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

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2021

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number: 001-35703

PUMA BIOTECHNOLOGY, INC.
(Exact name of registrant as specified in its charter)

Delaware	**77-0683487**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**

10880 Wilshire Boulevard, Suite 2150, Los Angeles, CA 90024
(Address of principal executive offices) (Zip code)

(424) 248-6500
(Registrant's telephone number, including area code)

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

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

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

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

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

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐	Smaller reporting company	☐
Emerging growth company	☐		

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

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

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date. 40,885,645 shares of Common Stock, par value $0.0001 per share, were outstanding as of October 29, 2021.

PUMA BIOTECHNOLOGY, INC.

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q, or this Quarterly Report, contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Any statements about our expectations, beliefs, plans, objectives, assumptions, future events or performance are not historical facts and may be forward looking. These forward-looking statements include, but are not limited to, statements about:

- the commercialization of NERLYNX® (neratinib);
- the development of our drug candidates, including when we expect to undertake, initiate and complete clinical trials of our product candidates;
- the impact of the global COVID-19 pandemic, and measures to control the spread of COVID-19, on business, financial condition, results of operations and ongoing trials;
- the anticipated timing of regulatory filings;
- the regulatory approval of our drug candidates;
- our use of clinical research organizations and other contractors;
- our ability to find collaborative partners for research, development and commercialization of potential products;
- efforts of our sub-licensees to obtain regulatory approval and commercialize NERLYNX in areas outside the United States;
- our ability to market any of our products;
- our expectations regarding our costs and expenses;
- our anticipated capital requirements and estimates regarding our needs for additional financing;
- our ability to compete against other companies and research institutions;
- our ability to secure adequate protection for our intellectual property;
- our intention and ability to vigorously defend against any litigation to which we are or may become party;
- our estimates for damages that we may be required to pay in connection with the class action lawsuit to which we are a party;
- our ability to attract and retain key personnel; and
- our ability to obtain adequate financing.

These statements are often, but not always, made through the use of words or phrases such as “anticipate,” “estimate,” “plan,” “project,” “continuing,” “ongoing,” “expect,” “believe,” “intend” and similar words or phrases. Accordingly, these statements involve estimates, assumptions and uncertainties that could cause actual results to differ materially from those expressed in them. Discussions containing these forward-looking statements may be found throughout this Quarterly Report, including, in Part I, the section entitled “Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.” These forward-looking statements involve risks and uncertainties, including the risks discussed in Part I, Item 1A. “Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2020 that could cause our actual results to differ materially from those in the forward-looking statements. Such risks should be considered in evaluating our prospects and future financial performance. We undertake no obligation to update the forward-looking statements or to reflect events or circumstances after the date of this document.

Part I – FINANCIAL INFORMATION

Item 1. Financial Statements

PUMA BIOTECHNOLOGY, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)
(unaudited)

	September 30, 2021	December 31, 2020
ASSETS		
Current assets:		
Cash and cash equivalents	$ 63,947	$ 85,293
Marketable securities	23,596	8,096
Accounts receivable, net of allowance for credit loss of $0 and $1,000	23,799	25,543
Inventory, net	7,206	3,454
Prepaid expenses, current	9,074	11,262
Restricted cash, current	8,850	8,850
Other current assets	451	3,641
Total current assets	136,923	146,139
Lease right-of-use assets, net	14,641	16,404
Property and equipment, net	1,924	2,481
Intangible assets, net	68,129	74,140
Restricted cash, long-term	3,311	3,311
Prepaid expenses and other, long-term	1,359	1,745
Total assets	$ 226,287	$ 244,220
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	$ 20,047	$ 12,076
Accrued expenses, current	90,782	61,325
Accrued in-licensed rights, current	—	20,993
Post-marketing commitment liability, current	1,978	2,481
Lease liabilities, current	3,454	3,094
Current portion of long-term debt	—	14,286
Total current liabilities	116,261	114,255
Accrued expenses, long-term	1,212	25,963
Lease liabilities, long-term	16,911	19,549
Post-marketing commitment liability, long-term	6,023	6,379
Long-term debt	96,802	84,025
Total liabilities	237,209	250,171
Commitments and contingencies (Note 13)		
Stockholders' deficit:		
Common stock - $.0001 par value per share; 100,000,000 shares authorized; 40,860,842 shares issued and outstanding at September 30, 2021 and 40,086,387 issued and outstanding at December 31, 2020	4	4
Additional paid-in capital	1,360,057	1,331,676
Accumulated other comprehensive loss	(2)	—
Accumulated deficit	(1,370,981)	(1,337,631)
Total stockholders' deficit	(10,922)	(5,951)
Total liabilities and stockholders' deficit	$ 226,287	$ 244,220

See Accompanying Notes to the Unaudited Condensed Consolidated Financial Statements

PUMA BIOTECHNOLOGY, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share data)
(unaudited)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2021	2020	2021	2020
Revenues:				
Product revenue, net	$ 43,426	$ 49,333	$ 138,098	$ 146,713
License revenue	—	—	50,250	22,700
Royalty revenue	2,819	1,421	9,450	3,140
Total revenue	46,245	50,754	197,798	172,553
Operating costs and expenses:				
Cost of sales	10,279	9,943	51,806	28,434
Selling, general and administrative	26,084	29,598	93,832	89,882
Research and development	18,836	23,344	57,702	73,490
Total operating costs and expenses	55,199	62,885	203,340	191,806
Loss from operations	(8,954)	(12,131)	(5,542)	(19,253)
Other income (expenses):				
Interest income	13	22	147	474
Interest expense	(3,121)	(3,627)	(10,089)	(10,479)
Legal verdict expense	(24,498)	(15,855)	(9,781)	(16,041)
Loss on debt extinguishment	(8,146)	—	(8,146)	—
Other income	71	128	173	298
Total other expenses	(35,681)	(19,332)	(27,696)	(25,748)
Net loss before income taxes	$ (44,635)	$ (31,463)	$ (33,238)	$ (45,001)
Income tax expense	$ (37)	—	$ (112)	—
Net loss	$ (44,672)	$ (31,463)	$ (33,350)	$ (45,001)
Net loss per share of common stock—basic	$ (1.09)	$ (0.79)	$ (0.82)	$ (1.14)
Net loss per share of common stock—diluted	$ (1.09)	$ (0.79)	$ (0.82)	$ (1.14)
Weighted-average shares of common stock outstanding—basic	40,813,609	39,695,444	40,520,041	39,473,691
Weighted-average shares of common stock outstanding—diluted	40,813,609	39,695,444	40,520,041	39,473,691

See Accompanying Notes to the Unaudited Condensed Consolidated Financial Statements

PUMA BIOTECHNOLOGY, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(in thousands)
(unaudited)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2021	2020	2021	2020
Net loss	$ (44,672)	$ (31,463)	$ (33,350)	$ (45,001)
Other comprehensive loss:				
Unrealized loss on available-for-sale securities, net of tax of $0 and $0	(1)	(1)	(2)	(65)
Reclassifications of gain on available-for-sale securities, included in “Other income (expenses)", net of tax of $0 and $0	—	—	—	3
Comprehensive loss	$ (44,673)	$ (31,464)	$ (33,352)	$ (45,063)

See Accompanying Notes to the Unaudited Condensed Consolidated Financial Statements

PUMA BIOTECHNOLOGY, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT
(in thousands, except share data)
(unaudited)

For the Three Months Ended September 30, 2021

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total
	Shares	Amount				
Balance at June 30, 2021	40,733,928	$ 4	$ 1,355,775	$ (1)	$ (1,326,309)	$ 29,469
Stock-based compensation	—	—	4,282	—	—	4,282
Shares issued or restricted stock units vested under employee stock plans	126,914	—	—	—	—	—
Unrealized loss on available-for-sale securities	—	—	—	(1)	—	(1)
Net loss	—	—	—	—	(44,672)	(44,672)
Balance at September 30, 2021	40,860,842	$ 4	$ 1,360,057	$ (2)	$ (1,370,981)	$ (10,922)

For the Three Months Ended September 30, 2020

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total
	Shares	Amount				
Balance at June 30, 2020	39,626,917	$ 4	$ 1,314,572	$ 1	$ (1,291,174)	$ 23,403
Stock-based compensation	—	—	7,565	—	—	7,565
Shares issued or restricted stock units vested under employee stock plans	94,014	—	43	—	—	43
Unrealized loss on available-for-sale securities	—	—	—	(1)	—	(1)
Net loss	—	—	—	—	(31,463)	(31,463)
Balance at September 30, 2020	39,720,931	$ 4	$ 1,322,180	$ -	$ (1,322,637)	$ (453)

See Accompanying Notes to the Unaudited Condensed Consolidated Financial Statements

PUMA BIOTECHNOLOGY, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT
(in thousands, except share data)
(unaudited)

For the Nine Months Ended September 30, 2021

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total
	Shares	Amount				
Balance at December 31, 2020	40,086,387	$ 4	$ 1,331,676	$ —	$ (1,337,631)	$ (5,951)
Stock-based compensation	—	—	28,381	—	—	28,381
Shares issued or restricted stock units vested under employee stock plans	774,455	—	—	—	—	—
Unrealized loss on available-for-sale securities	—	—	—	(2)	—	(2)
Net loss	—	—	—	—	(33,350)	(33,350)
Balance at September 30, 2021	40,860,842	$ 4	$ 1,360,057	$ (2)	$ (1,370,981)	$ (10,922)

For the Nine Months Ended September 30, 2020

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total
	Shares	Amount				
Balance at December 31, 2019	39,203,304	$ 4	$ 1,295,033	$ 62	$ (1,277,636)	$ 17,463
Stock-based compensation	—	—	27,102	—	—	27,102
Shares issued or restricted stock units vested under employee stock plans	517,627	—	45	—	—	45
Reclassification of gain on available-for-sale securities	—	—	—	3	—	3
Unrealized loss on available-for-sale securities	—	—	—	(65)	—	(65)
Net loss	—	—	—	—	(45,001)	(45,001)
Balance at September 30, 2020	39,720,931	$ 4	$ 1,322,180	$ —	$ (1,322,637)	$ (453)

See Accompanying Notes to the Unaudited Condensed Consolidated Financial Statements

PUMA BIOTECHNOLOGY, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	For the Nine Months Ended September 30,	
	2021	2020
Operating activities:		
Net loss	$ (33,350)	$ (45,001)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	8,327	7,085
Stock-based compensation	28,381	27,102
Provision for credit loss expense	(1,000)	—
Loss on debt extinguishment	8,146	—
Changes in operating assets and liabilities:		
Accounts receivable, net	2,744	1,759
Inventory, net	(3,752)	26
Prepaid expenses and other	2,574	4,413
Other current assets	3,190	(3,103)
Accounts payable	7,971	(6,655)
Accrued expenses and other	3,713	20,951
Deferred rent	—	(44)
Post-marketing commitment liability	(859)	(125)
Net cash provided by operating activities	26,085	6,408
Investing activities:		
Purchase of property and equipment	—	(23)
Purchase of available-for-sale securities	(38,073)	(24,430)
Maturity of available-for-sale securities	22,571	57,033
Purchase of intangible assets	—	(10,000)
Net cash (used in) provided by investing activities	(15,502)	22,580
Financing activities:		
Net proceeds from shares issued under employee stock plans	—	45
Proceeds from debt	98,500	8,444
Payment of debt	(100,000)	(8,444)
Payment of prepayment costs, end of loan payment and other extinguishment costs	(8,519)	—
Payment of debt issuance costs	(1,910)	—
Installment payment for purchase of intangible asset	(20,000)	—
Net cash (used in) provided by financing activities	(31,929)	45
Net (decrease) increase in cash, cash equivalents and restricted cash	(21,346)	29,033
Cash, cash equivalents and restricted cash, beginning of period	97,454	73,210
Cash, cash equivalents and restricted cash, end of period	$ 76,108	$ 102,243
Supplemental disclosures of non-cash investing and financing activities:		
Intangibles in accrued expenses	$ —	$ 30,000
Supplemental disclosure of cash flow information:		
Interest paid	$ 7,914	$ 7,021
Income taxes paid	$ 84	$ 183

See Accompanying Notes to the Unaudited Condensed Consolidated Financial Statements

PUMA BIOTECHNOLOGY, INC. AND SUBSIDIARIES
NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 1—Business and Basis of Presentation:

Business:

Puma Biotechnology, Inc., or the Company, is a biopharmaceutical company based in Los Angeles, California with a focus on the development and commercialization of innovative products to enhance cancer care. The Company in-licenses from Pfizer, Inc., or Pfizer, the global development and commercialization rights to PB272 (neratinib, oral), PB272 (neratinib, intravenous) and PB357, as well as certain related compounds. Neratinib is a potent irreversible tyrosine kinase inhibitor that blocks signal transduction through the epidermal growth factor receptors HER1, HER2 and HER4. Currently, the Company is primarily focused on the development and commercialization of the oral version of neratinib, and its most advanced drug candidates are directed at the treatment of HER2-positive breast cancer and HER2 mutated cancers. The Company believes that neratinib has clinical application in the treatment of several other cancers as well, including other tumor types that over-express or have a mutation in HER2 or EGFR, such as breast cancer, cervical cancer, lung cancer or other solid tumors.

The Company has two subsidiaries, Puma Biotechnology Ltd., a United Kingdom company, and Puma Biotechnology, B.V., a Netherlands company. These subsidiaries were established for the purpose of legal representation in the United Kingdom and the European Union.

Basis of Presentation:

The Company has incurred significant operating losses since its inception. The Company believes that it will continue to incur net losses and may incur negative net cash flows from operating activities through the drug development process and global commercialization. In 2017, the Company received U.S. Food and Drug Administration, or FDA, approval for its first product, NERLYNX® (neratinib), formerly known as PB272 (neratinib, oral), for the extended adjuvant treatment of adult patients with early stage HER2-overexpressed/amplified breast cancer following adjuvant trastuzumab-based therapy. Following FDA approval in July 2017, NERLYNX became available by prescription in the United States, and the Company commenced commercialization.

In 2018, the European Commission, or EC, granted marketing authorization for NERLYNX in the European Union for the extended adjuvant treatment of adult patients with early stage hormone receptor positive HER2-overexpressed/amplified breast cancer and who are less than one year from the completion of prior adjuvant trastuzumab-based therapy.

In February 2020, NERLYNX was also approved by the FDA in combination with capecitabine for the treatment of adult patients with advanced or metastatic HER2-positive breast cancer who have received two or more prior anti-HER2-based regimens in the metastatic setting.

The Company is required to make substantial payments to Pfizer upon the achievement of certain milestones and has contractual obligations for clinical trial contracts.

The Company has entered into other exclusive sub-license agreements with various parties to pursue regulatory approval, if necessary, and commercialize NERLYNX, if approved, in many regions outside the United States, including Europe (excluding Russia and Ukraine), Australia, Canada, China, Southeast Asia, Israel, Mexico, South Korea, and various countries and territories in Central and South America. The Company plans to continue to pursue commercialization of NERLYNX in other countries outside the United States, if approved.

The condensed consolidated financial statements have been prepared assuming the Company will continue to operate as a going concern, which contemplates the realization of assets and settlement of liabilities in the normal course of business, and does not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from uncertainty related to its ability to continue as a going concern within one year from the date of issuance of these condensed consolidated financial statements. However due to the factors described below, there is substantial doubt about the Company's ability to continue as a going concern for the twelve months following the issuance date of the unaudited condensed consolidated financial statements for three and nine months ended September 30, 2021.

The Company has reported a net loss of approximately $44.7 million and net loss of approximately $33.4 million for the three and nine months ended September 30, 2021, respectively, and cash flows from operations of approximately $26.1 million for the nine months ended September 30, 2021. The Company's commercialization, research and development or marketing efforts may require funding in addition to the cash and cash equivalents totaling approximately $63.9 million and marketable securities totaling approximately $23.6 million available at September 30, 2021. As a result, the Company is likely to need to obtain additional funding to sustain operations and continue to successfully commercialize neratinib in the United States. While the Company has been successful in raising capital in the past, there can be no assurance that it will be able to do so in the future. The Company's ability to obtain funding may be adversely impacted by uncertain market conditions, including the COVID-19 pandemic, the Company's success in commercializing neratinib, unfavorable decisions of regulatory authorities or adverse clinical trial results. The outcome of these matters cannot be predicted at this time.

Since its inception through September 30, 2021, the Company's financing has consisted of proceeds from product and license revenue, public offerings of its common stock, private equity placements, and borrowings under its prior loan and security agreement, which borrowings were paid off in July 2021 using new borrowings from the issuance of notes under the Company's Note Purchase Agreement. Additionally, the Company anticipates it may need to make two cash payments relating to the settlement of its class action legal matter totaling $54.2 million in the first six months of 2022, the payment of which could place the Company in noncompliance with the cash covenant of the Company's financial debt covenants, which raises substantial doubt about the Company's ability to continue as a going concern. For additional detail regarding the current status of the Company's class action litigation, see Note 9, Accrued Expenses.

Note 2—Significant Accounting Policies:

The significant accounting policies followed in the preparation of these unaudited consolidated financial statements are as follows:

Principles of Consolidation:

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Segment Reporting:

Management has determined that the Company operates in one business segment, which is the development and commercialization of innovative products to enhance cancer care.

Use of Estimates:

The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles, or GAAP, requires management to make estimates and assumptions that affect reported amounts of assets and liabilities, and disclosure of contingent assets and liabilities at the date of the balance sheet, and reported amounts of revenues and expenses for the period presented. Accordingly, actual results could differ from those estimates.

Significant estimates include estimates for variable consideration for which reserves were established. These estimates are included in the calculation of net revenues and include trade discounts and allowances, product returns, provider chargebacks and discounts, government rebates, payor rebates, and other incentives, such as voluntary patient assistance, and other allowances that are offered within contracts between the Company and its customers, payors, and other indirect customers relating to the Company's sale of its products.

Net Loss per Share of Common Stock:

Basic net loss per share of common stock is computed by dividing net loss available to common stockholders by the weighted-average number of shares of common stock outstanding during the periods presented, as required by Accounting Standards Codification, or ASC, 260, *Earnings per Share*. For purposes of calculating diluted net loss per share of common stock, the denominator includes both the weighted-average number of shares of common stock outstanding and the number of dilutive common stock equivalents, such as stock options, restricted stock units, or RSUs, and warrants. A common stock equivalent is not included in the denominator when calculating diluted earnings per common share if the effect of such common stock equivalent would be anti-dilutive and a net loss is reported.

Our potentially dilutive securities include potential common shares related to our stock options and restricted stock units granted in connection with the 2011 and 2017 Plans. Diluted earnings per share ("Diluted EPS") considers the impact of potentially dilutive securities except in periods in which there is a loss because the inclusion of the potential common shares would have an anti-dilutive effect. Diluted EPS excludes the impact of potential common shares related to our stock options in periods in which the option exercise price is greater than the average market price of our common stock for the period.

