with the electric and telephone utility companies to provide complete and operable systems. The actual telephone service within the building will be provided by the telephone utility and the cost of the phone system will be borne by Tenants. Service brought to NETPOP room only.

Water Service

A water service main will be provided from the main located in the public right of way adjacent to the site. This main will be adequately sized for the domestic services within the building and for the interior and exterior fire protection systems. Service main will be code approved cement lined ductile iron pipe. A single service main with a split-off for domestic and fire protection water will be brought into the mechanical room.

Sanitary Sewerage

A 6” minimum sanitary sewer line will be extended from the building to the sanitary system located in the public right of way. The sanitary sewer line will be code approved standard polyvinyl chloride plastic or standard strength vitrified clay sewer pipe with code approved manholes and castings.

Storm Drainage

Contractor will set adequate grades so that drainage and surface water run-off will be handled through catch basins, trench drains and storm sewers as required to regional storm detention ponds. The storm sewer will be reinforced concrete pipe with catch basins and manholes as required by code and the governing watershed district.

Lawns and Landscaping

A complete landscaping package is provided to include plantings, an underground lawn irrigation system, retaining walls, pavers and landscape design.
Outline Specification

Exterior Lighting

At building entrances and in parking areas, Contractor will install lighting conforming to code and municipal requirements and controlled by a programmable electronic time clock. Exterior lighting for parking areas will be metal halide lamps.

Light standards painted steel will be mounted on 24” diameter concrete bases in parking and traffic areas. These standards and forward throw cut-off luminaries at truck docks will be located to provide an average of 1 footcandle of lighting throughout the parking and drive areas.

Building Structural System

The base building structural system will conform to the standards of ACI, ASTM, SJI, and applicable building regulations. The general construction will be steel columns and composite beams carrying metal floor deck. Bay sizes will be as shown on the drawings. The base building envelope will fall in the category of BOCA Type 1B, protected.

Live load design criteria

<table>
<thead>
<tr>
<th></th>
<th>Floors</th>
<th>Roof</th>
<th>Wind</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>100 psf, (80 psf, plus 20 psf for the partition, mechanical and ceiling loads) 6 1/2” thick standard weight concrete with 6 x 6.W2.1 x W2.1 welded wire mesh or steel fiber mesh on standard 3” deep non-cellular metal deck</td>
<td>30 psf minimum</td>
<td>20 psf minimum</td>
</tr>
</tbody>
</table>

All interior concrete is designed for a minimum compressive strength of 3,000 psi at 28 days. Concrete slab-on-grade will be 4” thick on 6” granular base. This slab-on-grade is part of the base building scope.

Floor Leveling Standard

The concrete slab on grade (SOG) will be installed to meet the following standards:

- Floor Flatness FF = 20
- Floor Levelness FL = 17

The concrete composite decks (Floors 1-4) will be installed to meet the following standards:

- Floor Flatness FF = 20
- Floor Levelness FL = N/A
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Building Exterior

The office building wall system will consist of moderately articulated, colored precast concrete wall panels utilizing imported aggregates.

The precast wall panels will be used in combination with curtain wall and punched glass and aluminum windows. Window sill height will be 30”.

Granite trim will be used to highlight exterior entry ways.

A distinctive front entry design will be provided.

Insulation for exterior walls will be foil faced thermax board to achieve a minimum total R-Value of 14. All exterior soffits and window overhangs will be insulated in a similar manner. Rigid perimeter insulation will be provided to a depth of 2’ below finished grade at all exterior walls.

The lobby entrance door will be 6’-6” diameter standard revolving door with prefinished framing members, aluminum cap soffit and fascia, and clear tempered glass.

All other exterior entrance doors and frames will be medium style prefinished aluminum framing members to match the windows and curtainwall. All exterior doors will have aluminum thresholds. The doors at the main entrance and exits will have 1” diameter stainless steel door pulls.

Windows will be 1” thick, standard color reflective coating, insulated glass set in prefinished aluminum frames with a thermally improved design.

Window units will be fixed, with no operating sash. Exterior glass in lobby, doors and sidelights will be clear.

Roofing

The roof will be single-ply EPDM ballasted roof with rigid insulation yielding an insulating value of approximately R=14 for the roofing system.

Roofing and flashing will be guaranteed by the roofing subcontractor for one year. The single-ply membrane system excluding insulation and metal coping will be guaranteed by the membrane manufacturer for ten (10) years.

All roof areas will slope to roof drains with interior downspouts. All roof edge fascias will be pre-finished clad metal to match adjacent materials; other flashings will be prefinished aluminum to match the windows.
Outline Specification

Roof access will be provided from the stairwell by means of a ships ladder.

The roof-top mechanical screen will be constructed of spandrel glass and aluminum sections.

Clear Height

The floor to ceiling height in the office areas will be 9’ 0”.

The floor to ceiling height in the toilet rooms and lower level corridor will be 8’-0”.

Plumbing System

System Description

Contractor will design and install a complete base building plumbing system. Included will be all outside sewer and water work, interior waste and vent, hot and cold water piping system, drain tile (per recommendations of the previously referenced soils report), and common plumbing fixtures. Systems shall conform to all local and state codes.

Outside Sewer and Water Work

Contractor will make all necessary connections to the municipal utilities and flush and test all piping systems. Contractor shall obtain all approvals and municipal inspections.

Interior Piping Systems

A complete sanitary waste and vent piping system, and hot and cold water piping system will be provided, using code approved materials and methods. An interior roof drainage system will be connected to the exterior storm drain system.

All hot and cold water piping and all roof drain sumps and horizontal runs of metal roof drainage piping will be insulated to energy code thicknesses.

Stop valves are included at each fixture in addition to the required unions and isolating valves to create an easily serviceable system. All piping systems will be flushed and tested. The domestic potable system shall be purified per code.

Drainage Specialties

Floor drains will be provided in the toilet rooms, Janitor’s closet and mechanical room. Drains and cleanouts will be equal to Smith, Wade, or Zurn.
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Service Water Heating System

Hot water will be delivered to lavatories at 110 degrees Fahrenheit by means of electric water heaters in the Janitor’s closet. Water heaters will be equal to A.O. Smith.

Plumbing Fixtures and Equipment

Plumbing fixtures will be commercial quality equal to American Standard, Kohler, or Eljer.

Lavatories will be vitreous china bowels with automatic shut-off style faucets (if required by code). Water closets will be wall mounted, flush valve type. Urinals will be wall mounted, flush valve units. All fixtures will conform to the water and energy saving provisions of the Plumbing Code. Fixture counts will also conform with local code requirements.

A total of eight (8) washrooms are anticipated, (1 men’s and 1 women’s per floor). The fixtures to be provided in each washroom are as follows:

- **Men’s:**
  - 3 Water Closets
  - 2 Urinals
  - 5 Lavatories

- **Women’s:**
  - 5 Water Closets
  - 5 Lavatories

One (1) floor drain will be provided in each washroom.

A janitor’s closet with mop sink will be furnished on each of the above four (4) floors.

One (1) freeze-proof wall hydrant equal to Woodford, Josam, or Zurn will be installed at the dock area.

Wet columns (1-1/2” water, 4” sanitary and 3” vent) will be provided at the east and west ends of the building for plumbing of tenant improvement lunchroom sinks etc.

Electric water coolers will be installed near toilet room entrance locations. The quality will be equal to Halsey Taylor, Westinghouse, or Oasis. (Stainless Steel Finish).

One (1) set of house pumps will be provided to increase water pressure to the upper floors if required.

The building will not be provided with a water softener system.

Protection Systems

Fire Protection System

Contractor will install a wet pipe shell building automatic fire protection
Outline Specification

system for the facility to comply with the requirements of all applicable codes.

The automatic fire protection sprinkler system is designed for the following density:

Light hazard 0.10 GPM/1500 SF

The base building sprinkler system will include a fire pump if required, sprinkler heads, distribution piping, reduced pressure backflow preventer, riser piping and control valves for each floor. All building systems and risers will be manifolded from the service entry in the mechanical room. The sprinkler system will contain a flow alarm capable of being connected to a fire alarm panel for remote alarm monitoring. Leasing of monitored phone line is by Client.

Sprinkler heads in finished common areas with ceilings shall be concealed. Heads shall be placed in approximate center of ceiling tiles (+/-two inches).

Base building sprinkler heads will consist of one (1) chrome pendent recessed head at 9’-0” ceiling height every 225 usable square feet in a general pattern in the tenant areas.

Additional heads and relocation of heads, if required, will be part of the Tenant Improvement work.

The system will include a free-standing 22” Fire Department Siamese connection adjacent to the main entrance or truck dock and a free-standing, 12” Fire Department hose connection at each stairwell door if required by Code.

Exposed heads are included at mechanical and electrical rooms, truck dock, janitor’s closets and stairwells. Concealed heads are included at other finished common areas and in the tenant area office space. All of the above work is part of the Base Building Scope. Recessed concealed heads are included at the entrance lobby.

Pre-action systems, dry systems, FM 200 systems, and other special fire protection systems and panels as well as relocation or addition of sprinkler heads are included under the Tenant Improvement work.

Heating, Ventilating and Air Conditioning System

Contractor will design, furnish and install a base building heating, ventilating and air conditioning system meeting local codes and ASHRAE 90.1.
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Design Conditions

Heating and air conditioning systems will be capable of maintaining inside temperatures of 72 degrees Fahrenheit at -10 degrees Fahrenheit outside winter conditions and 72 degrees Fahrenheit dry bulb inside at 92 degrees Fahrenheit dry bulb and 75 degrees Fahrenheit wet bulb outside summer conditions.

Loading area and mechanical/electrical room areas will be heated to 60 degrees Fahrenheit at -10 degrees Fahrenheit winter conditions.

Ventilation air from the outside will be provided at a minimum of 20 CFM per person for up to 1050 people (21,000 cfm) or in sufficient quantity to make-up all required exhaust, whichever is greater. Humidification is not included within the scope of this specification.

For load calculations, the average occupancy has been based on 142 usable square feet per person and 5.0 watts per square foot for lighting, equipment and miscellaneous loads over 150,000 assumed usable square feet.

Air-Conditioning & Heating System Description

The following HVAC system is included:

VAV Packaged Rooftop System

The air conditioning system will utilize weather proof, insulated, roof mounted, packaged, variable air volume cooling and ventilating units. The units will have a direct expansion cooling coil; air cooled condensing unit with capacity control; two (2) sets of throw-away filters; and an enthalpy economizer cycle, with exhaust fan, permitting the use of outside air for cooling at favorable outside dry bulb temperature and relative humidity.

Rooftop units will be screened as necessary to meet Code.

The rooftop units will be equal to McQuay or Trane. The system air volume will vary in response to a system static pressure controller.

Computer rooms, or any other room requiring dedicated HVAC systems, will be provided as part of the tenant improvement allowance. The base building HVAC cooling system may be used to supplement and/or back-up the special area systems.

The base building cooling load is based on approx. one (1) ton per 320 rentable square feet (excluding lower level) for a total of 500 tons.

The Base Building HVAC system will consist of rooftop VAV units, main supply ductwork, return plenum, six (6) fan powered VAV boxes with electric heat on the 2nd and 4th floors, four (4) fan powered VAV
Outline Specification

boxes with electric heat on the 3rd floor and (1) one fan powered VAV box with electric heat on the 1st floor. Each of the fan powered VAV boxes provide temporary heat and are equipped with localized thermostats. The Base Building HVAC system will also include mechanical, elevator and electrical room ventilation as required by Code.

Space will be provided within the mechanical roof screen for tenant’s supplemental air cooled condensing units, if required.

Heating Units

Base Building utility area baseboard units, if required, will be commercial grade units equal to Q-Mark BBC Series. Vestibule heaters will be equal to Q-Mark Series 4000 Architectural model with concealed controls.

Dock area and mechanical room electric unit heaters will have integral controls.

The lower level will be heated to approximately 50° Fahrenheit.

Air Distribution System

Base Building exhaust system will be provided for toilet rooms; janitors closets; elevator, electrical and mechanical rooms per code. Fire dampers and access panels will be installed at all penetrations of fire separations as required by the regulatory agency. A relief system will be included to operate during the economizer cycle.

The garage will have exhaust fans interlocked with a carbon monoxide detection system.

Temperature Controls

A fully computerized D.D.C. control system is included for the Base Building VAV system. Extension of the D.D.C. controls for tenant improvement systems and other energy management functions shall be part of the tenant improvement work.

Test and Balance: Operation and Maintenance Instructions

The equipment and air duct and water systems will be tested and balanced to provide proper flow distribution. The test and balance agency will be AADC certified.

The following BYAC items are included under Tenant Improvement work:

- Special dedicated HVAC systems.
- Energy Management beyond DDC system.
- Supplemental base board heating or other special heating in the tenant
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areas. (Heat is included in other common areas per code within the Base Building scope.)
- Interior zone VAV boxes, additional perimeter zone VAV boxes, associated D.D.C. controls, ductwork, diffusers, registers and grilles.
- Tenant area ductwork from perimeter zone VAV boxes and associated diffusers, registers and grilles.
- Other special systems.
- Tenant area special exhaust

Electrical Systems

General
The Base Building electrical work will include wiring of all base building HVAC equipment, elevators, etc., exterior lighting and lighting of interior common areas, with exit and emergency lighting as required by code.

Base Building scope will also include distribution to electrical switches in electrical closets on each floor.

Tenant area panels, light fixtures, exit and emergency fixtures, receptacles, switches, transformers, empty phone and data conduits, UPS, security and other special systems are part of the Tenant Improvement work.

Electrical Service and Power Distribution
The base building scope includes a capacity of 7.0 watts per square foot for electric heating. Tenant improvement heating work begins at the triple tubs (provided under base building scope) and includes the associated breakers plus any excess power beyond and above stipulated 7.0 watts per square foot.

Electrical service will be sized for the following tenant average load which is in addition to base building equipment loads such as HVAC, elevators, sump pumps, etc. Total tenant load of 5.0 watts of convenience power per useable SF assuming a 50% diversity factor; maximum of 11.5 watts per useable SF of connected load.

| Lighting | 1.5 watts/USF |
| Tenant Equipment/Convenience Power | 5.0 watts/USF |
| Total Tenant Area Load | 6.5 watts/USF (demand load) |
| | 11.5 watts/USF (connected load) |

A 480/277 volt, 3-phase, 4-wire, pad mounted transformer will be furnished by the electrical utility. Base building electrical installation will be completed from the transformer to centrally located power and lighting panels, throughout the building. A 480/277 volt distribution will be provided to the heating and air conditioning system equipment.
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A 1,600 and 2,000 amp main service switchboard will be supplied complete with main service Ground Fault protection. All distribution over current devices will be of the fused type. Bolt on type circuit breakers will be used on panel boards. Panel boards and panel board feeders for lighting and convenience power will be oversized for 20% future load.

Aluminum wire may be used for feeders size #6 and larger, provided that only compression type terminations and connectors are used and that copper “pigtails” will be used where mechanical terminations and connections must be made.

Equipment Connections

All electrically powered base building mechanical equipment as described above will be connected as required. This will include but not be limited to fire pump, house pumps, elevators, sump pumps, HVAC equipment, exhaust fans, electric baseboard heaters, and ventilation fans. Electrically powered tenant area equipment will be connected as part of the Tenant Build-out work.

Miscellaneous Power

Miscellaneous use duplex 120 volt receptacles will be provided in common areas as required per code.

Emergency Power

A properly sized diesel generator with integral fuel tank or back-up power system and transfer switch or battery back-up will be installed to provide emergency power for base building only, fire life safety system, one elevator, and emergency exit lighting to meet code requirements, as part of the base building scope of work.

Generator will provide emergency power to the fire pump.

Space will be provided for a Tenant supplied emergency generator, if required.

Telephone/Data (Point of entry)

Two (2) four (4") inch PVC conduits under foundation to basement telephone room will be provided. One (1) 4’ x 8’ x 3/4” sheet of plywood will be provided as a telephone board in the telephone closet on each floor as part of the Base Building work. Each floor will be provided with two (2) 3.5” sleeves through the floor in the telephone closets. All telephone and data cabling and the permits required for this work are by Tenant.
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Security System

Security system is included within the Base Building scope of work to provide for Base Building entry door card readers, garage entry card reader, fire monitoring, elevator monitoring, elevator traveling cable security capability and other security items as required for the base building plus expansion capability for tenant security needs.

Fire Alarm System

Fire Alarm System - A complete UL approved fire management system consisting of a fire command station, pull alarm detection system, bell alarms, strobe lighting and a fire department telephone communication system will be provided as part of the Base Building scope for the common areas. The system will monitor sprinkler flow, isolating valves, smoke detectors, and individual pull alarms.

Lighting System

Tenant Areas

Tenant area lighting fixtures will be provided as part of the Tenant Build-out Allowance.

Elevator Lobbies (3rd through 4th Floor)

Two (2) lamp, staggered strip cove fluorescent indirect lighting and PL downlight fixtures will be provided at the ceiling as part of the Tenant work.

Electrical Rooms, Mechanical Room, Janitors Closets and Dock Areas

Lighting in these spaces will be 4 foot and/or 8 foot fluorescent strip fixtures and will be provided as part of base building costs.

Exterior

Lighting at the building exterior exits will consist of soffit mounted, recessed metal halide fixtures. Wall mounted fixtures will also be provided as required at the dock area. All exterior lighting is included as part of base building costs.

Emergency/Exit

Emergency lighting will consist of emergency back-up system powered selected fixtures and exit lights in the stairwells, corridors and other common areas included as part of base building costs.

Exit Corridor

The lighting in the first floor exit corridor as well as other miscellaneous common area finished spaces on the first floor will be 2’ X 2’ or 2’ x 4’
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three lamp, nine or eighteen cell Jay-in parabolic fluorescent fixtures or PL downlight fixtures, included as part of base building costs.

Toilet Rooms

Fluorescent cove lighting will be provided in each toilet room on the four (4) floors as part of base building costs.

Stairs

Stairwell lighting will consist of ceiling mounted and/or wall mounted fluorescent lighting fixtures included as part of base building costs.

Interior Circulation

Elevators

Passenger Elevators

Contractor will furnish and install two (2) hydraulic passenger elevators with a capacity of 3,000 lbs. at a speed of 150 ft per minute. The platform dimensions will be approximately 5'-6" x 7'-0" with 9'-0" ceiling height; the doors will be center opening 3'-6" X 8'-0". The elevators will have call buttons and indicator lights for all levels. Control panels will be provided on each side of the center opening doors.

Passenger/Service Elevator

Contractor will furnish and install one (1) hydraulic general service elevator with a capacity of 4,500 lbs. at 150 ft. per minute. The platform dimensions will be approximately 7'-8" x 7'-8" with 9'-0" ceiling height. The service doors will be side opening at rear of car and at front.

An elevator status panel will be located in the Elevator Machine Room to monitor the elevator location and status.

The elevator cars will be furnished as shell cab construction. The elevator cab interior finishes and design for the three (3) elevators will be provided as part of the base building.

Stairs

Interior fire stairs will be constructed of steel stringer and concrete filled metal pan treads with metal risers. Handrails and supports at all walls will be metal sections.

Equipment

Truck Dock

Two (2) 48” depressed exterior docks will be provided. The receiving dock will be provided with one (1) 30,000 lb. mechanical dock leveler. Space at the second dock will be provided for a trash compactor.
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Interior Finishes

Main Lobby and First Floor Elevator Lobby

A 2-story, one entry level, single loaded lobby is included. Lobby finishes will be provided as part of the base building. The scope of lobby finishes includes:

– Granite, terrazzo (or other similar type material) flooring and base
– Carpeting and pedimats Millwork and trim and directory Handrail
– Painting, wall covering, granite facing, column covers and wood paneling
– Gypsum board and acoustical ceiling
– Concealed sprinklers
– Ceiling and accent lighting
– Architectural baseboard heaters and grilles
– Gypsum board partitions and soffits
– Interior windows, doors and hardware
– Lobby, common area and elevator finish design

Common/Tenant Areas

A. Floors: Tenant area floor finishes are provided under tenant improvement cost allowance.

   Unless otherwise specified, all floor areas will be troweled smooth exposed concrete.

B. Partitions:

1. Two hour rated partitions extending full height from floor to underside of deck will be provided at the first floor exit corridor. The walls will be constructed of 3 5/8” metal studs with one layer of 3/4” gypsum board on each side, sound attenuation blankets, fire taped and sanded.

2. Unrated partitions extending full height from floor to underside of deck will be provided at the elevator machine room. The walls will be constructed of 3 5/8” metal studs with one layer of 5/8” gypsum board on each side, sound attenuation blankets, fire taped and sanded.

3. Two-hour rated shaft walls extending full height from floor to underside of deck will be provided at mechanical shafts. The walls will be constructed of 2 1/2” metal studs with two layers of 1/2” gypsum board and 1” gypsum shaft liner, sound attenuation blankets, fire taped and sanded.

4. Walls enclosing toilet rooms, lobby, phone closets, mechanical rooms and electrical/transformer rooms will be non-rated partitions
extending from floor to underside of deck. The walls will be constructed of 3 5/8” metal studs with one layer of 5/8” gypsum board on each side, fire-taped and sanded.

5. All other partitions shown on the drawings shall extend from floor to ceiling grid and will be constructed of 3 5/8” metal studs with one layer of 5/8” gypsum board on each side, fire-taped and sanded.

6. Two and one-half inch thick batt insulation for sound attenuation will be provided in the wall construction surrounding the toilet rooms, mechanical rooms, first floor corridor and dock (receiving) area.

7. A layer of 5/8” gypsum board will be provided at the knee wall under exterior windows as part of the base building work. Taping and finishing of these surfaces is part of the Tenant Build-out work.

8. Studs, drywall, taping and finishing of building columns will be part of the Tenant Build-out work.

C. Ceilings:

A 2’ x 2’ acoustical tile ceiling with recessed medium fissured lay-in panels in a white painted steel suspended grid system will be provided in all finished common areas as part of the base building scope. Lay-in ceiling will begin at the interior window head section which will be set at 9’-0” A.F.F. In tenant areas, the grid and lay-in tile will be provided as part of the Tenant Build-out work.

Toilet Rooms:

A. Floors: The toilet room floors will receive a standard unglazed cushion edge, domestic ceramic or porcelain tile, as manufactured by American Olean Mosaic or equal.

B. Walls/Base: All toilet mom walls will be floor to floor height drywall partitions with acoustical batt insulation. Plumbing walls will receive full height unglazed domestic ceramic or porcelain tile. All other wall surfaces will be vinyl wall covering. Ceramic tile base, with a coved profile will be provided around the full perimeter of each toilet room.

C. Ceilings:

A 2’ x 2’ acoustical tile ceiling with medium fissured lay-in panels in a white painted steel suspended grid system.

D. Vanities: Granite with a 4” front return will be installed in each toilet room.
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Stairs

In general, the outboard stairs will be of a utilitarian design.

A. Floors: Landings and treads will be sealed concrete.

B. Walls: All stair-side gypsum board or masonry surfaces will be provided with two (2) coats of semi-gloss enamel paint. Concrete surface will be finished with Tamms or equal product.

C. Ceilings: The underside of the exposed stairway structure will be painted.

D. Metals: All handrails, stringers, etc. will be painted.

The central stair will be constructed similarly to the outboard stairs, but will be provided with the following upgraded finishes:

A. Treads, risers and landings will be carpeted.

B. Vinyl base will be provided at landings.

C. A 2’ x 2’ acoustic ceiling will be provided below landings and below the roof structure above the top floor level.

D. A factory assembled, 4’ x 8’ double domed skylight with dropped soffit will be installed in the roof above the stair.

Electrical/Telephone Rooms, Mechanical Rooms and Docks

A. Floors: The floors in these rooms will be exposed sealed concrete.

B. Walls: The walls will be unfinished sheetrock. No vinyl base will be provided in these areas.

C. Ceiling: The exposed structure will remain unfinished.

Janitor’s Closet

A. Floors: The janitor’s closet floor will be the exposed concrete slab.

B. Walls: The sheetrock walls will be painted. Vinyl base will be installed around the perimeter of the room.

C. Ceiling: The exposed structure will remain unfinished.

Toilet Partitions and Accessories

Toilet Rooms

Toilet partitions will be metal, ceiling hung with a baked-on enamel finish. Each toilet partition door will have a chrome latch, coat hook, and
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rubber bumper. Matching screens will be installed between each urinal. Handicapped toilet stalls will be provided with grab bars as required by code. A tissue dispenser will be installed for each toilet stall, with a sanitary napkin disposal for each women’s toilet stall. Tissue dispenser in women’s toilet stalls will be dual dispenser with stainless steel shelf above.

A soap dispenser, paper towel cabinet, and mirror in each toilet room and a sanitary napkin dispenser in each women’s toilet room will be provided. All toilet rooms will have mirrors above each lavatory sink.

Doors

Wood Doors

Interior doors will be 3’-0” x 8’-10” or (7’-10” at toilet room interior doors) solid core plain sliced mahogany veneer or approved equal with a stained, sealed, and varnished finish. Wood doors will be provided with a standard profile 2” wide hollow metal frame. Base building doors will be provided as shown on the plans.

Hollow Metal Doors and Frames

Exterior hollow metal door at truck dock will be 3’-0” x 7’-0”. Other required exterior hollow metal doors will be 3’-0” wide and height will be selected to be compatible with adjacent architectural features. Exterior hollow metal doors will be insulated flush face panel design.

Interior hollow metal doors in service areas will be 3’-0” x 7’-0” or 8’-0”, flush face panel design. All exterior and interior frames will be standard profile 2” wide hollow metal frame. All hollow metal doors and frames will be painted.

Finish Hardware

All door hardware will be as manufactured by Schlage, Russwin or Corbin to meet ADA requirements, with function appropriate to intended usage. Base building and tenant locksets will be lever style hardware equal to Schlage L 9000 Series #07 with US-26D satin chrome finish. A complete keying system allowing doors within a given area to keyed alike and tied into a building master and grand master system will be furnished.

Overhead Doors

Two (2) 9’ x 10’ exterior overhead doors, 20 gauge flush metal panel, fully weatherstripped with lock and hardware, insulated, motor operation. Overhead doors will be furnished at the dock and compactor areas respectively.

Specialties

Fire Extinguishers

Ten (10) fire extinguishers and cabinets will be provided for the common
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areas.

Mini Blinds

One inch (1") horizontal mini blinds are included within the base building scope of work for all tenant area exterior windows.

Miscellaneous Metals

An access ladder will be provided to each elevator pit. A ships ladder will be provided to the roof.

Window Washing

A set of window washing roof tie-backs will be provided in the roof structural system in accordance with code requirements. Swing stages, davits, wall tie backs and window washing equipment are not included.

Exceptions

Items Not Included

The following items are specifically excluded from the Base Building scope of work:

- Setting, wiring, plumbing, or connections of tenant equipment including computers, CRT’s, computer peripherals, cameras, process equipment, etc.
- Lightning protection, F.A.A. warning lights, fire alarm connection to local fire equipment.
- Central time clock and music, paging, night bells, telephone, or other internal communications systems
- Draperies, or other window treatments (beyond Base Building mini blinds)
- Furniture and office furnishings including demountable office partitioning, lockers, vending machines, racking and shelving, audio-visual equipment and projection screens
- Underfloor power/communication duct system
- Window cleaning swing stages and washing equipment
- Trash containers or compactors
- Exterior plaza or furniture
- Flag poles
- Link to Phase I building.
- Artwork.
- Any other items not specifically named in this proposal
- Deli
- Fitness Center

Tenant Build-out

Notwithstanding anything herein to the contrary, the following items are to be accommodated by the Tenant Build-Out Allowance:

- Interior finishes on floors (including raised floors) and walls
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throughout the building (except common areas)

– Acoustic ceiling tile and grid in tenant areas
– Tenant area partitions and wall finishes, hollow metal doors, wood doors, frames, windows and hardware
– Additional plumbing in tenant areas to include lunchrooms, kitchens, coffee stations, private toilets etc.
– Mechanical system interior VAV boxes, additional perimeter VAV boxes, all diffusers, register, grilles and associated ductwork, (D.D.C. included in Base Building to Base Building VAV boxes)
– Additional or relocated sprinkler drops and heads and fire extinguishers in tenant areas, FM 200 and special Fire Protection Systems
– Electrical metering, distribution panels, wall outlets and switches, empty telephone/data wall boxes, and trim in tenant areas
– Tenant area light fixtures
– Raceways, data and telecommunication wiring and antennas
– Specialty interior items and systems
– Tenant area millwork
– Telecommunication, cable TV/Broadband Communications systems and sound systems
– General conditions, construction supervision, permits, hoisting, insurance, or contractor’s fee for Tenant Build-out
– Tenant Build-out design and space planning

Notwithstanding anything herein to the contrary, the following items are included in base building costs:

– On-grade parking
– Sitework and Landscaping
– Building foundations
– Building Superstructure
– Building Envelope (i.e. skin and roof)
– Common area partitions finished on common area side (minus finishes on tenant side)
– Common area ceilings
– Central Plant Mechanical, Electrical and Plumbing
– Complete Standard Fire Protection System
– Tenant area mini blinds
– Security System (base building only)
– Toilet Rooms and Stairwell Finishes
– Lobby finishes
– Stairs plus three (3) hydraulic elevators
– Signage
– Base Building Design and Engineering
CEILING HEIGHT TYPICAL:

9’-0” clear height from finish floor to ceiling tile.

PARTITIONS:

Partitions will conform to all state and local building codes.

Interior Partitions:

1. Two hour rated partitions extending full height from floor to underside of deck will be constructed of 3-5/8” metal studs with one layer of 3/4” gypsum board on each side, sound attenuation blankets, fire taped and sanded. These walls are required at the first floor exit corridor.

2. Unrated partitions extending full height from floor to underside of deck will be constructed of 3-5/8” metal studs with one layer of 5/8” gypsum board on each side, sound attenuation blankets, fire taped and sanded. These walls are required at the elevator machine room.

3. Two hour rated shaft walls extending full height from floor to underside of deck will be constructed of 2-1/2” metal studs with two layers of 1/2” gypsum board and 1” gypsum shaft liner, sound attenuation blankets, fire taped and sanded. These walls are required at mechanical shafts.

4. Walls enclosing toilet rooms, lobby, phone closets, mechanical rooms and electrical/transformer rooms will be non-rated partitions extending from floor to underside of deck. The walls will be constructed of 3-5/8” metal studs with one layer of 5/8” gypsum board on each side, fire-taped and sanded.

5. All other partitions not listed above shall at a minimum extend from floor to ceiling grid and will be constructed of 3-5/8” metal studs with one layer of 5/8” gypsum board on each side, fire-taped and sanded (not including knee walls).

6. Two and one-half inch thick batt insulation for sound attenuation will be provided in the wall construction surrounding the toilet rooms, mechanical rooms, first floor corridor and dock (receiving) area.

Tenant demising partitions & columns:

Interior building columns shall be finished with a minimum metal studs, drywall, taping and wall finish. Interior partition connections to existing window mullions will be by break-metal closure end cap over wall end to match mullion partition in color. Window sill height will be approximately 32” above finish floor. Two and one-half inch thick batt insulation for sound attenuation will be provided in the demising wall construction between two tenant spaces, with the wall partition being fire rated per code.

DOORS:

Suite entrance door:

3’-0” x 8’-10” pair of solid glass Hurculite doors or solid glass doors with millwork trim and mullions with approved stain, sealer, and varnish shall be provided at Suite Entrances. Sidelites at each side of
door opening shall also be provided. Entrance locking system shall comply with code and local Fire Marshalls requirements. Hollow metal frames will not be allowed.

**Interior doors:**

Interior doors will be 3'-0" x 8'-10" x 1 3/4" flush panel solid core doors as above with painted (satin) standard profile, 2” face, welded hollow metal frame.

**DOOR HARDWARE:**

All door hardware will meet ADA requirements, with function appropriate to intended usage. Base building and tenant latch and locksets will be lever style equal to Schlage L 9000 Series #07, with US-260 satin chrome finish. A complete keying system allowing doors within a given tenant area to be sub mastered and tied to a building master system will be provided. Electric strikes/locksets are permissible as is card reader technology as long as Landlord is provided credentials to access.

Entrance door Hardware equal to:

Lockset Schlage # L 9050 07A
2 pr. Hinges- Stanley #FBB 168
Closer- Vale 3500 BF Series
Wall stop- Glynn Johnson 50C/60C
Hurculite Doors may require special pulls and Mag lock mechanisms

Interior door hardware equal to:

Lockset - · Schlage # L 9050 07A or Latchset - Schlage #9010
2 pr. Hinges- - Stanley #FBB 168
Wall stop- Glynn Johnson 50C/60C

**TENANT ID SIGNAGE:**

One (1) per tenant, Entry will have building standard suite identification graphics.

**ELECTRICAL:**

**Duplex Receptacles:**

Partition mounted convenience outlet (120v.) ivory device with satin stainless finish cover plate in building standard outlet box.

**Data Outlets:**

One (1) per office/conference room, work station and copy vending room. Partition mounted building standard boxes with pull string to above ceiling for tenant contractor’s use.

**Light switches:**

Partition mounted single pole, ivory toggle switches with satin stainless cover plate in building standard outlet box.
Light Fixture:

Equal to:

Recessed lay-in deep cell parabolic 2’x4’ fluorescent fixture: Columbia lighting Model #P4D24-332G-MA36-5-EB8LHUNV equipped with (3) 32W T-8 lamps.

Recessed lay-in deep cell parabolic 2’x2’ fluorescent fixture: Columbia lighting Model #P4D22-317G-MA33-S-EB8LHUNV equipped with (3) 17W T-8 lamps.

2’x4’ compact fluorescent lay-in direct/indirect basket fixture: H.E. Williams Model #DIG-S24-X-32-WPR. All offices and conference rooms to be equipped with (2) 32W T8 lamps per fixture. All open areas to be equipped with (3) 32W T-8 lamps per fixture.

2’x2’ compact fluorescent lay-in direct/indirect basket fixture: H.E. Williams Model #DIG-S22-X 4” recessed square horizontal compact fluorescent downlight fixture Kirlin Model #FRT-04092-43 with(1) 32W lamp.

Incandescent 4-1/2” recessed downlight Infinity Model #R45-50-PAR20/Med w/ Matte trim kit.

Emergency Lighting: (as required)

Equal to:

Energy efficient 3-tube 2’ x 4’, lay-in fluorescent fixtures with T-8 lamps and 18 cell parabolic diffusers equal to Metalux-Paralux III (2P3GAX/340, IS cell) or indirect lighting fixtures as approved by Opus.

Exit signs:

Exit signs in accordance with applicable codes type suspended from ceiling.

CEILING:

Equal to:

2’x2’ or 2’x4’ Ceiling Tile
9/16” Fine Line Ceiling Grid

WINDOW TREATMENT:

One-inch (1”) horizontal mini-blinds. Levelor or equal. Color to be black.

CARPET:

TBD... Carpet material allowance (for carpet material only) for tenant improvement areas equal to $20/SY or more.

MILLWORK:

Closets:

One painted shelf and one stainless/chrome steel rod.
PANTRY CABINETS:

Plastic laminate counter top with millwork base and wall hung cabinets.

MECHANICAL:

PLUMBING:

*Equal to:*

Sink-Eikay #LIZAD 2219 with #LK-35 strainer and tailpiece and faucet.

FIRE SPRINKLER SYSTEM:

A sprinkler grid with semi-recessed or recessed heads at a coverage rate of one per two hundred twenty-five (225) square feet or as required by code for specifics of tenants build out.

HVAC:

Variable Air Volume system with fan-powered boxes and reheat coils as required for build out and by code.

FLOOR LOADING:

(Tenant’s use not to exceed the floor loads listed below)

<table>
<thead>
<tr>
<th>Description</th>
<th>Load (PSF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Live load (typical floor)</td>
<td>100</td>
</tr>
<tr>
<td>Live load (designed storage areas only) Dead load (superimposed)</td>
<td>125</td>
</tr>
<tr>
<td>Partitions (on typical floor)</td>
<td>Included in floor live load</td>
</tr>
<tr>
<td>Partitions (on typical floor)</td>
<td></td>
</tr>
</tbody>
</table>
GENERAL DESCRIPTION OF LANDLORD’S JANITORIAL SERVICES

1. GENERAL

DAILY SERVICES (MONDAY – FRIDAY, EXCEPT HOLIDAYS):

1. Sweep all staircases and vacuum if carpeted.
2. Empty and clean all wastepaper baskets, ashtrays, receptacles, etc. and damp dust and wash as necessary.
3. Clean cigarette burns, and replace sand or water as necessary.
4. Dust and sanitize all telephones.
5. Wash and sanitize all water fountains using a disinfectant solution.
6. Dust mop, using a treated mop, all stone, ceramic tile, terrazzo and other types of unwaxed flooring, and damp mop spills.
7. Dust mop, using treated mop, all vinyl, asbestos, asphalt, rubber and similar types of flooring. This includes removal of gum and other similar substances using a scraping device.
8. Sweep all steps, sidewalks and plaza.
9. In lobby, dust and wipe clean mail chutes, mail depository door, metal doorknobs, kick plates, and directional signs.
10. Damp mop the elevator lobbies and corridors.
11. Vacuum all carpets and rugs, moving light fixtures other than desks and file cabinets as needed, etc.
12. Hand dust all fixtures, windowsills and furniture, including desktops, chairs and tables with specialty treated cloths (do not disturb papers on desk).
13. Dust all exposed filing cabinets, bookcases and shelves with specially treated cloths.
14. Low dust all horizontal surfaces to hand height (70”), including all sills, ledges, moldings, shelves, counters and baseboards.
15. Low dust moldings, picture frames and convertors.
16. Clean upper side of all glass furniture lops.
17. Spot clean all interior glass to partitions and doors, and in glass elevator.
18. Maintain janitor slop sink and locker rooms in clean and orderly condition.
19. Remove all gum and foreign matter on sight.
20. Designated lights shall be turned off after work is completed and floors are to be left in a neat and orderly condition.
**WEEKLY SERVICES:**

1. Wet mop all staircases or detail vacuum.
2. Clean building directory glass.
3. Remove fingerprints from doors, frames, handles, railings, light switches and push plates.
4. Sweep clean loading dock areas and garage.
5. Detail dust all railings to staircases.
6. Spray buff all tile floors. Lobbies may require spray buffing more often.
7. Polish all elevator door tracks.
8. Hand dust all door louvers and other ventilating louvers within reach.

**II. RESTROOMS**

**DAILY SERVICES (MONDAY- FRIDAY, EXCEPT HOLIDAYS):**

1. Clean tables and chairs in lounge area.
2. Clean and sanitize both sides of the toilet seats with a germicidal solution.
3. Clean and polish all mirrors, powder shelves and bright work. Bright work includes flushometers, piping and toilet seat hinges.
4. Empty and clean all paper towel and sanitary disposal receptacles.
5. Wash receptacles with a germicidal solution.
6. Dust all partitions, tile walls and dispensers. Remove all finger marks and smudges.
7. Spot clean partitions for graffiti.
8. Refill soap, toilet tissue and towel dispensers. Restroom stock is to be supplied by the customer.
9. Sweep and mop all ceramic tile floors with a germicidal solution.
10. Remove wastepaper and refuse to trash room in special carriages and dump into compactor unit.
11. Sanitary napkin dispensers are to be stocked and serviced by contractor.

**MONTHLY SERVICES:**

1. Machine scrub tile floors as required.
2. Wash partitions
III CARPET

DAILY SERVICES (MONDAY- FRIDAY, EXCEPT HOLIDAYS):

1. Spot clean carpeting.

IV. ELEVATORS

DAILY SERVICES (MONDAY- FRIDAY, EXCEPT HOLIDAYS):

1. Dust walls around cabs.
2. Clean fingerprints from around push button plates.
4. Damp mop, floor in freight elevators, if any.
5. Vacuum elevator door tracks.

V. QUARTERLY SERVICES

1. Perform all high dusting, which includes all vertical surfaces such as walls, partitions, Venetian blinds and other surfaces not reached in nightly cleaning.
2. Vacuum grill and duct work.
3. Clean all interior glass in partitions and doors.
4. Wash partitions, tile walls and surfaces with a proper disinfectant in all restrooms.
6. Resilient tile throughout the building, except where scheduled otherwise, shall be scrubbed and refinished using a neutral, low alkaline washing solution and a synthetic resistant finish.
7. All baseboards are to be wiped clean after each refinishing of floors.
8. Special care is to be taken to assure that chrome of legs of metal furniture is wiped clean after each refinishing of the floors.
9. Vacuum upholstered furniture, drapes, etc.
10. Shampoo all public area carpeting.
11. Hose down loading dock areas.
12. Wash entrance lobby walls.
14. Clean exterior glass two (2) times per year. Clean interior glass one (1) time per year.
EXHIBIT “I”
GENERAL DEPICTION OF STORAGE SPACE
EXHIBIT “J-1”
GENERAL DEPICTION OF FAÇADE SIGNAGE
EXHIBIT “J-2”
DETAILS FOR BUILDING MONUMENT SIGNAGE

MOVE TENANT ‘A’ SPACE TO THIS SIDE

JULY 31, 2008
Tenant’s interior common area sign may include a statement as to the location of any reception area of Tenant.
EXHIBIT “J-3(b)”
GENERAL DEPICTION OF ONE ALTERNATIVE FOR INTERIOR COMMON AREA TENANT SIGNAGE

Tenant’s interior common area sign may include a statement as to the location of any reception area of Tenant.
LOBBY ELEVATION @
STONE & WOOD WALL

1/4" = 1'-0"

48" x 18"
SIGN / LOGO AREA
LETTERING / GRAPHICS
TO BE COMPATIBLE WITH
EXISTING LOBBY FINISHES
(BRUSHED SS OR EQUAL)

OPUS

Opus Architects & Engineers, Inc.

August 16, 2008
SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT is dated as of August 26, 2008 by and among UNION BANK & TRUST COMPANY, a Nebraska state banking corporation, its successors and assigns (“Lender’), SOLO CUP OPERATING CORPORATION, a Delaware corporation, (“Tenant”), and OPUS NORTH CORPORATION, an Illinois Corporation (“Landlord” or “Borrower”).

RECITALS:

Lender, Tenant and Landlord acknowledge the following:

A. Landlord owns the property legally described in Exhibit A attached hereto (“Property”).

B. Landlord has leased a portion of the Property to Tenant (“Premises”) pursuant to a lease dated the 26th day of August, 2008 and all amendments, supplements and additions thereto (“Lease”).

C. Lender has agreed to make a first mortgage loan (“Loan”) to Landlord, repayment of which is to be secured by a Combination Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Financing Statement (“Mortgage”) on the Property.

D. As a condition precedent to Lender’s disbursement of the Loan proceeds, Lender has required that Tenant subordinate the Lease and Tenant’s interest in the Premises in all respects to the lien of the Mortgage.

E. In return, Lender is agreeable to not disturbing the Tenant’s possession of the Property.
F. Lender is disbursing the Loan proceeds in reliance upon the agreements contained in this instrument, but for which it would not disburse the Loan.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals and the mutual agreements which follow, Lender, Tenant and Landlord agree as follows:

1. **Subordination.** Tenant agrees that the Lease, terms, covenants and provisions thereof including all of the rights of Tenant in, to or under the Lease, are, and shall at all times continue to be, subject to and subordinate in all respects to the lien of the Mortgage and to all renewals, modifications, supplements, replacements and extensions thereof, and to the rights and interest of the holder of the Mortgage, as fully and with the same force and effect as if the Mortgage had been executed, delivered and recorded, and the indebtedness secured thereby had been fully disbursed prior to the execution and delivery of the Lease or possession of the Property by Tenant, or its predecessors in interest.

2. **Nondisturbance.** So long as Tenant is not in default under the Lease (beyond any period given Tenant to cure such default), Lender agrees that Tenant’s possession of the Property and Tenant's other rights and privileges under the Lease or any extensions or renewals thereof, shall not be diminished, disturbed or interfered with by Lender, and if any action or proceeding is commenced by Lender for the foreclosure of the Mortgage and/or the sale of the Property, Tenant shall not be named as a party defendant therein unless required by law or if the Tenant fails to comply with the terms of this Section. Should Lender become the owner of the Property, or should the Property be sold by reason of foreclosure, or other proceedings brought to enforce the Mortgage, or should the Property be transferred by deed in lieu of foreclosure, or should any portion of the Property be sold under a trustee’s sale, the Lease will continue in full force and effect as a direct lease between the Lender and/or the succeeding owner of the Premises, as the case may be, and the Tenant, upon and subject to all of the terms, covenants and conditions of the Lease for the balance of its term as it may be extended, and Lender, or any successor owner of the Premises, will be bound by all of the terms of the Lease. Lender agrees that so long as the Lease is in full force and effect, no proper exercise by Tenant of its rights under the Lease shall constitute a default under the Mortgage or require Lender’s consent, and that any conflict between the terms of the Lease and the terms of the Mortgage shall be resolved in favor of the Lease.

3. **Attornment.** Tenant agrees that the institution of any action or other proceedings by Lender under the Mortgage in order to realize upon Landlord’s interest in the Property shall not result in the cancellation or termination of the Lease or Tenant’s obligations thereunder. If Lender shall become the owner of the Property by reason of the foreclosure of the Mortgage or the acceptance of a deed in lieu of foreclosure or otherwise: (a) the Lease shall not be terminated, or otherwise affected thereby except as specified herein; (b) Tenant shall attorn to Lender and recognize Lender as its landlord under the Lease for the unexpired term of the Lease, subject to all of the terms and
conditions of the Lease, except as specified herein, said attornment to be effective and self-operative immediately upon Lender succeeding to the interest of the Landlord under the Lease without the execution of any further instruments on the part of any of the parties hereto; and (c) Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the Landlord under the Lease; provided, however, that Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has succeeded to the interest of Landlord under the Lease. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein.

4. **Lender Not Bound By Certain Acts of Landlord.** If the Lender shall succeed to the interest of Landlord under the Lease, Lender shall not be: (a) responsible or liable for, or obligated to cure, any defaults by Landlord under the Lease, or any act or omission of any prior landlord (including Landlord) (provided that, and subject to subparagraphs (f) and (g) below, the foregoing shall not be deemed to relieve Lender or any other party from the obligation to perform any obligation of the Landlord under the Lease which remains unperformed at the time the Lender or any other party succeeds to the interest of Landlord under the Lease and which continues (or has theretofore continued) beyond any applicable cure period); (b) subject to any claims, defenses or offsets under the Lease or against any prior landlord (including Landlord) which arose or existed prior to the time Lender obtains possession of the Property (provided that, and subject to subparagraphs (f) and (g) below, the foregoing shall not be deemed to relieve Lender or any other party from the obligation to perform any obligation of the Landlord under the Lease which remains unperformed at the time the Lender or any other party succeeds to the interest of Landlord under the Lease and which continues (or has theretofore continued) beyond any applicable cure period); (c) bound by any rent paid more than thirty (30) days in advance; (d) liable for the return of any security deposit paid to any prior landlord, including Landlord, unless Lender has actually received the same; (e) bound by any amendment or modification of the Lease made without its prior written consent which would (i) result in a reduction or rent or other sums due and payable pursuant to the Lease, (ii) reduce the term of the Lease, (iii) provide for payment of rent more than thirty (30) days in advance, or (iv) materially increase Landlord’s obligations under the Lease (Lender agrees not to unreasonably withhold or delay its consent to any proposed amendment or modification which does not materially and adversely affect Lender’s security); provided that Lender shall be bound by any such amendments or modifications that are contemplated by the Lease in connection with the exercise of rights of Tenant or Landlord thereunder (for example, but without limitation, an amendment memorializing Tenant’s exercise of any renewal or extension rights under the Lease); (f) bound by any provisions of the Lease regarding the commencement or completion of any construction by the Landlord thereunder (provided; however, that (i) Lender will be bound by construction obligations upon the expiration of 180 days from the date Lender comes into fee title of the Property, and further provided that if Lender sells the Property
prior to the expiration of the 180-day period, then any purchaser thereof must be bound by said construction obligations at the time of purchase, and (ii) such lack of liability on the part of Lender shall not affect any of Tenant’s rights of rent abatement, offset or termination described in the Lease in the event of any failure to perform any such construction obligations as long as Tenant has provided all applicable notices and cure periods as required under the Lease and this Agreement); and (g) bound by any provisions of the Lease which provided for warranties of construction from the Landlord or other parties to Tenant (provided, however, that Lender will be bound by any such warranties of construction in the Lease after expiration of 180 days from the date Lender comes into fee title of the Property, and further provided that if Lender sells the Property prior to the expiration of the 180-day period, the any purchaser thereof must be bound by said construction warranties at the time of purchase). Nothing in this Section shall be deemed a waiver of any rights or remedies that Tenant may possess or claim personally against Landlord for any defaults or acts of Landlord. For clarity, the parties agree that if Lender shall succeed to the interest of Landlord under the Lease, Lender shall be responsible and liable to Tenant for the payment of any then unpaid or unfunded allowances (including, without limitation, the Improvement Allowance and Space Plan Allowance, each as defined in the Lease) due or to become due to Tenant under the Lease, regardless of whether the obligation to fund and/or pay such amount shall have arisen prior to, on or after the date on which the Lender succeeded to the interest of Landlord under the Lease, and nothing contained in this Section 4 shall be deemed to limit such responsibility or liability.

5. **Right To Cure Landlord’s Default.** Notwithstanding any provisions of the Lease to the contrary, no notice of cancellation or termination of the Lease by Tenant by reason of a default under the Lease by the Landlord thereunder shall be effective unless Lender shall have first received notice of the default giving rise to such cancellation and shall have failed, for a period of thirty (30) days after receipt thereof, to cure such default. Tenant will forward to Lender copies of any statement, notice, claim or demand of default under the Lease given or made by Tenant to Landlord, in all cases by the same method as the statement, notice, claim or demand of default was given or made to Landlord.

6. **Assignment of Lease.** Tenant acknowledges that Landlord is assigning the Lease and rents thereunder to Lender as security for the Note given by Landlord to Lender. Tenant agrees that upon receipt of a written notice from Lender, it will thereafter pay to Lender directly all rent and other amounts due or to become due from time to time under the Lease. The Tenant shall have the right to rely upon the notice from Lender and shall pay such rents and other amounts to Lender without any obligation or right to determine the actual existence of the right of Lender to receive such rents and other amounts, notwithstanding any notice from or claim of Landlord to the contrary. Landlord shall have no right or claim against Tenant for any such rents and other amounts so paid by Tenant to Lender and Landlord waives and releases any such claims. Landlord and Lender agree that Tenant shall be credited under the Lease for any payments sent to Lender pursuant to such written notice. In the event that Tenant makes such payment(s) to Lender as provided for in this Section, Landlord agrees not to commence any action (at
law or in equity) against Tenant to recover: (a) the proceeds of said payment(s); or (b) possession of the Premises.

7. **Casualty and Condemnation.** Lender agrees that so long as the Lease is in full force and effect, if the Premises shall be damaged or destroyed by fire or other casualty, or taken by condemnation, and such event does not result in the termination of the Lease by Landlord or Tenant pursuant to any right reserved therein by either such party, then notwithstanding any contrary provision contained in the Mortgage, Lender will make the proceeds of insurance, or condemnation award, available for the purpose of repairing and restoring the Premises, as the case may be, subject to such reasonable procedures with respect thereto as Lender may impose.

8. **Notices.** Any notice required or permitted to be given by either party hereto to the other under the terms of this Agreement, or documents related hereto, shall be given by one of the following methods: (i) by deposit in the United States Mail, registered or certified, return receipt requested, postage prepaid, (ii) by telefacsimile with proof of transmission, (iii) by reputable overnight courier providing a receipt for overnight delivery, or (iv) by personal delivery with proof of delivery, addressed as follows:
All notices shall be deemed to have been given upon receipt (or refusal of receipt) thereof.

9. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and assigns of Lender, Tenant and Landlord and any person or entity that takes title to the Property by virtue of a foreclosure sale or otherwise. This Agreement shall not modify or in any way affect Landlord’s obligations under the Lease.
10. Amendment. This Agreement may be amended only by a written agreement signed by Lender, Landlord and Tenant.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

12. Counterparts. This Agreement may be executed in 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. Lender and Tenant agree that facsimile executed copies of this Agreement shall be binding. Original copies of this Agreement shall be circulated and signed by Tenant and Lender as soon as practicable after closing of the loan.

13. Tenant Financing. Tenant shall have the absolute right from time to time during the term of the Lease and without Landlord’s or Lender’s further approval written or otherwise, to collaterally assign or to grant and assign a mortgage or other security interest in Tenant’s interest in the Lease and all of Tenant’s property to Tenant’s lenders in connection with Tenant’s financing arrangements. Lender agrees to execute such confirmation certificates and other documents as Tenant’s lenders may reasonably request in connection with any such financing provided the same are in a form acceptable to Lender.