	Three and Nine Months Ended September 30, 2021	
	2021	2020
Options outstanding	4,757,783	5,179,581
Warrant outstanding	2,116,250	2,116,250
Unvested restricted stock units	1,891,958	2,237,615
Totals	8,765,991	9,533,446

The 2,116,250 shares underlying the warrant will not have an impact on our diluted net income (loss) per share until the average market price of our common stock exceeds the exercise price of $16 per share. Refer to Note 11 for further details about the warrant.

A reconciliation of the numerators and denominators of the basic and diluted net loss per share of common stock computations is as follows (in thousands, except per share amounts):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2021	2020	2021	2020
Numerator:				
Net loss	$ (44,672)	$ (31,463)	$ (33,350)	$ (45,001)
Denominator:				
Weighted average common stock outstanding for basic net loss per share	40,814	39,695	40,520	39,474
Net effect of dilutive common stock equivalents	—	—	—	—
Weighted average common stock outstanding for diluted net loss per share	40,814	39,695	40,520	39,474
Net loss per share of common stock				
Basic	$ (1.09)	$ (0.79)	$ (0.82)	$ (1.14)
Diluted	$ (1.09)	$ (0.79)	$ (0.82)	$ (1.14)

Revenue Recognition:

Under ASC Topic 606, *Revenue from Contracts with Customers*, or ASC 606, the Company recognizes revenue when its customer obtains control of the promised goods or services, in an amount that reflects the consideration which the entity expects to be entitled in exchange for those goods or services. The Company had no contracts with customers until the FDA approved NERLYNX on July 17, 2017. Subsequent to receiving FDA approval, the Company entered into a limited number of arrangements with specialty pharmacies and specialty distributors in the United States to distribute NERLYNX. These arrangements are the Company's initial contracts with customers. The Company has determined that these sales channels with customers are similar.

Product Revenue, Net:

The Company sells NERLYNX to a limited number of specialty pharmacies and specialty distributors in the United States. These customers subsequently resell the Company's products to patients and certain medical centers or hospitals. In addition to distribution agreements with these customers, the Company enters into arrangements with health care providers and payors that provide for government mandated and/or privately negotiated rebates, chargebacks and discounts with respect to the purchase of the Company's products.

The Company recognizes revenue on product sales when the specialty pharmacy or specialty distributor, as applicable, obtains control of the Company's product, which occurs at a point in time (upon delivery). Product revenue is recorded net of applicable reserves for variable consideration, including discounts and allowances. The Company's payment terms range between 10 and 68 days.

Shipping and handling costs for product shipments occur prior to the customer obtaining control of the goods and are recorded in cost of sales.

If taxes should be collected from customers relating to product sales and remitted to governmental authorities, they will be excluded from revenue. The Company expenses incremental costs of obtaining a contract when incurred if the expected amortization period of the asset that the Company would have recognized is one year or less. However, no such costs were incurred during the nine months ended September 30, 2021 and 2020.

Reserves for Variable Consideration:

Revenue from product sales are recorded at the net sales price (transaction price), which includes estimates of variable consideration for which reserves are established. Components of variable consideration include trade discounts and allowances, product returns, provider chargebacks and discounts, government rebates, payor rebates, and other incentives, such as voluntary patient assistance, and other allowances that are offered within contracts between the Company and its customers, payors, and other indirect customers relating to the Company's sale of its products. These reserves, as detailed below, are based on the related sales, and are classified as reductions of accounts receivable, net when the right of offset exists in accordance with Accounting Standards Update ("or "ASU") ASU 2013-1, *Balance Sheet (Topic 210): Clarifying the Scope of Disclosures about Offsetting Assets and Liabilities,* or as a current liability. These estimates take into consideration a range of possible outcomes that are probability-weighted in accordance with the expected value method in ASC 606 for relevant factors such as current contractual and statutory requirements, specific known market events and trends, industry data, and forecasted customer buying and payment patterns. Overall, these reserves reflect the Company's best estimates of the amount of consideration to which it is entitled based on the terms of the respective underlying contracts.

The amount of variable consideration that is included in the transaction price may be constrained, and is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized under the contract will not occur in a future period. The Company's analyses also contemplated application of the constraint in accordance with the guidance, under which it determined a significant reversal of revenue would not be probable to occur in a future period for the estimates detailed below as of September 30, 2021 and, therefore, the transaction price was not reduced further during the quarter ended September 30, 2021. Actual amounts of consideration ultimately received may differ from the Company's estimates. If actual results in the future vary from the Company's estimates, the Company will adjust these estimates, which would affect net product revenue and earnings in the period such variances become known.

Trade Discounts and Allowances:

The Company generally provides customers with discounts, which include incentive fees that are explicitly stated in the Company's contracts and are recorded as a reduction of revenue in the period the related product revenue is recognized. The reserve for discounts is established in the same period that the related revenue is recognized, together with reductions to accounts receivable, net on the consolidated balance sheets. In addition, the Company compensates its customers for sales order management, data, and distribution services. The Company has determined such services received to date are not distinct from the Company's sale of products to its customers and, therefore, these payments have been recorded as a reduction of revenue within the consolidated statements of operations.

Product Returns:

Consistent with industry practice, the Company offers the specialty pharmacies and specialty distributors that are its customers limited product return rights for damaged and expiring product, provided it is within a specified period around the product expiration date as set forth in the applicable individual distribution agreement. The Company estimates the amount of its product sales that may be returned by its customers and records this estimate as a reduction of product revenue, net in the period the related product revenue is recognized, as well as a reduction to accounts receivable, net on the consolidated balance sheets. The Company currently estimates product returns using its own sales information, including its visibility into the inventory remaining in the distribution channel. The Company has an insignificant amount of returns to date and believes that returns of its products will continue to be minimal.

Provider Chargebacks and Discounts:

Chargebacks for fees and discounts to providers represent the estimated obligations resulting from contractual commitments to sell products to qualified healthcare providers at prices lower than the list prices charged to its customers who directly purchase the product from the Company. Customers charge the Company for the difference between what they pay for the product and the ultimate selling price to the qualified healthcare providers. The reserve for chargebacks is established in the same period the related revenue is recognized, resulting in a reduction of product revenue, net and a reduction to accounts receivable, net on the consolidated balance sheets. Chargeback amounts are generally determined at the time of resale to the qualified healthcare provider by customers, and the Company generally issues credits for such amounts within a few weeks of the customer's notification to the Company of the resale. Chargebacks consist of credits the Company expects to issue for units that remain in the distribution channel at each reporting period-end that the Company expects will be sold to qualified healthcare providers and chargebacks that customers have claimed, but for which the Company has not yet issued a payment.

Government Rebates:

The Company is subject to discount obligations under state Medicaid programs and Medicare. These reserves are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue, net and the establishment of a current liability, which is included in accrued expenses on the consolidated balance sheets. The Company's liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet been received, estimates of claims for the current quarter, and estimates of future claims that will be made for product that has been recognized as revenue, but which remains in the distribution channel at the end of each reporting period.

Payor Rebates:

The Company contracts with certain private payor organizations, primarily insurance companies and pharmacy benefit managers, for the payment of rebates with respect to utilization of its products. The Company estimates these rebates and records such estimates in the same period the related revenue is recognized, resulting in a reduction of product revenue, net and the establishment of a current liability, which is included in accrued expenses on the consolidated balance sheets.

Other Incentives:

Other incentives the Company offers include voluntary patient assistance programs, such as the co-pay assistance program, which are intended to provide financial assistance to qualified commercially insured patients with prescription drug co-payments required by payors. The calculation of the accrual for co-pay assistance is based on an estimate of claims and the cost per claim that the Company expects to receive associated with product that has been recognized as revenue, but remains in the distribution channel at the end of each reporting period. The adjustments are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability, which is included as a component of accrued expenses on the consolidated balance sheets.

License Revenue:

The Company also recognizes license revenue under certain of the Company's sub-license agreements that are within the scope of ASC 606. The terms of these agreements may contain multiple performance obligations, which may include licenses and research and development activities. The Company evaluates these agreements under ASC 606 to determine the distinct performance obligations. Non-refundable, upfront fees that are not contingent on any future performance and require no consequential continuing involvement by the Company, are recognized as revenue when the license term commences and the licensed data, technology or product is delivered. The Company defers recognition of non-refundable upfront license fees if the performance obligations are not satisfied.

Prior to recognizing revenue, the Company makes estimates of the transaction price, including variable consideration that is subject to a constraint. Amounts of variable consideration are included in the transaction price to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur and when the uncertainty associated with the variable consideration is subsequently resolved.

If there are multiple distinct performance obligations, the Company allocates the transaction price to each distinct performance obligation based on its relative standalone selling price. The standalone selling price is generally determined based on the prices charged to customers or using expected cost-plus margin. Revenue is recognized by measuring the progress toward complete satisfaction of the performance obligations using an input measure.

Since 2018, the Company has entered into sub-license agreements with certain sub-licensees in territories outside of the United States. These sub-licensing agreements grant certain intellectual property rights and set forth various respective obligations with respect to actions such as development, pursuit and maintenance of regulatory approvals, commercialization and supply of NERLYNX in the sub-licensees' respective territories.

License fees under the sub-license agreements include one-time upfront payments when each sub-license agreement was executed and potential additional one-time milestone payments due to the Company upon successful completion of certain performance obligations, such as achieving regulatory approvals or sales target thresholds, and potential double-digit royalties on sales of the licensed product, calculated as a percentage of net sales of the licensed product throughout each sub-licensee's respective territory.

As of September 30, 2021, the total potential milestone payments that would be due to the Company upon achievement of all respective performance obligations under the sub-license agreements is approximately $581.3 million. At this time, the Company cannot estimate if or when these milestone-related performance obligations might be achieved.

Royalty Revenue:

For sub-license agreements that are within the scope of ASC 606, the Company recognizes revenue when the related sales occur in accordance with the sales-based royalty exception under ASC 606-10-55-65.

Royalty revenue consists of consideration earned related to international sales of NERLYNX made by the Company's sub-licensees in their respective territories. The Company recognizes royalty revenue when the performance obligations have been satisfied. Royalty revenue was $2.8 million and $9.5 million for the three and nine months ended September 30, 2021, respectively.

Legal Contingencies and Expense:

For legal contingencies, the Company accrues a liability for an estimated loss if the potential loss from any claim or legal proceeding is considered probable and the amount can be reasonably estimated. Legal fees and expenses are expensed as incurred based on invoices or estimates provided by legal counsel. The Company periodically evaluates available information, both internal and external, relative to such contingencies and adjusts the accrual as necessary. The Company determines whether a contingency should be disclosed by assessing whether a material loss is deemed reasonably possible. In determining whether a loss should be accrued, the Company evaluates, among other factors, the degree of probability of an unfavorable outcome and the ability to make a reasonable estimate of the amount of the loss (see Note 13, Commitments and Contingencies).

Royalty Expenses:

Royalties incurred in connection with the Company's license agreement with Pfizer, as disclosed in Note 13—Commitments and Contingencies, are expensed to cost of sales as revenue from product sales is recognized.

Research and Development Expenses:

Research and development expenses, or R&D Expenses, are charged to operations as incurred. The major components of R&D Expenses include clinical manufacturing costs, clinical trial expenses, consulting and other third-party costs, salaries and employee benefits, stock-based compensation expense, supplies and materials, and allocations of various overhead costs. Clinical trial expenses include, but are not limited to, investigator fees, site costs, comparator drug costs, and clinical research organization, or CRO, costs. In the normal course of business, the Company contracts with third parties to perform various clinical trial activities in the ongoing development of potential products. The financial terms of these agreements are subject to negotiation and variations from contract to contract and may result in uneven payment flows. Payments under the contracts depend on factors such as the achievement of certain events, the successful enrollment of patients and the completion of portions of the clinical trial or similar conditions. The Company's accruals for clinical trials are based on estimates of the services received and efforts expended pursuant to contracts with numerous clinical trial sites, cooperative groups and CROs. As actual costs become known, the Company adjusts its accruals in that period.

In instances where the Company enters into agreements with third parties for clinical trials and other consulting activities, upfront amounts are recorded to prepaid expenses and other in the accompanying consolidated balance sheets and expensed as services are performed or as the underlying goods are delivered. If the Company does not expect the services to be rendered or goods to be delivered, any remaining capitalized amounts for non-refundable upfront payments are charged to expense immediately. Amounts due under such arrangements may be either fixed fee or fee for service, and may include upfront payments, monthly payments and payments upon the completion of milestones or receipt of deliverables.

Costs related to the acquisition of technology rights and patents for which development work is still in process are charged to operations as incurred and considered a component of R&D Expenses.

Stock-Based Compensation:

Stock Option Awards:

ASC Topic 718, *Compensation-Stock Compensation*, or ASC 718, requires the fair value of all share-based payments to employees and nonemployees, including grants of stock options, to be recognized in the statement of operations over the requisite service period. Under ASC 718, employee and nonemployee option grants are generally valued at the grant date and those valuations do not change once they have been established. The fair value of each option award is estimated on the grant date using the Black-Scholes Option Pricing Method. As allowed by ASC 718, the Company's estimate of expected volatility is based on its average volatilities using its past eight years of publicly traded history. The risk-free rate for periods within the contractual life of the option is based on the U.S. Treasury yield curve in effect at the time of grant valuation. Option forfeitures are estimated when the option is granted to reduce the option expense to be recognized over the life of the award. The estimated forfeiture rate considers historical employee turnover rates stratified into employee pools, actual forfeiture experience and other factors. The option expense is adjusted upon the actual forfeiture of a stock option grant and the Company periodically revises the estimated forfeiture rate in subsequent periods if actual forfeitures differ from those estimates. Due to its limited history of stock option exercises, the Company uses the simplified method to determine the expected life of the option grants. Compensation expense related to modified stock options is measured based on the fair value for the awards as of the modification date. Any incremental compensation expense arising from the excess of the fair value of the awards on the modification date compared to the fair value of the awards immediately before the modification date is recognized at the modification date or ratably over the requisite service period, as appropriate.

Restricted Stock Units:

RSUs are valued on the grant date and the fair value of the RSUs is equal to the market price of the Company's common stock on the grant date. The RSU expense is recognized over the requisite service period. When the requisite service period begins prior to the grant date (because the service inception date occurs prior to the grant date), the Company is required to begin recognizing compensation cost before there is a measurement date (i.e., the grant date). The service inception date is the beginning of the requisite service period. If the service inception date precedes the grant date, accrual of compensation cost for periods before the grant date shall be based on the fair value of the award at the reporting date. In the period in which the grant date occurs, cumulative compensation cost shall be adjusted to reflect the cumulative effect of measuring compensation cost based on fair value at the grant date rather than the fair value previously used at the service inception date (or any subsequent reporting date). RSU forfeitures are estimated when the RSU is granted to reduce the RSU expense to be recognized over the life of the award. The estimated forfeiture rate considers historical employee turnover rates stratified into employee pools, actual forfeiture experience and other factors. The RSU expense is adjusted upon the actual forfeiture of an RSU grant and the Company periodically revises the estimated forfeiture rate in subsequent periods if actual forfeitures differ from those estimates. Compensation expense related to modified restricted stock units is measured based on the fair value for the awards as of the modification date. Any incremental compensation expense arising from the excess of the fair value of the awards on the modification date compared to the fair value of the awards immediately before the modification date is recognized at the modification date or ratably over the requisite service period, as appropriate.

Warrants:

Warrants (refer to Note 11 for further details) granted to employees and nonemployees are normally valued at the fair value of the instrument on the grant date and are recognized in the condensed statement of operations over the requisite service period. When the requisite service period precedes the grant date and a market condition exists in the warrant, the Company values the warrant using the Monte Carlo Simulation Method. When the terms of the warrant become fixed, the Company values the warrant using the Black-Scholes Option Pricing Method. As allowed by ASC 718, the Company's estimate of expected volatility is based on its average volatilities using its publicly traded history. The risk-free rate for periods within the contractual life of the warrant is based on the U.S. Treasury yield curve in effect at the time of grant valuation. In determining the value of the warrant until the terms are fixed, the Company factors in the probability of the market condition occurring and several possible scenarios. When the requisite service period precedes the grant date and is deemed to be complete, the Company records the fair value of the warrant at the time of issuance as an equity stock-based compensation transaction. The grant date is determined when all pertinent information, such as exercise price and quantity are known. Compensation expense related to warrant modifications is measured based on the fair value of the warrant as of the modification date. Any incremental compensation expense arising from the excess of the fair value of the warrant on the modification date compared to the fair value of the warrant immediately before the modification date is recognized at the modification date or ratably over the requisite service period, as appropriate.

Income Taxes:

The Company follows ASC Topic 740, *Income Taxes*, or ASC 740, which requires recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the consolidated financial statements or tax returns. Under this method, deferred tax assets and liabilities are based on the differences between the consolidated financial statement and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. Deferred tax assets are reduced by a valuation allowance to the extent management concludes it is more likely than not that the asset will not be realized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The standard addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the consolidated financial statements. Under ASC 740, the Company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the tax authorities, based on the technical merits of the position. The tax benefits recognized in the consolidated financial statements from such a position should be measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. ASC 740 also provides guidance on de-recognition, classification, interest and penalties on income taxes, accounting in interim periods and requires increased disclosures. As of September 30, 2021, the Company's uncertain tax position reserves include a reserve for its R&D credits.

Financial Instruments:

The carrying value of financial instruments, such as cash equivalents, accounts receivable and accounts payable, approximate their fair value because of their short-term nature. The carrying value of long-term debt approximates its fair value as the principal amounts outstanding are subject to variable interest rates that are based on market rates, which are regularly reset.

Cash and Cash Equivalents:

The Company classifies all highly liquid instruments with an original maturity of three months or less as cash equivalents.

Restricted Cash:

Restricted cash represents cash held at financial institutions that is pledged as collateral for stand-by letters of credit for lease and legal verdict commitments. The lease-related letters of credit will lapse at the end of the respective lease terms through 2026. At each of September 30, 2021 and December 31, 2020, the Company had restricted cash in the amount of $12.2 million.

Investment Securities:

The Company classifies all investment securities (short-term and long-term) as available-for-sale, as the sale of such securities may be required prior to maturity to implement management's strategies. These securities are carried at fair value, with the unrealized gains and losses reported as a component of accumulated other comprehensive income (loss) in stockholders' equity until realized. Realized gains and losses from the sale of available-for-sale securities, if any, are determined on a specific identification basis. In accordance with ASU 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, credit losses on available-for-sale securities are reported using an expected loss model and recorded to an allowance. Premiums and discounts are amortized or accreted over the life of the related security as an adjustment to yield using the straight-line method. Interest income is recognized when earned.

Assets Measured at Fair Value on a Recurring Basis:

ASC Topic 820, *Fair Value Measurement*, or ASC 820, provides a single definition of fair value and a common framework for measuring fair value as well as disclosure requirements for fair value measurements used in financial statements. Under ASC 820, fair value is determined based upon the exit price that would be received by a company to sell an asset or paid by a company to transfer a liability in an orderly transaction between market participants, exclusive of any transaction costs. Fair value measurements are determined by either the principal market or the most advantageous market. The principal market is the market with the greatest level of activity and volume for the asset or liability. Absent a principal market to measure fair value, the Company uses the most advantageous market, which is the market from which the Company would receive the highest selling price for the asset or pay the lowest price to settle the liability, after considering transaction costs. However, when using the most advantageous market, transaction costs are only considered to determine which market is the most advantageous and these costs are then excluded when applying a fair value measurement. ASC 820 creates a three-level hierarchy to prioritize the inputs used in the valuation techniques to derive fair values. The basis for fair value measurements for each level within the hierarchy is described below, with Level 1 having the highest priority and Level 3 having the lowest.