14. Entire Agreement. This Agreement contains the entire agreement between the parties respecting the subject matter contained herein and supersedes all prior or contemporaneous written or oral agreements and negotiations between the parties.

[REMAINDER OF PAGE LEFT BLANK]
UNION BANK & TRUST COMPANY, a Nebraska state banking corporation:

By

Karen J. Cenovic, Senior Vice President

STATE OF NEBRASKA  )
COUNTY OF DOUGLAS  )  ss.

The foregoing instrument was acknowledged before me this __________ day of __________, 2008, by Karen J. Cenovic, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the entity upon behalf of which she acted, executed the instrument. She is the Senior Vice President of Union Bank & Trust Company, a Nebraska state banking corporation, for and on behalf of said Union Bank & Trust Company, and she acknowledged, signed and delivered the instrument as her free and voluntary act, for the uses and purposes therein set forth.

Notary Public

Signature Page to Subordination Agreement
Opus North Corporation

S - 1
TENANT:
SOLO CUP OPERATING CORPORATION:
By
Its

STATE OF ________________ )
) ss.
COUNTY OF ________________ )

The foregoing instrument was acknowledged before me this __________ day of __________, 2008, by __________, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which he/she acted, executed the instrument. He/She is the __________ of Solo Cup Operating Corporation, a Delaware corporation, for and on behalf of said Solo Cup Operating Corporation, and he/she acknowledged, signed and delivered the instrument as his/her free and voluntary act, for the uses and purposes therein set forth.

Notary Public

Signature Page to Subordination Agreement
Opus North Corporation
S - 2
LANDLORD:
OPUS NORTH CORPORATION, an Illinois corporation:

By __________________________________________
Dave Everson, Vice President

STATE OF MINNESOTA )
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this __________ day of __________, 2008, by Dave Everson, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is the Vice President of Opus North Corporation, an Illinois corporation, for and on behalf of said Opus North Corporation, and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.

Notary Public

Signature Page to Subordination Agreement Opus North Corporation

S - 3
Exhibit A
Legal Description

Parcel 1:

Lot 2 in Opus Landmark of Lake Forest Subdivision, being a subdivision of part of the East 1/2 of the East 1/2 of Government Lot 2 of the Northwest 1/4 of Section 1, Township 43 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded June 21, 2000, as Document No. 4542702, in Lake County, Illinois. Except from the above described premises that portion of the land taken for Saunders Road by Plat of Dedication recorded May 4, 2006 as document 5987992. Also Except from the above described premises that portion of the land taken for Saunders Road by Plat of Dedication recorded May 4, 2006 as document 5987993.

Parcel 2:

That portion of Saunders Road as vacated by The City of Lake forest Ordinance No. 00-43 recorded December 22, 2000 as document 4623821 and re-recorded May 4, 2006 as document 5987986 and Plat of Vacation of Saunders Road recorded May 4, 2006 as document 5987989, described as follows: The East 60.00 feet of the South 679.00 feet of Lot 2 in Opus Landmark of Lake Forest Subdivision, being a subdivision of part of the East 112 of the East 1/2 of Government Lot 2 of the Northwest 114 of Section 1, Township 43 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded June 21, 2000, as Document No. 4542702, in Lake County, Illinois.
EXHIBIT “L”
PRE-APPROVED LIST OF POSSIBLE TENANT’S GENERAL CONTRACTORS

1. Clune Construction;
2. Clayco Construction;
3. Pepper Construction Company; or
4. Opus North Corporation
First Amendment to Office Lease Agreement

Opus Development Corporation, an Illinois corporation – Landlord

and

Solo Cup Operating Corporation, a Delaware corporation --Tenant

Opus Landmark of Lake Forest II-- Lake Forest, Illinois

Dated as of November 23, 2010
This First Amendment to Office Lease Agreement ("First Amendment") is made and entered into as of the 23rd day of November, 2010, by and between Opus Development Corporation, an Illinois corporation formerly known as Opus North Corporation ("Landlord"), and Solo Cup Operating Corporation, a Delaware corporation authorized to transact business in Illinois ("Tenant").

Recitals:

A. Landlord and Tenant are parties to that certain Office Lease Agreement, dated as of August 26, 2008, with an Effective Date (as such term is defined therein) also of August 26, 2008 ("Original Lease"). Pursuant to the Original Lease, Landlord is leasing to Tenant, and Tenant is currently leasing from Landlord, the Premises (as such term is defined in the Original Lease). The Premises constitute certain office space in the Opus Landmark of Lake Forest II Office Building located at 150 South Saunders Road, Lake Forest, Illinois, and are commonly known as Suites 150, 200, 300 and 400.

B. Tenant has informed Landlord that Tenant desires to install a second (and redundant) communications line ("Redundant Line") into the Building (as such term is defined in the Original Lease) in order to provide further assurance to Tenant of uninterrupted telephone service to and from the Premises (in particular, but not by of limitation, for Tenant’s customer service group). Tenant’s installation of a Redundant Line is acceptable to Landlord, subject to the terms, provisions and conditions of this First Amendment.

C. Because the installation of a Redundant Line affects the Building, and not just the Premises, it is appropriate for the arrangements in connection therewith to be set forth in an amendment to the Original Lease. As a result, Landlord and Tenant desire to amend the Original Lease as set forth herein.

Agreements:

Now, therefore, for and in consideration of the foregoing Recitals and the covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, Landlord and Tenant agree as follows:

Section 1 Meanings of Terms; Incorporation of Recitals. Except as otherwise set forth in this First Amendment, all capitalized terms used herein will have the respective meanings given them in the Original Lease. The Recitals set forth above are hereby incorporated into this First Amendment and are hereby made a part hereof, as if fully set forth herein. The Original Lease, as amended by this First Amendment, will herein and hereafter be referred to as the "Lease."

Section 2 Redundant Line Installation Redundant Line Work.

(a) Redundant Line Work; Performance of Redundant Line Work. Strictly subject to this Section 2 and the balance of this First Amendment, Tenant may, at its sole cost and expense, cause the installation of a Redundant Line and related conduit and other equipment (collectively, "Redundant Line Work"). The Redundant Line Work will include, without limitation, bringing the Redundant Line into the demarcation room located on the lower level of the Building, generally as depicted on the site plan set forth on Exhibit A attached hereto and made a part hereof ("Redundant Line Plans"). Among other things, the Redundant Line Work will include making watertight any physical intrusions into the Building. Any material deviation from the Redundant Line Plans must be approved by Landlord, in writing and in Landlord’s sole and absolute discretion. Among other things, Tenant (i) will cause the Redundant Line Work to be performed in a first-class, prudent and commercially reasonable manner which minimizes or eliminates any interference with the operation of the Property as a first-class office facility for all of the tenants thereof, and (ii) will promptly repair and restore any and all damage to the Property (or any portion thereof) attributable to the Redundant Line Work, including, without limitation, to the parking areas, the sidewalks and the landscaping which are a part of the Property.
Tenant has contracted with AT&T Communications, or an affiliate thereof ("AT&T"), for the performance of the Redundant Line Work. Landlord hereby approves AT&T as Tenant's contractor for such purpose, subject to the requirements of this First Amendment. Landlord has retained Mackie Consultants, LLC ("Landlord's Consultant") to review the performance of the Redundant Line Work by AT&T and its subcontractors. Tenant will cause AT&T and its subcontractors (i) to allow Landlord’s Consultant full access to all of the Redundant Line Work at all times during the performance thereof for the purpose of inspecting both the ongoing performance of the Redundant Line Work, as well as the Redundant Line Work already in place from time to time; and (ii) to comply with all directions from Landlord’s Consultant which are intended to assure that the Redundant Line Work is being performed (A) in accordance with the Redundant Line Plans, (B) in a manner reasonably necessary to protect the Property and all Improvements (including, without limitation, assuring that no underground lines providing utility or other services to the Building are damaged or impaired), or (C) otherwise in accordance with the terms, provisions and conditions of this First Amendment. In the event that Landlord’s Consultant gives directions to Tenant or to AT&T and its subcontractors with respect to the performance of the Redundant Line Work, but Tenant, AT&T or any one of more of AT&T’s subcontractors fails or refuses to comply therewith, Tenant will cause the performance of the Redundant Line Work to be suspended immediately until either (1) there has been compliance with the directions of Landlord’s Consultant, or (2) it is established to Landlord’s reasonable satisfaction that such compliance is not necessary in order to conform with the requirements of this First Amendment. Anything in this First Amendment to the contrary notwithstanding, any directions given by Landlord’s Consultant will neither constitute any warranty or other undertaking by Landlord or Landlord’s Consultant to Tenant as to the adequacy of such directions nor create any liability or responsibility on the part of Landlord or Landlord’s Consultant with respect thereto, all such liability and responsibility remaining with Tenant or with AT&T and its subcontractors, exercising their independent professional judgment.

Tenant will be solely responsible for all costs and expenses of the Redundant Line Work, and all costs and expenses of the maintenance and operation of the Redundant Line. In addition, Tenant will reimburse Landlord for all costs and expenses of Landlord’s Consultant in connection with the Redundant Line Work, within 30 days after Landlord’s invoice therefor accompanied by reasonable supporting documentation. All such costs will be Additional Rent for purposes of the Lease and, among other things, will be paid by Tenant in order that Tenant complies with its obligations under the Lease to prevent the filing of any mechanics’ liens against the Property or any portion thereof.

Tenant will indemnify, defend and hold harmless Landlord, and its officers, directors, shareholders, managers, members, employees, contractors, consultants and agents, from any loss, cost, damage, expense and other liability (including, without limitation, reasonable attorneys’ fees and costs) arising out of or suffered in connection with or as a result of the performance of any of the Redundant Line Work, or any portion thereof, or the maintenance or operation by or on behalf of Tenant of the Redundant Line, including, without limitation, any loss, cost, damage, expense or other liability arising out or suffered in connection with (i) any damage to the Property, the Building, the Premises, the premises of any other tenants in the Building, or any portion or portions of any of the foregoing, or (ii) any interruption or interference with services to be provided to the Building or any other tenants in the Building. This indemnification will be in addition to all other indemnification and other obligations of Tenant set forth in the Original Lease.
Landlord and Tenant each caused this First Amendment to be executed and delivered by its duly authorized representative to be effective as of the date first above written.

**LANDLORD:**

Opus Development Corporation, an Illinois corporation formerly known as Opus North Corporation

By:  
/s/ David Everson  
Name:  David Everson  
Title:  General Manager  
Vice President, Sales & Finance

**TENANT:**

Solo Cup Operating Corporation, a Delaware corporation authorized to transact business in Illinois

By:  
/s/ Jan Stern Reed  
Name:  Jan Stern Reed  
Title:  Executive VP-HR, General Counsel
Tenant will be directional boring underneath the existing parking lot, going from the electrical room straight east to property line, at this location we will be setting a 24” X 36” X 24” hand hole. Tenant will need to dig at the Building to find the existing conduits coming out and connect our 4” conduit to an existing sleeve in the Building foundation. The directional bore will not disturb the parking lot unless we need to cross an existing utility then Tenant will have to expose to get a depth on that utility. These location will be restored to original condition.
Second Amendment to Office Lease Agreement

This Second Amendment to Office Lease Agreement ("Second Amendment") is made and entered into as of the 30th day of August, 2012, by and between Lake Forest Landmark II, LLC, an Illinois limited liability company, successor-in-interest to Opus Development Corporation, an Illinois corporation (formerly known as Opus North Corporation) ("Landlord"), and Solo Cup Operating Corporation, a Delaware corporation authorized to transact business in Illinois ("Tenant").

Recitals:

A. Landlord and Tenant are parties to that certain Office Lease Agreement, dated as of August 26, 2008, with an Effective Date (as such term is defined therein) of August 26, 2008 ("Original Lease"), as amended by that certain First Amendment to Office Lease Agreement, dated as of November 23, 2010 ("First Amendment," and together with the Original Lease, the "Existing Lease"). Pursuant to the Existing Lease, Landlord is leasing to Tenant, and Tenant is leasing from Landlord, the Premises (as such term is defined in the Existing Lease). The Premises constitute certain office space in the Landmark of Lake Forest II Office Building located at 150 South Saunders Road, Lake Forest, Illinois, and are commonly known as Suites 150, 200, 300 and 400.

B. On December 1, 2010, the Building (as such term is defined in the Existing Lease) experienced an electrical event ("Electrical Event"). Following the Electrical Event, it was discovered that certain of the electrical equipment in or about the Building was damaged. In response to the discovery of damaged electrical equipment, Landlord caused the total replacement of the 4000 amp electrical service to the Building (including 9 electrical feeds/external switchgear/system grounding) (the "Project"), and incurred certain costs in the amount of $271,121.24 in connection therewith ("Project Costs").

C. Landlord and Tenant have now reached agreement on the share of the Project Costs to be paid by Tenant as Additional Rent under the Lease.

D. Landlord and Tenant desire to amend the Existing Lease to reflect such agreement as to Tenant’s share of the Project Costs and the manner in which it will be paid.

Agreements:

Now, therefore, for and in consideration of the foregoing Recitals and the covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, Landlord and Tenant agree as follows:

Section 1 Meanings of Terms; Incorporation of Recitals. Except as otherwise set forth in this Second Amendment, all capitalized terms used herein will have the respective meanings given them in the Existing Lease. The Recitals set forth above are hereby incorporated into this Second Amendment and are hereby made a part hereof, as if fully set forth herein.
Section 2  Tenant's Share of Project Costs. In addition to paying Tenant's Share of Operating Expenses in accordance with Section 3 hereof, Tenant will pay to Landlord, as Additional Rent, $225,618.54, being Tenant's Share (83.217%) of the Project Costs, as follows:

(i) $12,278.56, covering the period from January 1, 2012, through August 31, 2012, payable on or before September 1, 2012; and

(ii) 139 monthly installments of $1,534.82 each, commencing on September 1, 2012, and continuing on the first day of each and every month thereafter for the next succeeding months during the balance of the Term.

Section 3  Operating Expense Catch-Up. In addition to paying Tenant's Share of the Project Costs in accordance with Section 2 hereof, on or before September 1, 2012, Tenant will pay to Landlord, as Additional Rent, $4,837.60, which amount represents a portion of Tenant's Share of Operating Expenses, which portion was withheld by Tenant for the period from January 1, 2012, through August 31, 2012.

Section 4  Full and Final Payment. Landlord represents that the Project Costs represent all costs incurred by Landlord in furtherance of the Project for which Landlord is seeking or will seek reimbursement from Tenant. Landlord further represents that it has provided to Tenant copies of invoices or other documentation that detail such costs and the services provided to Landlord in relation to the Project. Landlord and Tenant agree that the payments set forth in Section 2 herein represent Tenant's full and final payment for all costs associated with the Project (other than the Project Costs), whether known or unknown.

Section 5  Miscellaneous.

(a) Counterparts; Facsimile and Electronic Signatures. This Second Amendment may be executed in any number of counterparts, each of which will constitute an original document and all of which together will constitute one instrument. Any party hereto may rely upon a facsimile or electronic copy of an executed counterpart of this Second Amendment, and this Second Amendment will be enforceable against the party executing such counterpart.

(b) Captions. The paragraph headings or captions appearing in this Second Amendment are for convenience only, are not a part of this Second Amendment, and are not to be considered in interpreting this Second Amendment.

(c) Governing Law; Binding Nature; Further Amendment. This Second Amendment (a) will be construed and enforceable in accordance with the laws of the State of Illinois, without application of its choice of law rules; (b) will be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns; and (c) may be modified or amended only by a written agreement executed and delivered by Landlord and Tenant.

2.
(d) **Full Force and Effect.** Except as expressly amended by this Second Amendment, the Existing Lease will remain in full force and effect in accordance with its terms, provisions and conditions. The Existing Lease, as amended by this Second Amendment, will herein and hereafter be referred to as the “**Lease.**”

(e) **Conflicts.** In the event of any conflict or inconsistency between this Second Amendment and the Existing Lease, the terms, provisions and conditions of this Second Amendment will govern and control.

[Signatures on following page]

3.
Landlord and Tenant each caused this Second Amendment to be executed and delivered by its duly authorized representative to be effective as of the date first above written.

**LANDLORD:**

Lake Forest Landmark II, LLC, an Illinois limited liability company

By: NWB Real Estate Company, an Illinois corporation
   Its Managing Member

By: /s/ Charles F. Gross
    Charles F. Gross, President

**TENANT:**

Solo Cup Operating Corporation, a Delaware corporation authorized to transact business in Illinois

By: /s/ Robert D. Koney, Jr.
Name: Robert D. Koney, Jr.
Title: Executive Vice President &
       Chief Financial Officer
EXHIBIT B

Sublease
EXHIBIT C

Space Plan

[See Following Pages]
AMENDMENT NO. 1 TO
SUPPLY AGREEMENT

This AMENDMENT NO. 1 TO SUPPLY AGREEMENT (this “Amendment”) is made and entered into as of February 4, 2016 by and between Nuvo Research Inc., a company incorporated under the laws of the province of Ontario, Canada (“NUVO”), having offices at 7560 Airport Road, Unit 10, Mississauga, Ontario, L4T 4H4, and Horizon Pharma Ireland Limited, a Irish limited company (“HORIZON PHARMA”), and amends that certain Supply Agreement, dated as of October 17, 2014 (the “Supply Agreement”), by and between NUVO and HORIZON PHARMA. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Supply Agreement.

AGREEMENT

1. SECTION 2.2. Section 2.2 of the Supply Agreement is hereby amended and restated as follows:

2.2 

2.2.1 As soon as reasonably practicable following the Effective Date, NUVO shall identify, evaluate and select an organization capable of providing Manufacturing services substantially similar in nature, scope and quality to the services provided by NUVO under this Agreement, and which is reasonably acceptable to HORIZON PHARMA (the “Alternative Third-Party Manufacturer”); PROVIDED that NUVO shall […***…]. After such Alternative Third-Party Manufacturer is selected, HORIZON PHARMA[…***…]. The Alternative Third-Party Manufacturer shall not be permitted to supply more than the Alternative Supply Limit in any twelve month period. “Alternative Supply Limit” means, for one or more purchases of Product during any twelve (12) month period, the quantity of Product equal to ten percent (10%) of the sum of the total amount of Product manufactured from the Nuvo Facility during the nine
(9) month period prior to a proposed purchase date and the amount then set forth on Horizon PHARMA's then-current binding forecast for the three (3) month period following such proposed purchase date.

2.2.2 As of the Effective Date, NUVO is a party to the agreements set forth on Schedule 2.2, pursuant to which the Third Party counterparties to such agreements (each, an “Alternate API Manufacturer”) provide API Manufacturing services currently utilized by NUVO. Following the Effective Date, HORIZON PHARMA shall[...***...].

2.2.3 If the Alternative Third-Party Manufacturer or Alternate API Manufacturer is not approved by the Regulatory Authorities in the HORIZON PHARMA Territory, NUVO shall use reasonable efforts to select an alternative manufacturer acceptable to the applicable Regulatory Authorities as soon as reasonably practicable.

2.2.4 Following approval from the relevant Regulatory Authorities, NUVO shall use commercially reasonable efforts to enter into agreements with the Alternative Third-Party Manufacturer and Alternate API Manufacturer requiring the Alternative Third-Party Manufacturer and Alternate API Manufacturer to provide Manufacturing services on substantially the same terms as described in this Agreement upon reasonable notice to such Alternative Third-Party Manufacturer or Alternate API Manufacturer by NUVO; provided, however, that NUVO shall not be required to enter into any such agreement to the extent such services are provided for in an agreement set forth on Schedule 2.2; and further provided [...***...]. Notwithstanding any other provision, the agreement with the Alternative Third-Party Manufacturer shall include language: [...***...]

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[...***...]. Notwithstanding anything to the contrary herein[...***...]. The preceding limitation shall not apply in the case of any (a) gross negligence or willful misconduct by NUVO or (b) the supply of Supplied Product by such Alternative Third-Party Manufacturer due to NUVO’s uncured material breach of this Agreement. In connection with the negotiation of any agreement with an Alternative Third-Party Manufacturer or Alternate API Manufacturer, NUVO shall at all times keep HORIZON PHARMA apprised of the status of all such negotiations and any and all terms that NUVO and the potential Alternative Third-Party Manufacturer or Alternate API Manufacturer are discussing and shall provide HORIZON PHARMA with a copy of any such agreement prior to the execution thereof. To the extent any agreement with an Alternative Third-Party Manufacturer or Alternate API Manufacturer requires NUVO to purchase a minimum quantity of Supplied Product or API to permit the Alternative Third-Party Manufacturer or Alternate API Manufacturer to maintain its approvals with a relevant Regulatory Authority, NUVO shall purchase such quantity of Supplied Product or API from such Alternative Third-Party Manufacturer or Alternate API Manufacturer and may supply such Supplied Product or API to HORIZON PHARMA hereunder; provided, however, that if the

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2.2.5 HORIZON PHARMA shall reimburse NUVO […] in connection with the performance of its obligations under this Section 2.2; provided that such costs and expenses shall be consistent with a budget to be agreed upon by the Parties prior to NUVO’s commencement of activities under this Section 2.2.

2.2.6 Notwithstanding anything to the contrary herein, no provisions in this Agreement related to Alternative Supply Limit shall apply to, or prohibit HORIZON PHARMA from purchasing, any quantities of product from an Alternative Third-Party Manufacturer or Alternate API Manufacturer where NUVO is unable to supply product to HORIZON PHARMA for a period of […] or more due to a continuing quality issue, manufacturing issue, or Force Majeure event. In such case, HORIZON PHARMA may purchase product equal to the difference between HORIZON PHARMA’s forecast and the amount of acceptable product supplied by NUVO and such quantities shall not be subject to any Alternative Supply Limit for so long as NUVO is unable to supply.

2. **SECTION 11.1.** Section 11.1 of the Supply Agreement is hereby amended and restated as follows:

11.1 **Term.** The term of this Agreement will commence as of the Effective Date and, unless earlier terminated in accordance with this Section 11, will expire on December 31, 2029 (the “Initial Term”), and unless HORIZON PHARMA provides notice to NUVO of its desire not to renew for an additional term at least ninety (90) days before the expiration of the Initial Term or any then-current renewal term, this Agreement shall automatically renew for successive additional two (2) year terms thereafter (each such renewal term, together with the Initial Term, the “Term”).

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3. **SCHEDULE 5.** Schedule 5 is hereby amended and replaced with Exhibit A which is attached to this Amendment.

4. **EFFECT OF THIS AMENDMENT.** Except as expressly provided herein, this Amendment shall not constitute an amendment, modification or waiver of any provision of the Supply Agreement or any rights or obligations of any party under or in respect of the Supply Agreement. Except as modified by this Amendment, the Supply Agreement shall continue in full force and effect. Upon the execution of this Amendment by each of the parties hereto, each reference in the Supply Agreement to “this Agreement” or the words “hereunder,” “hereof,” “herein” or words of similar effect referring to the Supply Agreement shall mean and be a reference to the Supply Agreement as amended by this Amendment, and a reference to the Supply Agreement in any other instrument or document shall be deemed a reference to the Supply Agreement as amended by this Amendment. This Amendment shall be subject to, shall form a part of, and shall be governed by, the terms and conditions set forth in the Supply Agreement, as amended by this Amendment.

5. **GENERAL.** This Amendment may be executed in multiple counterparts, each of which may be delivered via facsimile or other electronic means, which taken together shall constitute the original agreement.

**IN WITNESS WHEREOF,** the Parties have executed this **AMENDMENT** to the **SUPPLY AGREEMENT** by their respective authorized representatives as of the date first written above.

**HORIZON PHARMA IRELAND LIMITED**

By: /s/ David G. Kelly  
Name: David G. Kelly  
Title: Director

**NUVO RESEARCH INC.**

By: /s/ Stephen Lemieux  
Name: Stephen Lemieux  
Title: VP & CFO
### EXHIBIT A

**TRANSFER PRICES**

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EXECUTIVE EMPLOYMENT
AGREEMENT BY AND BETWEEN
HORIZON PHARMA SERVICES LIMITED AND
DAVID G. KELLY

This Executive Employment Agreement (hereinafter referred to as the “Agreement”), is entered into by and between Horizon Pharma Services Limited (hereinafter referred to as the “Company”) and David G. Kelly (hereinafter referred to as the “Executive”). The terms of this Agreement shall be effective commencing January 1, 2016 (the “Effective Date”).

RECITALS

WHEREAS, the Executive previously entered into a service contract with Vidara Therapeutics Research Limited (f/k/a AGI Therapeutics Research Limited) (“Vidara”) on May 30, 2006, as previously amended, including as amended on August 9, 2013 (collectively, the “Prior Agreement”);

WHEREAS, the Company’s parent entity, Horizon Pharma Public Limited Company (“Horizon plc”) acquired Vidara in September 2014, and Vidara became a wholly owned subsidiary of Horizon plc., and in connection therewith Executive’s employment was transferred to the Company;

WHEREAS, the Company desires assurance of the continued association and services of the Executive in order to continue to retain the Executive’s experience, skills, abilities, background and knowledge, and is willing to continue to engage the Executive’s services on the terms and conditions set forth in this Agreement, which as of the Effective Date shall replace and supersede in its entirety the terms of the Prior Agreement; and

WHEREAS, Executive desires to be in the continued employ of the Company, and is willing to accept such continued employment on the terms and conditions set forth in this Agreement.

AGREEMENT

1. Employment.

1.1 Term. The Company hereby agrees to continue to employ the Executive, and the Executive hereby accepts continued employment by the Company, upon the terms and conditions set forth in this Agreement. The Executive originally commenced employment with Horizon Pharma Ireland Ltd, September 2014 in connection with Horizon plc’s acquisition of Vidara and thereafter became an employee of Company. Executive’s employment shall be governed under the terms set forth in this Agreement beginning on the Effective Date and shall continue until it is terminated pursuant to Section 4 herein (hereinafter referred to as the “Term”).

1.2 Title. From and after the Effective Date the Executive will continue to have the title of Executive Vice President, Company Secretary and Managing Director,
Ireland such position held by Executive during such period is hereinafter referred to as “EVP MDI”) and Executive shall continue to serve in such other capacity or capacities commensurate with his position as EVP MDI as the President and CEO of Horizon Pharma plc may from time to time prescribe.