Level 1: Quoted prices in active markets for identical assets or liabilities.

Level 2: Quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations in which all significant inputs are observable in active markets.

Level 3: Valuations derived from valuation techniques in which one or more significant inputs are unobservable.

Following are the major categories of assets measured at fair value on a recurring basis as of September 30, 2021 and December 31, 2020, using quoted prices in active markets for identical assets (Level 1), significant other observable inputs (Level 2), and significant unobservable inputs (Level 3) (in thousands):

September 30, 2021	**Level 1**	**Level 2**	**Level 3**	**Total**
Cash equivalents	$ 46,242	$ —	$ —	$ 46,242
Commercial paper	—	16,883	—	16,883
Corporate bonds	—	6,713	—	6,713
Totals	$ 46,242	$ 23,596	$ —	$ 69,838

December 31, 2020	**Level 1**	**Level 2**	**Level 3**	**Total**
Cash equivalents	$ 59,919	$ 11,798	$ —	$ 71,717
Commercial paper	—	8,096	—	8,096
Totals	$ 59,919	$ 19,894	$ —	$ 79,813

The Company's investments in commercial paper, corporate bonds and U.S. government securities are exposed to price fluctuations. The fair value measurements for commercial paper, corporate bonds and U.S. government securities are based upon the quoted prices of similar items in active markets multiplied by the number of securities owned.

The following tables summarize the Company's cash equivalents and short-term investments (in thousands):

September 30, 2021	Maturity (in years)	Amortized cost	Unrealized Gains	Unrealized Losses	Estimated fair value
Cash equivalents		$ 46,242	$ —	$ —	$ 46,242
Commercial paper	Less than 1	16,883	—	—	16,883
Corporate bonds	Less than 1	6,715	—	(2)	6,713
Totals		$ 69,840	$ —	$ (2)	$ 69,838

December 31, 2020	Maturity (in years)	Amortized cost	Unrealized Gains	Unrealized Losses	Estimated fair value
Cash equivalents		$ 71,717	$ —	$ —	$ 71,717
Commercial paper	Less than 1	8,096	—	—	8,096
Totals	Less than 1	$ 79,813	$ —	$ —	$ 79,813

Concentration of Risk:

Financial instruments, which potentially subject the Company to concentrations of credit risk, principally consist of cash and cash equivalents, marketable securities, and accounts receivable, net. The Company's cash and cash equivalents and restricted cash in excess of the Federal Deposit Insurance Corporation and the Securities Investor Protection Corporation insured limits at September 30, 2021, were approximately $75.9 million. The Company does not believe it is exposed to any significant credit risk due to the quality nature of the financial instruments in which the money is held. Pursuant to the Company's internal investment policy, investments must be rated A-1/P-1 or better by Standard and Poor's Rating Service and Moody's Investors Service at the time of purchase.

The Company sells its products in the United States primarily through specialty pharmacies and specialty distributors. Therefore, wholesale distributors and large pharmacy chains account for a large portion of its accounts receivables, net and product revenues, net. The creditworthiness of its customers is continuously monitored, and the Company has internal policies regarding customer credit limits. The Company estimates an allowance for doubtful accounts primarily based on the credit worthiness of its customers, historical payment patterns, aging of receivable balances and general economic conditions. The Company recorded a recovery of $1.0 million credit loss and $1.0 million as an allowance for credit loss for the periods ended September 30, 2021 and December 31, 2020, respectively.

The Company's success depends on its ability to successfully commercialize NERLYNX. The Company currently has a single product and limited commercial sales experience, which makes it difficult to evaluate its current business, predict its future prospects and forecast financial performance and growth. The Company has invested a significant portion of its efforts and financial resources in the development and commercialization of the lead product, NERLYNX, and expects NERLYNX to constitute the vast majority of product revenue for the foreseeable future.

The Company relies exclusively on third parties to formulate and manufacture NERLYNX and its drug candidates. The commercialization of NERLYNX and any other drug candidates, if approved, could be stopped, delayed or made less profitable if those third parties fail to provide sufficient quantities of product or fail to do so at acceptable quality levels or prices. The Company has no experience in drug formulation or manufacturing and does not intend to establish its own manufacturing facilities. The Company lacks the resources and expertise to formulate or manufacture NERLYNX and other drug candidates. While the drug candidates were being developed by Pfizer, both the drug substance and drug product were manufactured by third-party contractors. The Company is using the same third-party contractors to manufacture, supply, store and distribute drug supplies for clinical trials and the commercialization of NERLYNX. If the Company is unable to continue its relationships with one or more of these third-party contractors, it could experience delays in the development or commercialization efforts as it locates and qualifies new manufacturers. The Company intends to rely on one or more third-party contractors to manufacture the commercial supply of drugs.

Inventory:

The Company values its inventories at the lower of cost and estimated net realizable value. The Company determines the cost of its inventories, which includes amounts related to materials and manufacturing overhead, on a first-in, first-out basis. The Company performs an assessment of the recoverability of capitalized inventory during each reporting period, and it writes down any excess and obsolete inventories to their estimated realizable value in the period in which the impairment is first identified. Such impairment charges, should they occur, are recorded within cost of sales in the condensed consolidated statements of operations. The determination of whether inventory costs will be realizable requires estimates by management. If actual market conditions are less favorable than projected by management, additional write-downs of inventory may be required.

The Company capitalizes inventory costs associated with the Company's products after regulatory approval, if any, when, based on management's judgment, future commercialization is considered probable and the future economic benefit is expected to be realized. Inventory that can be used in either the production of clinical or commercial product is recorded as R&D Expenses when selected for use in a clinical trial. Starter kits, provided to patients prior to insurance approval, are expensed by the Company to selling, general and administrative expense as incurred.

As of September 30, 2021, the Company's inventory balance consisted primarily of raw materials purchased subsequent to FDA approval of NERLYNX.

Property and Equipment, Net:

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, which is generally three years for computer hardware and software, three years for phone equipment, and seven years for furniture and fixtures. Leasehold improvements are amortized using the straight-line method over the lesser of the useful life or the lease term. Upon retirement or sale, the cost of assets disposed of and the related accumulated depreciation are eliminated from the accounts and any resulting gain or loss is credited or charged to operations. Repairs and maintenance costs are expensed as incurred.

The Company reviews its long-lived assets used in operations for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable, as required by ASC Topic 360, *Property, Plant, and Equipment,* or ASC 360. The Company performs a recoverability test by comparing the sum of the estimated undiscounted cash flows over the life of the asset to its carrying value on the consolidated balance sheet. If the undiscounted cash flows used in the recoverability test are less than the carrying value, the Company would then determine the fair value of the long-lived asset and recognize an impairment loss for the amount in excess of the carrying value.

Leases:

ASC Topic 842, *Leases*, as adopted in the first quarter of 2019, requires lessees to recognize most leases on the balance sheet with a corresponding right-of-use asset, or ROU asset. ROU assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. The assets and lease liabilities are recognized at the lease commencement date based on the estimated present value of fixed lease payments over the lease term. ROU assets are evaluated for impairment using the long-lived assets impairment guidance, as required by ASC 360. A significant indication of impairment of an ROU asset would include a change in the extent or manner in which the asset is being used. The Company must make assumptions which underlie the most significant and subjective estimates in determining whether any impairment exists. Those estimates, and the underlying assumptions, include estimates of future cash flow utilizing market lease rates and determination of fair value. If an ROU asset related to an operating lease is impaired, the carrying value of the ROU asset post-impairment should be amortized on a straight-line basis through the earlier of the end of the useful life of the ROU asset or the end of the lease term. Post impairment, a lessee must calculate the amortization of the ROU asset and interest expense on the lease liability separately, although the sum of the two continues to be presented as a single lease cost. If a lease is planned to be abandoned with no intention of subleasing, the ROU asset should be assessed for impairment.

Leases will be classified as financing or operating, which will drive the expense recognition pattern. The Company elects to exclude short-term leases if and when the Company has them. For additional information, see Note 6, Leases.

The Company leases office space and copy machines, all of which are operating leases. Most leases include the option to renew and the exercise of the renewal options is at the Company's sole discretion. Options to extend or terminate a lease are considered in the lease term to the extent that the option is reasonably certain of exercise. The leases do not include options to purchase the leased property. The depreciable life of assets and leasehold improvements is limited by the expected lease term. Covenants imposed by the leases include letters of credit required to be obtained by the lessee.

The incremental borrowing rate, or IBR, represents the rate of interest the Company would expect to pay on a collateralized basis to borrow an amount equal to the lease payments under similar terms. When determinable, the Company uses the rate implicit in the lease to determine the present value of lease payments. As the Company's leases do not provide an implicit rate, the Company uses its incremental borrowing rate based on the information available at the commencement date in determining the present value of lease payments. The Company's average IBR for existing leases as of September 30, 2021 is 10.9%.

License Fees and Intangible Assets:

The Company expenses amounts paid to acquire licenses associated with products under development when the ultimate recoverability of the amounts paid is uncertain and the technology has no alternative future use when acquired. Acquisitions of technology licenses are charged to expense or capitalized based upon the asset achieving technological feasibility in accordance with management's assessment regarding the ultimate recoverability of the amounts paid and the potential for alternative future use. The Company has determined that technological feasibility for its product candidates is reached when the requisite regulatory approvals are obtained to make the product available for sale. The Company capitalizes technology licenses upon reaching technological feasibility.

The Company maintains definite-lived intangible assets related to the license agreement with Pfizer. These assets are amortized over their remaining useful lives, which are estimated based on the shorter of the remaining patent life or the estimated useful life of the underlying product. Intangible assets are amortized using the economic consumption method if anticipated future revenues can be reasonably estimated. The straight-line method is used when future revenues cannot be reasonably estimated. Amortization costs are recorded as part of cost of sales.

The Company assesses its intangible assets for impairment if indicators are present or changes in circumstance suggest that impairment may exist. Events that could result in an impairment, or trigger an interim impairment assessment, include the receipt of additional clinical or nonclinical data regarding one of the Company's drug candidates or a potentially competitive drug candidate, changes in the clinical development program for a drug candidate, or new information regarding potential sales for the drug. If impairment indicators are present or changes in circumstance suggest that impairment may exist, the Company performs a recoverability test by comparing the sum of the estimated undiscounted cash flows of each intangible asset to its carrying value on the consolidated balance sheet. If the undiscounted cash flows used in the recoverability test are less than the carrying value, the Company would determine the fair value of the intangible asset and recognize an impairment loss if the carrying value of the intangible asset exceeds its fair value. In connection with the FDA approval of NERLYNX in July 2017, the Company triggered a one-time milestone payment pursuant to its license agreement with Pfizer. In June 2020, the Company entered into a letter agreement with Pfizer relating to the method of payment associated with a milestone payment under the Company's license agreement with Pfizer (see Note 13, Commitments and Contingencies). The Company capitalized the milestones as intangible assets and is amortizing the assets to cost of sales on a straight-line basis over the estimated useful life of the licensed patent through 2030. The Company recorded amortization expense related to its intangible assets of $2.0 million and $6.0 million for the three and nine months ended September 30, 2021, respectively. As of September 30, 2021, estimated future amortization expense related to the Company's intangible assets was approximately $2.0 million for the remainder of 2021 and $8.0 million for each year starting 2022 through 2029, and $2.0 million for 2030.

During the nine months ended September 30, 2021, the Company agreed to settle its ongoing arbitration proceeding with CANbridge BIOMED Limited, or CANbridge, relating to an agreement in which the Company granted CANbridge an exclusive sub-license to develop and commercialize NERLYNX throughout greater China. The Company and CANbridge agreed to drop their respective claims against one another. At the same time, the Company entered into a separate transaction in which it agreed to pay CANbridge a one-time termination fee of $20.0 million in exchange for it returning to the Company all rights to NERLYNX in greater China. The Company expensed the $20.0 million one-time termination fee to cost of sales in the nine months ended September 30, 2021.

Recently Issued Accounting Standards:

In December 2019, the Financial Accounting Standards Board, or FASB issued ASU No 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, as part of its Simplification Initiative to reduce the cost and complexity in accounting for income taxes. The amendments in ASU 2019-12 remove certain exceptions related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences. ASU 2019-12 also amends other aspects of the guidance to help simplify and promote consistent application of GAAP. The guidance is effective for interim and annual periods beginning after December 15, 2020, with early adoption permitted. ASU 2019-12 did not have a material effect on the Company's current financial position, results of operations or financial statement disclosures.

In October 2020, the FASB issued *ASU 2020-10*, *Codification Improvements*, which updates various codification topics by clarifying or improving disclosure requirements to align with SEC regulations. The Company adopted *ASU 2020-10* as of the reporting period beginning January 1, 2021. ASU 2020-10 did not have a material effect on the Company's current financial position, results of operations or financial statement disclosures.

Note 3—Accounts Receivable, Net:

Accounts receivable, net consisted of the following (in thousands):

	September 30, 2021	December 31, 2020
Trade accounts receivable	$ 20,980	$ 21,515
License revenue receivable	—	2,500
Royalty revenue receivable	2,819	2,528
Total accounts receivable	$ 23,799	$ 26,543
Allowance for credit losses	—	(1,000)
Total accounts receivable, net	$ 23,799	$ 25,543

Trade accounts receivable consist entirely of amounts owed from the Company's customers related to product sales. License revenue receivable represents an amount owed from sub-licensees under sub-license agreements. Royalty revenue receivable represents amounts owed related to royalty revenue recognized based on the Company's sub-licensees' sales in their respective territories in the periods ended September 30, 2021 and December 31, 2020.

For all accounts receivable, the Company recognized credit losses based on lifetime expected losses to selling, general and administrative expense in the consolidated statements of operations. In determining estimated credit losses, the Company evaluated its historical loss rates, current economic conditions and reasonable and supportable forecasts of future economic conditions. The Company recorded a recovery of $1.0 million in credit loss and $1.0 million as a credit loss expense for the periods ended September 30, 2021 and December 31, 2020, respectively. The rollforward of the allowance for credit losses is as follows:

Allowance for credit losses (in thousands):	
Beginning balance at January 1, 2021	$ (1,000)
Provision for credit loss expense	—
Accounts receivable written-off	—
Recoveries	1,000
Total ending allowance balance as September 30, 2021	$ —

Note 4—Prepaid Expenses and Other:

Prepaid expenses and other consisted of the following (in thousands):

	September 30, 2021	December 31, 2020
Current:		
CRO services	$ 975	$ 1,550
Other clinical development	3,585	2,718
Insurance	658	3,708
Professional fees	1,128	651
Other	2,728	2,635
	9,074	11,262
Long-term:		
CRO services	358	518
Other clinical development	410	437
Other	591	790
	1,359	1,745
Totals	$ 10,433	$ 13,007

Other current prepaid amounts consist primarily of deposits, signing bonuses, licenses, subscriptions and software. Other long-term prepaid amounts consist primarily of deposits, signing bonuses, licenses, subscriptions, software, a capitalized sublease commission and a sublease tenant improvement allowance, net of amortization.

Note 5—Other Current Assets:

Other current assets consisted of the following (in thousands):

	September 30, 2021	December 31, 2020
Deposit for manufacturing costs	$ —	$ 3,376
Deferred rent	195	198
Other	256	67
Totals	$ 451	$ 3,641

Other current asset amounts consist primarily of a deposit, capitalized sublease commission and a sublease tenant improvement allowance, net of amortization.

Note 6—Leases:

In December 2011, the Company entered into a non-cancelable operating lease for office space in Los Angeles, California, which was subsequently amended in November 2012, December 2013, March 2014, July 2015, and December 2017. The initial term of the lease was for seven years and commenced on December 10, 2011. As amended, the Company rents approximately 65,656 square feet. The term of the lease runs until March 2026, and rent amounts payable by the Company increase approximately 3% per year. Concurrent with the execution of the lease, the Company provided the landlord an automatically renewable stand-by letter of credit in the amount of $2.0 million. The stand-by letter of credit is collateralized by a high-yield savings account, which is classified as restricted cash, long-term on the accompanying consolidated balance sheets.

In June 2012, the Company entered into a long-term lease agreement for office space in South San Francisco, California, which was subsequently amended in May 2014 and July 2015. As amended, the Company rents approximately 29,470 square feet. The term of this lease runs until March 2026, with the option to extend for an additional five-year term, and rents payable by the Company increase approximately 3% per year. The Company provided the landlord an automatically renewable stand-by letter of credit in the amount of $1.1 million. The stand-by letter of credit is collateralized by a high-yield savings account, which is classified as restricted cash, long-term on the accompanying consolidated balance sheets. The Company also leases copier equipment for use in the office spaces. Components of lease expense include fixed lease expense and variable lease expense of approximately $3.5 million and $0.3 million, respectively, for each of the nine months ended September 30, 2021 and September 30, 2020. For purposes of determining straight-line rent expense, the lease term is calculated from the date the Company first takes possession of the facility, including any periods of free rent and any renewal option periods that the Company is reasonably certain of exercising. The Company's office and equipment leases generally have contractually specified minimum rent and annual rent increases that are included in the measurement of the ROU asset and related lease liability. Additionally, under these lease arrangements, the Company may be required to pay directly, or reimburse the lessors, for real estate taxes, insurance, utilities, maintenance and other operating costs. Such amounts are generally variable and therefore not included in the measurement of the ROU asset and related lease liability but are instead recognized as variable lease expense in selling, general and administrative costs in the consolidated statements of operations when they are incurred.

Supplemental cash flow information related to leases for the nine months ended September 30, 2021:		
Operating cash flows used for operating leases (in thousands)	$	4,282
Right-of-use assets obtained in exchange for new operating lease liabilities		—
Weighted average remaining lease term (in years)		4.5
Weighted average discount rate		10.9%

The future minimum lease payments under ASC 842 as of September 30, 2021 were as follows (in thousands):

		Amount
2021 (remaining)	$	1,352
2022		5,483
2023		5,631
2024		5,805
2025		5,983
Thereafter		1,508
Total minimum lease payments	$	25,762
Less: imputed interest		(5,397)
Total lease liabilities	$	20,365

In February 2019, the Company entered into a long-term sublease agreement for 12,429 square feet of the office space in Los Angeles, California. The term of the lease runs until March 2026 and rent amounts payable to the Company increase approximately 3% per year. The Company recorded operating sublease income of $0.1 million and $0.3 million for the three and nine months ended September 30, 2021, respectively, in other income (expenses) in the consolidated statements of operations.

The future minimum lease payments to be received as of September 30, 2021 were as follows (in thousands):

	Amount
2021 (remaining)	$ 119
2022	481
2023	495
2024	510
2025	525
Thereafter	134
Total	$ 2,264

Note 7—Property and Equipment, Net:

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

	September 30, 2021	December 31, 2020
Leasehold improvements	$ 3,779	$ 3,779
Computer equipment	2,190	2,192
Telephone equipment	302	302
Furniture and fixtures	2,359	2,359
	8,630	8,632
Less: accumulated depreciation	(6,706)	(6,151)
Totals	$ 1,924	$ 2,481

For the three and nine months ended September 30, 2021, the Company incurred depreciation expense of $0.2 million and $0.6 million, respectively.

Note 8—Intangible Assets, Net:

Intangible assets, net consisted of the following (in thousands):

	September 30, 2021	December 31, 2020
Acquired and in-licensed rights	$ 90,000	$ 90,000
Less: accumulated amortization	(21,871)	(15,860)
Total intangible asset, net	$ 68,129	$ 74,140

For the three and nine months ended September 30, 2021, the Company incurred amortization expense of $2.0 million and $6.0 million, respectively. In June 2020, the Company entered into a letter agreement with Pfizer relating to the method of payment associated with a one-time milestone payment under the Company's license agreement with Pfizer (see Note 13, Commitments and Contingencies). The estimated remaining useful life of the intangible assets as of September 30, 2021 is 8.5 years.

Note 9—Accrued Expenses:

Accrued expenses consisted of the following (in thousands):

	September 30, 2021	December 31, 2020
Current:		
Accrued legal verdict expense	$ 57,328	$ 22,724
Accrued royalties	7,699	8,604
Accrued CRO services	2,969	3,474
Accrued variable consideration	8,281	9,014
Accrued bonus	5,054	7,788
Accrued compensation	4,374	4,820
Accrued other clinical development	1,277	1,904
Accrued professional fees	1,926	1,420
Accrued legal fees	919	383
Accrued manufacturing costs	376	752
Other	579	442
	90,782	61,325
Long-term:		
Accrued legal verdict expense	—	24,822
Accrued CRO services	1,006	908
Accrued other	206	233
	1,212	25,963
Totals	$ 91,994	$ 87,288

Accrued CRO services, accrued other clinical development expenses, and accrued legal fees represent the Company's estimates of such costs and are recognized as incurred. Accrued royalties represent royalties incurred in connection with the Company's license agreement with Pfizer. Accrued compensation includes accrued commissions and accrued vacation, which is accrued at the rate the employee earns vacation and reduced as vacation is used by the employee. Accrued variable consideration represents estimates of adjustments to product revenue, net for which reserves are established.

Current accrued legal verdict expense includes an estimate of $2.8 million that may be owed to the plaintiff as a result of the jury verdict in *Eshelman v. Puma Biotechnology, Inc., et al.* The Company's best estimates of potential damages in the matter could be approximately $2.8 million, which also represents our estimate as the most likely outcome; however, the actual amount of damages payable by the Company is still uncertain and will be ascertained only after completion of the appeal process and subsequent proceedings on remand, and such amount could be greater than the amount of expense already recognized or the high end of the estimate. During the nine months ended September 30, 2021, the Company revised its estimate from $22.9 million to $2.8 million, a decrease of $20.1 million, based on changes in the facts and circumstances surrounding this case and recent developments. The Company continues to classify the accrual as a current liability due to the uncertainty of the timing and amount of the payment. See Part II Item 1. “Legal Proceedings” of this Quarterly Report for a more detailed description of recent developments.

Additionally, current accrued legal verdict expense includes the Company’s estimate of $54.2 million that may be owed to class action participants as a result of the jury verdict in *Hsu v. Puma Biotechnology, Inc., et al*. During the nine months ended September 30, 2021 the Company revised its estimate from $24.8 million to $54.5 million, an increase of $29.7 million, based on changes in the facts and circumstances surrounding this case and recent developments. See Part II Item 1. “Legal Proceedings” of this Quarterly Report for a more detailed description of recent developments.

Other current accrued expenses consist primarily of business license fees, one half of the portion of employer Social Security payroll taxes deferred under the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, and other taxes, insurance and marketing fees.

Other long-term accrued expenses consist primarily of one half of the portion of employer Social Security payroll taxes deferred under the CARES Act, accrued compensation and deposit from a sublessee.

All accrued expenses are adjusted in the period the actual costs become known.

Note 10—Debt:

Long term debt consisted of the following (in thousands):

	September 30, 2021	Maturity Date
Total debt	$ 102,000	July 23, 2026
Less: debt issuance costs and discounts	(5,198)	
Total long-term debt, net	$ 96,802	

Oxford Loan and Security Agreement:

In October 2017, the Company entered into a loan and security agreement with Silicon Valley Bank ("SVB"), as administrative agent, and the lenders party thereto from time to time, or the Original Lenders, including Oxford Finance, LLC, ("Oxford"), and SVB. Pursuant to the terms of the credit facility provided for by the loan and security agreement, or the Original Credit Facility, we borrowed $50.0 million. In May 2018, the Company entered into an amendment to the loan and security agreement, which provided for an amended credit facility, or the Amended Credit Facility. Under the Amended Credit Facility, the Original Lenders agreed to make term loans available to the company in an aggregate amount of $155.0 million, consisting of (i) an aggregate amount of $125.0 million, the proceeds of which, in part, were used to repay the $50.0 million outstanding under the Original Credit Facility, and (ii) an aggregate amount of $30.0 million that was drawn in December 2018, which was available under the Amended Credit Facility as a result of achieving a specified minimum revenue milestone.

On June 28, 2019, or the Effective Date, the Company entered into an amendment and restatement of the loan and security agreement, which provided for a new credit facility, or the New Credit Facility, with Oxford, as collateral agent, and the lenders party thereto from time to time, including Oxford, pursuant to which the Company repaid the $155.0 million outstanding under the Amended Credit Facility, as well as all applicable exit and prepayment fees, owed to the Original Lenders under the Amended Credit Facility, using cash on hand and $100.0 million in new borrowings from the New Credit Facility. Under the New Credit Facility, the Company issued to Oxford new and/or replacement secured promissory notes in an aggregate principal amount for all such promissory notes of $100.0 million evidencing the New Credit Facility.

The New Credit Facility was secured by substantially all of the Company's personal property other than intellectual property. The Company also pledged 65% of the issued and outstanding capital stock of its subsidiaries, Puma Biotechnology Ltd. and Puma Biotechnology B.V. The New Credit Facility limited the Company's ability to grant any interest in intellectual property to certain permitted licenses and permitted encumbrances set forth in the agreement.

The term loans under the New Credit Facility bore interest at an annual rate equal to the greater of (i) 9.0% and (ii) the sum of (a) the “prime rate,” as reported in The Wall Street Journal on the last business day of the month that immediately preceded the month in which the interest will accrue, plus (b) 3.5%. The Company was required to make monthly interest-only payments on each term loan under the New Credit Facility commencing on the first calendar day of the calendar month following the funding date of such term loan, and continuing on the first calendar day of each calendar month thereafter through August 1, 2021, or the Amortization Date. Commencing on the Amortization Date, and continuing on the first calendar day of each calendar month thereafter, the Company would have made consecutive equal monthly payments of principal, together with applicable interest, in arrears to each lender under the New Credit Facility, calculated pursuant to the New Credit Facility. All unpaid principal and accrued and unpaid interest with respect to each term loan under the New Credit Facility was due and payable in full on June 1, 2024, or the Maturity Date. Upon repayment of such term loans, the Company was also required to make a final payment to the lenders equal to 7.5% of the aggregate principal amount of such term loans outstanding as of the Effective Date.

The Company had the option to prepay the outstanding principal balance of any term loan in whole but not in part, subject to a prepayment fee of 3.0% of any amount prepaid if the prepayment occurred through and including the first anniversary of the funding date of such term loan, 2.0% of the amount prepaid if the prepayment occurred after the first anniversary of the funding date of such term loan through and including the second anniversary of the funding date of such term loan, and 1.0% of the amount prepaid if the prepayment occurred after the second anniversary of the funding date of such term loan and prior to the Maturity Date.

On July 23, 2021, the Company used proceeds from the Athyrium Note Purchase Agreement to repay the amounts outstanding under the New Credit Facility, together with applicable exit and prepayment fees, and terminated the New Credit Facility.

Athyrium Note Purchase Agreement:

The Company issued senior notes for an aggregate principal amount of $100.0 million pursuant to the note purchase agreement dated July 23, 2021, by and among the Company, its subsidiaries, Athyrium Opportunities IV Co-Invest 1 LP (“Athyrium”), as Administrative Agent, and certain other investor parties (the “Note Purchase Agreement”), with an initial maturity date of July 23, 2026 (the “Athyrium Notes”). The Athyrium Notes were issued for face amount of $100.0 million net of an original issue discount of $1.5 million. The Athyrium Notes also require a 2.0% exit payment to be made on each payment of principal. The borrowings under the Athyrium Notes, together with cash on hand, were used to repay the Company’s outstanding indebtedness, including the applicable exit and prepayment fees owed to lenders under its Oxford Credit Facility. The Company can borrow up to an additional $25.0 million under the Note Purchase Agreement. The Athyrium Notes are secured by substantially all the Company’s assets. The Company incurred $1.9 million of deferred financing costs with the borrowing.

The Athyrium Notes bear interest at an annual rate equal to the sum of (i) 8.0% and (ii) three-month London Interbank Offering Rate (LIBOR) rate where the three-month LIBOR rate cannot be less than 1.5% or greater than 3.5%. (or a comparable or successor rate that gives due consideration to the then prevailing rate used by commercial banks in the United States which rate is reasonably determined by Athyrium). Interest is payable quarterly on the last business day of March, June, September and December each year. Beginning June 30, 2024, principal payments are required to be made quarterly at 11.11% of the original face amount with the remaining balance paid at maturity. Each principal payment will also include 2.0% exit payment.

At the Company’s option, the Company may prepay the outstanding principal balance of the notes in whole or in part, subject to a prepayment fee of 2.0% of the amount prepaid if the prepayment occurs on or prior to the second anniversary of the issuance date of such notes, plus the present value of remaining interest that would have accrued through and including the second anniversary date, and 2.0% of the amount prepaid if the prepayment occurs after the second anniversary but on or prior to the third anniversary of the issuance date of such notes. In addition, under the Note Purchase Agreement, the Company will be subject to mandatory prepayments of the net cash proceeds received in connection with a Disposition or Involuntary Disposition (as defined), an Extraordinary Receipt (as defined) or a Debt Issuance (as defined).

The Athyrium Notes include affirmative and negative covenants applicable to the Company. The affirmative covenants include, among others, covenants requiring the Company to maintain its legal existence and governmental approvals, deliver certain financial reports, maintain insurance coverage, and

satisfy certain requirements regarding deposit accounts. The negative covenants include, among others, restrictions on the Company's transferring collateral, incurring additional indebtedness, engaging in mergers or acquisitions, paying dividends or making other distributions, making investments, creating liens, selling assets and suffering a change in control, in each case subject to certain exceptions. Additionally, the Company may not make legal payments in connection with the Eshelman or class action legal matters exceeding a certain threshold without first raising sufficient additional capital above the threshold. The Company is also required to achieve certain minimum product revenue targets, measured as of the last day of each fiscal quarter on a trailing year-to-date basis. As of September 30, 2021, the principal balance outstanding under the Athyrium Notes was $100.0 million, representing all of the Company's long-term debt. The Company was in compliance with all applicable covenants under the Athyrium Notes.

The future minimum principal and exit payments under the Athyrium Notes as of September 30, 2021 were as follows (in thousands):

	Amount
2021 (remaining)	$ —
2022	—
2023	—
2024	33,997
2025	45,329
Thereafter	22,674
Total	$ 102,000

Debt Issuance Costs and Discounts

Debt issuance costs and discounts consist of the following (in thousands):

	September 30, 2021	December 31, 2020
Debt issuance costs and discounts (Oxford Credit Facility)	$ —	$ 8,668
Debt issuance costs and discounts (Athyrium Notes)	5,410	—
Less: accumulated amortization	(212)	(3,666)
Included in long-term debt	$ 5,198	$ 5,002

Debt issuance costs and discounts are financing costs related to the Company's outstanding debt. Amortization of debt issuance costs is expensed using the effective interest method and is included in interest expense in the condensed consolidated statement of operations. For the nine months ended September 30, 2021 and 2020, the Company recorded approximately $1.5 million and $1.4 million, respectively, of interest expense related to the amortization of debt issuance costs in the consolidated statements of operations.

Note 11—Stockholders' Equity:

Common Stock:

The Company issued 0 and 12,000 shares of common stock upon exercise of stock options during the nine months ended September 30, 2021 and 2020, respectively. The Company issued 774,455 and 505,627 shares of common stock upon vesting of RSUs during the nine months ended September 30, 2021 and 2020, respectively.

Authorized Shares:

The Company has 100,000,000 shares of stock authorized for issuance, all of which are common stock, par value $0.0001 per share.

Warrants:

In October 2011, the Company issued an anti-dilutive warrant to Alan Auerbach, the Company's founder and Chief Executive Officer. The warrant was issued to provide Mr. Auerbach with the right to maintain ownership of at least 20% of the Company's common stock in the event that the Company raised capital through the sale of its securities in the future.

In connection with the closing of a public offering in October 2012, the exercise price and number of shares underlying the warrant issued to Mr. Auerbach were established and, accordingly, the final value of the warrant became fixed. Pursuant to the terms of the warrant, Mr. Auerbach may exercise the warrant to acquire 2,116,250 shares of the Company's common stock at $16 per share until October 4, 2021. On April 1, 2021, the Company's Board of Directors approved an amendment to the terms of the warrant by extending the term until October 4, 2026. The amendment was approved by the Company's stockholders on June 15, 2021.

As a result of this amendment, the Company recorded additional stock-based compensation in the amount of $0 and $13.6 million which was included in selling, general and administrative expense for the three and nine months ended September 30, 2021. The fair value of the additional stock-based compensation was estimated using the Black-Scholes Option Pricing Method (see Note 2, Significant Accounting Policies) with the following assumptions as of June 15, 2021, the date of modification:

Dividend yield	0.0%
Expected volatility	87.0%
Risk-free interest rate	0.8%
Expected life in years	5.31

Stock Options and Restricted Stock Units:

The Company's 2011 Incentive Award Plan, as amended, or the 2011 Plan, was adopted by the Company's Board of Directors on September 15, 2011. Pursuant to the 2011 Plan, the Company may grant incentive stock options and nonqualified stock options, as well as other forms of equity-based compensation. Incentive stock options may be granted only to employees, while consultants, employees, officers and directors are eligible for the grant of nonqualified options under the 2011 Plan. The maximum term of stock options granted under the 2011 Plan is 10 years and the awards generally vest over a three-year period. The exercise price of incentive stock options granted under the 2011 Plan must be at least equal to the fair value of such shares on the date of grant. On April 1, 2021, the Board of Directors adopted an amendment to the 2011 Plan to increase the number of shares of the Company's common stock reserved for issuance thereunder by 2,000,000 shares. The amendment was approved by the Company's stockholders on June 15, 2021. As of September 30, 2021, a total of 14,529,412 shares of the Company's common stock have been reserved for issuance under the 2011 Plan.

All of the options awarded by the Company have been "plain vanilla options" as determined by the SEC Staff Accounting Bulletin 107 - *Share Based Payment.* As of September 30, 2021, 5,537,638 shares of the Company's common stock are issuable upon the exercise of outstanding stock options and vesting of RSUs granted under the 2011 Plan and 3,919,963 shares of the Company's common stock are available for future issuance under the 2011 Plan. The fair value of options granted to employees and nonemployees was estimated using the Black-Scholes Option Pricing Method (see Note 2, Significant Accounting Policies) with the following weighted-average assumptions used during the nine months ended September 30:

	2021	2020
Dividend yield	0.0%	0.0%
Expected volatility	86.5%	100.6%
Risk-free interest rate	0.8%	0.9%
Expected life in years	5.82	5.81

The Company's 2017 Employment Inducement Incentive Award Plan, as amended, or the 2017 Plan, was adopted by the Company's Board of Directors on April 27, 2017. Pursuant to the 2017 Plan, the Company may grant stock options and RSUs, as well as other forms of equity-based compensation to employees, as an inducement to join the Company. The maximum term of stock options granted under the 2017 Plan is 10 years and the awards generally vest over a three-year period. The exercise price of stock options granted under the 2017 Plan must be at least equal to the fair market value of such shares on the date of grant. On July 15 2021, the Board of Directors adopted an amendment to the 2017 Plan to increase the number of shares of the Company's common stock reserved for issuance thereunder by 1,000,000 shares. As of September 30, 2021, a total of 3,000,000 shares of the Company's common stock have been reserved for issuance under the 2017 Plan. As of September 30, 2021, 1,112,103 shares of the Company's common stock are issuable upon the exercise of outstanding stock options and vesting of RSUs granted under the 2017 Plan and 1,341,851 shares of the Company's common stock are available for future issuance under the 2017 Plan.

Stock-based compensation expense was as follows (in thousands):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2021	2020	2021	2020
Stock-based compensation:				
Options:				
Selling, general, and administrative	$ 971	$ 1,025	$ 2,942	$ 2,908
Research and development	147	723	426	2,295
Restricted stock units:				
Selling, general, and administrative	1,979	3,076	6,753	10,615
Research and development	1,185	2,741	4,673	11,284
Warrant modification:				
Selling, general, and administrative	—	—	13,587	—
Total stock-based compensation expense	$ 4,282	$ 7,565	$ 28,381	$ 27,102

Activity with respect to options granted under the 2011 Plan and 2017 Plan is summarized as follows:

	Shares	Weighted Average Exercise Price	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2020	5,009,342	$ 71.42	$ 3,458
Granted	640,748	$ 11.12	
Forfeited	(148,051)	$ 11.16	
Expired	(744,256)	$ 84.47	
Outstanding at September 30, 2021	4,757,783	$ 63.13	$ 1,079
Nonvested at September 30, 2021	949,366	$ 10.67	—
Exercisable	3,808,417	$ 76.21	$ 1,079

At September 30, 2021, total estimated unrecognized employee compensation cost related to non-vested stock options granted prior to that date was approximately $6.4 million, which is expected to be recognized over a weighted-average period of 1.9 years. At September 30, 2021, the total estimated unrecognized employee compensation cost related to non-vested RSUs was approximately $15.3 million, which is expected to be recognized over a weighted-average period of 1.7 years. The weighted-average grant date fair value of options granted during the nine months ended September 30, 2021 and 2020 was $7.90 and $7.81 per share, respectively. The weighted average grant date fair value of RSUs awarded during the nine months ended September 30, 2021 and 2020 was $11.73 and $10.57 per share, respectively.

Stock Option Rollforward

	Shares	Weighted Average Grant-Date Fair Value
Nonvested shares at December 31, 2020	899,672	$ 8.71
Granted	640,748	7.90
Forfeited	(148,051)	8.32
Vested/Issued	(443,003)	9.52
Nonvested shares at September 30, 2021	949,366	$ 7.85

Restricted Stock Unit Rollforward

	Shares	Weighted Average Grant-Date Fair Value
Nonvested shares at December 31, 2020	1,854,205	$ 13.51
Granted	1,339,483	11.73
Vested/Issued	(774,455)	15.62
Forfeited	(527,275)	12.69
Nonvested shares at September 30, 2021	1,891,958	$ 11.62

Note 12—401(k) Savings Plan:

During 2012, the Company adopted a 401(k) savings plan for the benefit of its employees. The Company is required to make matching contributions to the 401(k) plan equal to 100% of the first 3% of wages deferred by each participating employee and 50% on the next 2% of wages deferred by each participating employee. The Company incurred expenses for employer matching contributions of approximately $1.3 million and $1.1 million for the nine months ended September 30, 2021 and 2020, respectively.