1.3 **Duties.** The Executive shall do and perform all services, acts or things necessary or advisable to manage and conduct the business of the Company and shall have the authority and responsibilities which are generally associated with the position of EVP MDI including being responsible for the Company’s operations in Ireland. The Executive shall report to the Horizon Pharma plc President and CEO. The Executive may be assigned duties from time to time for Group companies without further remuneration (where “Group” means the Company and any company which is a member of any “Group of Companies” within the meaning of section 8(3) of the Companies Act 2014 of which the Company is also a member).

1.4 **Policies and Practices.** The employment relationship between the Parties shall be governed by this Agreement and the policies and practices established by the Company and the Board of Directors (hereinafter referred to as the “Board”). In the event that the terms of this Agreement differ from or are in conflict with the Company’s policies or practices or the Company’s Employee Handbook, this Agreement shall control.

1.5 **Location.** The Executive shall perform the services the Executive is required to perform pursuant to this Agreement at the Company’s premises, currently in Dublin, Ireland. The Company may from time to time require the Executive to travel temporarily to other locations outside of the Dublin, Ireland area in connection with the Company’s business.

2. **Loyalty of Executive.**

2.1 **Loyalty.** During the Executive’s employment by the Company, the Executive shall devote the Executive’s business energies, interest, abilities and productive time to the proper and efficient performance of Executive’s duties under this Agreement. Subject to the prior written consent of the President and CEO, the Executive is permitted to serve on the board of directors of three (3) other companies, so long as none of the other companies compete with the Company.

2.2 **Exclusive Employment.** Except with the prior written consent of the Chief Executive Officer, Executive shall not, during the term of this Agreement, undertake or engage in any other employment, occupation or business enterprise, other than ones in which Executive is a passive investor. Executive may engage in any civic and not-for-profit activities so long as such activities do not materially interfere with the performance of his duties hereunder or present a conflict of interest with the Company.

2.3 **Agreement not to Participate in Company’s Competitors.** During the Term of this Agreement, the Executive agrees not to acquire, assume or participate in, directly or indirectly, any position, investment or interest known by Executive to be
adverse or antagonistic to the Company, its business or prospects, financial or otherwise or in any company, person or entity that is, directly or indirectly, in competition with the business of the Company or any of its affiliates. Notwithstanding the foregoing, Executive may invest and/or maintain investments in any public or private entity up to an amount of 5% of an entity’s fully diluted shares and on a passive basis.

3. **Compensation to Executive.**

3.1 **Base Salary.** The Company shall pay the Executive a base salary at the initial annualized rate of four hundred twenty seven thousand U.S. dollars ($427,000.00) gross per year, subject to standard deductions, social security contributions and withholdings, or such higher rate as may be determined from time to time by the Board or the compensation committee thereof (hereinafter referred to as the **“Base Salary”**). Such Base Salary shall be paid in accordance with the Company’s standard payroll practice. Payments of salary installments shall be made no less frequently than once per month. Executive’s Base Salary will be reviewed annually, typically each December, and Executive shall be eligible to receive a salary increase (but not decrease) annually in an amount to be determined by the Board or the compensation committee thereof in its sole and exclusive discretion. Once increased, the new salary shall become the Base Salary for purposes of this Agreement and shall not be reduced without the Executive’s written consent. Any material reduction in the Base Salary of the Executive, without his written consent, may be deemed Good Reason as set forth in and subject to Section 4.5.2 of this Agreement.

3.2 **Discretionary Award.** Provided the Executive meets the conditions stated in this Section 3.2, the Executive shall be eligible for an annual discretionary Award (hereinafter referred to as the **“Award”**) with a target amount of fifty percent (50%) of the Executive’s Base Salary, subject to standard deductions, social security contributions and withholdings, based on the Board’s determination, in good faith, and based upon the Executive’s individual achievement and company performance objectives as set by the Board or the compensation committee thereof, of whether the Executive has met such performance milestones as are established for the Executive by the Board or the compensation committee thereof, in good faith, in consultation with the Executive (hereinafter referred to as the **“Performance Milestones”**). The Performance Milestones will be based on certain factors including, but not limited to, the Executive’s performance and the Company’s financial performance. The Executive’s Award target will be reviewed annually and may be adjusted by the Board or the compensation committee thereof in its discretion, provided however, that the Award target may only be materially reduced upon Executive’s written consent. The Executive must be employed on the date the Award is awarded to be eligible for the Award, subject to the termination provisions hereof. The Award shall be paid during the calendar year following the performance calendar year.

3.3 **Equity Awards.**

3.3.1 **Prior Equity Grants.** All Horizon plc equity awards previously granted to Executive shall continue in effect from and following the Effective Date in
accordance with their existing terms. Executive may be eligible to receive additional grants of Horizon plc equity awards in the sole discretion and subject to the approval of the Board.

3.3.2 **Legal Review.** Upon the Executive’s submission of appropriate itemized proof and verification of reasonable and customary legal fees incurred by the Executive in obtaining legal advice associated with the review, preparation, approval, and execution of this Agreement, the Company shall pay for up to $10,000.00 of such legal fees subject to receipt of appropriate proof and verification of such legal fees no later than sixty (60) days of receipt of an invoice for legal services from the Executive and/or his attorneys. To be eligible for reimbursement, the invoice must be submitted no later than ninety (90) days after the legal fees are incurred.

3.4 **Changes to Compensation.** The Executive’s compensation may be changed from time to time by mutual agreement of the Executive and the Company. In the event that the Executive’s base salary is materially decreased without his written consent, said decrease will be Good Reason for the Executive to terminate the Agreement as set forth in and subject to Section 4.5.2 of this Agreement.

3.5 **Taxes.** All amounts paid under this Agreement to the Executive by the Company will be paid less applicable tax withholdings, social insurance contributions, and any other withholdings or deductions required by law or authorized by the Executive.

3.6 **Benefits.** The Executive shall, in accordance with Company policy and the terms of the applicable plan documents, be eligible to participate in benefits under any executive benefit plan or arrangement which may be in effect from time to time and made available to the Company’s executives or key management employees, including the Company’s pension benefit program, provided, however, that the Executive shall be entitled to at least twenty five (25) days of paid vacation annually.

4. **Termination.**

4.1 **Termination by the Company.** The Executive’s employment with the Company may be terminated only under the following conditions:

4.1.1 **Termination for Death or Disability.** The Executive’s employment with the Company shall terminate effective upon the date of the Executive’s death or “Complete Disability” (as defined in Section 4.5.1), provided, however, that this Section 4.1.1 shall in no way limit the Company’s obligations to provide such reasonable accommodations to the Executive and/or his heirs as may be required by law.

4.1.2 **Termination by the Company For Cause.** The Company may terminate the Executive’s employment under this Agreement for “Cause” (as defined in Section 4.5.3) by delivery of written notice to the Executive specifying the Cause or Causes relied upon for such termination, provided that such notice is delivered within two (2) months following the occurrence or discovery of any event or events constituting “Cause”. Any notice of termination given pursuant to this Section 4.1.2 shall effect termination as of the date of the notice or such date as specified in the notice. The
Executive shall have the right to appear before the CEO before any termination for Cause becomes effective and binding upon the Executive.

4.1.3 Termination by the Company Without Cause. The Company may terminate the Executive’s employment under this Agreement on one (1) months’ notice or such additional notice as is required by legislation, at any time and for any reason or no reason subject to the requirements set out in Section 4.4 of this Agreement. Such termination shall be effective on the date the Executive is so informed or as otherwise specified by the Company, pursuant to notice requirements set forth in Section 6 of this Agreement.

4.2 Termination By The Executive. The Executive may terminate his employment with the Company at any time and for any reason or no reason, including, but not limited to, the following conditions:

4.2.1 Good Reason. The Executive may terminate his employment under this Agreement for “Good Reason” (as defined below in Section 4.5.2) by delivery of written notice to the Company specifying the Good Reason relied upon by the Executive for such termination in accordance with the requirements of such section.

4.2.2 Without Good Reason. The Executive may terminate the Executive’s employment hereunder for other than Good Reason upon three (3) months written notice to the Company.

4.3 Termination by Mutual Agreement of the Parties. The Executive’s employment pursuant to this Agreement may be terminated at any time upon a mutual agreement in writing of the Parties. Any such termination of employment shall have the consequences specified in such mutual agreement.

4.4 Compensation to Executive Upon Termination. In connection with any termination of the Executive’s employment for any reason, the Executive or the Executive’s estate, as applicable, shall be entitled to any amounts payable to the Executive or the Executive’s beneficiaries subject to and accordance with the terms of the Company’s employee welfare benefit plans or policies (excluding any severance pay).

4.4.1 Death or Complete Disability. If the Executive’s employment shall be terminated by death or Complete Disability as provided in Section 4.1.1, the Company shall pay to Executive, and/or Executive’s heirs, all earned but unpaid Base Salary, any earned but unpaid discretionary Awards for any prior performance period at such time as Awards for such performance period would have been paid if the Executive remained employed, all accrued but unpaid business expenses, and all accrued but unused vacation time earned through the date of termination at the rate in effect at the time of termination (hereinafter referred to as the “Accrued Amounts”), less standard deductions and withholdings. The Executive shall also be eligible to receive a pro-rated Award for the year of termination, as determined by the Board or the Compensation Committee of the Board based on actual performance and the period of the year he was employed (hereinafter referred to as the “Pro-rata Award”), less standard deductions and
withholdings, to be paid as a lump sum within thirty (30) days after the date of termination.

4.4.2 With Cause or Without Good Reason. If the Executive’s employment shall be terminated by the Company for Cause, or if the Executive terminates employment hereunder without Good Reason, the Company shall pay the Executive's Base Salary, accrued but unpaid business expenses and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination, less standard deductions and withholdings.

4.4.3 Without Cause or For Good Reason.

(i) Not in Connection With a Change in Control. If the Company terminates the Executive’s employment without Cause or the Executive terminates his employment for Good Reason, and Section 4.4.3(ii) below does not apply, the Company shall pay the Accrued Amounts subject to standard deductions and withholdings, to be paid as a lump sum no later than thirty (30) days after the date of termination. In addition, subject to the limitations stated in this Agreement and upon the Executive’s furnishing to the Company an executed waiver and release of claims in a form acceptable to the Company (the “Release”) within the applicable time period set forth therein, but in no event later than forty-five days following termination of employment and permitting such Release to become effective in accordance with its terms (the “Release Effective Date”), and subject to Executive entering into no later than the Release Effective Date a non-competition and non-solicitation agreement to be effective during the Severance Period (as defined below), substantially similar to Section 2.3, and continuing to abide by its terms during the Severance Period, the Executive shall be entitled to:

(a) the equivalent of the Executive’s Base Salary in effect at the time of termination will continue to be paid for a period of twelve (12) months following the date of termination (hereinafter referred to as the “Severance Period”), less standard deductions and withholdings, to be paid during the Severance Period according to the Company’s regular payroll practices, subject to any delay in payment required by Section 4.6 in connection with the Release Effective Date; and

(b) in the event the Executive timely elects continued coverage, the Company will continue to pay the same portion of Executive’s health insurance premium as the percentage of health insurance premiums that it paid during the Executive’s employment, including any amounts that Company paid for benefits to the qualifying family members of the Executive, following the date of termination up until the earlier of either (i) the last day of the Severance Period or, (ii) the date on which the Executive begins full-time employment with another company or business entity which offers comparable health insurance coverage to the Executive (such period, the “Health Care Payment Period”). Notwithstanding the foregoing, if the Company determines, in its sole discretion, that the Company cannot provide the health care premium benefits without potentially incurring financial costs or penalties under applicable law (including, without limitation, Section 2716 of the Public Health Service Act or the local law
equivalent), the Company shall in lieu thereof pay Executive a taxable cash amount, which payment shall be made regardless of whether the Executive or his qualifying family members elect health care continuation coverage (the “Health Care Benefit Payment”). The Health Care Benefit Payment shall be paid in monthly or bi-weekly installments on the same schedule that the health care premiums would otherwise have been paid to the insurer. The Health Care Benefit Payment shall be equal to the amount that the Company otherwise would have paid for health care insurance premiums (which amount shall be calculated based on the premium for the first month of coverage), and shall be paid until the expiration of the Health Care Payment Period.

(ii) In Connection With a Change in Control. If the Company (or its successor) terminates the Executive’s employment without Cause or the Executive terminates his employment for Good Reason within the period commencing ninety (90) days immediately prior to a Change in Control of the Company and ending eighteen (18) months immediately following a Change in Control of the Company (as defined in Section 4.5.5 of this Agreement), the Executive shall receive the Accrued Amounts subject to standard deductions and withholdings, to be paid as a lump sum no later than thirty (30) days after the date of termination. In addition, subject to the limitations stated in this Agreement and upon the Executive’s furnishing to the Company (or its successor) an executed Release within the applicable time period set forth therein, but in no event later than forty-five days following termination of employment and permitting such Release to become effective in accordance with its terms, and subject to Executive entering into no later than the Release Effective Date a non-competition and non-solicitation agreement to be effective during the Severance Period, substantially similar to Section 2.3, and continuing to abide by its terms during the Severance Period, then in lieu of (and not additional to) the benefits provided pursuant to Section 4.4.3(i) above, the Executive shall be entitled to:

(a) the equivalent of the Executive’s Base Salary in effect at the time of termination will continue to be paid during the Severance Period, less standard deductions and withholdings, to be paid during the Severance Period according to the Company’s regular payroll practices, subject to any delay in payment required by Section 4.6 in connection with the Release Effective Date;

(b) Executive’s target Award in effect at the time of termination, or if none, the last target Award in effect for Executive, less standard deductions and withholdings, to be paid in a lump sum within ten (10) days following the later of (i) the Release Effective Date, or (ii) the effective date of the Change in Control; and

(c) in the event the Executive timely elects continued health care coverage, the Company will continue to pay the same portion of Executive’s health insurance premium as the percentage of health insurance premiums that it paid during the Executive’s employment, including any amounts that Company paid for benefits to the qualifying family members of the Executive, following the date of termination until the expiration of the Health Care Payment Period. Notwithstanding the foregoing, if the Company determines, in its sole discretion, that the Company cannot provide the health care premium benefits without potentially incurring financial costs or
penalties under applicable law (including, without limitation, Section 2716 of the Public Health Service Act or local law equivalent),
the Company shall in lieu thereof pay Executive the Health Care Benefit Payment, which payment shall be made regardless of whether
the Executive or his qualifying family members elect health continuation coverage. The Health Care Benefit Payment shall be paid in
monthly or bi-weekly installments on the same schedule that the health care premiums would otherwise have been paid to the insurer.
The Health Care Benefit Payment shall be equal to the amount that the Company otherwise would have paid for health care insurance
premiums (which amount shall be calculated based on the premium for the first month of coverage), and shall be paid until the
expiration of the Health Care Payment Period.

(iii) No Duplication of Benefits. For the avoidance of doubt, in no event will Executive be
entitled to benefits under Section 4.4.3(i) and Section 4.4.3(ii). If Executive commences to receive benefits under Section 4.4.3(i) due
to a qualifying termination prior to a Change in Control and thereafter becomes entitled to benefits under Section 4.4.3(ii), any benefits
previously provided to Executive under Section 4.4.3(i) shall offset the benefits to be provided to Executive under Section 4.4.3(ii) and
shall be deemed to have been provided to Executive pursuant to Section 4.4.3(ii).

4.4.4 Equity Award Acceleration.

(i) In Connection With a Change in Control. In the event that the Executive’s employment is
terminated without Cause or for Good Reason within the ninety (90) days immediately preceding or during the eighteen (18) months
immediately following a Change in Control of the Company (as defined in Section 4.5.5 of this Agreement), the vesting of any time-
based vesting Company equity awards granted to Executive shall be fully accelerated such that on the effective date of such
termination (or, if later, the date of the Change in Control) one hundred percent (100%) of the equity award shares granted to
Executive prior to such termination shall be fully vested and immediately exercisable, if applicable, by the Executive. Treatment of any
performance stock unit awards granted to Executive will in all cases be governed solely by the terms of the Equity Long-Term
Incentive Plan.

(ii) Release and Waiver. Any equity vesting acceleration pursuant to this Section 4.4.4 shall be
conditioned upon and subject to the Executive’s delivery to the Company of a fully effective Release in accordance with the terms
specified by Section 4.4.3 hereof and such vesting acceleration benefit shall be in addition to the benefits provided by Section 4.4.3
hereof.

4.4.5 Taxes. All severance benefits and other amounts paid on termination of this Agreement to the Executive will be paid
less applicable tax withholdings, social insurance contributions, and any other withholdings or deductions required by law or
authorized by the Executive.

4.5 Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

4.5.2 Complete Disability. “Complete Disability” shall mean the inability of the Executive to perform the Executive’s duties under this Agreement, whether with or without reasonable accommodation, because the Executive has become permanently disabled within the meaning of any policy of disability income insurance covering employees of the Company then in force. In the event the Company has no policy of disability income insurance covering employees of the Company in force when the Executive becomes disabled, the term “Complete Disability” shall mean the inability of the Executive to perform the Executive’s duties under this Agreement, whether with or without reasonable accommodation, by reason of any incapacity, physical or mental, which the Board, based upon medical advice or an opinion provided by a licensed physician, determines to have incapacitated the Executive from satisfactorily performing all of the Executive’s usual services for the Company, with or without reasonable accommodation, for a period of at least one hundred eighty (180) days during any twelve (12) month period that need not be consecutive.

4.5.3 Good Reason. “Good Reason” for the Executive to terminate the Executive’s employment hereunder shall mean the occurrence of any of the following events without the Executive’s consent:

(i) a material reduction in the Executive’s duties, authority, or responsibilities relative to the duties, authority, or responsibilities in effect immediately prior to such reduction, including by way of example, having the same title, duties, authority and responsibilities at a subsidiary level following a Change in Control;

(ii) the relocation of the Executive’s primary work location to a point more than fifty (50) miles from the Executive’s current work location set forth in Section 1.5 that requires a material increase in Executive’s one-way driving distance;

(iii) a material reduction by the Company of the Executive’s base salary or annual target Award opportunity, without the written consent of the Executive, as initially set forth herein or as the same may be increased from time to time pursuant to this Agreement; and

(iv) a material breach by the Company of Section 1.2 of this Agreement.

Provided, however that, such termination by the Executive shall only be deemed for Good Reason pursuant to the foregoing definition if (i) the Company is given written notice from the Executive within sixty (60) days following the first occurrence of the condition that he considers to constitute Good Reason describing the condition and the Company fails to satisfactorily remedy such condition within thirty (30) days following such written notice, and (ii) the Executive terminates employment within thirty (30) days following the end of the period within which the Company was entitled to remedy the condition constituting Good Reason but failed to do so.
4.5.4 Cause. “Cause” for the Company to terminate Executive’s employment hereunder shall mean the occurrence of any of the following events, as determined reasonably and in good faith by the Board or a committee designated by the Board:

(i) the Executive’s gross misconduct, gross negligence or willful failure to substantially perform his duties and responsibilities to the Company or willful and deliberate violation of a Company policy;

(ii) the Executive’s conviction of a criminal offence (other than an offence which in the reasonable opinion of the Board does not affect his position with the Company) or the Executive’s commission of any act of fraud, embezzlement or dishonesty against the Company or involving moral turpitude that is likely to inflict or has inflicted material injury on the business of the Company, to be determined by the sole discretion of the Company;

(iii) the Executive’s unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party that the Executive owes an obligation of nondisclosure as a result of the Executive’s relationship with the Company;

(iv) the Executive’s willful and deliberate breach of the obligations under this Agreement that causes material injury to the business of the Company; and

(v) the Executive ceasing to be a director of the Company without the prior written agreement of the Company.

4.5.5 Change in Control. For purposes of this Agreement, “Change in Control” means: (i) a sale of all or substantially all of the assets of the Company; (ii) a merger or consolidation in which the Company is not the surviving entity and in which the holders of the Company’s outstanding voting stock immediately prior to such transaction own, immediately after such transaction, securities representing less than fifty percent (50%) of the voting power of the entity surviving such transaction or, where the surviving entity is a wholly-owned subsidiary of another entity, the surviving entity’s parent; (iii) a reverse merger in which the Company is the surviving entity but the shares of Common Stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities of the surviving entity’s parent, cash or otherwise, and in which the holders of the Company’s outstanding voting stock immediately prior to such transaction own, immediately after such transaction, securities representing less than fifty percent (50%) of the voting power of the Company or, where the Company is a wholly-owned subsidiary of another entity, the Company’s parent; or (iv) an acquisition by any person, entity or group (excluding any employee benefit plan, or related trust, sponsored or maintained by the Company or subsidiary of the Company or other entity controlled by the Company) of the beneficial ownership of securities of the Company representing at least seventy-five percent (75%) of the combined voting power entitled to vote in the election of Directors; provided,
however, that nothing in this paragraph shall apply to a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company.

4.6 Application Code Section 280G. If any payment or benefit Executive would receive pursuant to a Change in Control from the Company or otherwise ("Payment") would (i) constitute a “parachute payment” within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “Excise Tax”), then such Payment shall be equal to the Reduced Amount. The “Reduced Amount” shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in Executive’s receipt, on an after-tax basis, of the greater economic benefit notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting “parachute payments” is necessary so that the Payment equals the Reduced Amount, reduction shall occur in the manner that results in the greatest economic benefit for Executive. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata.

In the event it is subsequently determined by the U.S. Internal Revenue Service that some portion of the Reduced Amount as determined pursuant to clause (x) in the preceding paragraph is subject to the Excise Tax, Executive agrees to promptly return to the Company a sufficient amount of the Payment so that no portion of the Reduced Amount is subject to the Excise Tax. For the avoidance of doubt, if the Reduced Amount is determined pursuant to clause (y) in the preceding paragraph, Executive will have no obligation to return any portion of the Payment pursuant to the preceding sentence.

Unless Executive and the Company agree on an alternative accounting firm, the accounting firm engaged by the Company for general tax compliance purposes as of the day prior to the effective date of the Change in Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change in Control, the Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder.

The Company shall use commercially reasonable efforts to cause the accounting firm engaged to make the determinations hereunder to provide its calculations, together with detailed supporting documentation, to Executive and the Company within fifteen (15) calendar days after the date on which Executive’s right to a Payment is triggered (if requested at that time by Executive or the Company) or such other time as requested by Executive or the Company.
4.7 **Indemnification Agreements.** Executive has previously executed the Company’s indemnification agreements, copies of which are attached hereto as Exhibit A-1 and Exhibit A-2.

4.8 **Confidential Information and Invention Assignment Agreement.** The Executive has previously executed the Company’s Confidential Information and Invention Assignment Agreement the terms of which shall continue to govern the terms of Executive’s employment following the Effective Date, and a copy of which is attached as Exhibit B.

4.9 **No Mitigation or Offset.** The Executive shall not be required to seek or accept other employment, or otherwise to mitigate damages, as a condition to receipt of the Severance Benefits, and the Severance Benefits shall not be offset by any amounts received by Executive from any other source, except to the extent that the Executive’s rights to the benefits described in Sections 4.4.3(i)(b) or 4.4.3(ii)(c), as applicable, are terminated by reason of the Executive obtaining full-time employment with another company or business entity which offers comparable health insurance coverage, or except to the extent that the Executive is entitled to a termination payment under statute (including but not limited to a statutory redundancy payment).

4.10 **Notice and Garden Leave.** The Company may pay the Executive’s pro-rated Base Salary in lieu of all or part of any notice period which he or the Company is required to give. Where payment is made in lieu the Executive’s employment shall terminate with immediate effect. For the avoidance of doubt, the payment in lieu shall not include any element in relation to:

(i) any Award or commission payments that might otherwise have been due during the period for which the payment in lieu is made;

(ii) any payment in respect of any additional benefits which the Executive would have been entitled to receive during the period for which the payment in lieu is made; and

(iii) any payment in respect of any holiday entitlement that would have accrued during the period for which the payment in lieu is made.

The Executive agrees that the Company may be entitled at its absolute discretion to require him not to attend at work and/or not to undertake all or any of his duties during any period of notice ("garden leave"). However, during the notice period, he shall continue to be required to hold himself available to assist with answering any questions or dealing with any other matters relating to his work and he shall remain an employee of the Company. During the notice period the Company shall continue to pay the Executive’s Base Salary and contractual benefits. During this time, he shall remain bound by the terms of this Agreement and any other duties owed to the Company. The Employee may also be subject to such other conditions during the notice period as the Company considers appropriate.
5. Assignment and Binding Effect.

This Agreement shall be binding upon the Executive and the Company and inure to the benefit of the Executive and the Executive’s heirs, executors, personal representatives, assigns, administrators and legal representatives. Because of the unique and personal nature of the Executive’s duties under this Agreement, neither this Agreement nor obligations under this Agreement shall be assignable by the Executive. This Agreement shall be binding upon and inure to the benefit of the Company and its successors, assigns and legal representatives, provided that the Agreement may only be assigned to an acquirer of all or substantially all of the Company’s assets. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. For this purpose, “successor” means any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company.


For the purposes of this Agreement, notices, demands, and all other forms of communication provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or (unless otherwise specified) mailed by registered mail, return receipt requested, postage prepaid, or by confirmed facsimile, addressed as set forth below, or to such other address as any party may have furnished to the other in writing in accordance herewith, except that notices of address shall be effective only upon receipt, as follows:

If to the Company:

Horizon Pharma, Inc.
150 S. Saunders Road
Lake Forest, IL 60045
Attention: Timothy P. Walbert, Chairman, President & CEO
Fax: 847-572-1372

If to the Executive:

Any such written notice shall be deemed given on the earlier of the date on which such notice is personally delivered or ten (10) days after its deposit in the mail as specified above. Either Party may change its address for notices by giving written notice to the other Party in the manner specified in this section.
7. **Data Protection.**

All personal information which the Company holds about Executive is protected by data protection laws. The Company take its responsibilities under these laws seriously and holds some or all of the following personal data about Executive: address, date of birth, marital status, educational or previous employment background, history and details of current position, CVs, applications and interview records, references, performance ratings or reviews, bank details, salary, Awardes, records of internet or email usage, CCTV images, records of disciplinary investigations/meetings or grievances, stock option, pension and other insurance documentation, payroll details and other related data. This information is required for the management and administration of the Employment and to protect Executive’s rights under various employment laws. For these purposes it may from time to time be necessary to disclose Executive’s personal information to third parties, including (but not limited to) payroll processors, pension brokers/trustees, or insurers. It may also be necessary to disclose information in order to comply with any legal or regulatory obligations. The Company takes all reasonable steps as required by law to ensure the safety, privacy and integrity of Executive’s personal information. The Company may need to share personal data including sensitive personal data with other related entities which are based abroad. This may involve a transfer of data, including Executive’s personal sensitive data to a country which may not have the same data protection laws as Ireland. By signing this Agreement, Executive hereby consents to the Company holding, processing, transferring or disclosing such personal data.

8. **Disciplinary procedure**

In the event of any disciplinary issue arising in relation to the Executive’s employment it will be dealt with in the following manner:

(i) The disciplinary issue will be investigated by the Company during which time the Executive may be suspended on full pay;

(ii) The allegations made will be put to the Executive at a specially convened disciplinary meeting and he will be given an opportunity to respond. The Executive will be entitled to be accompanied by a fellow staff member at that meeting;

(iii) Following investigation, the Company will decide whether the issues alleged have been proven and if so what the appropriate sanction is in the circumstances. For minor misconduct sanctions may include a verbal warning or a written warning where appropriate. For more serious misconduct or if the Executive’s conduct fails, following warnings, to improve the Company may issue him with a final written warning, demote him or suspend him without pay. If termination is the appropriate sanction, then this Agreement may be terminated in accordance with Section 4 above; and

(iv) The Executive may appeal against the sanction, within 5 days of notification to him, to the Chairperson of the Board (or some other person as will
be informed to him who will not have been involved in the disciplinary procedure prior to the appeal stage).

9. Medical Examination

If so requested by the Company, the Executive shall at any reasonable time participate in a medical examination(s) by a practitioner or practitioners nominated by the Company, the result of such examination(s) to be advised directly by such practitioner to the Company. The Executive shall then be notified of the result. By signing this letter the Executive indicates his consent to disclosure by his own GP (or other medical attendant) to the medical practitioner(s) nominated by the Company of all information necessary to allow him/her to prepare a comprehensive medical report and to the disclosure of that report and all relevant background information to the Company. Failure to attend at a medical examination when requested to do so may result in disciplinary action and/or termination of sick pay.


This Agreement shall be governed by the laws of the Republic of Ireland, without regard to any conflicts of law principals thereof that would call for the application of the laws of any other jurisdiction, and the courts of the Republic of Ireland shall have non exclusive jurisdiction.

11. Integration.

This Agreement, including Exhibit A, Exhibit B-1, and Exhibit B-2 contains the complete, final and exclusive agreement of the Parties relating to the terms and conditions of the Executive’s employment and the termination of Executive’s employment, and supersedes all prior and contemporaneous oral and written employment agreements or arrangements between the Parties, including but not limited to the Prior Agreement.

12. Amendment.

This Agreement cannot be amended or modified except by a written agreement signed by the Executive and the Company.

13. Waiver.

No term, covenant or condition of this Agreement or any breach thereof shall be deemed waived, except with the written consent of the Party against whom the waiver is claimed, and any waiver or any such term, covenant, condition or breach shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other term, covenant, condition or breach.
14. **Severability.**

The finding by a court of competent jurisdiction of the unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid or illegal. Such court shall have the authority to modify or replace the invalid or unenforceable term or provision with a valid and enforceable term or provision, which most accurately represents the Parties’ intention with respect to the invalid, unenforceable, or illegal term or provision.

15. **Interpretation; Construction.**

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. This Agreement has been drafted and negotiated by legal counsel representing the Company and the Executive. The Parties acknowledge that each Party and its counsel has reviewed and revised, or had an opportunity to review and revise, this Agreement, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

16. **Execution by Facsimile Signatures and in Counterparts.**

The parties agree that facsimile signatures shall have the same force and effect as original signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

17. **Survival.**

The provisions of this Agreement, and of all other agreements referenced herein, shall survive the termination of this Agreement, and of the Executive’s employment by the Company for any reason, to the extent necessary to enable the parties to enforce their respective rights hereunder.

[Remainder of Page Intentionally Left Blank]
IN WITNESS WHEREFORE, the parties have signed this Agreement on the date first written above.

COMPANY:

HORIZON PHARMA SERVICES LIMITED

By: /s/ Timothy P. Walbert
Title: 
Print Name: 

As authorized agent of the Company

Date

EXECUTIVE:

David G. Kelly

/s/ David G. Kelly
David G. Kelly, individually

Date
COMMERCIAL SUPPLY AGREEMENT

This Commercial Supply Agreement (this “Agreement”) is entered into as of October 16, 2008, (the “Effective Date”) by and between Enzon Pharmaceuticals, Inc., a Delaware corporation with an address of 685 Route 202-206, Bridgewater, New Jersey 08807 (“Enzon”), and Savient Pharmaceuticals, Inc., a Delaware corporation, having its principal place of business at One Tower Center, 14th Floor, East Brunswick, New Jersey 08816 (“Savient”). Enzon and Savient may be referred to individually as a “Party” or collectively as “Parties.”

R E C I T A L S

WHEREAS, Savient is engaged in the development and research of certain biologic products and requires manufacture of such a product for commercial distribution;

WHEREAS, Enzon is a contract manufacturer that possesses the necessary technical capabilities and operates facilities for the manufacture of pharmaceutical and biological products for commercial distribution;

WHEREAS, Savient desires Enzon to supply to it the Product on the terms and conditions set forth herein; and

WHEREAS, Enzon is willing to supply the Product to Savient on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which each of the Parties does hereby acknowledge, the Parties, intending to be legally bound, agree as follows:

Section 1. DEFINITIONS

1.1 As used herein, the following terms shall have the following meanings:

1.2 “Affiliate” shall mean any business entity which directly or indirectly controls, is controlled by, or is under common control with any Party to this Agreement. A business entity shall be deemed to “control” another business entity if (i) it owns, directly or indirectly, at least fifty percent (50%) of the issued and outstanding voting securities, capital stock, or other comparable equity or ownership interest of such business entity, or (ii) it has the de facto ability to control or direct the management of such business entity.

1.3 “Applicable Laws” means all relevant federal, state and local laws, statutes, rules, and regulations which are applicable to a Party’s activities hereunder, including, without limitation, the applicable regulations of the Regulatory Authority, European Medicines Agency (EMEA) and United States and European Union cGMPs. The Parties may amend this section in writing to include additional countries.
1.4 “BLA” means a regulatory application filed with a governmental agency in the United States, the European Union, or any other country that the Parties mutually agree upon in writing (e.g. FDA and EMEA) for the purpose of lawfully marketing, selling, distributing, importing, exporting, manufacturing, developing or using a therapeutic or prophylactic product for the treatment or prevention of a disease or physical condition. As used herein, BLA shall include, without limitation, a Marketing Authorization Application in the European Union, a Biologics License Application in the United States.

1.5 “Bulk Product” shall mean the bulk solution of […] supplied by Savient to Enzon pursuant to this Agreement.

1.6 “Commerciably Reasonable Efforts” shall mean efforts in accordance with the standards of care and diligence Enzon practices with respect to its own products.

1.7 “cGMPs” shall mean current good manufacturing practices as promulgated by the FDA under the United States Food, Drug and Cosmetic Act, 21 C.F.R. Part 210 et seq., as amended from time to time, and the European Union.

1.8 “Field Alerts” shall have the definition of field alerts used by the FDA irrespective of the jurisdiction in which the acts or circumstances giving rise to such field alerts occur.

1.9 “Process Consumables” means media, resins, raw materials, filters, membranes, product contact materials or surfaces, disposable lab supplies and similar materials used in the manufacture of Product. Provided, however, that Process Consumables shall not include components of manufacture supplied by third parties such as labels (hereinafter referred to as “Manufacture Components”).

1.10 “Product” means pegloticase, a PEGylated recombinant mammalian uricase formulation in final drug product form ready for commercial sale.

1.11 “Quality Agreement” shall mean that certain Quality Agreement by and between the Parties hereto, dated as of the date hereof and attached to this Agreement.

1.12 “Regulatory Authority” shall mean any governmental agency with jurisdiction over the regulation of drug and biological agents for use in man, including, but not limited to, the United States Food and Drug Administration and any foreign equivalents thereto.

1.13 “Savient-supplied Materials” shall mean those materials including, but not limited to Bulk Product, supplied by Savient for use in connection with the manufacture of the Product, as set forth in the Work Plan which is attached hereto as Exhibit A or any subsequent Work Plan signed by both parties.

1.14 “Savient Intellectual Property” shall mean (i) all valid patent claims owned or licensed by Savient and all converted provisionals, divisions, continuations, continuations-in-part, reissues, reexaminations or extensions thereof, as well as any corresponding foreign
counterparts and equivalents thereof, whether issued or pending as of the Effective Date or thereafter; (ii) trademarks which are owned, licensed or sublicensed by Savient and which are registered in the United States and, where applicable, foreign jurisdictions for use in association with the Product; and (iii) any Savient Know-How developed by Savient or any of its Affiliates during the Term relating to (a) the Bulk Product or the Product (including, without limitation, its pharmaceutical utility) or (b) the Services provided hereunder.

1.15 "Savient Know-How" shall mean all technical information, data (including, without limitation, regulatory data) patentable and unpatentable inventions, developments, discoveries, methods and processes that are, in each case, not disclosed in a published patent application or patent or otherwise publicly available, which are developed or conceived of by Savient or any of its Affiliates or which is licensed to Savient or any of its Affiliates.

1.16 "Service" means those services described in any Work Plan which is made a part of this Agreement and those services described in any Quality Agreement pertaining to such services.

1.17 "Specifications" means the written specifications for the Product and Savient-supplied Materials attached hereto as Exhibit B, which may be amended from time to time by the mutual written agreement of the parties.

1.18 "Work Plan" means the schedule and detailed plans used to prepare formulated Bulk Product, fill Bulk Product into vials and package the resulting drug product thereby resulting in the ultimate deliverable which is the Product. The definition of Work Plan shall also include subsequent change orders to any Work Plan (as described in Section 3.3). The first Work Plan is attached hereto as Exhibit A.

Section 2. SERVICES

2.1 Enzon shall perform the Services described in this Agreement and in the exhibits hereto, which are made part of this Agreement, or as described in any Work Plan, the Specifications, or change order pursuant to Section 3.3. Savient shall provide such Savient-supplied Materials and make such payments as are set forth therein. The Parties mutually acknowledge and agree that nothing contained in this Agreement or any Work Plan executed hereunder shall create an exclusive manufacture or supply arrangement between the Parties.

2.2 To the extent necessary to enable Enzon to provide the Services, Savient hereby grants to Enzon a royalty-free, non-exclusive license and, where appropriate, sublicense, to use the Savient Intellectual Property which pertains to the Product or the Services hereunder; provided, however, that any license, or sublicense, granted herein as the case may be, shall be used by Enzon or any permitted sublicensee solely for the purposes of carrying out the Services and no rights or title in or to the Savient Intellectual Property shall vest in Enzon. Upon the expiration or earlier termination of this Agreement the license or sublicense granted to Enzon to
use Savient Intellectual Property shall immediately cease and Enzon shall make no further use thereof and shall cause any permitted sublicensee to make no further use thereof.

2.3 Enzon agrees to provide the Services outlined in the Work Plan attached hereto as Exhibit A which is incorporated and made a part of this Agreement and any other Services that may be described in any future Work Plan or change order, or Quality Agreement which addresses the Services described in this Section 2, which shall be incorporated into this Agreement upon execution by both parties. Such Services shall be performed in accordance with Applicable Laws. Savient agrees to make payments in accordance with this Agreement and all Work Plans. In the event of a conflict between this Agreement and any Work Plan, this Agreement shall control.

2.4 Enzon shall provide Savient, at no additional charge, product support services, at Savient’s reasonable request, for the activities listed below:

- Meetings with Regulatory Authorities, whether in person or by phone
- Routine documentation provided to Regulatory Authorities on behalf of Savient
- Annual product reviews for commercial products, as required by Regulatory Authorities.
- All audit correspondence including Savient-requested revisions to Enzon’s audit response.

Savient may request from Enzon other product support services at its customary rate, as set forth on Exhibit C, including but not limited to:

- Preparation of documents in anticipation of a Pre-Approval Inspection.
- Letters of reference from Enzon or Enzon’s vendors that are requested by Savient (e.g., Master file reference letters, rubber or glass vendor letters).
- Documentation provided to Regulatory Authorities on behalf of Savient, other than routine documentation.
- All time used for collecting and photocopying Savient documentation. One copy of a batch record is exempted from support charges.
- Changes and revisions to artwork mandated by Regulatory Authorities or requested by Savient.
- Any additional validation work requested by Savient beyond original Work Plan or outside current validation requirements.
- Any analytical development and/or analyses beyond original Work Plan.

For all requests under this Section 2.4, Savient shall provide Enzon a written request for product support services that describes the required services and/or documents/work product required. Enzon shall provide Savient an estimate based on its customary rate. Upon acceptance of such estimate by Savient, Savient shall issue a purchase order to Enzon and Enzon shall perform such services in accordance with the terms hereof.
2.5 Enzon shall prepare and effect the Product shipment in accordance with explicit written instructions issued by Savient, which shall include the packaging instructions and Savient’s selected mode of transportation. All transportation costs shall be borne by Savient in accordance with the terms contained herein.

Section 3. MANAGEMENT/FORECASTING/MATERIALS

3.1 Account Management. Each party will appoint an account manager who will be the party responsible for overseeing the activities hereunder.

3.2 Content of Work Plans. Each Work Plan shall include a reasonably detailed description of the Services to be provided, relevant Specifications, a schedule for completion of the Work Plan, a fee and payment schedule, and such other information as is necessary for Enzon to perform the relevant Services.

3.3 Change Orders. In the event that Enzon is requested to perform services that are outside the scope of agreed-upon Work Plans such changes must be mutually agreed upon by the parties in a written change order prior to the provision of said services. Each such change order constitutes an amendment to the applicable Work Plan (which shall be explicitly referenced in such change order) and the services set forth therein shall be deemed to be part of such Work Plan. After receipt of the reasonably detailed description of the additional services from Savient, Enzon shall provide Savient with a cost estimate for performing the changed or additional services. Each change order shall be governed by the terms and conditions of this Agreement and by such supplementary written amendments of this Agreement or Work Plans as may be, from time to time, executed between the parties.

3.4 Forecasting And Savient-supplied Materials

(a) Upon execution of this Agreement and on the first day of each [...] thereafter, Savient shall deliver to Enzon’s account manager an updated rolling forecast of Product requirements (in full-batch quantities) for the [...] period commencing on the first day of the immediately following calendar month. Enzon shall, within ten (10) days of receipt of a forecast from Savient, confirm its receipt thereof in writing and shall advise Savient of whether such forecast is accepted in whole or in part; in the event that any part of the forecast is not accepted by Enzon then Enzon shall detail in writing the rationale for such non-acceptance. Within thirty (30) days of accepting each forecast, Enzon will provide Savient a projected manufacturing schedule indicating approximate dates of manufacturing which shall conform with the delivery dates specified in the forecast supplied by Savient. The foregoing notwithstanding, once a forecast (or any portion thereof) has been accepted by Enzon it shall be binding on both parties except as otherwise may be explicitly set forth herein; in the event that Enzon neither accepts or rejects any forecast submitted by Savient within ten (10) days of receipt from Savient then the entire forecast as submitted by Savient shall be deemed accepted by Enzon. If accepted, the forecast for the first [...] of each forecast (“Firm Forecast”) shall be 100% binding on both parties and the forecast for the next [...] (“Planning Forecast”) shall be binding on both parties as set forth in the
following sentence. Product requirements within the Planning Forecast shall not be increased or decreased by Savient by more than […] per […] period, per forecast, provided that no month may be reduced to […] batches unless the initial Planning Forecast for that particular month was initially set as […] batches; for purposes of clarification only, the parties agree that the intention of this provision is to allow Savient, in each subsequent forecast, to modify each […] period of the most recently supplied Planning Forecast by […] batch as follows: the […] period of the most recently provided Planning Forecast (which becomes the […] period of the Firm Forecast) may be modified by […] the […] period of the Planning Forecast may be modified by […] and the […] period of the most recently provided Planning Forecast may be modified by […]. Savient shall forecast Product requirements for the […] following the Planning Forecast, and the forecast for those […] are non-binding (“Non-Binding Forecast”) on Savient. Savient shall place firm purchase orders for its requirement of the Product in full-batch quantities at least […] prior to the requested date of delivery. Each firm written purchase order, signed by Savient’s duly authorized representative, shall authorize Enzon to manufacture the number of batches of the Product as are set forth therein. The number of purchase orders submitted by Savient shall not exceed […] per calendar month, unless otherwise agreed to by the parties in writing. Enzon shall have completed any and all activities which are required by the applicable Work Plan and all Applicable Laws so as to be able to deliver the Product on or before the delivery dates specified by Savient in the subject purchase order but in any event the Product shall not be delivered by Enzon more than […] in advance of any specified delivery date. Provided, however, that Enzon shall use Commercially Reasonable Efforts to minimize the amount of time elapsing between the completion of manufacturing activities and delivery of the completed Product to Savient.

(b) Starting from inception of the manufacture of the Product, Savient shall supply to Enzon, and use Commercially Reasonable Efforts to ensure that Enzon has on hand, a sufficient stock of Savient-supplied Materials as is necessary to provide the Services. Enzon shall have no liability for any failure to supply Product to Savient in accordance with the delivery terms contained in a Savient purchase order if sufficient quantities of Savient-supplied Materials in light of the forecasting described above have not been supplied to Enzon at least four (4) weeks prior to the scheduled manufacture date, as communicated to Savient pursuant to Section 3.4(a). In such case, manufacture of Product may be delayed until receipt of adequate supplies of Savient-supplied Materials and the availability of an appropriate manufacturing slot; provided, however, that Enzon shall use Commercially Reasonable Efforts to schedule the manufacture of the Product as soon as is possible subsequent to receiving the Savient-supplied Materials. If Savient provides Enzon with insufficient Savient-supplied Materials to produce the amount of Product requested in a particular purchase order, both sides may nonetheless agree in writing to have Enzon produce a lesser amount based on the amount of Savient-supplied Materials provided to Enzon, and all such batches shall be subject to the pricing listed in Exhibit C, including the minimum batch price, if applicable. Provided, however, that the Parties agree that any shortfall on the part of Enzon to produce at least […] vials of Product when provided with at least […] of Bulk Product by Savient shall
not constitute a breach of this Agreement and that the pricing for such shortfall below [...***…] vials) shall be computed as set forth in Section 6.2(c) herein. Additionally, in the event that any scheduled manufacture of the Product is delayed due to the unavailability of adequate stores of Savient-supplied Materials, then any Firm Forecast then in effect shall be carried forward until such a time as the manufacture and delivery of the Product in accordance with the most recently supplied firm purchase order have been completed. Savient shall be responsible for verifying that all Savient-supplied Materials meet relevant Specifications. Title to Savient-supplied Materials shall not be transferred to Enzon. Savient will provide a signed, abbreviated Certificate of Analysis (“CofA”) which shall, at minimum, certify that Savient-supplied Materials meet the Specifications for such Savient-supplied Materials as defined on Exhibit B prior to the processing of Savient-supplied Materials by Enzon. Enzon shall store all Savient-supplied Materials and finished Product in accordance with instructions provided by Savient in the Quality Agreement.

(c) All costs associated with the selection and/or qualification of alternative suppliers for any materials required to perform the Services shall be borne by Savient. Any such activities will be defined by Savient in writing and accompanied by an appropriate purchase order to Enzon.

(d) Upon execution of this Agreement and along with every [...***…] forecast, Savient shall pay Enzon a rolling, non-refundable reservation fee equal to [...***…] (specified on Exhibit C) price for batches included in the Firm Forecast to secure manufacturing capacity slots corresponding to the forecast provided. Savient shall pay such reservation fee to Enzon within ten (10) days of Enzon’s provision to Savient of the manufacturing schedule, as set forth in Section 3.4(a), which schedule sets forth the approximate dates of manufacturing for the Product. Such reservation fee shall be credited towards Product produced by Enzon on a batch-by-batch basis in a prorated amount. Additionally, upon payment of the reservation fee by Savient, Enzon warrants that manufacture of the Product shall occur on or before the dates specified in the manufacturing schedule which conforms to the Firm Forecast for which the reservation fee is paid. Upon shipment of each completed batch, Enzon will invoice Savient at a rate equivalent to the applicable unit price multiplied by the total number of vials produced less the applicable portion of any reservation fees paid. No less than two weeks prior to each [...***…] update of the Firm Forecast, Enzon and Savient will reconcile the invoices against the above-mentioned reservation fee. In the event that Savient cancels any batch within the Firm Forecast, Enzon will charge Savient, and Savient agrees to pay to Enzon, a cancellation fee as set forth in the following sentence. For each batch canceled by Savient, Savient will pay Enzon an amount equal to the minimum batch price set forth on Exhibit C [...***…] representing unused Process Consumables and Manufacturing Components), which amount shall represent liquidated damages resulting from unused manufacturing capacity. In the event that Savient postpones the manufacture of any batch scheduled during the Firm Forecast period for a period of more than thirty (30) days, then Enzon will charge Savient, and Savient agrees to pay to Enzon, a postponement fee as set forth in the following sentence. For each batch postponed by Savient, Savient will pay Enzon an amount equal to the minimum batch price set forth on Exhibit C [...***…] representing unused Process Consumables and Manufacturing Components
Components) which amount shall represent liquidated damages resulting from unused manufacturing capacity. Only with respect to batches which are postponed beyond the Firm Forecast, Savient will remit to Enzon the amount drawn within 30 days, and that amount will be credited back to the reservation fee. Enzon will draw the cancellation and postponement fee amounts described above from the amounts previously remitted to Enzon as reservation fees. In the event that any amounts owing to Enzon pursuant to this Section exceed the amounts previously remitted to Enzon as reservation fees, Enzon shall submit an invoice to Savient for the difference and Savient shall submit payment for such invoiced amounts in accordance with the terms of this Agreement.

Section 4. COMPENSATION AND EXPENSES

4.1 As compensation for rendering the Services hereunder, Savient shall pay Enzon the amounts specified in Exhibit C and any subsequent additional Work Plans executed in writing by both parties. Except as otherwise specifically provided in the attached Work Plan or any subsequent additional Work Plan, all payments by Savient shall be made within thirty (30) days of the date of its receipt of the appropriate invoice from Enzon. Enzon will charge a late payment fee of […***…] per month, or the maximum amount permitted by law if less than […***…] per month, for any payment not received within thirty (30) days of the date of Savient's receipt of the appropriate invoice from Enzon. Failure to invoice for interest due shall not be a waiver of Enzon's right to charge interest. Savient will pay any sales, use, gross receipts or other taxes, licenses, or fees (excluding tax based on Enzon's net income) required to be paid by Enzon to any state or tax jurisdiction in connection with the Services performed hereunder.

4.2 All invoices and/or other requests for payment shall be itemized with a reasonable degree of specificity to ensure accuracy in accounting for services and/or goods provided and invoiced for. All invoices and/or other requests for payment shall be sent to:

Accounts Payable
Savient Pharmaceuticals, Inc.
One Tower Center, 14th Floor
East Brunswick, New Jersey 08816

4.3 Enzon will adjust prices not more often than annually, commencing on January 1, 2010, based on normal and customary increases in costs, not greater than the pharmaceutical Producer Price Index (as published by Bureau of Labor Statistics, Industry Code 325412). Additionally, Enzon may revise the prices provided in an attached Work Plan either upward or downward with Savient's prior written consent, such consent not to be unreasonably withheld, if (i) any information which the parties reasonably agree is material to the performance of the Services proves to be incomplete or inaccurate (including but not limited to a material reduction in volume or a material change in prices of Enzon’s raw materials), (ii) Savient revises Enzon’s manufacturing or packaging responsibilities, procedures, or assumptions in a way that would impact the cost of the Services, or (iii) unforeseen circumstances, which both parties reasonably agree were unforeseeable at the time of contracting and which are not directly attributable to Enzon, affect the activities required to complete the Work Plan. Enzon will notify Savient...
immediately if the costs to complete Services materially differ, either positively or negatively, from the prices stated in the attached Work Plan. Enzon will not commence work involving charges in excess of those stated in the attached Work Plan without Savient's written approval unless such advance notice was not possible due to the circumstances. Savient shall be responsible for all non-cancelable costs incurred by Enzon as a direct result of any change order or other variation in Services requested by Savient, including but not limited to, inventory rendered unusable under the Work Plan; provided, however, that Enzon shall use Commercially Reasonable Efforts to minimize any non-cancelable costs contemplated herein including, but not limited to, by maintaining on hand only such Manufacture Components which are reasonably required to manufacture such quantities of Product as are specified in the Firm Forecast.

4.4 Savient’s failure to pay for the amounts due under this Agreement (including but not limited to payments under 3.4(d)) shall constitute a material breach of this Agreement. Savient shall have 45 days from Enzon’s written notice to cure such breach; provided, however, that Savient’s failure to pay any amounts otherwise owing hereunder due to a good faith dispute relating to such amounts shall not constitute a material breach only with respect to such amounts. Upon the expiration of the stated cure period, Enzon shall have the right to suspend any Services under this Agreement. Any batch cancellations resulting from such actions will be billed to Savient in accordance with Section 3.4(d).

Section 5. CERTAIN REPRESENTATIONS, WARRANTIES, AND COVENANTS

OF ENZON:

5.1 Authority. Enzon represents and warrants that it has full authority to enter into this Agreement.

5.2 Material/Supplies. Enzon shall use Savient-supplied Materials only to perform the Services hereunder.

5.3 Savient Intellectual Property. Enzon warrants that it shall use Savient Intellectual Property only for the purpose of manufacturing the Product on behalf of Savient in accordance with the terms of this Agreement.

5.4 MVP Confidential Information. Enzon hereby represents and warrants that, during the Term of this Agreement, it has not taken any action, nor failed to take any action, which would violate or cause to be violated the terms and conditions contained in the attached Exhibit E, which is incorporated herein by reference. The warranty contained herein shall survive the termination or expiration of the Agreement in accordance with the terms contained in the attached Exhibit E. Anything to the contrary contained in this Agreement notwithstanding, Enzon agrees that there shall be no limitation on the amount of liability for which Enzon may be liable to either Savient or Mountain View Pharmaceuticals, Inc., for breach of this Section 5.4.
5.5 Books and Records. Enzon shall maintain true and accurate books, records, test and laboratory data, reports and all other information relating to manufacture of Product as required by regulation and in accord with current good manufacturing practices (“cGMP”) and as set forth in the Quality Agreement.