Note 13—Commitments and Contingencies:

Contractual Obligations:

Contractual obligations represent future cash commitments and liabilities under agreements with third parties, and exclude contingent liabilities for which the Company cannot reasonably predict future payment. The Company's contractual obligations result primarily from obligations for various contract manufacturing organizations and clinical research organizations, which include potential payments we may be required to make under our agreements. The contracts also contain variable costs and milestones that are hard to predict as they are based on such things as patients enrolled and clinical trial sites. The timing of payments and actual amounts paid under contract manufacturing organization, or CMO, and CRO agreements may be different depending on the timing of receipt of goods or services or changes to agreed-upon terms or amounts for some obligations. Also, those agreements are cancelable upon written notice by the Company and, therefore, not long-term liabilities.

License Agreement:

In August 2011, the Company entered into an agreement pursuant to which Pfizer agreed to grant it a worldwide license for the development, manufacture and commercialization of PB272 neratinib (oral), PB272 neratinib (intravenous) and PB357, and certain related compounds. The license is exclusive with respect to certain patent rights owned by or licensed to Pfizer. Under the agreement, the Company is obligated to commence a new clinical trial for a product containing one of these compounds within a specified period of time and to use commercially reasonable efforts to complete clinical trials and to achieve certain milestones as provided in a development plan. From the closing date of the agreement through December 31, 2011, Pfizer continued to conduct the existing clinical trials on behalf of the Company at Pfizer's sole expense. At the Company's request, Pfizer has agreed to continue to perform certain services in support of the existing clinical trials at the Company's expense. These services will continue through the completion of the transitioned clinical trials. The license agreement "capped" the out of pocket expense the Company would incur to complete the then existing clinical trials. All agreed upon costs incurred by the Company above the "cost cap" would be reimbursed by Pfizer. The Company exceeded the "cost cap" during the fourth quarter of 2012. In accordance with the license agreement, the Company billed Pfizer for agreed upon costs above the "cost cap" until December 31, 2013.

On July 18, 2014, the Company entered into an amendment to the license agreement with Pfizer. The amendment amends the agreement to (1) reduce the royalty rate payable by the Company to Pfizer on sales of licensed products; (2) release Pfizer from its obligation to pay for certain out-of-pocket costs incurred or accrued on or after January 1, 2014 to complete certain ongoing clinical studies; and (3) provide that Pfizer and the Company will continue to cooperate to effect the transfer to the Company of certain records, regulatory filings, materials and inventory controlled by Pfizer as promptly as reasonably practicable.

As consideration for the license, the Company is required to make substantial payments upon the achievement of certain milestones totaling approximately $187.5 million if all such milestones are achieved. In connection with the FDA approval of NERLYNX in July of 2017, the Company triggered a one-time milestone payment pursuant to the agreement. In June 2020, the Company entered into a letter agreement, or the Letter Agreement, with Pfizer relating to the method of payment associated with a one-time milestone payment under the license agreement with Pfizer. The Letter Agreement permitted the Company to make the milestone payment in installments with the remaining amount payable to Pfizer (including interest). The milestone payment accrued interest at 6.25% per annum. The milestone payment including accrued interest of $1.8 million was paid in full in September 2021. The installment payments and accrued interest were included in accrued in-licensed rights on the accompanying consolidated balance sheets. The Company may trigger additional milestone payments in the future. Should the Company commercialize any more of the compounds licensed from Pfizer or any products containing any of these compounds, the Company will be obligated to pay to Pfizer annual royalties at a fixed rate in the low-to-mid teens of net sales of all such products, subject to certain reductions and offsets in some circumstances. The Company's royalty obligation continues, on a product-by-product and country-by-country basis, until the later of (1) the last to expire licensed patent covering the applicable licensed product in such country, or (2) the earlier of generic competition for such licensed product reaching a certain level in such country or expiration of a certain time period after first commercial sale of such licensed product in such country. In the event that the Company sublicenses the rights granted to the Company under the license agreement with Pfizer to a third party, the same milestone and royalty payments are required. The Company can terminate the license agreement at will, or for safety concerns, in each case upon specified advance notice.

Legal Proceedings

The Company and certain of its executive officers were named as defendants in certain lawsuits. The Company records a liability in the consolidated financial statements for loss contingencies when a loss is known or considered probable and the amount can be reasonably estimated. If the reasonable estimate of a known or probable loss is a range, and no amount within the range is a better estimate than any other, the minimum amount of the range is accrued. If a loss is reasonably possible but not known or probable, and can be reasonably estimated, the estimated loss or range of loss is disclosed. When determining the estimated loss or range of loss, significant judgment is required to estimate the amount and timing of a loss to be recorded.

Note 14—Subsequent Events:

Legal Proceedings

Hsu v. Puma Biotechnology, Inc., et al.

On October 29, 2021, the parties to the Company's class action lawsuit, *Hsu v. Puma Biotechnology, Inc., et al.*, informed the court that they had reached a settlement in principle, and the court entered judgment in the amount of claimed damages and prejudgment interest totaling approximately $54.2 million. On November 2, 2021, the court dismissed the case in light of the parties' settlement, retaining jurisdiction only for settlement approval. The parties' settlement in principle provides that there will be no judgment for liability entered against the Company or its chief executive officer, Alan Auerbach, and provides for payment by the Company of approximately $54.2 million in two installments, to be paid in January and June of 2022. The settlement in principle is subject to execution of a formal settlement agreement to be negotiated among the parties, which agreement will be submitted to the court for approval.

Other Events

On November 2, 2021, the Company implemented a restructuring of the organization in part due to the impact of COVID-19 on the Company’s sales. The restructuring includes a reduction in headcount of approximately 13% consisting primarily of commercial and research personnel. The Company anticipates that it will incur approximately $1.2 million in severance related costs which includes salary, insurance premiums, and sales commissions. This cost will be recorded in the fourth quarter of 2021. The Company believes that all payments related to this plan will be made by March 31, 2022.

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our unaudited condensed consolidated financial statements and the notes thereto included in Item 1 in this Quarterly Report on Form 10-Q, or this Quarterly Report. The following discussion should also be read in conjunction with our audited consolidated financial statements and the notes thereto and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in our Annual Report on Form 10-K for the year ended December 31, 2020.

Unless otherwise provided in this Quarterly Report, references to the "Company," "we," "us," and "our" refer to Puma Biotechnology, Inc., a Delaware corporation, together with its wholly owned subsidiaries.

Overview

We are a biopharmaceutical company with a focus on the development and commercialization of innovative products to enhance cancer care. We in-licensed from Pfizer, Inc., or Pfizer, the global development and commercialization rights to PB272 (neratinib, oral), PB272 (neratinib, intravenous) and PB357. Neratinib is a potent irreversible tyrosine kinase inhibitor, or TKI, that blocks signal transduction through the human epidermal growth factor receptors, HER1, HER2 and HER4. Currently, we are primarily focused on the development and commercialization of the oral version of neratinib, our most advanced drug candidate is directed at the treatment of HER2-positive breast cancer and HER2 mutated cancers. We believe neratinib has clinical application in the treatment of several other cancers as well, including other tumor types that over-express or have a mutation in HER2 or EGFR, such as breast cancer, cervical cancer, lung cancer or other solid tumors.

Prior to 2017, our efforts and resources had been focused primarily on acquiring and developing our pharmaceutical technologies, raising capital and recruiting personnel. In 2017, the U.S. Food and Drug Administration, or FDA, approved NERLYNX, formally known as PB272 (neratinib, oral), for the extended adjuvant treatment of adult patients with early stage HER2-overexpressed/amplified breast cancer following adjuvant trastuzumab-based therapy. In February 2020, NERLYNX was also approved by the FDA in combination with capecitabine for the treatment of adult patients with advanced or metastatic HER2-positive breast cancer who have received two or more prior anti-HER2-based regimens in the metastatic setting. In 2018, the European Commission, or EC, granted marketing authorization for NERLYNX in the European Union for the extended adjuvant treatment of adult patients with early-stage hormone receptor positive HER2-overexpressed/amplified breast cancer and who are less than one year from the completion of prior adjuvant trastuzumab-based therapy.

We have entered into exclusive sub-license agreements with various parties to pursue regulatory approval, if necessary, and commercialize NERLYNX, if approved, in numerous regions outside the United States, including Europe (excluding Russia and Ukraine), Australia, Canada, China, Southeast Asia, Israel, Mexico, South Korea, and various countries and territories in Central and South America. We plan to continue to pursue commercialization of NERLYNX in other countries outside the United States, if approved.

In July 2021, our Canadian partner, Knight Therapeutics, Inc., received Health Canada's approval of an alternate dosing regimen (two-week dose escalation) to be incorporated into the prescribing information.

On July 23, 2021, we entered into a note purchase agreement with Athyrium Opportunities IV Co-Invest 1 LP ("Athyrium") for an aggregate principal amount of $100.0 million. The borrowings under the Athyrium Note Purchase Agreement ("Athyrium Notes"), together with cash on hand, were used to repay the outstanding indebtedness, including the applicable exit and prepayment fees owed to lenders under our Oxford Credit facility. See Note 10, Debt for further details regarding both the Athyrium Notes and Oxford Loan and Security Agreement.

Our expenses to date have been related to hiring staff, commencing company-sponsored clinical trials and the build out of our corporate infrastructure and, since 2017, the commercial launch of NERLYNX. Accordingly, our success depends not only on the safety and efficacy of our product candidates, but also on our ability to finance product development. To date, our major sources of working capital have been proceeds from product and license revenue, public offerings of our common stock, proceeds from our credit facility and sales of our common stock in private placements.

Impact of COVID-19

Our priorities during the COVID-19 pandemic continue to be focused on protecting the health and safety of our employees while delivering on our mission to develop and commercialize innovative products to enhance cancer care. Substantially all geographic regions in which our U.S. sales force operates have imposed restrictions and may in the future change or impose additional restrictions to control or limit the spread of COVID-19 and its variants. These restrictions include, but are not limited to "shelter-in-place" orders, quarantines, testing requirements or similar orders or restrictions. These types of restrictions may deter or prevent cancer patients from traveling to see their doctors and result in a decline in revenue for NERLYNX, our only commercial product. Additionally, the impact of COVID-19 has significantly reduced the ability of our commercial team and our sales force to travel and interact personally with physicians and members of the extended healthcare team. This has reduced our commercial team's access to healthcare providers, and a large portion of its promotional activities are now being conducted virtually. Although we have seen some recent easing of local restrictions, these have been inconsistent and have not led to a broad relaxation of requirements. These types of restrictions have adversely impacted our ability to engage with our customers and have adversely impacted sales of NERLYNX, and they may continue to do so. The respective commercial teams affiliated with certain companies to which we sub-license the commercial rights to NERLYNX, and on which we rely for our international sales, have chosen or have been forced to take similar action, and other sub-licensees of NERLYNX may choose or be forced to take similar action in the future. Furthermore, the COVID-19 pandemic has resulted in dramatic increases in unemployment rates, which may result in a substantial number of people becoming uninsured or underinsured. Any of these developments may have an adverse effect on our revenue. We have observed disruptions in patient enrollments in the United States and in our Phase II SUMMIT basket trial. If the COVID-19 pandemic continues to spread in the geographies in which we are conducting clinical trials, we may experience additional disruptions in those clinical trials, which could have a material adverse impact on our clinical trial plans and timelines.

Our ability to continue to operate without any significant negative impacts will in part depend on the length and severity of the COVID-19 pandemic and our ability to protect our employees and our supply chain. We continue to follow and monitor recommended actions of government and health authorities to protect our employees worldwide. For the nine months ended September 30, 2021, we and our key third-party suppliers and manufacturers were able to broadly maintain operations. We rely exclusively on third-party manufacturers to manufacture NERLYNX.

On October 29, 2021, the parties to our class action lawsuit informed the court that they had reached a settlement in principle, and the court entered judgment in the amount of claimed damages and prejudgment interest totaling approximately $54.2 million. On November 2, 2021, the court dismissed the case in light of the parties' settlement, retaining jurisdiction only for settlement approval. The parties' settlement in principle provides that there will be no judgment for liability entered against us or Mr. Auerbach, and provides for payment by us of approximately $54.2 million in two installments, to be paid in January and June of 2022. The settlement in principle is subject to execution of a formal settlement agreement to be negotiated among the parties, which agreement will be submitted to the court for approval. For additional detail regarding the class action lawsuit, see Part II. Item 1. Legal Proceedings in this Quarterly Report on Form 10-Q.

We intend to satisfy our near-term liquidity requirements through a combination of our existing cash and cash equivalents and marketable securities as of September 30, 2021 and proceeds that will become available to us through product sales, royalties and sub-license milestone payments. However, this intention is based on assumptions that may prove to be wrong. Changes may occur that would consume our available capital faster than anticipated, including the length and severity of the COVID-19 pandemic and measures taken to control the spread of COVID-19, as well as changes in and progress of our development activities, the impact of commercialization efforts, acquisitions of additional drug candidates and changes in regulation. Some of these developments have had and may continue to have an adverse effect on our revenue and thus could have an adverse effect on our ability to satisfy the minimum revenue covenants in our Note Purchase Agreement.

Our consolidated financial statements as of and for the three and nine months ended September 30, 2021 have been prepared on the basis that we will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. Based on our cash and marketable securities balances, recurring losses since inception and recent developments in our class action litigation, there is substantial doubt about our ability to continue as a going concern, due to our minimum cash financial covenant. Our ability to continue as a going concern is dependent upon our ability to raise additional capital to sustain operations and continue to commercialize neratinib. We cannot assure you that such funding will be available on commercially reasonable terms, or at all.

Critical Accounting Policies

As of the date of the filing of this Quarterly Report, we believe there have been no material changes to our critical accounting policies and estimates during the nine months ended September 30, 2021 from our accounting policies at December 31, 2020, as reported in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020. We accounted for the following related to sub-license agreements and our legal contingencies and expense during the nine months ended September 30, 2021:

License Revenue:

We recognize license revenue under certain of our sub-license agreements that are within the scope of ASC 606. The terms of these agreements may contain multiple performance obligations, which may include licenses and research and development activities. We evaluate these agreements under ASC 606 to determine the distinct performance obligations. Non-refundable, up-front fees that are not contingent on any future performance and require no consequential continuing involvement by us, are recognized as revenue when the license term commences and the licensed data, technology or product is delivered. We defer recognition of non-refundable upfront license fees if the performance obligations are not satisfied.

Prior to recognizing revenue, we make estimates of the transaction price, including variable consideration that is subject to a constraint. Amounts of variable consideration are included in the transaction price to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur and when the uncertainty associated with the variable consideration is subsequently resolved. Variable consideration may include nonrefundable upfront license fees, payments for research and development activities, reimbursement of certain third-party costs, payments based upon the achievement of specified milestones, and royalty payments based on product sales derived from the collaboration.

If there are multiple distinct performance obligations, we allocate the transaction price to each distinct performance obligation based on its relative standalone selling price. The standalone selling price is generally determined based on the prices charged to customers or using expected cost-plus margin. Revenue is recognized by measuring the progress toward complete satisfaction of the performance obligations.

Legal Contingencies and Expense:

For legal contingencies, we accrue a liability for an estimated loss if the potential loss from any claim or legal proceeding is considered probable and the amount can be reasonably estimated. Legal fees and expenses are expensed as incurred based on invoices or estimates provided by legal counsel. We periodically evaluate available information, both internal and external, relative to such contingencies and adjust the accrual as necessary. We determine whether a contingency should be disclosed by assessing whether a material loss is deemed reasonably possible. In determining whether a loss should be accrued, we evaluate, among other factors, the degree of probability of an unfavorable outcome and the ability to make a reasonable estimate of the amount of the loss (see Note 13, Commitments and Contingencies in the accompanying notes to the financial statements).

Summary of Income and Expenses

Product revenue, net:

Product revenue, net consists of revenue from sales of NERLYNX. We sell NERLYNX to a limited number of specialty pharmacies and specialty distributors in the United States. We record revenue at the net sales price, which includes an estimate for variable consideration for which reserves are established. Variable consideration consists of trade discounts and allowances, product returns, provider chargebacks and discounts, government rebates and other incentives.

License revenue:

License revenue consists of consideration earned for performance obligations satisfied pursuant to our sub-license agreements.

Royalty revenue:

Royalty revenue consists of consideration earned related to product sales made by our sub-licensees in their respective territories pursuant to our sub-license agreements.

Cost of sales:

Cost of sales consists of third-party manufacturing costs, freight, and indirect overhead costs associated with sales of NERLYNX. Cost of sales also includes period costs related to royalty charges payable to Pfizer, the amortization of milestone payments made to Pfizer, certain inventory manufacturing services, inventory adjustment charges, unabsorbed manufacturing and overhead costs, and manufacturing variances.

Selling, general and administrative expenses:

Selling, general and administrative expenses, or SG&A Expenses, consist primarily of salaries and payroll-related costs, stock-based compensation expense, professional fees, business insurance, rent, general legal activities, credit loss expense and other corporate expenses. We expense SG&A Expenses as they are incurred.

Research and development expenses:

Research and development expenses, or R&D Expenses, include costs associated with services provided by consultants who conduct and perform clinical services on our behalf and contract organizations for the manufacturing of clinical materials. During the three and nine months ended September 30, 2021 and 2020, our R&D Expenses consisted primarily of clinical research organization, or CRO, fees; fees paid to consultants; salaries and related personnel costs; and stock-based compensation. We expense our R&D Expenses as they are incurred. Internal R&D Expenses primarily consist of payroll-related costs and also include equipment costs, travel expenses and supplies.

Results of Operations

Three Months Ended September 30, 2021 Compared to Three Months Ended September 30, 2020

Total revenue:

For the three months ended September 30, 2021, total revenue was approximately $46.2 million, compared to $50.8 million for the three months ended September 30, 2020.

Product revenue, net:

Product revenue, net was approximately $43.4 million for the three months ended September 30, 2021, compared to $49.3 million for the three months ended September 30, 2020. This decrease in product revenue, net was primarily attributable to a volume decrease of approximately 18.0% in bottles of NERLYNX sold and an increase in reserves for variable consideration from approximately 15.8% of product revenue for the three months ended September 30, 2020 compared to approximately 19.4% of product revenue, for the three months ended September 30, 2021 offset by increases in the gross selling price that occurred in the third quarter of 2020 and in the first and third quarter of 2021. The increase in reserves for variable consideration is primarily due to an increase in Medicaid claims and government chargebacks as a percentage of gross revenue.