5.6 Regulatory Inspections. Enzon shall make its facilities and all records relating to the Product manufacture available to the Regulatory Authorities at times agreed with such authorities and shall notify Savient if the Regulatory Authority begins or schedules an inspection of Enzon’s records, facilities, or manufacturing processes related to the manufacture of Product and provide Savient access to any documentation related to or resulting from the inspection as described in the Quality Agreement.

5.7 Debarment. Enzon hereby certifies it does not and shall not employ, contract with or retain any person directly or indirectly to perform services under this Agreement if such person is debarred under 21 U.S.C. 335a (a) or (b) or other equivalent laws, rules, regulations or standards of any other relevant jurisdiction.

5.8 Regulatory Filings. Enzon will cooperate in providing to Savient any non-confidential information in its control relating to this Agreement or the Product that Savient may reasonably require in connection with its regulatory or governmental filings, provided that such information shall be provided in whatever form held by Enzon. If applicable, Enzon will provide a letter permitting applicable Regulatory Authority to reference its relevant drug master file.

5.9 Product and Process. Enzon provides services to its customers on a contractual fee-for-service basis. Enzon warrants that it will perform the Services with due care and in accordance with agreed upon protocols and/or specifications, the terms of this Agreement and any Work Plan hereunder, generally prevailing industry standards and Applicable Laws. Enzon warrants that its fill/finish process does not and will not infringe on the rights of any third parties.

OF SAVIENT:

5.10 Authority. Savient represents and warrants that it has full authority to enter into this Agreement.

5.11 Savient-supplied Materials. Savient represents, warrants and covenants as follows: (i) all Savient-supplied Materials will be supplied not later than four (4) weeks prior to a scheduled manufacturing date, as communicated to Savient pursuant to Section 3.4(a), so as to enable Enzon to complete manufacture and delivery of the Product in accordance with all forecasts and firm purchase orders submitted by Savient and accepted by Enzon; (ii) all Savient-supplied Materials shall meet all relevant specifications, (iii) Savient shall take sole and exclusive responsibility for the quality and sufficient supply of all such Savient-supplied Materials, including responsibility for all testing and inspection of the same except to the extent (if any) that Savient and Enzon agree that Enzon shall perform any such testing and/or inspections in any Work Plan to this Agreement, and (iv) Enzon shall have no liability for a loss of Savient-supplied Materials except as set forth in Section 11.4.
5.12 **IP Rights.** Savient represents, warrants and covenants that Savient has all the rights necessary, including the rights to the Savient Trademarks, to permit Enzon to perform the Services hereunder without infringing the intellectual property rights of any third party.

5.13 **Debarment.** Savient hereby certifies it does not and shall not employ, contract with or retain any person directly or indirectly to perform services under this Agreement if such person is debarred under 21 U.S.C. 335a (a) or (b) or other equivalent laws, rules, regulations or standards of any other relevant jurisdiction.

**Section 6. ADDITIONAL PRODUCT SUPPLY TERMS**

6.1 **Delivery.** Delivery terms shall be FCA (Incoterms 2000) Enzon’s manufacturing facility in Indianapolis, Indiana (or such other facility as the Parties may agree upon); Product shall be delivered in accordance with the timeframe set forth in the applicable purchase order. Title to Product and Savient-supplied Materials shall remain vested with Savient at all times.

6.2 **Rejected Goods; Failure of Supply.**

   (a) Except as provided for in Section 11.4, Savient’s sole remedy for breach of Enzon’s warranty in Section 5.9 shall be to require Enzon to re-perform the relevant services at Enzon’s cost.

   (b) Concurrent with Enzon’s delivery to Savient of any Product contemplated hereunder, Enzon shall provide to Savient a written, executed CofA demonstrating compliance of Product with all relevant Specifications; such CofA may be transmitted to Savient via facsimile or electronic mail. Promptly following receipt of Product, Savient shall have the right but not the obligation to test such Product to determine compliance with the Specifications. Savient shall notify Enzon in writing of any rejection of Product based on any claim that the Product fails to meet Specifications within thirty (30) days of delivery, after which point all unrejected Product shall be deemed accepted. Any rightly rejected Product that does not meet the Specifications shall, at Enzon’s sole discretion and expense, either (i) be returned to Enzon within a reasonable period of time and relabeled or reworked as permitted in the Marketing Authorizations and Specifications, if permitted by the Applicable Laws, or (ii) be destroyed in accordance with Applicable Laws.

   (c) In the event that Enzon believes that Product has been incorrectly rejected, Enzon may require that Savient provide to it Product samples for testing. Enzon may retain and test the samples of Product retained by it. In the event of a discrepancy between Savient’s and Enzon’s test results such that one Party’s test results fall within relevant Specifications and the other Party’s test results fall outside the relevant Specifications, or there exists a dispute between the Parties over the extent to which such failure is attributable to a given Party, the Parties shall cause an independent laboratory or appropriate expert promptly to review records, test data and perform comparative tests and/or analyses on samples of the alleged defective Product. Such independent laboratory or expert shall be mutually agreed upon by the Parties, and shall be of such national repute as to allow both Parties to reasonably agree that the independent laboratory...
or expert is sufficiently qualified to perform such analyses. The independent laboratory’s results shall be in writing and shall be final and binding save for manifest error. Unless otherwise agreed to by the Parties in writing, the costs associated with such testing and review shall be borne by the Party against whom the independent laboratory rules.

(d) Enzon shall replace any rightly rejected Product as promptly as practicable, using Commercially Reasonable Efforts to make available manufacturing capacity, after the notice of such rejection, and in any case as soon as reasonably possible after receiving such notice, provided that Savient shall provide to Enzon sufficient quantities of Savient-supplied Materials at no additional cost to Enzon. However, if the failure to meet Specifications is due to defects in the Savient-supplied Materials (where such defects are not due to any failure on the part of Enzon), or any other cause except Enzon’s failure to perform the Services in accordance with this Agreement, Savient will pay the full cost of the rejected batch.

(e) The Parties agree that Savient shall supply variable amounts of Bulk Product to Enzon for purposes of allowing Enzon to provide Services to fill and finish such Bulk Product into Product; the Parties further agree that if Savient supplies to Enzon [...] or more of Bulk Product for a single filling run that Enzon shall produce not less than [...] vials of Product; if Enzon should fail to produce at least [...] vials of Product as indicated herein, then Savient shall pay to Enzon an amount equal to the per-vial price indicated on the attached Exhibit C multiplied by the actual number of vials produced. In the event that Savient supplies less than [...] of Bulk Product to Enzon for a single filling run, then Savient shall pay to Enzon the minimum batch price indicated on Exhibit C attached hereto.

6.3 Recall; Withdrawal; Modification; Complaints. Savient shall be responsible for the cost of and all losses associated with any recall or product withdrawal or modification; provided, however, that to the extent that any such recall or product withdrawal is due to the gross negligence or willful misconduct on the part of Enzon, then Enzon shall reimburse Savient for all direct costs associated with such recall or withdrawal, in addition to any other rights or remedies Savient may have, but in any case only to the extent attributable to Enzon. Enzon shall reasonably cooperate with Savient in connection with any recall, withdrawal, or modification, at the expense of Savient except as otherwise provided for herein. Savient shall share with Enzon all relevant information relating to any such recall, withdrawal, or modification. In addition, Savient shall also promptly and fully detail for Enzon any Product complaints or Field Alerts it receives insofar as any such complaints relate to the Services rendered by Enzon hereunder. Enzon shall cooperate with Savient to report any adverse events of which it becomes aware in accordance with the terms of the Quality Agreement. Enzon shall only be responsible for the testing and protocols set forth in the Work Plan and Exhibits A and B, as applicable, and Savient is responsible for all other testing and protocols.

Section 7. TERM AND TERMINATION

7.1 Term. This Agreement shall commence on the Effective Date and shall remain in full force and effect unless terminated as provided herein.
7.2 **Termination.** Subsequent to the first (1st) anniversary of the Effective Date of this Agreement, this Agreement may be terminated by either party at any time by giving at least twenty-four (24) months prior written notice to the other party as follows: either party may give notice to the other party thirty (30) days prior to every such anniversary date. During the 24-month period between the notice of termination and the effectiveness of such termination, the Parties shall continue to cooperate with each other in good faith to effectuate the purpose of this Agreement; specifically, and without limitation, Savient may place, and Enzon shall accept and fulfill, forecasts and purchase orders for the manufacture of Product, all in accordance with the terms and conditions of this Agreement. During the pendency of the effective date of the termination notice, Savient shall not reduce the final six (6) months of any previously submitted forecast to [...] batches except if Enzon is the party which is terminating this Agreement. For the purposes of clarification only, the prohibition contained in the immediately preceding sentence shall not apply where the final six (6) months of the most recently supplied forecast were identified as having [...] batches at the time that the notice of termination was provided. Except as provided for herein, if, at any time subsequent to the tendering of a notice of termination pursuant to the terms herein, Savient reduces any of the final six months of the forecast to [...] batches, Savient shall pay Enzon a termination fee of $[...] per batch. Enzon shall use Commercially Reasonable Efforts to minimize the incurrence of any additional charges, fees or expenses which will not be utilized in the manufacture of the Product on behalf of Savient prior to the effective date of termination of this Agreement. Within thirty (30) days of the effective date of the termination of this Agreement, Enzon shall provide to Savient any case reports, analyses and other deliverables which were prepared by Enzon, if any, prior to the date of termination and Enzon shall also provide Savient with a written itemized statement of all Services performed by it hereunder and all costs incurred or for which Enzon is obligated. In the event of termination pursuant to this Section 7.2, Enzon shall be entitled to full payment for the Services actually rendered by it hereunder and all non-cancelable costs incurred through the date of termination. In addition to the foregoing, if Savient terminates this Agreement or any Work Plan pursuant to this Section 7.2, Savient shall pay any cancellation or postponement amounts set forth in Section 3.4(d); provided, however, that Enzon shall use Commercially Reasonable Efforts to mitigate any such cancellation or postponement amounts by scheduling, to the extent practicable, additional third party manufacturing activities, with any such mitigation accruing to the benefit of Savient and proportionately reducing any cancellation or postponement amounts otherwise owing. If the amount already paid by Savient to Enzon exceeds such amounts payable hereunder, Enzon shall refund such excess to Savient and if such amounts payable are greater than the amounts already paid by Savient to Enzon, then Savient shall pay the amount of such shortfall to Enzon.

7.3 This Agreement may also be terminated by either party upon material default in performance of the other party, provided that any defaulting party shall be given not less than ninety (90) days’ prior written notice of default and the opportunity to cure the default during such period. In the event this Agreement is terminated pursuant to this Section 7.3, Enzon shall be entitled to full payment for the services provided by it hereunder (as set forth in any Work Plan(s) made a part hereof) and all costs incurred through the date of termination or for which Enzon is obligated as of the date of termination; provided, however, that if Savient terminates this Agreement pursuant to this Section 7.3 then, anything to the contrary notwithstanding,
Enzon shall be entitled only to payment for such Services which it actually rendered on behalf of Savient through the effective date of termination. In addition to the foregoing, if Enzon terminates this Agreement or any Work Plan pursuant to this Section 7.3, Savient shall pay any applicable cancellation or postponement amounts set forth in Section 3.4(d); provided, however, that Enzon shall use Commercially Reasonable Efforts to mitigate any such cancellation or postponement amounts by scheduling, to the extent practicable, additional third party manufacturing activities, with any such mitigation accruing to the benefit of Savient and proportionately reducing any cancellation or postponement amounts otherwise owing. If the amount previously paid by Savient exceeds such amount payable hereunder, the excess shall be refunded to Savient and if such amounts payable are greater than the amounts already paid by Savient to Enzon, then Savient shall pay the amount of such shortfall to Enzon.

7.4 In the event that Savient’s BLA for the Product is not approved by the FDA, and where such disapproval is final or otherwise not appealed by Savient, then either Party shall have the right, but not the obligation, to terminate this Agreement upon the provision of thirty (30) days notice to the other Party. In the event this Agreement is terminated pursuant to this Section 7.4, Savient shall pay Enzon for packaging and labeling materials, any unpaid amounts for manufactured batches, and any reservation fees or other applicable cancellation or termination fees, provided that Enzon shall use Commercially Reasonable Efforts to mitigate such fees.

7.5 In the event that Savient’s BLA for the Product has not been approved by April 2009, then this Agreement shall continue in force and effect but any deliverables and obligations of the parties shall be held in abeyance for up to 18 months so as to allow Savient to address any findings in such approvable letter issued by the FDA and resubmit the subject BLA. Savient shall pay any cancellation or postponement amounts set forth in Section 3; provided, however, that Enzon shall use Commercially Reasonable Efforts to mitigate any such postponement amounts by scheduling, to the extent practicable, additional third party manufacturing activities, with any such mitigation accruing to the benefit of Savient and proportionately reducing any cancellation or postponement amounts otherwise owing. Savient shall provide to Enzon notice of its receipt of an approvable letter from the FDA within five (5) business days of its receipt of same. After said 18 months lapses, Enzon shall have the right to terminate this agreement immediately and with no penalty, and Savient shall pay all applicable cancellation and postponement amounts as set forth.

7.6 This Agreement may be terminated immediately, upon written notice, upon either party’s bankruptcy (voluntary or involuntary), insolvency, or placing of either party’s business in the hands of a receiver.

7.7 Survival. The rights and obligations of each Party which by their nature survive the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement, including Sections 4, 6, 7, 8, 9, 10, 11, 14, and 15 (to the extent relevant). In addition, Enzon hereby acknowledges that neither expiration nor termination of this Agreement shall affect in any manner Savient’s right to manufacture and sell, or have manufactured and sold, the Product.
Section 8. INTELLECTUAL PROPERTY

8.1 Subject to Section 8.2, all Savient Intellectual Property supplied to Enzon or developed by Enzon in the course of performing the Services hereunder are owned by Savient. All information developed by Enzon and related to the Bulk Product or the Product shall be disclosed to Savient promptly upon discovery or development by Enzon. Savient shall have the right to make any use of such information and Enzon agrees to execute any documents which may be reasonably required to effectuate any assignment of inventorship contemplated by this provision, at Savient’s expense. Following completion of the Services outlined in any Work Plan, Enzon will insure the return of all client data or other materials furnished to Enzon. Subject to Section 8.2, all intellectual property rights subsisting in or relating to any calculations, data, methods, specifications, papers, documents, and any other items, material or information arising from the performance of the Services by Enzon under this Agreement are vested in and are the sole property of Savient and Enzon shall execute any and all documents reasonably requested by Savient in order to effectuate the intent of this provision, at Savient’s expense.

8.2 Enzon shall own all rights to any invention (whether or not patentable) relating to manufacturing and analytical methods and processes developed by Enzon in connection with Services performed hereunder that have general use in biopharmaceutical manufacturing, to the extent not specific to Savient’s Product, and to the extent not directed to or derived from any pre-existing Savient Intellectual Property or MVP Confidential Information (“Process Invention”); provided that the provisions of this Section 8.2 shall not apply to manufacturing and analytical methods and processes developed by Enzon at the direction of Savient. Except as specifically prohibited with respect to MVP Confidential Information, Enzon reserves the right to use data developed during the course of performing Services hereunder to support applications, assignments or other instruments necessary to apply for and obtain patent or other intellectual property protection with respect to Process Inventions so long as no information which Enzon is required to keep confidential under this Agreement or any other previously executed agreement between the Parties relating to confidentiality of information is disclosed in any such application, assignment, or other instrument without the prior consent of Savient (not to be unreasonably withheld). For Process Inventions developed by Enzon in connection with performing services hereunder, Enzon will grant to Savient a perpetual, world-wide, royalty-free, non-exclusive license for Savient to use such Process Inventions in the development and manufacture of the Savient Products.

Section 9. CONFIDENTIALITY

9.1 For the duration of the Agreement and five (5) years thereafter with respect to Savient Confidential Information (as defined below), or, in the case of MVP Confidential Information (as defined below), for twenty (20) years from the Effective Date of the Agreement, Enzon will not disclose, without Savient’s written permission, any such Savient Confidential Information or MVP Confidential Information, unless such disclosure: (i) is to an Affiliate, agent, employee or consultant of Enzon that is under a similar obligation to keep such information confidential and such disclosure is reasonably necessary for the performance of the Services contemplated herein; (ii) is or becomes publicly available through no fault of Enzon;
(iii) is disclosed by a third party entitled to disclose it; (iv) is already known to Enzon as shown by its prior written records; or, (v) is required by any law, rule, regulation, order, decision, decree, subpoena or other legal process to be disclosed or in response to a request or order from a regulatory agency. If such disclosure is requested by a regulatory agency or legal process, Enzon will make all reasonable efforts to notify Savient of this request promptly prior to any disclosure to permit Savient to oppose such disclosure by appropriate legal action. Enzon shall use reasonable precautions to protect the confidentiality of both Savient Confidential Information and MVP Confidential Information in a manner that is comparable to precautions taken to protect its own proprietary information. As used herein, “MVP Confidential Information” means any Confidential Information that Savient provides, or has provided, to Enzon which is specifically identified in writing as containing Mountain View Pharmaceuticals, Inc.’s proprietary technology for the manufacture of PEGylated uricase (Puricase®/pegloticase), specifically including the documents referenced in Schedule A of the Second Amendment to the Agreement for Services between Savient and Enzon dated October 31, 2006, which the Parties have agreed to in a letter dated September 12, 2007, as containing Confidential Information belonging to Mountain View Pharmaceuticals, Inc.; “Savient Confidential Information” means any Confidential Information provided by Savient to Enzon, with the sole exception of MVP Confidential Information, during the term of the Agreement.

9.2 For the duration of the Agreement and five (5) years thereafter with respect to Savient Confidential Information, or in the case of MVP Confidential Information, for twenty (20) years from the Effective Date of the Agreement, Enzon will not use such Confidential Information except in connection with the performance of Services under the Agreement or any other Agreement between Savient and Enzon related to Savient’s PEGylated uricase (Puricase®/pegloticase) product and in particular represents and warrants that it will not utilize such Confidential Information in the manufacturing of any other product.

9.3 For twenty (20) years from the Effective Date of the Agreement, Savient will not disclose, without Enzon’s written permission, any Confidential Information belonging to Enzon which is provided to Savient by Enzon during the Term of the Agreement (“Enzon Confidential Information”) unless such disclosure: (i) is to an affiliate, agent, employee or consultant of Savient that is under a similar obligation to keep such information confidential; (ii) is or becomes publicly available through no fault of Savient; (iii) is disclosed by a third party entitled to disclose it; (iv) is already known to Savient as shown by its prior written records; or, (v) is required by any law, rule, regulation, order decision, decree, subpoena or other legal process to be disclosed or in response to a request or order from a regulatory agency. If such disclosure is requested by a regulatory agency or legal process, Savient will make all reasonable efforts to notify Enzon of this request promptly prior to any disclosure to permit Enzon to oppose such disclosure by appropriate legal action. Savient shall use reasonable precautions to protect the confidentiality of Enzon Confidential Information in a manner that is comparable to precautions taken to protect its own proprietary information.

9.4 If either Party shall be obliged to provide testimony or records pertaining to the Confidential Information provided by the other in any legal or administrative proceeding, then the Party which supplied the Confidential Information shall reimburse the other Party for its out-
of-pocket costs therefore plus an hourly fee for its employees or representatives equal to the internal fully burdened costs of such employee or representative.

9.5 For both Parties, “Confidential Information” shall mean and include, without limitation, such types of information as: inventions, methods, plans, processes, specifications, characteristics, raw data, analyses, equipment design, trade secrets, costs, marketing, sales, and product performance information, including patents and patent applications, grant applications, notes, and memoranda, whether in writing or presented, stored or maintained electronically, magnetically or by other means, which are disclosed by the disclosing Party to the recipient Party in writing or in other tangible form and marked “confidential” or, if disclosed orally (or in some other non-tangible form), are identified as confidential to the recipient Party in writing within sixty (60) days of such disclosure; provided, however, that failure to reduce any verbal disclosure to writing shall not, in and of itself, vitiate the confidential nature of such Confidential Information and provided, further, that for the purposes of this Agreement, Confidential Information shall include any and all such information exchanged between the Parties prior to the Effective Date of this Agreement pursuant to the Confidentiality Agreement between the Parties dated July 24, 2006.”

Section 10. INSURANCE

Each Party shall for the term of this Agreement and for two (2) years after the last Product is delivered, obtain and maintain at its own cost and expense from a qualified insurance company, comprehensive general liability insurance including, but not limited to, contractual liability coverage and standard product liability coverage in an amount commensurate with industry standards. Savient shall for the term of this Agreement and for two (2) years after the last Product is delivered, obtain and maintain at its own cost and expense from a qualified insurance Savient, insurance coverage for losses of inventory at Enzon’s facility prior to, and following manufacture of the Product. At a Party’s request, the other Party shall provide it with proof of such coverage.

Section 11. INDEMNIFICATION AND LIMITS OF LIABILITY

11.1 Without limiting Enzon’s rights under law or in equity, Savient agrees to indemnify and hold harmless Enzon and its employees, directors and agents from and against any loss, damage, cost and expense (including without limitation attorneys’ fees and expenses) incurred in connection with any claims, proceedings or investigations arising directly or indirectly from (a) the manufacture, promotion, marketing, distribution or sale of the Product, (b) use or exposure to Product or any material provided to Enzon by Savient, (c) use of any Savient Intellectual Property provided by Savient to Enzon (but only in cases where Savient has provided such Savient Intellectual Property for Enzon’s use) or any infringement of the intellectual property rights of any third party related to the Product, or (d) any breach of Savient’s representations and/or warranties, except to the extent any such claim is the result of Enzon’s […]***…].

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*** Confidential Treatment Requested
11.2 Without limiting Savient’s rights under law or in equity, Enzon agrees to indemnify and hold harmless Savient and its employees, directors and agents from and against any loss, damage, cost and expense (including without limitation attorneys’ fees and expenses) incurred in connection with any claims, proceedings or investigations arising out of or in connection with (a) this Agreement and the Product produced and the Services rendered hereunder to the extent that such claim, proceeding or investigation is based on the [...] of Enzon or its employees, (b) any breach of Section 9.2 of this Agreement with respect to MVP Confidential Information, (c) any breach of the representations made by Enzon in the Letter Agreement between Enzon and Savient dated September 12, 2007, attached hereto as Exhibit E; but in any case only to the extent attributable to Enzon.

11.3 Any party seeking indemnification pursuant to this Section 11 (the “Indemnitee”) shall give notice within five (5) days to the party from whom indemnification is sought (the “Indemnitor”) of any claim, proceeding or investigation; provided, however, that any failure to notify the Indemnitor within such five (5) day period shall not negate the rights of indemnification granted hereunder except to the extent that the Indemnitor is actually prejudiced by such delay in notification. The Indemnitee shall cooperate in the defense of such claim, proceeding or investigation, subject to reimbursement by the Indemnitor for all reasonable out-of-pocket expenses. The Indemnitor shall, at its option, assume control of the defense of any such claim, proceeding or investigation. The indemnities set forth in Sections 11.1 and 11.2 shall include amounts paid in settlement provided, however, that no such settlement shall be entered into without the Indemnitor’s consent, which consent shall not be unreasonably withheld.

11.4 As Savient’s sole remedy, Enzon agrees to reimburse Savient up to a maximum of $[…***…] per batch, pro-rated over the usable portion of the batch, if applicable, for any loss of Savient-supplied Materials for each batch that does not meet Specifications or was not manufactured in accordance with the Manufacturing Process or cGMP or the requirements of this Agreement, and therefore cannot be released or otherwise utilized for its intended purpose; provided that the loss of such materials can be shown after investigation to be caused solely and directly by: (a) the failure of Enzon to follow its SOP’s; or (b) Enzon’s negligence, gross negligence, willful misconduct, or breach of this Agreement. In addition to this payment, if due to Enzon’s gross negligence, willful misconduct, or breach of this Agreement, Enzon will re-perform the Services as provided in Section 6.2(a).

11.5 SECTION 11.4 IS SAVIENT’S SOLE AND EXCLUSIVE REMEDY FOR ANY LOSSES OF SAVIENT-SUPPLIED MATERIAL AS A RESULT OF PRODUCT THAT DOES NOT COMPLY WITH THE SPECIFICATIONS OR THE OTHER REQUIREMENTS OF THIS AGREEMENT. UNDER NO CIRCUMSTANCES SHALL ENZON BE LIABLE TO SAVIENT OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT (INCLUDING LOST REVENUES OR PROFITS), SPECIAL, OR OTHER DAMAGES, AND THE WARRANTY SET FORTH IN SECTION 5.9 IS THE SOLE AND EXCLUSIVE WARRANTY AND IN LIEU OF ANY AND ALL OTHER WARRANTIES RELATING TO THE SERVICES TO BE PERFORMED, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR FOR NON-INFRINGEMENT OF INTELLECTUAL

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*** Confidential Treatment Requested
PROPERTY RIGHTS. ENZON’S MAXIMUM LIABILITY FOR DAMAGES IN CONNECTION WITH A CLAIM RELATED TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION, WILL NOT EXCEED THE SUM TOTAL OF THE AMOUNTS PAID BY SAVIENT TO ENZON IN THE PRECEDING TWELVE (12) MONTHS.

EXCEPT AS EXPRESSLY STATED HEREIN, NEITHER PARTY PROVIDES TO THE OTHER PARTY HERETO ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER, AND ALL SUCH WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE WAIVED, OTHER THAN AGREED HEREIN. WITHOUT LIMITING THE PROVISIONS OF SECTION 5.9 AND 6.2(e), ENZON MAKES NO WARRANTIES THAT THE EXECUTION OF THIS AGREEMENT WILL RESULT IN ANY SPECIFIC QUANTITY OR QUALITY OF PRODUCT.

Section 12. PUBLICITY AND PUBLICATIONS

Neither Savient nor Enzon shall make any news release or other public statement, whether to the press or otherwise, disclosing the existence of this Agreement, the terms thereof, or of any amendment thereto without the prior written approval of the other Party, except as required by Applicable Laws including, without limitation, those regulations promulgated by the United States Securities and Exchange Commission.

Section 13. FORCE MAJEURE AND CHANGE IN CIRCUMSTANCES

If either Party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strike, lockouts, labor troubles, restrictive governmental or judicial orders or decrees, riots, insurrection, war, terrorist acts, acts of God, inclement weather, or other reason or cause reasonably beyond such Party’s control (each a “Force Majeure”), then performance of such act shall be excused for the period of such Force Majeure. The Party affected by the Force Majeure shall provide notice to the other of the commencement and termination of the Force Majeure. Should a Force Majeure continue for more than three (3) months, the Party unaffected by the Force Majeure may terminate this Agreement upon prior written notice to the affected Party. If the Force Majeure equally affects the ability of each Party to perform under this Agreement, then such termination shall only be by mutual written agreement. In the event of any other type of unforeseen material change in circumstances (that does not qualify as force majeure), both parties agree to negotiate in good faith to find a commercially reasonable solution.

Section 14. NOTICES

14.1 All administrative communications provided for in this Agreement shall be sent via first class mail (subject to Section 14.2 below), postage prepaid, addressed to the respective parties as follows:

<table>
<thead>
<tr>
<th>To Enzon:</th>
<th>To Savient</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Commercial Supply Agreement</td>
</tr>
<tr>
<td></td>
<td>Execution Copy</td>
</tr>
<tr>
<td></td>
<td>Page 19 of 44</td>
</tr>
</tbody>
</table>
14.2 Original documents and other than routine correspondence required under this Agreement shall be sent by certified mail and addressed to the respective parties at the addresses set forth in Section 14.1. All legal notices shall be in writing and sent by certified mail, return receipt requested. Such notices shall be effective on receipt. All routine correspondence between the Parties may be sent via electronic mail, facsimile or by regular mail.

Section 15. MISCELLANEOUS

15.1 Amendments; Assignment. This Agreement, including any Work Plans or other attachments, may not be altered, amended or modified except by a written document signed by both Parties. Enzon will not assign this Agreement without the prior written consent of Savient; any purported assignment in contravention of this Section shall be null and void; provided, however, that either Party may assign this Agreement in connection with the sale of all or substantially all of its assets related to this Agreement or the Services to be provided hereunder; provided, further, that any such successor or assignee assumes and accepts in writing all obligations of the purported assigning party hereunder.

15.2 Subcontracting. Enzon may subcontract or delegate any of its rights or obligations under this Agreement with the prior written authorization of Savient, such authorization not to be unreasonably withheld. Enzon shall cause any subcontractor to be subject by contract to the same restrictions, exceptions, obligations, reports, termination provisions and other provisions contained in this Agreement.

15.3 Successors; Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and each of their respective successors and permitted assigns.

15.4 Severability. All agreements and covenants contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this Agreement shall be interpreted as if such invalid agreements or covenants were not contained herein.
15.5 **Entire Agreement.** This Agreement, including the attached Work Plans, constitutes the entire agreement between the Parties and supersedes all prior communications, representations, or agreements, either verbal or written between the Parties which are specifically related to the subject matter contemplated herein; anything to the contrary notwithstanding, any previously executed Confidentiality and Nondisclosure Agreement shall remain valid and enforceable in accordance with its terms. Each Party confirms that it is not relying on any representations or warranties of the other Party except as specifically set forth herein.

15.6 **Independent Contractor.** This Agreement shall not be deemed to create any partnership, joint venture, or agency relationship between the Parties. Each Party shall act hereunder as an independent contractor and its agents and employees shall have no right or authority under this Agreement to assume or create any obligation on behalf of, or in the name of, the other Party. All persons employed by a Party shall be employees of such Party and not of the other Party, and all costs and obligations incurred by reason of any such employment shall be for the account and expense of such Party.

15.7 **Waiver.** The waiver by either Party of any right hereunder shall not be deemed a waiver of any other right hereunder.

15.8 **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.9 **Headings.** The headings used in this Agreement are for convenience only and are not a part of this Agreement.

15.10 **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, without application of its principles of conflict of laws.

15.11 **Audits.** Once each calendar year during the term of this Agreement, Savient and its agents and designees shall have the right to audit Enzon’s facilities, systems, records solely related to this Agreement or the Product. Such audits may be conducted upon reasonable notice during the term of this Agreement, so long as (i) all auditors have entered into confidentiality agreements relating to the materials to be reviewed, (ii) no materials are removed from the premises of Enzon, provided, however, that Savient may make and retain copies of Enzon materials as may be reasonably necessary solely for purposes of completing the contemplated audit and any such materials shall be considered confidential, and (iii) a copy of all findings is provided to Enzon. All costs for such audits shall be paid by Savient. For the avoidance of doubt, pre-approval inspections shall be considered an audit under this Section 15.11. Anything to the contrary notwithstanding, in the event that an audit is required due to batch failures or because the Services are not rendered in accordance with the terms of this Agreement (including any Work Plan), then such for-cause audit shall not count towards the annual audit provided for herein.

15.12 **Nonsolicitation.** For the term of this Agreement, and for twelve (12) months following termination of this Agreement, for any reason, neither Savient nor Enzon nor any of
their employees or agents shall, directly or indirectly, solicit any employees of the other, who have been involved in the Services, unless otherwise approved by the other party.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Commercial Supply Agreement to be executed by its duly authorized representative as of the date written above.

ENZON PHARMACEUTICALS, INC.

By: /s/ Ralph del Campo
    Ralph del Campo
    EVP - Operations

SAVIENT PHARMACEUTICALS, INC.

By: /s/ Philip K. Yachmetz
    Philip K. Yachmetz
    EVP & Chief Business Officer
Exhibit A

Work Plan

Enzon will fill, inspect, package and test the Product using the components defined below and the process as outlined on the following Process Flow Diagram.

[...***...]

[...***...]

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*** Confidential Treatment Requested
### Final Product Release Specifications

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Test Method</th>
<th>Specification</th>
</tr>
</thead>
<tbody>
<tr>
<td>[..***..]</td>
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### In-Process Product Specifications

<table>
<thead>
<tr>
<th>Parameter</th>
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<td>[..***..]</td>
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</tbody>
</table>
### Commercial Manufacturing

<table>
<thead>
<tr>
<th>Activities Included</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Prepare Master Batch Records</td>
<td>$[...***... per vial</td>
</tr>
<tr>
<td>• Materials to be packed with one vial and product insert per carton.</td>
<td></td>
</tr>
<tr>
<td>• Commercial Batch Prices are effective on 1 January 2008, and are effective through 31 December 2009.</td>
<td></td>
</tr>
<tr>
<td>• Enzon reserves the right to increase prices pursuant to the terms of the Supply Agreement.</td>
<td></td>
</tr>
<tr>
<td>• Release testing of batches; provision of CoA</td>
<td></td>
</tr>
<tr>
<td>• Supply temperature recorders to Drug Substance manufacturer for shipping. Download and provide temperature data to Savient.</td>
<td></td>
</tr>
</tbody>
</table>

### Puricase Final Drug Product Stability test Schedule at [...***...]

<table>
<thead>
<tr>
<th>Puricase Final Drug Product Stability test Schedule at [...***...]</th>
<th>Price is per each lot tested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Setup &amp; initiation Fee</td>
<td>Initial Test</td>
</tr>
<tr>
<td>$[...***...]</td>
<td>$[...***...]</td>
</tr>
</tbody>
</table>

### Puricase Final Drug Product Stability test Schedule at [...***...]

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<tr>
<th>Puricase Final Drug Product Stability test Schedule at [...***...]</th>
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</tr>
<tr>
<td>$[...***...]</td>
<td>$[...***...]</td>
</tr>
</tbody>
</table>

Stability studies will be conducted on batches requested in advance by Savient. Prices will be in effect for stability studies initiated on 2008 or 2009 and subject to review at the end of 2009.

### Professional Services Fee Structure

<table>
<thead>
<tr>
<th>Professional Services Fee Structure</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>• One (1) man-hour</td>
<td>$[...***...]</td>
</tr>
</tbody>
</table>

**Terms:** Purchase Orders are required for each scheduled batch.

- Invoice for vials produced will be sent upon shipment of materials. Payment due net 30 days.
- Delivery terms are FCA Enzon’s manufacturing facility in Indianapolis, IN.
- Cancelled and postponed batches shall be billed in accordance with Section 3.4(d).

---

**Exhibit C**

**Product Price**

*Enzon to update prices on or about January 1 of every year.*
Exhibit D

Product Forecast

Savient has provided the following forecast for the […]***[…] period beginning October 2008.

[...***...]

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*** Confidential Treatment Requested
September 12, 2007

Enzon Pharmaceuticals, Inc.
Attn: Thomas J. Puskar
685 Route 202/206
Bridgewater, New Jersey 08807

Re: Second Amendment to Agreement for Services (“Agreement”) between Savient Pharmaceuticals, Inc. (“Savient”) and Enzon Pharmaceuticals, Inc. (“Enzon”) dated October 31, 2006 and as amended on June 15, 2007

Dear Mr. Puskar:

Pursuant to Section 13.01 of the Agreement, Savient and Enzon hereby agree to amend the Agreement by repealing Section 4:

Confidentiality and replacing it as follows:

“4.01: For the duration of the Agreement and five (5) years thereafter with respect to Savient Confidential Information (as defined below), or, in the case of MVP Confidential Information (as defined below), for twenty (20) years from the Effective Date of the Agreement, Enzon will not disclose, without Savient’s written permission, any such Savient Confidential Information or MVP Confidential Information, unless such disclosure: (i) is to an affiliate, agent, employee or consultant of Enzon that is under a similar obligation to keep such information confidential and such disclosure is reasonably necessary for the performance of the Services contemplated herein; (ii) is or becomes publicly available through no fault of Enzon; (iii) is disclosed by a third party entitled to disclose it; (iv) is already known to Enzon as shown by its prior written records; or, (v) is required by any law, rule, regulation, order decision, decree, subpoena or other legal process to be disclosed or in response to a request or order from a regulatory agency. If such disclosure is requested by a regulatory agency or legal process, Enzon will make all reasonable efforts to notify Savient of this request promptly prior to any disclosure to permit Savient to oppose such disclosure by appropriate legal action. Enzon shall use reasonable precautions to protect the confidentiality of both Savient Confidential Information and MVP Confidential Information in a manner that is comparable to precautions taken to protect its own proprietary information. As used herein, “MVP Confidential Information” means any Confidential Information that Savient provides, or has provided, to Enzon which is specifically identified in writing as containing Mountain View Pharmaceuticals, Inc.’s proprietary technology for the manufacture of PEGylated uricase

Cont…/…
4.02 For the duration of the Agreement and five (5) years thereafter with respect to Savient Confidential Information, or in the case of MVP Confidential Information, for twenty (20) years from the Effective Date of the Agreement, Enzon will not use such Confidential Information except in connection with the performance of Services under the Agreement or any other Agreement between Savient and Enzon related to Savient’s PEGylated uricase (Puricase®/pegloticase) product and in particular represents and warrants that it will not utilize such Confidential Information in the manufacturing of any other product.

4.03 For twenty (20) years from the Effective Date of the Agreement, Savient will not disclose, without Enzon’s written permission, any Confidential Information belonging to Enzon which is provided to Savient by Enzon during the Term of the Agreement (“Enzon Confidential Information”) unless such disclosure: (i) is to an affiliate, agent, employee or consultant of Savient that is under a similar obligation to keep such information confidential; (ii) is or becomes publicly available through no fault of Savient; (iii) is disclosed by a third party entitled to disclose it; (iv) is already known to Savient as shown by its prior written records; or, (v) is required by any law, rule, regulation, order decision, decree, subpoena or other legal process to be disclosed or in response to a request or order from a regulatory agency. If such disclosure is requested by a regulatory agency or legal process, Savient will make all reasonable efforts to notify Enzon of this request promptly prior to any disclosure to permit Enzon to oppose such disclosure by appropriate legal action. Savient shall use reasonable precautions to protect the confidentiality of Enzon Confidential Information in a manner that is comparable to precautions taken to protect its own proprietary information.

4.04 If either Party shall be obliged to provide testimony or records pertaining to the Confidential Information provided by the other in any legal or administrative proceeding, then the Party which supplied the Confidential Information shall reimburse the other Party for its out-of-pocket costs therefore plus an hourly fee for its employees or representatives equal to the internal fully burdened costs of such employee or representative.

Cont…/ …
4.05. For both Parties, “Confidential Information” shall mean and include, without limitation, such types of information as: inventions, methods, plans, processes, specifications, characteristics, raw data, analyses, equipment design, trade secrets, costs, marketing, sales, and product performance information, including patents and patent applications, grant applications, notes, and memoranda, whether in writing or presented, stored or maintained electronically, magnetically or by other means, which are disclosed by the disclosing Party to the recipient Party in writing or in other tangible form and marked “confidential” or, if disclosed orally (or in some other non-tangible form), are identified as confidential to the recipient Party in writing within sixty (60) days of such disclosure; provided, however, that failure to reduce any verbal disclosure to writing shall not, in and of itself, vitiate the confidential nature of such Confidential Information and provided, further, that for the purposes of this Agreement, Confidential Information shall include any and all such information exchanged between the Parties prior to the effective date of this Agreement pursuant to the Confidentiality Agreement between the Parties dated July 24, 2006.”

To signify your acceptance of this Amendment, kindly countersign and return one copy to my attention.

Should you have any questions, please do not hesitate to contact John Petrolino at (732) 565-4655.

Very truly yours,

/s/ Philip K. Yachmetz

Philip K. Yachmetz
Executive Vice President
Chief Business Officer

I hereby agree to the terms and conditions contained herein.

Enzon Pharmaceuticals, Inc.

By: /s/ Ralph del Campo

Name: Ralph del Campo
Title: EVP Technical Operations
Date: 9/17/07
SCHEDULE A

List of Confidential Documents identified pursuant to
Section 4.01 of this Agreement in the letter of September 12, 2007

1.) [...***…]
2.) [...***…]
3.) [...***…]
4.) [...***…]

*** Confidential Treatment Requested
Quality Technical Agreement for:

PRODUCT: Puricase® (PEG-Uricase)

DOSAGE/FORM: 8 mg/ml per vial

This Quality Agreement shall be read in conjunction with a commercial Supply Agreement between ENZON and SAVIENT ("Supply Agreement"), dated as of October 16, 2008 and is incorporated into the Supply Agreement. Capitalized terms not defined herein shall have the respective meanings set forth in the Supply Agreement. The effective date of this Quality Agreement shall be the Effective Date of the Supply Agreement.

This Quality Agreement defines the duties of ENZON and SAVIENT for the contract pharmaceutical manufacture of Product. In particular this Quality Agreement clearly states who is responsible for the cGMP aspects of manufacturing and specifies the way in which the Party releasing Product for sale ensures that the Product complies with the approved Product Specifications (defined below) and the Marketing Authorizations (defined below).

This Quality Agreement takes the form of a detailed checklist of all the activities associated with pharmaceutical production, analysis, release, and distribution. Responsibility for each activity is assigned to either ENZON or SAVIENT in the appropriate box in the Delegation Responsibility Checklist which follows.

In order to provide better quality assurance, ENZON will perform the activities defined herein in accordance with its Standard Operating Procedures (defined below) to the extent that a Standard Operating Procedure is applicable to such activity.

This Agreement is subject to the terms of the Supply Agreement. A breach of this Quality Agreement shall be deemed a breach of the Supply Agreement. In the event of a conflict between this Quality Agreement and the Supply Agreement, the Supply Agreement shall control.

This Quality Agreement is intended to comply with the guidance and directives set forth in the current versions and effective amendments of (I) FDA Guidance for Industry, Cooperative Manufacturing Arrangements for Licensed Biologics, August 1999; (ii) 21 CFR 210 & 211 and applicable portions of 21 CFR 600 through 610; and (iii) European Commission Directive 91/356 down the principles and guidelines of good manufacturing practice for medicinal Products for human use. This will be made accessible to relevant regulatory authorities if required by them.

[signature page follows]
The Parties have caused their duly authorized representatives to executed this Quality Agreement, effective as of October 16, 2008.

<table>
<thead>
<tr>
<th>SAVIENT PHARMACEUTICALS, Inc.</th>
<th>ENZON PHARMACEUTICALS, Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>/s/ Robert Lamm</td>
<td>/s/ Christian W. Dreyer</td>
</tr>
<tr>
<td>Signature</td>
<td>Signature</td>
</tr>
<tr>
<td>Robert Lamm</td>
<td>Christian W. Dreyer</td>
</tr>
<tr>
<td>Printed Name</td>
<td>Printed Name</td>
</tr>
<tr>
<td>SVP, QA, RA</td>
<td>V.P. QOP</td>
</tr>
<tr>
<td>Title</td>
<td>Title</td>
</tr>
<tr>
<td>10/16/08</td>
<td>10/21/08</td>
</tr>
<tr>
<td>Date</td>
<td>Date</td>
</tr>
</tbody>
</table>
For purposes of this Quality Agreement, the following definitions shall apply:

A. “FDA” shall mean the United States Food and Drug Administration, and any successor entity thereto.

B. “Marketing Application” shall mean an application for Product marketing authorization which has not yet been approved by the FDA or other regulatory authority, including, without limitation, FDA New Drug Application, FDA Biologics License Application, and other similar marketing applications promulgated by regulatory authorities.

C. “Marketing Authorizations” shall mean any approved application for Product marketing authorization, including, without limitation, FDA New Drug Application, FDA Biologics License Application, and other similar marketing authorizations promulgated by international regulatory authorities.

D. “Process” or “Processing” shall mean the sterile compounding, filling, producing and/or packaging of the raw materials into Product in accordance with the Product Specifications and the terms and conditions set forth in the Supply Agreement and this Quality Agreement.

E. “Product Specifications” shall mean the procedures, requirements, specifications, standards, quality control testing, other data and scope of Supply related to the Product, as set forth in the Project Plan and/or attached hereto. ENZON shall not release Product if these parameters are not met and investigation shows the non-complying parameter to be a valid test result.

F. “Standard Operating Procedures” or “SOPS” shall mean the standard operating procedures in effect at ENZON which have been approved by ENZON Quality Assurance department and which are applicable to the Processing; provided that all Standard Operating Procedures applicable to the Processing or the Product shall also be approved by SAVIENT.

G. “Bulk Product” shall mean the bulk solution of [...***...] supplied by Savient to Enzon pursuant to this agreement.

H. “Business Day” shall mean Monday through Friday excluding government holidays.

I. “Component” shall mean all packaging materials utilized during manufacture, including all primary and secondary packaging materials.

J. “Deviation” shall mean any planned or unplanned event or result that is different from the expected event or result defined in existing procedures or specifications.
K. “Filled Product” shall mean in-process sterile Product that has been filled into its final primary package for further labeling and packaging.

L. “Product” shall mean sterile Product in its final packaged and labeled form that is ready for disposition.

M. “Manufacture” shall mean finished drug Product pooling, filling, packaging, and associated in-process and stability testing, as applicable.

N. “Master Production Control Record (MPCR)” shall mean a master document that represents a detailed procedure and data record for the batch manufacturing process, pursuant to CFR 21 §211.186.

O. “Out of Specification (OOS)” shall mean any in-process, intermediate, or finished Product test result that is outside of acceptable ranges defined in approved specifications or analytical test methods.

P. “cGMPs’ shall mean current good manufacturing practices as promulgated by the FDA under the United States Food, Drug, and Cosmetic Act, 21 C.F.R. Part 210 et seq., as amended from time to time, and the European Union.

The following Facilities shall be used by ENZON for Processing or provision of Supply (“Facilities”):

<table>
<thead>
<tr>
<th>Manufacturing, Packaging, Testing and Storage</th>
</tr>
</thead>
<tbody>
<tr>
<td>6925 Guion Rd.</td>
</tr>
<tr>
<td>Indianapolis, IN 46268</td>
</tr>
<tr>
<td>USA</td>
</tr>
</tbody>
</table>

Section 16. RESPONSIBILITY DELEGATION CHECKLIST

<table>
<thead>
<tr>
<th>RESPONSIBILITIES</th>
<th>SAVIENT</th>
<th>ENZON</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Regulatory Authorizations &amp; cGMP Compliance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 Maintain all licenses, registrations and other authorizations as are required to operate a cGMP pharmaceutical manufacturing facility under the Applicable Laws.</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>1.2 Maintain and operate the Facility in compliance with the cGMPs, Applicable Laws and all other Product-specific instructions and requirements agreed to by the Parties.</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>RESPONSIBILITIES</td>
<td>SAVIENT</td>
<td>ENZON</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>1.3 Process the Product in accordance with the cGMPs, Applicable Laws and all</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>other Product-specific instructions and requirements agreed to by the Parties.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.4 Prepare, maintain and update the Marketing Authorizations in accordance with</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>cGMPs, Applicable Laws and all other Product-specific instructions and requirements</td>
<td></td>
<td></td>
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<tr>
<td>agreed to by the Parties.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.5 Provide ENZON with copies of those portions of the Marketing Applications</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>which are applicable to the Processing, prior to submission of such Marketing</td>
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<tr>
<td>Applications to the applicable regulatory authorities.</td>
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<tr>
<td>1.6 Provide ENZON with copies of updates of those portions of the Marketing</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Authorizations which are applicable to the Processing, prior to submission of</td>
<td></td>
<td></td>
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<tr>
<td>such Marketing Applications to the applicable regulatory authorities.</td>
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<tr>
<td>1.7 Satisfy all drug listing filing requirements for all Product and packaging</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>configurations processed at the Facilities.</td>
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<tr>
<td>1.8 Prepare and submit post-marketing annual reports to the FDA and other</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>applicable regulatory authorities in accordance with cGMPs, Applicable Laws and</td>
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<td></td>
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<tr>
<td>all other Product-specific instructions and requirements agreed to by the</td>
<td></td>
<td></td>
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<tr>
<td>Parties.</td>
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<tr>
<td>1.9 Provide SAVIENT within 30 business days of their request with the following</td>
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<td>X</td>
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<tr>
<td>information to be included in the post-marketing annual reports:</td>
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<tr>
<td>• Change control information for all changes implemented during the preceding</td>
<td></td>
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<tr>
<td>year relating to the Product.</td>
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<tr>
<td>• Applicable Product test data submitted in accordance with the requirements</td>
<td></td>
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<tr>
<td>of the Supply Agreement, including any non-conforming data.</td>
<td></td>
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<tr>
<td>1.10 Conduct Annual Product Quality Review for the Product in accordance with</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>cGMP’s, and Applicable Laws.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.11 Provide SAVIENT with the following information to be included in the Annual</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Product Quality Review:</td>
<td></td>
<td></td>
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<tr>
<td>• All requested data and information required per 21 CFR 211.180(e)</td>
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</tr>
<tr>
<td>RESPONSIBILITIES</td>
<td>SAVIENT</td>
<td>ENZON</td>
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</tr>
<tr>
<td><strong>2. Regulatory Actions &amp; Inspections</strong></td>
<td></td>
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<tr>
<td>2.1</td>
<td>Promptly (within 24 hours of receiving notice) notify SAVIENT of any FDA or other regulatory authority (a) notice of inspection or inspection of the Facilities directly relating to the Product, or (b) inspection or investigation relating to the Product; and promptly (within 3 days) notify SAVIENT of any regulatory authority request for Product samples or Product batch records.</td>
<td>X</td>
</tr>
<tr>
<td>2.2</td>
<td>Promptly (within 24 hours of receiving notice) notify ENZON of any FDA or other regulatory authority inspection or investigation relating to the Product; and promptly (within 3 days) notify ENZON of any regulatory authority request for Product samples or Product batch records.</td>
<td>X</td>
</tr>
<tr>
<td>2.3</td>
<td>Provide SAVIENT copies of any FDA Form 483's, warning letters or the like from applicable regulatory authorities within 30 days of receipt and copies of all subsequent response(s) relating to the Product or Quality Systems.</td>
<td>X</td>
</tr>
<tr>
<td>2.4</td>
<td>Approve inspection responses to observations relevant to Product.</td>
<td>X</td>
</tr>
<tr>
<td>2.5</td>
<td>Other than a request(s) delivered in conjunction with an inspection, notify the other Party of any requests for information, notices of violations or other communications from a regulatory authority relating directly to the Product produced at the Facility.</td>
<td>X</td>
</tr>
<tr>
<td><strong>3. Specifications &amp; Change Control</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>Approve Product Specifications.</td>
<td>X</td>
</tr>
<tr>
<td>3.2</td>
<td>Assume primary responsibility for ensuring that all Specifications (including Product Specifications) and batch records that specifically relate to the manufacture and release of Product comply with relevant portions of the Marketing Applications and Marketing Authorizations, as amended from time to time.</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>3.3</td>
<td>Assume secondary responsibility for ensuring that all Specifications (including Product Specifications) and batch records that specifically relate to the manufacture and release of Product comply with relevant portions of the Marketing Applications and Marketing Authorizations, as amended from time to time.</td>
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<tr>
<td>RESPONSIBILITIES</td>
<td>SAVIENT</td>
<td>ENZON</td>
</tr>
<tr>
<td>3.4</td>
<td>Submit any proposed changes to the Specifications to SAVIENT for review and approval, prior to the implementation of such changes by ENZON.</td>
<td></td>
</tr>
<tr>
<td>3.5</td>
<td>Submit any proposed changes to the Specifications to ENZON for review and comment, prior to the submission of any such changes by SAVIENT to the regulatory authorities.</td>
<td>X</td>
</tr>
<tr>
<td>3.6</td>
<td>Discuss and reach agreement with SAVIENT regarding any proposed changes to the Facilities or the Processing that may impact the Product, prior to implementation of such proposed changes.</td>
<td>X</td>
</tr>
<tr>
<td>3.7</td>
<td>Serve as sole communicator with regulatory authorities for the approval and any revisions of Product Specifications in the Market Applications and Marketing Authorizations.</td>
<td>X</td>
</tr>
<tr>
<td>4.</td>
<td>Materials</td>
<td></td>
</tr>
<tr>
<td>4.1</td>
<td>Maintain Bulk Product according to cGMPs and Applicable Laws</td>
<td>X</td>
</tr>
<tr>
<td>4.2</td>
<td>Retain reference samples of Bulk Product, including samples for periodic re-tests, for 6 years beyond Product expiry date.</td>
<td>X</td>
</tr>
<tr>
<td>4.3</td>
<td>Provide Bulk Product meeting the Specifications and cGMPs for manufacture, as well as a certificate of analysis for Bulk Product.</td>
<td>X</td>
</tr>
<tr>
<td>4.4</td>
<td>Perform identification testing of Bulk Product.</td>
<td>X</td>
</tr>
<tr>
<td>4.5</td>
<td>Source and qualify raw materials (excluding Bulk Product) used in Processing.</td>
<td>X</td>
</tr>
<tr>
<td>4.6</td>
<td>Maintain Specifications for Components and procure, store, sample, test and release raw materials.</td>
<td>X</td>
</tr>
<tr>
<td>4.7</td>
<td>Audit suppliers that provide Components and Process Consumables used in Processing in accordance with applicable SOPs to ensure full compliance with cGMPs and Applicable Laws.</td>
<td>X</td>
</tr>
</tbody>
</table>
4.8 Store Bulk Product and Components in accordance with the Specifications, SOPs, cGMPs and Applicable Laws while at the Facilities.