Royalty revenue:

Royalty revenue was approximately $2.8 million for the three months ended September 30, 2021, compared to $1.4 million for the three months ended September 30, 2020. The increase was due to increased product sales by our sub-licensees as they continue to commercialize NERLYNX in additional territories.

Cost of sales:

Cost of sales was approximately $10.3 million for the three months ended September 30, 2021, compared to $9.9 million for the three months ended September 30, 2020. The increase was primarily attributable to the increase in the amortization of the intangible asset under our license agreement with Pfizer and increased royalty expense due to Pfizer.

Selling, general and administrative expenses:

For the three months ended September 30, 2021, SG&A Expenses were approximately $26.1 million, compared to approximately $29.6 million for the three months ended September 30, 2020. SG&A Expenses for the three months ended September 30, 2021 and 2020 were as follows:

Selling, general, and administrative expenses (in thousands)	**For the Three Months Ended September 30,**		**Change**	
			$	**%**
	2021	**2020**	**2021/2020**	**2021/2020**
Payroll and related costs	$ 9,514	$ 10,274	$ (760)	-7.4%
Professional fees and expenses	9,612	11,271	(1,659)	-14.7%
Travel and meetings	1,338	1,090	248	22.8%
Facilities and equipment costs	1,380	1,412	(32)	-2.3%
Stock-based compensation	2,948	4,101	(1,153)	-28.1%
Other	1,292	1,450	(158)	-10.9%
	$ 26,084	$ 29,598	$ (3,514)	-11.9%

For the three months ended September 30, 2021, SG&A Expenses decreased by approximately $3.5 million compared to the same period in 2020, primarily attributable to the following:

- a decrease in professional fees and expenses of approximately $1.7 million, consisting of approximately $1.3 million of lower consultant expenses associated with marketing and commercialization support, and a decrease of approximately $0.4 million in legal fees;
- a decrease in stock-based compensation expense of approximately $1.2 million primarily due to a decrease of approximately $2.2 million for stock awards that have fully vested and a decrease of approximately $0.3 million for stock awards forfeited, partially offset by an increase of approximately $1.3 million from new grants; and
- a decrease in payroll and related costs of approximately $0.8 million resulting from a reduction in headcount.

Research and development expenses:

For the three months ended September 30, 2021, R&D Expenses were approximately $18.8 million, compared to approximately $23.3 million for the three months ended September 30, 2020. R&D Expenses for the three months ended September 30, 2021 and 2020 were as follows:

Research and development expenses (in thousands)	**For the Three Months Ended September 30,**		**Change**	
			$	**%**
	2021	**2020**	**2021/2020**	**2021/2020**
Clinical trial expense	$ 8,396	$ 8,257	$ 139	1.7%
Internal R&D	7,761	9,441	(1,680)	-17.8%
Consultant and contractors	1,347	2,183	(836)	-38.3%
Stock-based compensation	1,332	3,463	(2,131)	-61.5%
	$ 18,836	$ 23,344	$ (4,508)	-19.3%

For the three months ended September 30, 2021, R&D Expenses decreased by approximately $4.5 million compared to the same period in 2020, primarily attributable to the following:

- a decrease in stock-based compensation expense of approximately $2.1 million primarily due to a decrease of $2.3 million for stock awards that have fully vested and a decrease of approximately $0.3 million for stock awards forfeited, partially offset by an increase of $0.5 million from new grants; and

- a decrease in Internal R&D of approximately $1.7 million, primarily due to a reduction in headcount.

Other income (expenses):

Other income (expenses) (in thousands)	**For the Three Months Ended September 30,**		**Change**	
			$	**%**
	2021	**2020**	**2021/2020**	**2021/2020**
Interest income	$ 13	$ 22	$ (9)	-40.9%
Interest expense	(3,121)	(3,627)	506	-14.0%
Legal verdict expense	(24,498)	(15,855)	(8,643)	54.5%
Loss on debt extinguishment	(8,146)	—	(8,146)	-100.0%
Other income	71	128	(57)	-44.5%
	$ (35,681)	$ (19,332)	$ (16,349)	84.6%

Interest expense:

For the three months ended September 30, 2021, we recognized approximately $3.1 million in interest expense, compared to $3.6 million of interest expense for the three months ended September 30, 2020. The decrease in interest expense was primarily the result of the interest expense for the milestone payments being paid to Pfizer in installments.

Legal verdict expense:

For the three months ended September 30, 2021, we recorded additional legal expense of $24.5 million primarily related to our outstanding class action matter. See Item 1. "Legal Proceedings" for further details.

Loss on debt extinguishment:

For the three months ended September 30, 2021, we recognized approximately $8.1 million in loss on debt extinguishment related to our debt refinancing during July 2021. See Item 2 "Liquidity and Capital Resources".

Nine Months Ended September 30, 2021 Compared to Nine Months Ended September 30, 2020

Total revenue:

For the nine months ended September 30, 2021, total revenue was approximately $197.8 million, compared to $172.6 million for the nine months ended September 30, 2020.

Product revenue, net:

Product revenue, net was approximately $138.1 million for the nine months ended September 30, 2021, compared to $146.7 million for the nine months ended September 30, 2020. The decrease in product revenue, net was attributable to a volume decrease of approximately 16.0% in bottles of NERLYNX sold, and an increase in reserves for variable consideration from approximately 15.5% of product revenue for the nine months ended September 30, 2020 to approximately 18.5% of product revenue for the nine months ended September 30, 2021. The increase in reserves for variable consideration is primarily due to an increase in Medicaid claims and government chargebacks as a percentage of gross revenue. The decrease in product revenue, net was partially offset by an increase in gross selling price that occurred in the third quarter of 2020 and in the first and third quarter of 2021.

License revenue:

License revenue was approximately $50.3 million for the nine months ended September 30, 2021, compared to approximately $22.7 million for the nine months ended September 30, 2020. The increase in license revenue is due to a large, upfront payment in connection with an amendment to a sub-license agreement entered into during the nine months ended September 30, 2021.

Royalty revenue:

Royalty revenue was approximately $9.5 million for the nine months ended September 30, 2021, compared to $3.1 million for the nine months ended September 30, 2020. The increase was due to increased product sales by our sub-licensees as they continue to commercialize NERLYNX in additional territories.

Cost of sales:

Cost of sales was approximately $51.8 million for the nine months ended September 30, 2021, compared to $28.4 million for the nine months ended September 30, 2020. The increase in cost of sales was primarily attributable to a $20.0 million one-time license termination fee in February 2021.

Selling, general and administrative expenses:

For the nine months ended September 30, 2021, SG&A Expenses were approximately $93.8 million, compared to approximately $89.9 million for the nine months ended September 30, 2020. SG&A Expenses for the nine months ended September 30, 2021 and 2020 were as follows:

Selling, general, and administrative expenses (in thousands)	**For the Nine Months Ended September 30,**		**Change**	
			$	**%**
	2021	**2020**	**2021/2020**	**2021/2020**
Payroll and related costs	$ 30,113	$ 31,658	$ (1,545)	-4.9%
Professional fees and expenses	30,028	32,252	(2,224)	-6.9%
Travel and meetings	3,380	4,023	(643)	-16.0%
Facilities and equipment costs	4,175	4,276	(101)	-2.4%
Stock-based compensation	23,281	13,523	9,758	72.2%
Other	2,855	4,150	(1,295)	-31.2%
	$ 93,832	$ 89,882	$ 3,950	4.4%

For the nine months ended September 30, 2021, SG&A Expenses increased by approximately $3.9 million compared to the same period in 2020, primarily attributable to the following:

- an increase in stock-based compensation expense of approximately $9.8 million primarily due to the $13.6 million incremental expense resulting from the modification of the term of Mr. Auerbach's warrant, and an increase of approximately $3.4 million from new grants, partially offset by a decrease of approximately $5.9 million for fully vested grants and a decrease of approximately $1.3 million for awards forfeited.

This increase was partially offset by:

- a decrease in professional fees and expenses of approximately $2.2 million, consisting of approximately $3.1 million for professional fees, primarily related to decreased consultancy efforts related to marketing and commercialization support, and lower audit and IT related expenses of approximately $0.2 million, partially offset by an increase of approximately $0.4 million in insurance premiums and an increase of approximately $0.7 million in legal fees in connection with various lawsuits;

- a decrease in payroll and related costs of approximately $1.5 million due to a reduction in headcount;

- a decrease in other expenses of approximately $1.3 million due to a recovery of bad debt expense of $1.0 million and other miscellaneous costs; and

- a decrease in travel and meeting related costs of approximately $0.6 million resulting from COVID travel restrictions.

Research and development expenses:

For the nine months ended September 30, 2021, R&D expenses were approximately $57.7 million, compared to approximately $73.5 million for the nine months ended September 30, 2020. R&D expenses for the nine months ended September 30, 2021 and 2020 were as follows:

Research and development expenses (in thousands)	**For the Nine Months Ended September 30,**		**Change**	
			$	**%**
	2021	**2020**	**2021/2020**	**2021/2020**
Clinical trial expense	$ 21,504	$ 24,130	$ (2,626)	-10.9%
Internal R&D	26,230	29,564	(3,334)	-11.3%
Consultant and contractors	4,870	6,218	(1,348)	-21.7%
Stock-based compensation	5,098	13,578	(8,480)	-62.5%
	$ 57,702	$ 73,490	$ (15,788)	-21.5%

For the nine months ended September 30, 2021, R&D Expenses decreased by approximately $15.8 million compared to the same period in 2020, primarily attributable to the following:

- a decrease in stock-based compensation expense of approximately $8.5 million primarily due to a decrease of approximately $8.6 million for fully vested grants and a decrease of $1.3 million for awards forfeited, partially offset by an increase of $1.4 million from new grants;
- a decrease in internal R&D expense of approximately $3.3 million resulting from a reduction in headcount;
- a decrease in clinical trial expenses of approximately $2.6 million due to the close out of certain clinical trials and a reduction in patient enrollments and monitoring costs; and
- a decrease in consultant and contractor expenses of approximately $1.3 million due to the close out of certain clinical trials.

Other income (expenses):

Other income (expenses) (in thousands)	**For the Nine Months Ended September 30,**		**Change**	
			$	**%**
	2021	**2020**	**2021/2020**	**2021/2020**
Interest income	$ 147	$ 474	$ (327)	-69.0%
Interest expense	(10,089)	(10,479)	390	-3.7%
Legal verdict expense	(9,781)	(16,041)	6,260	-39.0%
Loss on debt extinguishment	(8,146)	—	(8,146)	0.0%
Other income	173	298	(125)	-41.9%
	$ (27,696)	$ (25,748)	$ (1,948)	7.6%

Legal verdict (expense) credit:

For the nine months ended September 30, 2021, we reduced our legal expense accrual by approximately $20.0 million with respect to the *Eshelman v. Puma Biotechnology, Inc., et al.* judgment, and we increased our legal expense accrual by approximately $29.6 million with respect to the *Hsu v. Puma Biotechnology, Inc., et.al* judgment, which resulted in a net legal verdict expense of $9.8 million for the period.

Loss on debt extinguishment:

For the nine months ended September 30, 2021, we recognized approximately $8.1 million in connection with our repayment and termination of the Oxford Credit Facility, which we replaced with the Athyrium Note. See Item 2. Liquidity and Capital Resources.

Liquidity and Capital Resources

We have reported a net loss of approximately $44.7 million and net loss of approximately $33.4 million for the three and nine months ended September 30, 2021, respectively. As of September 30, 2021, we had approximately $87.5 million in cash and marketable securities. Our commercialization, research and development or marketing efforts may require funding in addition to our current cash and marketable securities. Additionally, in light of recent developments in our class action lawsuit, we may need to make two payments totaling approximately $54.2 million in January and June 2022 in settlement of the litigation. As a result, the combination of these factors together with our cash and marketable securities balances and recurring losses since inception raise substantial doubt about our ability to continue as a going concern.

We may need to obtain additional funding to sustain operations and continue to commercialize neratinib in the United States. Our ability to obtain additional funding may be adversely impacted by a variety of issues including, uncertain market conditions, the COVID-19 pandemic, our success in commercializing neratinib, unfavorable decisions of regulatory authorities, adverse clinical trial results or the outcomes of outstanding or new litigation. We cannot assure you that such funding will be available on commercially reasonable terms, or at all. While we have been successful in raising capital in the past, there can be no assurance that we will be able to do so in the future. Our ability to obtain funding may be adversely impacted by uncertain market conditions, including the COVID-19 pandemic, our success in commercializing neratinib, unfavorable decisions of regulatory authorities or adverse clinical trial results. The outcome of these matters cannot be predicted at this time.

The following table summarizes our liquidity and capital resources as of September 30, 2021 and December 31, 2020, and for the nine months ended September 30, 2021 and 2020, and is intended to supplement the more detailed discussion that follows:

Liquidity and capital resources (in thousands)	As of September 30, 2021	As of December 31, 2020
Cash and cash equivalents	$ 63,947	$ 85,293
Marketable securities	$ 23,596	$ 8,096
Working capital	$ 20,662	$ 31,884
Stockholders' deficit	$ (10,922)	$ (5,951)

	Nine Months Ended September 30, 2021	Nine Months Ended September 30, 2020
Cash provided by (used in):		
Operating activities	$ 26,085	$ 6,408
Investing activities	(15,502)	22,580
Financing activities	(31,929)	45
Net increase (decrease) in cash, cash equivalents and restricted cash	$ (21,346)	$ 29,033

On November 2, 2021, we implemented a restructuring of the organization in part due to the impact of COVID-19 on our sales. The restructuring includes a reduction in headcount of approximately 13% consisting primarily of commercial and research personnel. We anticipate approximately $1.2 million in severance related costs which includes salary, insurance premiums, and sales commissions. This cost will be recorded in the fourth quarter of 2021. We believe that all payments related to this plan will be made by March 31, 2022.

Operating Activities:

Cash provided by operating activities for the nine months ended September 30, 2021 consisted of a net loss of approximately $33.4 million, offset by a decrease of approximately $39.5 million of non-cash items, including stock-based compensation, depreciation and amortization, loss on extinguishment of debt of approximately $3.8 million related to the write off of debt issuance costs and provision for credit loss expense. These decreases were partially offset by an increase in accrued expenses and other of approximately $3.7 million, an increase in inventory of approximately $3.8 million, and an increase in our post-marketing commitment liability of approximately $0.9 million which were partially offset by decreases of approximately $5.8 million in accounts receivable, net and other current assets, and an increase of approximately $8.0 million in accounts payable.

Cash provided by operating activities for the nine months ended September 30, 2020 consisted of a net loss of approximately $45.0 million, offset by approximately $34.2 million of non-cash items, such as stock-based compensation and depreciation and amortization, an increase in accrued expense and other of approximately $21.0 million, a decrease in prepaid expenses and other of approximately $4.4 million, and a decrease in accounts receivable, net of approximately $1.8 million. These increases were partially offset by a decrease in accounts payable of approximately $6.7 million, an increase in other current assets of approximately $3.1 million and other immaterial changes.

Investing Activities:

During the nine months ended September 30, 2021, cash used in investing activities was approximately $15.5 million, compared to net cash provided by investing activities of $22.6 million for the same period in 2020.

Cash used in investing activities during the nine months ended September 30, 2021 consisted of approximately $38.1 million of in purchases available-for-sale securities, partially offset by maturities of approximately $22.6 million of available-for-sale securities.

Net cash provided by investing activities during the nine months ended September 30, 2020 consisted of approximately $57.0 million of maturities of available-for-sale securities, partially offset by the purchase of available-for-sale securities of approximately $24.4 million and an increase in intangible assets relating to the milestone achieved under the Company's license agreement with Pfizer of $10.0 million.

Financing Activities:

During the nine months ended September 30, 2021, net cash used in financing activities was $31.9 million. During July 2021, we used approximately $8.5 million for the payment of prepayment costs, end of loan payment costs and other extinguishment costs related to our credit facility with Oxford, and approximately $1.9 million in payment of debt issuance costs related to the Athyrium Notes, and $20.0 million was used for installment payments relating to the milestone achieved under our license agreement with Pfizer of $20.00 million.

Oxford Loan and Security Agreement:

In October 2017, we entered into a loan and security agreement with SVB, as administrative agent, and the lenders party thereto from time to time, or the Original Lenders, including Oxford Finance, LLC, or Oxford, and SVB. Pursuant to the terms of the credit facility provided for by the loan and security agreement, or the Original Credit Facility, we borrowed $50.0 million. In May 2018, we entered into an amendment to the loan and security agreement, which provided for an amended credit facility, or the Amended Credit Facility. Under the Amended Credit Facility, the Original Lenders agreed to make term loans available to us in an aggregate amount of $155.0 million, consisting of (i) an aggregate amount of $125.0 million, the proceeds of which, in part, were used to repay the $50.0 million we borrowed under the Original Credit Facility, and (ii) an aggregate amount of $30.0 million that we drew in December 2018, which was available under the Amended Credit Facility as a result of achieving a specified minimum revenue milestone.

On June 28, 2019, or the Effective Date, we entered into an amendment and restatement of the loan and security agreement, which provided for a new credit facility, or the New Credit Facility, with Oxford, as collateral agent, and the lenders party thereto from time to time, including Oxford, pursuant to which we repaid the $155.0 million outstanding under the Amended Credit Facility, as well as all applicable exit and prepayment fees, owed to the Original Lenders under the Amended Credit Facility, using cash on hand and $100.0 million in new borrowings from the New Credit Facility. Under the New Credit Facility, we issued to Oxford new and/or replacement secured promissory notes in an aggregate principal amount for all such promissory notes of $100.0 million evidencing the New Credit Facility.

The New Credit Facility was secured by substantially all of our personal property other than our intellectual property. We also pledged 65% of the issued and outstanding capital stock of our subsidiaries, Puma Biotechnology Ltd. and Puma Biotechnology B.V. The New Credit Facility limited our ability to grant any interest in our intellectual property to certain permitted licenses and permitted encumbrances set forth in the agreement.

The term loans under the New Credit Facility bore interest at an annual rate equal to the greater of (i) 9.0% and (ii) the sum of (a) the "prime rate," as reported in The Wall Street Journal on the last business day of the month that immediately preceded the month in which the interest will accrue, plus (b) 3.5%. We were required to make monthly interest-only payments on each term loan under the New Credit Facility commencing on the first calendar day of the calendar month following the funding date of such term loan, and continuing on the first calendar day of each calendar month thereafter through August 1, 2021, or the Amortization Date. Commencing on the Amortization Date, and continuing on the first calendar day of each calendar month thereafter, we would have made consecutive equal monthly payments of principal, together with applicable interest, in arrears to each lender under the New Credit Facility, calculated pursuant to the New Credit Facility. All unpaid principal and accrued and unpaid interest with respect to each term loan under the New Credit Facility was due and payable in full on June 1, 2024, or the Maturity Date. Upon repayment of such term loans, we were also required to make a final payment to the lenders equal to 7.5% of the aggregate principal amount of such term loans outstanding as of the Effective Date.