<table>
<thead>
<tr>
<th>RESPONSIBILITIES</th>
<th>SAVIEN</th>
<th>ENZON</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.9 Retain reference samples of raw materials in a quantity sufficient to perform periodic re-tests, for 1 year beyond Product expiry date in accordance with Specifications, SOPs, cGMPs and Applicable Laws.</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>4.10 Notify SAVIEN of intent to dispose of material retains.</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>4.11 At SAVIEN’s option, ship material retains to SAVIEN (at SAVIEN’s expense) or destroy.</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>4.12 Dispose of Product waste and any special waste related to the Processing of the Product in accordance with Applicable Laws.</td>
<td></td>
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</tbody>
</table>

5. Production, Investigations & Validations

5.1 Provide personnel with appropriate education, training and/or experience for manufacturing, testing and disposition of Product that is suitable for human use, and for provision of Supply hereunder.

5.2 Provide premises that are maintained and able to meet design and cleanliness requirements in accordance with Applicable Laws and industry standards.

5.3 Test and maintain utilities and environment to the appropriate compendia or environmental standard to assure appropriateness for use in connection with Processing and the Product.

5.4 Maintain, qualify and validate the Facility, equipment, utilities (air and water) and processes associated with Processing the Product in accordance with Applicable Laws and industry standards.

5.5 Manufacture and test the Product at the Facilities in accordance with the Product master Production control record, the SOPs referenced therein, and the Specifications.

5.6 Perform visual inspection of finished Product in accordance with the Product master Production control record, the SOPs referenced therein, and the Specifications.

5.7 Label Product in accordance with the Product master Production control record, the SOPs referenced therein, and the Specifications.
<p>| | |</p>
<table>
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<tbody>
<tr>
<td>5.8</td>
<td>Prepare and approve all artwork, inserts, labeling and packaging in connection with the Product.</td>
</tr>
<tr>
<td>5.9</td>
<td>Package the Product in accordance with the Product master Production control record, the SOPs referenced therein, and the Specifications.</td>
</tr>
<tr>
<td><strong>RESPONSIBILITIES</strong></td>
<td><strong>SAVIENT</strong></td>
</tr>
<tr>
<td>5.10</td>
<td>Perform finished Product testing in accordance with the supply agreement and supply a certificate of analysis and a Certificate of Compliance to SAVIENT.</td>
</tr>
<tr>
<td>5.11</td>
<td>Final release Product in accordance with the Product Specifications.</td>
</tr>
<tr>
<td>5.12</td>
<td>Investigate, resolve and document deviations from the Master Production Control Record and OOS test results in accordance with the cGMPs. Investigations should be completed with 30 calendar days. Interim status reports must be provided to Savient periodically in writing for investigations remaining open beyond 30 business days.</td>
</tr>
<tr>
<td>5.13</td>
<td>Obtain Quality Assurance approval of all investigations and corrective and preventive action plans.</td>
</tr>
<tr>
<td>5.14</td>
<td>Provide equipment maintained and able to meet design and cleanliness requirements in accordance with Applicable Laws and industry standards, as applicable.</td>
</tr>
<tr>
<td>5.15</td>
<td>Establish a validation master plan and maintain the validation program in accordance with plan requirements.</td>
</tr>
<tr>
<td>5.16</td>
<td>Prepare and execute all Product related validation protocols, and complete validation reports.</td>
</tr>
<tr>
<td>5.17</td>
<td>Review and approve validation protocols related to Product.</td>
</tr>
<tr>
<td>5.18</td>
<td>Provide Quality Assurance review and approval of all validation packages.</td>
</tr>
<tr>
<td><strong>6. Audits</strong></td>
<td></td>
</tr>
<tr>
<td>6.1</td>
<td>SAVIENT will schedule and audit ENZON Facilities, records and documentation related to the Product manufactured by ENZON at a time mutually agreed by Enzon with a minimum advanced notice of 3 months and at a frequency of not more than once every 12 months. SAVIENT may request for-cause audits as needed.</td>
</tr>
<tr>
<td>6.2</td>
<td>Conduct internal audits of Facilities, processes and quality systems, in accordance with cGMPs and applicable SOPs.</td>
</tr>
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</tr>
<tr>
<td><strong>6.3</strong></td>
<td>SAVIENT shall provide ENZON with a written audit report containing audit observations within 30 business days of the audit.</td>
</tr>
<tr>
<td><strong>6.4</strong></td>
<td>ENZON will respond to Savient audit report in writing within 15 business days.</td>
</tr>
<tr>
<td><strong>6.5</strong></td>
<td>SAVIENT is entitled to inspect and audit suppliers, vendors and contractors used by ENZON in connection with the Product.</td>
</tr>
<tr>
<td><strong>7.</strong></td>
<td><strong>Lot Codes &amp; Expiration Dating</strong></td>
</tr>
<tr>
<td><strong>7.1</strong></td>
<td>Establish Product lot code.</td>
</tr>
<tr>
<td><strong>7.2</strong></td>
<td>Establish Product expiry dating as per approved Product License/Marketing Authorization.</td>
</tr>
<tr>
<td><strong>8.</strong></td>
<td><strong>Samples</strong></td>
</tr>
<tr>
<td><strong>8.1</strong></td>
<td>Perform Product sampling in accordance with the Supply Agreement, cGMP’s, and as otherwise agreed to by the Parties in the master Production control record for the Product.</td>
</tr>
<tr>
<td><strong>8.2</strong></td>
<td>Retain Finished Product samples including Stability samples in accordance with cGMP’s and the Supply Agreement.</td>
</tr>
<tr>
<td><strong>9.</strong></td>
<td><strong>Testing &amp; Analysis</strong></td>
</tr>
<tr>
<td><strong>9.1</strong></td>
<td>Perform all applicable Product testing according to the Supply Agreement.</td>
</tr>
<tr>
<td><strong>9.2</strong></td>
<td>Track and investigate all deviations (including DOS’s) associated with the Product, and notify SAVIENT Quality and Manufacturing within 24 hours of discovery of any significant deviations (those that may affect the identity, strength, quality, or purity of the Product).</td>
</tr>
<tr>
<td><strong>9.3</strong></td>
<td>Notify ENZON of any Product recall that might be attributed to Processing the Product.</td>
</tr>
<tr>
<td><strong>9.4</strong></td>
<td>Notify SAVIENT Quality and Manufacturing via email within the business day followed by signed documents of any confirmed failure of the Product that might be attributed to Processing the Product.</td>
</tr>
<tr>
<td><strong>10.</strong></td>
<td><strong>Release</strong></td>
</tr>
<tr>
<td><strong>10.1</strong></td>
<td>Provide initial QA disposition of Product to SAVIENT.</td>
</tr>
<tr>
<td><strong>10.2</strong></td>
<td>Provide final QA disposition of Product.</td>
</tr>
<tr>
<td><strong>11.</strong></td>
<td><strong>Records</strong></td>
</tr>
<tr>
<td></td>
<td>Review and approve the executed batch records.</td>
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<tr>
<td>---</td>
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<tr>
<td></td>
<td><strong>RESPONSIBILITIES</strong></td>
</tr>
</tbody>
</table>
| 11.1 | Provide the released, executed batch record documentation for each batch of Product, which shall include the following:  
- A statement that the lot was manufactured, packaged and tested in accordance with cGMPs, identifies the master batch Record documents, and lists any incident reports and investigations associated with the batch.  
- A certificate of analysis covering all regulatory authority and compendial tests, and a Certificate of Compliance.  
- The signature of the QA Representative who released the batch.  
- Copies of significant deviations (those that may materially affect the identify, strength, quality or purity of the Product).  
- A list of other deviations that may affect the Product.  
- A list of change control records that could impact the Product.  
- Copies of summary Quality Assurance reviewed release test records. |   |
<p>| 11.2 | Store the master record, batch records, manufacturing documentation and all other documentation related to the Product for the minimum period required by all Applicable Laws. | X |
| 11.3 | Provide copies of all documentation necessary for SAVIENT to respond to inquiries by regulatory authorities. | X |
| 12. Storage | Store and ship the Bulk Product in accordance with the Bulk Product Specifications, SOPs, cGMPs and Applicable Laws until manufacture of the Product. | X |
| 12.1 | Receive and store the Bulk Product, Intermediates, and finished Product in accordance with the Specifications, SOPs, cGMPs and Applicable Laws pending release of the Product. | X |
| 12.2 | Provide written instructions for shipping prior to Product release and shipment. | X |
| 13. Safety | Maintain safety/hazard and handling data on the Product and Bulk Product. | X |</p>
<table>
<thead>
<tr>
<th>RESPONSIBILITIES</th>
<th>SAVIENT</th>
<th>ENZON</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14. Complaints</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14.1</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>14.1 Upon request of SAVIENT, assist SAVIENT in investigating and resolving all medical, adverse events, and non-medical Product complaints.</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>14.2</td>
<td></td>
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<tr>
<td>14.2 Collect and log all information relating to Product complaints and adverse drug events.</td>
<td></td>
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<tr>
<td>14.3</td>
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<tr>
<td>14.3 Investigate all Product complaints and adverse drug events.</td>
<td></td>
<td>X</td>
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<tr>
<td>14.4</td>
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<tr>
<td>14.4 Issue all reports and conduct follow up corrective action relating to Product complaints and adverse drug events.</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>15. Recall, Field Alerts and Product Withdrawal</td>
<td></td>
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<tr>
<td>15.1</td>
<td></td>
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<tr>
<td>15.1 Inform the Quality Assurance contact from the other Party within 24 hours upon knowledge of all quality issues which might compromise the other Party’s quality requirements for Products already shipped, or about to be shipped.</td>
<td></td>
<td>X</td>
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<tr>
<td>15.2</td>
<td></td>
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<tr>
<td>15.2 Issue any decision to initiate Product recall or Product withdrawal.</td>
<td></td>
<td>X</td>
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<tr>
<td>15.3</td>
<td></td>
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<tr>
<td>15.3 Communicate decision to initiate Product recall to ENZON.</td>
<td></td>
<td>X</td>
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<tr>
<td>15.4</td>
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<tr>
<td>15.4 Notify appropriate regulatory authorities of any Product recall or Product withdrawal.</td>
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<td>15.5</td>
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<td>15.5 Manage any Product recall or Product withdrawal.</td>
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<td>X</td>
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<td>15.6</td>
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<td>15.6 Reconcile returned Product following Product recall or Product withdrawal.</td>
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<td>X</td>
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<td>15.7</td>
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<tr>
<td>15.7 Issue and follow up on FDA Field Alerts (or other similar processes of other regulatory authorities).</td>
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<td>X</td>
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<td>15.8</td>
<td></td>
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<tr>
<td>15.8 Perform mock recall and recall effectiveness checks.</td>
<td></td>
<td>X</td>
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<tr>
<td>16. Quality Agreement Review</td>
<td></td>
<td></td>
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<tr>
<td>16.1</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>16.1 On an as-needed basis (or once every two years), conduct a review to ensure that the Quality Agreement is in alignment with the current scope of the Project Plan and the then-current Supply Agreement. Update by mutual agreement of the Parties (if necessary).</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>17. Key Contacts</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Either party may change the following contact information by issuing a memo to the other party. Each party shall attach the memo to this original signed agreement. The updated information shall be incorporated into the next controlled revision of this agreement.

### Savient Pharmaceuticals Inc.

**For All Product Concerns:**
Savient Pharmaceutical’s Inc.
One Tower Center
14th Floor
East Brunswick, New Jersey 08816
USA

### Enzon Pharmaceuticals, Inc.

**For Manufacturing, Quality Assurance and Quality Control:**
Enzon Pharmaceuticals, Inc.
6925 Guion Road
Indianapolis, Indiana 46268
USA

**For Regulatory Affairs:**
Enzon Pharmaceuticals, Inc.
685 Route 202/206
Bridgewater, New Jersey 08854
USA

**For Operations, Planning & Logistics:**
Enzon Pharmaceuticals, Inc.
685 Route 202/206
Bridgewater, New Jersey 08807
USA

<table>
<thead>
<tr>
<th>Enzon Contact</th>
<th>Name/Title</th>
<th>Phone</th>
<th>Fax</th>
<th>E-mail</th>
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<tbody>
<tr>
<td>Quality Assurance</td>
<td>[...***...]</td>
<td>[... *** ...]</td>
<td>[...***... ]</td>
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<tr>
<td>QA – Product Release</td>
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<tr>
<td>Quality Control Lab</td>
<td>[...***...]</td>
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<tr>
<td>Operations</td>
<td>Control</td>
<td>Regulatory Affairs</td>
<td>Operations – Planning</td>
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</table>

<table>
<thead>
<tr>
<th>Savient Contact</th>
<th>Name/Title</th>
<th>Phone</th>
<th>Fax</th>
<th>E-mail</th>
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<tbody>
<tr>
<td>Quality Assurance</td>
<td>[...***...)]</td>
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<tr>
<td>QA — Product Release</td>
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<tr>
<td>Regulatory Affairs</td>
<td>[...***...)]</td>
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<tr>
<td>Manufacturing</td>
<td>[...***...)]</td>
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<td>Planning and Logistics</td>
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AMENDMENT NO. 1
TO
COMMERCIAL SUPPLY AGREEMENT
DATED OCTOBER 16, 2008

THIS AMENDMENT, effective as of Oct. 5, 2009, is entered into by and between SAVIENT PHARMACEUTICALS, INC. (“SAVIENT”), and ENZON PHARMACEUTICALS, INC. (“ENZON”) hereinafter collectively referred to as the “Parties.”

WHEREAS, the Parties have entered into a certain Commercial Supply Agreement (hereinafter referred to as the “Agreement”) with an effective date of October 16, 2008, which sets forth the terms and conditions for services performed by the Parties.

WHEREAS, the Parties wish to amend the payment structure outlined in the Agreement.

NOW, THEREFORE, notwithstanding anything to the contrary within the Agreement, for the duration of this Amendment set forth below, the parties hereby agree as follows:

• All payments under the Agreement are to be made as follows:
  - Savient shall pay the full amount for the Product upon Enzon’s receipt of Bulk Product.
  - Payment in full due “net 15 days” from bulk receipt. Packaging will occur at Savient’s instructions; final batch cost reconciliation will be calculated and billed at shipment (that payment also net 15 days.) Precise filling date will be confirmed by Enzon to accommodate Savient’s timelines.

• Upon FDA approval of a Biologics License Application for the Product, consistent with the original assumption of the Agreement, the Parties shall repeal this Amendment by signed mutual agreement and thereby revert to the original terms of the Agreement in full.

• A cancellation in Purchase Order or specific Product line after the Project is initiated will not result in a refund. All payments are considered final upon receipt.

Where there is any inconsistency between the provisions of the Agreement and the Amendment, the provisions of this Amendment shall prevail.

All remaining terms and conditions of the Statement shall remain unchanged and in full force and effect.

AGREED:

SAVIENT PHARMACEUTICALS, INC.

By: /s/Philip K. Yachmetz
Philip K. Yachmetz
EVP & Chief Business Officer
Date: 10/9, 2009.

ENZON PHARMACEUTICALS, INC.

By: /s/Ralph del Campo
Ralph del Campo
EV, Technical Ops
Date: 10/5/09, 2009.
[..***..]
Terms:

- Terms and conditions of the Commercial Supply Agreement dated October 16, 2008 and subsequent amendments apply (October 5, 2009 – Amendment No 1)
- Delivery terms are FCA Enzon’s Indianapolis, IN facility (Section 6.1)
- Purchase orders are required for all scheduled work
- Canceled or postponed batches will be billed in full. All payment are considered final

The Parties have caused their duly authorized representatives to execute this supplemental Exhibit C to the Commercial Manufacturing Agreement.

SAVIENT PHARMACEUTICALS, Inc.

/s/ Philip K. Yachmetz
Signature
Philip K. Yachmetz
Printed Name
SVP & General Counsel
Title
10-26-09
Date

ENZON PHARMACEUTICALS, Inc.

/s/ Ralph del Campo
Signature
Ralph del Campo
Printed Name
EVP – Tech Ops
Title
10/26/09
Date
AMENDMENT TO COMMERCIAL SUPPLY AGREEMENT

This Amendment (“Amendment”) is entered into as of July 29, 2014 (the “Effective Date”), by and between Sigma Tau PharmaSource, Inc., with its principal executive offices located at 6925 Guion Road, Indianapolis, IN, 46268 (“STPS”) and Crealta Pharmaceuticals LLC with its principal executive offices located at 500 W. Silver Spring Drive, Suite K-200, Glendale, WI 53217 (“Crealta”).

WHEREAS, STPS and Crealta are parties to a certain Commercial Supply Agreement dated October 16, 2008, (the “Agreement”); The parties desire to amend the Agreement to expand the scope of the Agreement. In consideration of the promises and of the mutual covenants and agreements set forth, the parties agree as follows:

1. **Recitals.** The following two recitals are hereby added to the RECITALS section of the Agreement:

   WHEREAS, on or about January 29, 2010, Enzon Pharmaceuticals, Inc. assigned its rights under this Agreement to Sigma-Tau PharmaSource, Inc. (“STPS”);
   WHEREAS, on or about January 9, 2014, Savient Pharmaceuticals, Inc. assigned its rights under the Agreement to Crealta; and

2. **Terms and Conditions.** Except as herein amended, all other terms and conditions of Agreement shall remain unchanged and in full force and effect. All defined terms used and not otherwise defined in this Amendment have the meanings ascribed to such terms in the Agreement. This Amendment may only be modified by a written document, signed by both parties. This Amendment may be executed in counterparts, each of which is an original, but all of which together constitute one and the same instrument. The terms and conditions of this Amendment and any Exhibits are incorporated into and made a part of the Agreement.

3. Section 2.4 of the Agreement is deleted in its entirety and replaced with the following:

   STPS shall provide Crealta, at no additional charge, product support services, at Crealta’s reasonable request, for the activities listed below:
   
   • Meetings with Regulatory Authorities, whether in person or by phone
   • Routine documentation provided to Regulatory Authorities on behalf of Crealta
   • Routine validation activities to support commercial production (e.g. Media fills, annual sterilization validations, or vial washing requalifications).
   • Annual product reviews for commercial products, as required by Regulatory Authorities.
   • All audit correspondence including Crealta-requested revisions to STPS’s audit response.
   • Preparation of documents in anticipation of a Pre-Approval Inspection.
   • Letters of reference from STPS or STPS’s vendors that are requested by Crealta (e.g., Master file reference letters, rubber or glass vendor letters).
   • Documentation provided to Regulatory Authorities on behalf of Crealta, other than routine documentation.
   • All time used for collecting and photocopying Crealta documentation.
   • Changes and revisions to artwork mandated by Regulatory Authorities or requested by Crealta.
   • Batch storage.
Crealta may request from STPS other product support services at its customary rate, as set forth on Exhibit C, including but not limited to:

- Any additional validation work requested by Crealta beyond original Work Plan or outside current validation requirements.
- Any analytical development and/or analyses beyond original Work Plan.

For all requests under this Section 2.4, Crealta shall provide STPS a written request for product support services that describes the required services and/or documents/work product required. STPS shall provide Crealta an estimate based on its customary rate. Upon acceptance of such estimate by Crealta, Crealta shall issue a purchase order to STPS and STPS shall perform such services in accordance with the terms hereof.

4. The first 2 sentences of Section 7.2 shall be deleted in their entirety and replaced with the following:

Subsequent to the first (1st) anniversary of the Effective Date of this Agreement, this Agreement may be terminated by either party at any time by giving at least thirty-six (36) months prior written notice to the other party as follows: either party may give notice to the other party thirty (30) days prior to every such anniversary date. During the 36-month period between the notice of termination and the effectiveness of such termination, the Parties shall continue to cooperate with each other in good faith to effectuate the purpose of this Agreement; specifically, and without limitation, Crealta may place, and STPS shall accept and fulfill, forecasts and purchase orders for the manufacture of Product, all in accordance with the terms and conditions of this Agreement.

5. Section 14.1 is deleted in its entirety and replaced with the following:

All administrative communications provided for in this Agreement shall be sent via first class mail (subject to Section 14.2 below), postage prepaid, addressed to the respective parties as follows:

**To STPS:**
Sigma-Tau PharmaSource, Inc.
6925 Guion Rd.
Indianapolis, IN 46268

With a Copy to:
Sigma-Tau Pharmaceuticals, Inc.
Attn: Legal Dept.
9841 Washingtonian Blvd., Suite 500
Gaithersburg, MD 20878

**To Crealta:**
Crealta Pharmaceuticals LLC
Attn: Richard Crowley
150 S. Saunders Rd., Suite 130
Lake Forest, IL 60045

With a Copy to:
Crealta Pharmaceuticals LLC
Attn: Edward Donovan
150 S. Saunders Rd., Suite 130
Lake Forest, IL 60045

6. Exhibit C of the Agreement is deleted in its entirety and replaced with Attachment 1 of this Amendment.

7. Exhibit F is deleted in its entirety and incorporates by reference with the Quality Agreement between the Parties dated October 16, 2008. Such new version is the new Exhibit F, which supersedes all prior versions of such Quality Agreement.
8. The parties acknowledge that the revised pricing reflected herein is reasonable as of the Effective Date of this Amendment and that current business conditions, as of the Effective Date, with respect thereto do not warrant any adjustment to the prices set forth herein pursuant to the second sentence of Section 4.3. Notwithstanding the foregoing, nothing in this Section 8 of this Amendment shall alter, modify, diminish, or otherwise affect any of the Parties’ rights under Section 4.3 of the Agreement.

The parties have executed this Amendment to be effective as of the Effective Date.

Sigma-Tau PharmaSource, Inc.  

By: /s/ Dave Lemus  
Name: Dave Lemus  
Title: President  
Date: 9-22-14

Crealta Pharmaceuticals LLC  

By: /s/ Richard Crowley  
Name: Richard Crowley  
Title: Senior VP, Operations & QA  
Date: September 9, 2014
Terms: Purchase Orders are required for each scheduled batch.

- Invoice for vials produced will be sent upon shipment of materials. Payment due Net 30 days.
- Delivery terms are FCA STPS’s manufacturing facility in Indianapolis, IN
- Cancelled and postponed batches shall be billed in accordance with Section 3.4(d)

STPS and Crealta agree that the total price (costs, fees, and incentives, if any) for all work provided for under the Agreement, including the work authorized under this Amendment, shall not exceed the new total contract price. All invoices must be presented to Company no later than 120 days after the completion of services.
### Exhibit 21.1

**Subsidiaries of Horizon Pharma Public Limited Company:**

<table>
<thead>
<tr>
<th>NAME:</th>
<th>JURISDICTION OF INCORPORATION:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Horizon Pharma Holdings Limited</td>
<td>Ireland</td>
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<tr>
<td>Horizon Pharma Capital Limited</td>
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<tr>
<td>Horizon Pharma Finance Sarl</td>
<td>Luxembourg</td>
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<td>Horizon Pharma Finance Limited</td>
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<tr>
<td>Horizon Pharma, Inc.</td>
<td>Delaware</td>
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<td>HZNP USA, Inc.</td>
<td>Delaware</td>
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<tr>
<td>Horizon Pharma USA, Inc.</td>
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<tr>
<td>Horizon Pharma (UK) Limited</td>
<td>United Kingdom</td>
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<td>Horizon Pharma Rheumatology LLC</td>
<td>Delaware</td>
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<td>Horizon Pharma Rheumatology Limited</td>
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<td>Horizon Therapeutics, Inc.</td>
<td>Delaware</td>
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<tr>
<td>Hyperion Holding LLC</td>
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<tr>
<td>Hyperion Therapeutics International Holdings Ltd</td>
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<td>Hyperion Therapeutics International Operating Ltd</td>
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<td>Horizon Pharma Israel Holding Corp. Ltd</td>
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<tr>
<td>Andromeda Biotech Limited</td>
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<tr>
<td>Horizon Pharma Holdings 2 Limited</td>
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<td>Hyperion (Bermuda) Limited</td>
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<td>Horizon Pharma Treasury Ltd</td>
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<td>Horizon Pharma Tri Limited</td>
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<tr>
<td>Horizon Pharma Investment Limited</td>
<td>Bermuda</td>
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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-198852) and Forms S-8 (No. 333-198865, 333-203933) of Horizon Pharma plc of our report dated February 29, 2016 relating to the financial statements, financial statement schedule and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP
Chicago, Illinois
February 29, 2016
Certification of Principal Executive Officer

I, Timothy P. Walbert, certify that:

1. I have reviewed this annual report on Form 10-K of Horizon Pharma plc (the “registrant”);

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: February 29, 2016

/s/ Timothy P. Walbert
Timothy P. Walbert
Chairman, President and Chief Executive Officer
(Principal Executive Officer)
Certification of Principal Financial Officer

I, Paul W. Hoelscher, certify that:

1. I have reviewed this annual report on Form 10-K of Horizon Pharma plc (the “registrant”);

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: February 29, 2016

/s/ Paul W. Hoelscher
Paul W. Hoelscher
Executive Vice President, Chief Financial Officer
(Principal Financial Officer)
CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and 18 U.S.C. Section 1350, I, Timothy P. Walbert, President, Chief Executive Officer and Chairman of the Board of Horizon Pharma plc (the "Company"), certify to the best of my knowledge that:

1. the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2015 (the “Report”), to which this Certification is attached as Exhibit 32.1, fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act; and

2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 29, 2016

/s/ Timothy P. Walbert
Timothy P. Walbert
Chairman, President and Chief Executive Officer
(Principal Executive Officer)

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.
CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and 18 U.S.C. Section 1350, I, Paul W. Hoelscher, Executive Vice President and Chief Financial Officer of Horizon Pharma plc (the "Company"), certify to the best of my knowledge that:

1. the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2015 (the “Report”), to which this Certification is attached as Exhibit 32.2, fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act; and

2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 29, 2016

/s/ Paul W. Hoelscher
Paul W. Hoelscher
Executive Vice President, Chief Financial Officer
(Principal Financial Officer)

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.