At our option, we were able to prepay the outstanding principal balance of any term loan in whole but not in part, subject to a prepayment fee of 3.0% of any amount prepaid if the prepayment occurred through and including the first anniversary of the funding date of such term loan, 2.0% of the amount prepaid if the prepayment occurred after the first anniversary of the funding date of such term loan through and including the second anniversary of the funding date of such term loan, and 1.0% of the amount prepaid if the prepayment occurred after the second anniversary of the funding date of such term loan and prior to the Maturity Date.

Athyrium Note Purchase Agreement:

On July 23, 2021, or the NPA Effective Date, we repaid the $100.0 million in term loans outstanding under the New Credit Facility, as well as all accrued interest, applicable exit, prepayment and legal fees owed to the lenders under the New Credit Facility in an amount of approximately $9.2 million, using cash on hand and $100.0 million in new borrowings from the issuance of notes under the note purchase agreement, or the Athyrium Notes, that we entered into on the NPA Effective Date with Athyrium Opportunities IV Co-Invest 1 LP, or, together with its affiliates, Athyrium, as administrative agent, and the purchasers party thereto from time to time, or the Purchasers, including Athyrium.

Pursuant to the Athyrium Notes, the Purchasers agreed to purchase from us, and we agreed to issue to such Purchasers, notes payable by us. On the NPA Effective Date, we issued to the Purchasers notes in an aggregate principal amount for all such notes of $100.0 million. Subject to satisfaction of certain conditions set forth in the Athyrium Notes, $25.0 million in additional notes remains available to us under the Athyrium Notes.

The obligations of the Company under the Athyrium Notes are secured by substantially all of our assets, including our intellectual property. We also pledged 65% of the issued and outstanding capital stock of our subsidiaries, Puma Biotechnology Ltd. and Puma Biotechnology B.V.

The notes bear interest at an annual rate equal to the sum of (a) 8.0% and (b) Adjusted Three-Month LIBOR for such Interest Period (as defined in the Athyrium Notes). We are required to make quarterly interest payments on each note issued under the Athyrium Notes commencing on the last business day of September 2021, and continuing on the last business day of each March, June, September and December through June 30, 2024, or the NPA Amortization Date. Commencing on the NPA Amortization Date, and continuing on the last day of each March, June, September and December thereafter, we will make consecutive equal quarterly payments of principal, together with applicable interest, in arrears to each Purchaser, calculated pursuant to the Athyrium Notes. All unpaid principal and accrued and unpaid interest with respect to each note issued under the Athyrium Notes is due and payable in full on July 23, 2026, or the NPA Maturity Date. At our option, we may prepay the outstanding principal balance of all or any portion of the principal amount of the notes, subject to a prepayment fee equal to (i) a make-whole amount if the prepayment occurs on or prior to the second anniversary of the NPA Effective Date and (ii) 2.0% of the amount prepaid if the prepayment occurs after the second anniversary of the NPA Effective Date by on or prior to the third anniversary of the NPA Effective Date. Upon prepayment or repayment of all or any portion of the principal amount of the notes (whether on the NPA Maturity Date or otherwise), we are also required to pay an exit fee to the Purchasers equal to 2.00% of the aggregate principal amount of such notes prepaid or repaid.

The Athyrium Notes include affirmative and negative covenants applicable to us, our current subsidiaries and any subsidiaries we create in the future. The affirmative covenants include, among others, covenants requiring us to maintain our legal existence and governmental approvals, deliver certain financial reports, maintain insurance coverage and satisfy certain requirements regarding deposit accounts. We must also (i) maintain a minimum amount of unrestricted cash in deposit accounts subject to a control agreement in favor of Athyrium at any time and (ii) achieve at least a specified minimum amount of revenue (based on a combination of both sales of NERLYNX in the United States and royalty revenues received by us for sales of NERLYNX outside the United States), measured as of the last day of each four consecutive fiscal quarter period. The negative covenants include, among others, restrictions on our transferring collateral, incurring additional indebtedness, engaging in mergers or acquisitions, paying dividends or making other distributions, making investments, creating liens, selling assets and suffering a change in control, in each case subject to certain exceptions.

The Athyrium Notes also include events of default, the occurrence and continuation of which could cause interest to be charged at the rate that is otherwise applicable plus 2.0% and would provide Athyrium, as administrative agent, with the right to exercise remedies against us and the collateral securing the new credit facility, including foreclosure against the property securing the obligations of us under the Athyrium Notes, including our cash. These events of default include, among other things, our failure to pay principal or interest due under the Athyrium Notes, a breach of certain covenants under the Athyrium Notes, our insolvency, a material adverse change, the occurrence of any default under certain other indebtedness in an amount greater than $750,000 and one or more judgments against us in an amount greater than $750,000 individually or in the aggregate that remains discharged or otherwise satisfied, in each case, as further described in the Athyrium Notes.

As of September 30, 2021, there were $102.0 million in term loans outstanding under the Athyrium Notes, representing all of our long-term debt outstanding as of that date, and we were in compliance with all applicable covenants.

Current and Future Financing Needs:

We did not receive or record any product revenues until the third quarter of 2017. We have spent, and expect to continue to spend, substantial amounts in connection with implementing our business strategy, including our planned product development efforts, our clinical trials, our research and development efforts and our commercialization efforts.

We may choose to begin new research and development efforts or we may choose to launch additional marketing efforts. These efforts may require funding in addition to the cash and cash equivalents totaling approximately $63.9 million and $23.6 million in marketable securities available at September 30, 2021. While our consolidated financial statements have been prepared on a going concern basis, we expect to continue incurring significant losses for the foreseeable future and will need to generate significant revenue to sustain operations and successfully commercialize neratinib. While we have been successful in raising financing in the past, there can be no assurance that we will be able to do so in the future. Our ability to obtain funding may be adversely impacted by uncertain market conditions, including the global COVID-19 pandemic, our success in commercializing neratinib, unfavorable decisions of regulatory authorities or adverse clinical trial results. The outcome of these matters cannot be predicted at this time.

In addition, we have based our estimate of capital needs on assumptions that may prove to be wrong. Changes may occur that would consume our available capital faster than anticipated, including the length and severity of the COVID-19 pandemic and measures taken to control the spread of COVID-19, as well as changes in and progress of our development activities, the impact of commercialization efforts, acquisitions of additional drug candidates and changes in regulation. Potential sources of financing include strategic relationships, public or private sales of equity or debt and other sources of funds. We may seek to access the public or private equity markets when conditions are favorable due to our long-term capital requirements. If we raise funds by selling additional shares of common stock or other securities convertible into common stock, the ownership interests of our existing stockholders will be diluted. If we are not able to obtain financing when needed, we may be unable to carry out our business plan. As a result, we may have to significantly limit our operations, and our business, financial condition and results of operations would be materially harmed. In such an event, we will be required to undertake a thorough review of our programs, and the opportunities presented by such programs, and allocate our resources in the manner most prudent.

Non-GAAP Financial Measures

In addition to our operating results, as calculated in accordance with generally accepted accounting principles, or GAAP, we use certain non-GAAP financial measures when planning, monitoring, and evaluating our operational performance. The following table presents our net loss and net loss per share, as calculated in accordance with GAAP, as adjusted to remove the impact of stock-based compensation. For the three and nine months ended September 30, 2021, stock-based compensation represented approximately 9.5% and 18.7% of our operating expenses, respectively, compared to 14.3% and 16.6% for the same respective periods in 2020, in each case excluding cost of sales. Our management believes that these non-GAAP financial measures are useful to enhance understanding of our financial performance, are more indicative of our operational performance and facilitate a better comparison among fiscal periods. These non-GAAP financial measures are not, and should not be viewed as, substitutes for GAAP reporting measures.

Reconciliation of GAAP Net Loss to Non-GAAP Adjusted Net Loss and GAAP Net Loss Per Share to Non-GAAP Adjusted Net Loss Per Share (in thousands except share and per share data)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2021	2020	2021	2020
GAAP net loss	$ (44,672)	$ (31,463)	$ (33,350)	$ (45,001)
Adjustments:				
Stock-based compensation -				
Selling, general and administrative (1)	2,950	4,101	23,282	13,523
Research and development (2)	1,332	3,464	5,099	13,579
Non-GAAP adjusted net loss	$ (40,390)	$ (23,898)	$ (4,969)	$ (17,899)
GAAP net loss per share—basic	$ (1.09)	$ (0.79)	$ (0.82)	$ (1.14)
Adjustment to net loss (as detailed above)	0.10	0.19	0.70	0.69
Non-GAAP adjusted basic net loss per share (3) (4)	$ (0.99)	$ (0.60)	$ (0.12)	$ (0.45)
GAAP net loss per share—diluted	$ (1.09)	$ (0.79)	$ (0.82)	$ (1.14)
Adjustment to net loss (as detailed above)	0.10	0.19	0.70	0.69
Non-GAAP adjusted diluted net loss per share (5) (6)	$ (0.99)	$ (0.60)	$ (0.12)	$ (0.45)

(1) To reflect a non-cash charge to operating expense for selling, general, and administrative stock-based compensation.
(2) To reflect a non-cash charge to operating expense for research and development stock-based compensation.
(3) Non-GAAP adjusted basic net loss per share was calculated based on 40,813,609 and 40,520,041 weighted-average shares of common stock outstanding for the three and nine months ended September 30, 2021, respectively.
(4) Non-GAAP adjusted basic net loss per share was calculated based on 39,695,444 and 39,473,691 weighted-average shares of common stock outstanding for the three and nine months ended September 30, 2020, respectively.
(5) Non-GAAP adjusted diluted net loss per share was calculated based on 40,813,609 and 40,520,041 weighted-average shares of common stock outstanding for the three and nine months ended September 30, 2021, respectively.
(6) Non-GAAP adjusted diluted net loss per share was calculated based on 39,695,444 and 39,473,691 weighted-average shares of common stock outstanding for the three and nine months ended September 30, 2020, respectively.

Off-Balance Sheet Arrangements

We do not have any “off-balance sheet agreements,” as defined by SEC regulations.

Contractual Obligations

In June 2020, we entered into a letter agreement, or the Letter Agreement, with Pfizer relating to the method of payment associated with our achievement of a milestone that triggered a $40.0 million payment under our license agreement with Pfizer. The Letter Agreement permitted us to make the milestone payment in installments with the majority of the amount payable to Pfizer (including interest) by September 2021. All amounts related to the Letter Agreement were paid in full during August 2021.

Other than as described in the preceding paragraph, there have been no material changes outside the ordinary course of business to our contractual obligations and commitments as described in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Annual Report on Form 10-K for the year ended December 31, 2020.

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Some of the securities that we invest in have market risk in that a change in prevailing interest rates may cause the principal amount of the cash equivalents to fluctuate. Financial instruments that potentially subject us to significant concentrations of credit risk consist primarily of cash and cash equivalents. We invested our excess cash primarily in cash equivalents such as money market investments as of September 30, 2021. The primary objectives of our investment activities are to ensure liquidity and to preserve principal while at the same time maximizing the income we receive from our cash and cash equivalents without significantly increasing risk. Additionally, we established guidelines regarding approved investments and maturities of investments, which are designed to maintain safety and liquidity.

Because of the short-term maturities of our cash equivalents, we do not believe that a 10% increase in interest rates would have a material effect on the realized value of our cash equivalents.

We also have interest rate exposure as a result of borrowings outstanding under our Note Purchase Agreement. As of September 30, 2021, the outstanding principal amount of our borrowings under our prior loan and security agreement was $100.0 million, which has since been repaid in full. As of July 23, 2021, the outstanding principal amount of our borrowings under our Note Purchase Agreement was $100.0 million. Our borrowings under the Note Purchase Agreement bear interest at an annual rate equal to the sum of (a) 8.0% and (b) Adjusted Three-Month LIBOR for such Interest Period (as defined in the Note Purchase Agreement). Changes in LIBOR may therefore affect our interest expense associated with our borrowings under the Note Purchase Agreement.

Item 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Exchange Act, is recorded, processed, summarized and reported within the timelines specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives and in reaching a reasonable level of assurance, management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we have evaluated the effectiveness of our disclosure controls and procedures (as defined under Exchange Act Rule 13a-15(e)), as of September 30, 2021. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that these disclosure controls and procedures were effective as of September 30, 2021.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the three months ended September 30, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

Hsu v. Puma Biotechnology, Inc., et al.

On June 3, 2015, Hsingching Hsu, individually and on behalf of all others similarly situated, filed a class action lawsuit against us and certain of our executive officers in the United States District Court for the Central District of California (Case No. 8:15-cv-00865-AG-JCG). On October 16, 2015, lead plaintiff Norfolk Pension Fund filed a consolidated complaint on behalf of all persons who purchased our securities between July 22, 2014 and May 29, 2015. A trial on the claims relating to four statements alleged to have been false or misleading was held from January 15 to January 29, 2019. At trial, the jury found that three of the four challenged statements were not false or misleading, and thus found in the defendants' favor on those claims. The jury found liability as to one statement and awarded a maximum of $4.50 per share in damages, which represents approximately 5% of the total claimed damages of $87.20 per share. On September 9, 2019, the Court entered an order specifying the rate of prejudgment interest to be awarded on any valid claims at the 52-week Treasury Bill rate. On September 8, 2020, and as supplemented on October 9, 2020, the claims administrator submitted its final claims report, reflecting approximately $50.5 million in claimed damages, exclusive of prejudgment interest. On October 29, 2021, the parties informed the Court that they had reached a settlement in principle, and the Court entered judgment in the amount of claimed damages and prejudgment interest totaling approximately $54.2 million. On November 2, 2021, the Court dismissed the case in light of the parties' settlement, retaining jurisdiction only for settlement approval. The parties' settlement in principle provides that there will be no judgment for liability entered against Defendants, and provides for payment by us of approximately $54.2 million in two installments, to be paid in January and June of 2022. The settlement in principle is subject to execution of a formal settlement agreement to be negotiated among the parties, which agreement will be submitted to the court for approval.

Eshelman v. Puma Biotechnology, Inc., et al.

In February 2016, Fredric N. Eshelman filed a lawsuit against our Chief Executive Officer and President, Alan H. Auerbach, and us in the United States District Court for the Eastern District of North Carolina (Case No. 7:16-cv-00018-D). The complaint generally alleged that we and Mr. Auerbach made defamatory statements regarding Dr. Eshelman in connection with a proxy contest. In May 2016, Dr. Eshelman filed a notice of voluntary dismissal of the claims against Mr. Auerbach. A trial on the remaining defamation claims against us took place from March 11 to March 15, 2019. At trial, the jury found us liable and awarded Dr. Eshelman $15.9 million in compensatory damages and $6.5 million in punitive damages. We strongly disagree with the verdict and, on April 22, 2019, filed a motion for a new trial or, in the alternative, a reduced damages award. The Court denied that motion on March 2, 2020. We have appealed that ruling and the verdict. Additionally, after trial, the plaintiff filed a motion seeking approximately $3.0 million in attorneys' fees, as well as pre-judgment interest. In the Court's March 2 ruling, it denied the motion for attorneys' fees but granted the request for pre-judgment interest, bringing the total judgment to $26.3 million. On March 30, 2020, the plaintiff filed a notice of cross-appeal and conditional cross-appeal, appealing the Court's order denying the plaintiff's request for attorneys' fees and conditionally cross-appealing a Court ruling that certain communications between Mr. Auerbach and his attorneys were protected by attorney-client privilege and a related evidentiary ruling. On June 23, 2021, the United States Court of Appeals for the Fourth Circuit affirmed the liability verdict in the *Eshelman v. Puma Biotechnology, Inc., et al.* matter but found the $22.35 million damages award, payable by us, to be excessive in light of the evidence at trial. The Court vacated this award and remanded for a new trial on damages. The Court's judgment will eliminate the damages award, including interest on the judgment, pending further proceedings on remand. On July 7, 2021, the plaintiff filed a petition for panel or *en banc* rehearing, which was denied on July 20, 2021. On July 26, 2021, the plaintiff filed a motion to stay issuance of the Fourth Circuit's mandate pending the filing and resolution of a petition for certiorari in the Supreme Court. The Fourth Circuit denied that motion on July 29, 2021. On October 18, 2021, the plaintiff filed a petition for certiorari with the Supreme Court seeking review of the Fourth Circuit's ruling. We estimate the high end of potential damages in the matter could be approximately $2.8 million which also represents our estimate as the most likely outcome.

Legal Malpractice Suit

On September 17, 2020, we filed a lawsuit against Hedrick Gardner Kincheloe & Garofalo, L.L.P. and David L. Levy, the attorneys who previously represented us in *Eshelman v. Puma Biotechnology, Inc., et al.* in the Superior Court of Mecklenburg County, North Carolina. We are alleging legal malpractice based on the defendants' negligent handling of the defense of us in *Eshelman v. Puma Biotechnology, Inc., et al*. as detailed above. We are seeking recovery of the entire amount awarded in *Eshelman v. Puma Biotechnology, Inc., et al.* On November 23, 2020, the defendant filed an answer to the complaint denying the allegations of negligence.

On June 23, 2021, the United States Court of Appeals for the Fourth Circuit set aside the damages award in the *Eshelman v. Puma Biotechnology, Inc., et al.* matter and remanded the case to the District Court for a new trial on damages. On October 7, 2021, Judge R. Stuart Albright entered a Order staying all proceedings in the legal malpractice case for a period of six months to allow time to resolve the damages issues in the Eshelman case. As a result, the amount of potential damages that may be recovered in the legal malpractice case is uncertain at this time.

Patent-Related Proceedings

On September 22, 2021, we filed a complaint for Patent Infringement against AstraZeneca (AZ), which markets osimeritinib (TAGRISSO), an irreversible EGFR kinase inhibitor for the treatment of patients with certain non-small cell lung cancers. We hold the rights to U.S. Patent No. 10,603,314 (the 314 patent) and U.S. Patent No. 10,596,162 (the 162 patent), which relate to the treatment of EGFR-mutant mediated lung cancers and filed suit to enforce our patent rights in the '314 and '162 patents against AZ for infringement arising out of AZ's manufacture, use, offer for sale, sale, distribution, and/or importation of osimertinib and TAGRISSO® dosage forms.

We received a Notice Letter dated September 29, 2021 from Sandoz Inc. ("Sandoz") notifying us of its Abbreviated New Drug Application (ANDA), which contains a Paragraph IV certification against U.S. Patent No. 7,399,865 that is listed, among other patents, in the U.S. Food and Drug Administration (FDA) list of Approved Drug Products with Therapeutic Equivalence Evaluations, for NERLYNX®. Sandoz is seeking to manufacture and market a generic version of NERLYNX® (neratinib) Tablets, 40 mg, in the United States. In response to the Notice Letter, we, with our licensor, have 45 days, which we will calculate from

the date above, to file an infringement action against Sandoz in order to avail ourselves of the statutory 30-month stay of final FDA approval of Sandoz's ANDA. We plan to protect our patent rights to the full extent of the law.

Item 1A. RISK FACTORS

Under Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2020, we identified important factors that could affect our financial performance and could cause our actual results for future periods to differ materially from our anticipated results or other expectations, including those expressed in any forward-looking statements made in this Quarterly Report. Except as described below, there has been no material change in our risk factors subsequent to the filing of our prior reports referenced above. However, the risks described in our reports are not the only risks we face. Additional risks and uncertainties that we currently deem to be immaterial or not currently known to us, as well as other risks reported from time to time in our reports to the SEC, also could cause our actual results to differ materially from our anticipated results or other expectations.

We have been subject to securities litigation in the past, and volatility in the price of our common stock may subject us to securities litigation in the future.

In the past, securities class action litigation has often been brought against a company following periods of volatility in the market price of its securities. This risk is especially relevant for us because pharmaceutical companies have experienced significant stock price volatility in recent years. These types of lawsuits are subject to inherent uncertainties, and are expensive and time-consuming to investigate, defend and resolve. For instance, in *Hsu v. Puma Biotechnology, Inc., et al.*, the plaintiff alleged that we and certain of our executive officers made false or misleading statements and failed to disclose material adverse facts about our business, operations, prospects and performance in violation of the Exchange Act. In February 2019, a jury found that we had liability on one of four alleged misstatements, and awarded a maximum of $4.50 per share in damages, representing approximately 5% of total claimed damages. On October 29, 2021 the parties to the litigation the parties informed the court that they had reached a settlement in principle, and the court entered judgment in the amount of claimed damages and prejudgment interest totaling approximately $54.2 million. On November 2, 2021, the court dismissed the case in light of the parties' settlement, retaining jurisdiction only for settlement approval. The parties' settlement in principle provides that there will be no judgment for liability entered against us or Mr. Auerbach, and provides for payment by us of approximately $54.2 million in two installments, to be paid in January and June of 2022. The settlement in principle is subject to execution of a formal settlement agreement to be negotiated among the parties, which agreement will be submitted to the court for approval. We cannot assure you that we will be able to reach final agreement on a settlement of the class action lawsuit on the proposed terms. If the settlement is not finalized and approved, this action and any additional litigation could result in substantial costs. The *Hsu* lawsuit is described further in Part II. Item 1. Legal Proceedings in this Quarterly Report on Form 10-Q. The *Hsu* lawsuit and any other litigation to which we are a party may similarly divert our management's attention and financial and other resources, or result in an onerous or unfavorable judgment that may not be reversed upon appeal or in payments of substantial monetary damages or fines. Additionally, we may decide to settle such lawsuits on similarly unfavorable terms, which could adversely affect our business, financial condition, results of operations or stock price.

Our consolidated financial statements for the three and nine months ended September 30, 2021 reflect substantial doubt about our ability to continue as a going concern.

We have reported net losses of approximately $44.7 million and $33.4 million, respectively, for the three and nine months ended September 30, 2021. As of September 30, 2021 we had $87.5 million in cash and marketable securities. Our commercialization, research and development or and marketing efforts may require funding in addition to our current cash and marketable securities. Additionally, in light of recent developments in our class action litigation, we anticipate making two payments totaling approximately $54.2 million in January and June 2022 in settlement of the litigation. This, combined with the risk of noncompliance with the financial covenants in our outstanding indebtedness, raises substantial doubt about our ability to continue as a going concern for the twelve months following the date of this report on Form 10-Q. As a result, we are at risk of noncompliance with the minimum cash financial covenant in our outstanding indebtedness which could raise substantial doubt about our ability to continue as a going concern.

As a result, we are likely to need to obtain additional funding to sustain operations and continue to commercialize neratinib in the United States. Our ability to obtain additional funding may be adversely impacted by a variety of issues including, uncertain market conditions, the COVID-19 pandemic, our success in commercializing neratinib, unfavorable decisions of regulatory authorities, adverse clinical trial results or the outcomes of outstanding or new litigation. We cannot assure you that such funding will be available on commercially reasonable terms, or at all.

Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Recent Sales of Unregistered Securities

We did not sell any of our equity securities without registration under the Securities Act of 1933, as amended, during the three months ended September 30, 2021.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

Neither we nor any “affiliated purchasers” within the definition of Rule 10b-18(a)(3) promulgated under the Exchange Act made any purchases of our equity securities during the quarter ended September 30, 2021.

Item 3. DEFAULTS UPON SENIOR SECURITIES

None.

Item 4. MINE SAFETY DISCLOSURES

Not applicable.

Item 5. OTHER INFORMATION

On November 2, 2021, we implemented a restructuring in part due to the impact of COVID-19 on our sales. The restructuring includes a reduction in headcount of approximately 13% consisting primarily of commercial and research personnel. We anticipate that we will incur approximately $1.2 million in severance related costs which includes salary, insurance premiums, and sales commissions. This cost will be recorded in the fourth quarter of 2021. We believe that all payments related to this plan will be made by March 31, 2022.

Item 6. EXHIBITS

(a) Exhibits required by Item 601 of Regulation S-K.

Exhibit Number	Description
3.1	Second Amended and Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware on June 14, 2016 (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on June 15, 2016 and incorporated herein by reference)
3.2	Third Amended and Restated Bylaws of the Company (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on May 28, 2019 and incorporated herein by reference)
10.1+*	Note Purchase Agreement with Athyrium Opportunities IV Co-Invest LP dated July 23, 2021
10.2#	Second Amendment to Puma Biotechnology, Inc. 2017 Incentive Award Plan (filed as Exhibit 99.12 to the Company's Current Report on Form S-8 filed with the SEC on September 16, 2021, and incorporated herein by reference)
31.1+	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 with respect to the registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2021
31.2+	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, with respect to the registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2021
32.1++	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2++	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS+	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH+	Inline XBRL Taxonomy Extension Schema Document
101.CAL+	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF+	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB+	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE+	Inline XBRL Taxonomy Extension Linkbase Document
104+	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

\+ Filed herewith

++ Furnished herewith

* Portions of this exhibit (indicated by asterisks) have been omitted pursuant to Regulation S-K, Item 601(b)(10). Such omitted information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

\# Management contract or compensatory agreement

SIGNATURES

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

PUMA BIOTECHNOLOGY, INC.

Date: November 4, 2021

By: /s/ Alan H. Auerbach
Alan H. Auerbach
President and Chief Executive Officer
(Principal Executive Officer)

Date: November 4, 2021

By: /s/ Maximo F. Nougues
Maximo Nougues
Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 10.1

[***] Certain information in this document has been excluded pursuant to Regulation S-K, Item 601(b)(10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

THE NOTES ISSUED UNDER THIS NOTE PURCHASE AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR QUALIFIED OR REGISTERED PURSUANT TO ANY STATE SECURITIES LAW OR THE SECURITIES LAW OF ANY OTHER JURISDICTION. THE NOTES ISSUED UNDER THIS NOTE PURCHASE AGREEMENT MAY BE RESOLD ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE SECURITIES ACT AND QUALIFIED OR REGISTERED PURSUANT TO APPLICABLE STATE AND OTHER SECURITIES LAWS OR IF AN EXEMPTION FROM SUCH REGISTRATION AND QUALIFICATION REQUIREMENT IS AVAILABLE.

NOTE PURCHASE AGREEMENT

Dated as of July 23, 2021

among

PUMA BIOTECHNOLOGY, INC.
as the Issuer,

CERTAIN SUBSIDIARIES OF THE ISSUER,
as the Guarantors,

ATHYRIUM OPPORTUNITIES IV CO-INVEST 1 LP
as the Administrative Agent

and

THE PURCHASERS FROM TIME TO TIME PARTY HERETO

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NOTE PURCHASE AGREEMENT

This NOTE PURCHASE AGREEMENT is entered into as of July 23, 2021 among PUMA BIOTECHNOLOGY, INC., a Delaware corporation (the "Issuer"), the Guarantors (defined herein), the Purchasers (defined herein) and ATHYRIUM OPPORTUNITIES IV CO-INVEST 1 LP, as the Administrative Agent.

The Issuer has requested that the Purchasers make an investment in the Issuer by purchasing up to $125,000,000 of notes and the Purchasers are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

"Acquisition" means, with respect to any Person, the acquisition by such Person, in a single transaction or in a series of related transactions, of (a) assets of another person which constitute all or substantially all of the assets of such Person, or of any division, line of business or other business unit of such Person, (b) at least a majority of the Voting Stock of another Person, in each case whether or not involving a merger or consolidation with such other Person and whether for cash, property, services, assumption of Indebtedness, securities or otherwise or (c) any Product.

"Adjusted Three-Month LIBOR" means, with respect to any Interest Period, the lesser of (a) Three-Month LIBOR and (b) three and one-half of one percent (3.50%) per annum.

"Administrative Agent" means Athyrium Opportunities IV Co-Invest 1 LP, a Delaware limited partnership, in its capacity as administrative agent under any of the Note Documents, or any successor administrative agent.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 11.02 or such other address or account as the Administrative Agent may from time to time notify the Issuer and the Purchasers.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agreement" means this Note Purchase Agreement.

"Applicable Percentage" means with respect to any Purchaser at any time, (a) in respect of the First Tranche, with respect to any First Tranche Purchaser at any time, the percentage (carried out to the ninth decimal place) of the First Tranche represented by (i) on or prior to the Closing Date, such First Tranche Purchaser's First Tranche Note Purchase Commitment at such time and (ii) thereafter, the outstanding principal amount of such First Tranche Purchaser's First Tranche Notes at such time and (b) in respect of the Second Tranche, with respect to any Second Tranche Purchaser at such time, the percentage (carried out to the ninth decimal place) of the Second Tranche represented by (i) at any time after the effectiveness of the Second Tranche Joinder Agreement but prior to the Second Tranche Notes Issuance, such Second Tranche Purchaser's Second Tranche Note Purchase Commitment at such time and (ii) at any time thereafter, the outstanding principal amount of such Second Tranche Purchaser's Second Tranche Notes at such time. The initial Applicable Percentage of each Purchaser in respect of each Notes Tranche is set forth opposite the name of such Purchaser on Schedule 2.01, in the Second Tranche Joinder Agreement or in the Assignment and Assumption pursuant to which such Purchaser becomes a party hereto, as applicable.

"Appropriate Purchaser" means, at any time, with respect to any Notes Tranche, a Purchaser that has a Note Purchase Commitment with respect to such Notes Tranche or holds a Note under such Notes Tranche at such time.

"Approved Fund" means any Fund that is administered or managed by (a) a Purchaser, (b) an Affiliate of a Purchaser or (c) an entity or an Affiliate of an entity that administers or manages a Purchaser.

"Assignment and Assumption" means an assignment and assumption agreement entered into by a Purchaser and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit D or any other form (including electronic documentation generated by MarkitClear or other electronic platform) approved by the Administrative Agent.

"Athyrium" means Athyrium Capital Management, LP and its successors and assigns.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease of any Person, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease and (c) in respect of any Securitization Transaction of any Person, the outstanding principal amount of such financing, after taking into account reserve accounts and making appropriate adjustments, determined by the Administrative Agent in its reasonable judgment.

"Audited Financial Statements" means the audited consolidated balance sheet of the Issuer and its Subsidiaries for the fiscal year ended December 31, 2020, and the related consolidated statements of operations, shareholders' equity and cash flows for such fiscal year of the Issuer and its Subsidiaries, including the notes thereto, audited by independent public accountants of recognized national standing and prepared in conformity with GAAP.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period, or (b) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

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

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Benchmark" means, initially, Three-Month LIBOR; provided, that, if a replacement of the Benchmark has occurred pursuant to Section 3.05(b) then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.

"Benchmark Replacement" means:

(a) For purposes of Section 3.05(b)(i), to the extent able to be determined by the Administrative Agent, the sum of: (A) Term SOFR; plus (B) 0.26161% (26.161 basis points) for an Available Tenor of three-months' duration; and

(b) for purposes of Section 3.05(b)(ii), the sum of (i) the alternate benchmark rate, plus (ii) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Issuer as the replacement Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by a Relevant Governmental Body, for Dollar-denominated syndicated credit facilities at such time;

provided, that, in no event shall any Benchmark Replacement as determined pursuant to clause (a) or (b) above be less than one and one-half of one percent (1.50%) or greater than three and one-half of one percent (3.50%) for the purposes of this Agreement and the other Note Documents. Any Benchmark Replacement shall be applied in a manner consistent with market practice; provided, that, to the extent such market practice is not administratively feasible for the Administrative Agent, such Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of Interest Period, Interest Rate, Adjusted Three-Month LIBOR or Three-Month LIBOR, the timing and frequency of determining rates and making payments of interest, the timing of prepayments, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Note Documents).

"Benchmark Transition Event" means, with respect to any then-current Benchmark other than Three-Month LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark or a Governmental Authority for such Benchmark with jurisdiction over such administrator announcing or stating that (a) all Available Tenors are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored or (b) all Available Tenors will no longer be made available permanently or indefinitely, or used for determining the interest rate of loans, or shall or will otherwise cease; provided, that, at the time of such statement or publication, there is no successor administrator that is reasonably satisfactory to the Administrative Agent that will continue to provide any Available Tenors of such Benchmark after such specific date.

"Board of Directors" means (a) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board, (b) with respect to a partnership, the Board of Directors of the general partner of the partnership, (c) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof, and (d) with respect to any other Person, the board or committee of such Person serving a similar function.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, New York, New York.

"Businesses" means, at any time, a collective reference to the businesses operated by the Issuer and its Subsidiaries at such time.

"Capital Lease" means, as applied to any Person, any lease of any property by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a capital lease on the balance sheet of that Person.

"Cash Equivalents" means, as at any date, (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided, that, the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition, (b) Dollar denominated time deposits and certificates of deposit of (i) any United States commercial bank of recognized standing having capital and surplus in excess of $500,000,000 or (ii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof (any such bank being an "Approved Bank"), in each case with maturities of not more than 270 days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any commercial paper or variable or fixed rate notes issued by, or guaranteed by, any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody's and maturing within six months of the date of acquisition, (d) repurchase agreements entered into by any Person with a bank or trust company (including any of the Purchasers) or recognized securities dealer having capital and surplus in excess of $500,000,000 for direct obligations issued by or fully guaranteed by the United States in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations, (e) Investments, classified in accordance with GAAP as current assets, in money market investment programs registered under the Investment Company Act of 1940 which are administered by reputable financial institutions having capital of at least $500,000,000 and the portfolios of which are limited to Investments of the character described in the foregoing subdivisions (a) through (d) and (f) other short term liquid investments approved in writing by the Administrative Agent (such approval not to be unreasonably withheld or delayed).

"Cash-Secured Obligations" means those certain obligations owing to Silicon Valley Bank ("SVB") on account of (a) Automated Clearing House transactions, foreign exchange contracts, or other treasury management services provided by SVB, in an aggregate amount not to exceed at any time, and secured by a segregated cash collateral account with SVB in the amount of, $1,500,000 and (b) corporate credit card services, including the Issuer's credit card issued by SVB, in an aggregate amount not to exceed $750,000 at any time.

"cGCP" means the then current Good Clinical Practices that establish the international ethical and scientific quality standards for designing, conducting, recording and reporting clinical trials that are promulgated or endorsed for the United States by the FDA (including through ICH E6 and 21 CFR Parts 50, 54, 56 and 312) and for outside the United States by comparable Governmental Authorities.

"cGMP" means the then current good manufacturing practices and regulatory requirements for or concerning manufacturing practices for pharmaceutical or biological products (and components thereof) that are promulgated or endorsed for the United States by the FDA (including through 21 CFR Parts 210 and 211) and for outside the United States by comparable Governmental Authorities.

"Change in Law" means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means the occurrence of any of the following events:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of Equity Interests representing thirty-five percent (35%) or more of the aggregate ordinary voting power in the election of the Board of Directors of the Issuer represented by the issued and outstanding Equity Interests of the Issuer on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or

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

(c) any "Change of Control" (or any comparable term) shall occur under any document, instrument or other agreement evidencing any Indebtedness in excess of the Threshold Amount.

"Closing Date" means the date hereof.

"CMS" means the U.S. Center for Medicare and Medicaid Services.

"Collateral" means a collective reference to all real and personal property with respect to which Liens in favor of the Administrative Agent, for the benefit of the Secured Parties, are purported to be granted pursuant to and in accordance with the terms of the Collateral Documents.

"Collateral Access Agreement" means an agreement in form and substance reasonably satisfactory to the Administrative Agent pursuant to which a lessor of real property located in the United States on which Collateral is stored or otherwise located, or a warehouseman, processor or other bailee of inventory or other property owned by any Credit Party, in each case in an aggregate amount in excess of $750,000, acknowledges the Liens of the Administrative Agent and waives (or, if approved by the Administrative Agent, subordinates) any Liens held by such Person on such property, and permits the Administrative Agent reasonable access to any Collateral stored or otherwise located thereon.

"Collateral Documents" means a collective reference to the Security Agreement, the Pledge Agreement, the Mortgages, the Deposit Account Control Agreements, the Collateral Questionnaire, the Collateral Access Agreements, the Real Property Security Documents and other security documents as may be executed and delivered by the Credit Parties pursuant to the terms of Section 7.14.

"Collateral Questionnaire" means that certain collateral questionnaire, in form and substance reasonably satisfactory to Administrative Agent, dated as of the Closing Date.

"Compliance Certificate" means a certificate substantially in the form of Exhibit E.

"Consolidated U.S. Net Product Sales and Ex-U.S. Royalty Revenues" means, for any period, for the Issuer and its Subsidiaries on a consolidated basis, the sum (without duplication) of (a) gross sales of Nerlynx to independent customers in the United States for such period, less deductions for (i) quantity, trade, cash or other discounts, allowances, credits or rebates (including customer rebates) actually allowed or taken in the ordinary course of business for such period, (ii) amounts deducted, repaid or credited by reason of rejections or returns of Nerlynx and government mandated rebates, or because of chargebacks or retroactive price reductions for such period, (iii) charges for freight, handling, postage, transportation, insurance and other shipping charges for such period, (iv) taxes, tariffs, duties or other governmental charges or assessments (including any sales, value added or similar taxes other than an income tax) levied, absorbed or otherwise imposed on or with respect to the production, sale, transportation, delivery or use of Nerlynx for such period and (v) amounts received by the Issuer or any Subsidiary to the extent owed to any Person other than the Issuer or any Subsidiary, all as determined and reported in accordance with GAAP plus (b) royalty revenues representing a percentage of end-user sales by the relevant licensee received by the Issuer and its Subsidiaries for such period with respect to Permitted Licenses of Nerlynx in jurisdictions other than the United States, excluding upfront payments, milestones and any other payments not received by the Issuer and its Subsidiaries in the ordinary course of business; provided, that, "Consolidated U.S. Net Product Sales and Ex-U.S. Royalty Revenues" shall exclude the gross amount billed or invoiced for sales of Nerlynx to independent customers by any Subsidiary or royalty revenues collected by any Subsidiary, in each case, to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of the income resulting from such amount billed or invoiced for sales of Nerlynx to independent customers or such royalty revenue, as the case may be, is not at the time permitted by operation of the terms of its Organization Documents or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary.

"Consolidated Revenues" means, for any period, for the Issuer and its Subsidiaries on a consolidated basis, revenues for such period as determined and reported in accordance with GAAP; provided, that, "Consolidated Revenues" shall exclude the revenues generated by any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of the income resulting from such revenues is not at the time permitted by operation of the terms of its Organization Documents or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote twenty percent (20%) or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

"Controlled Substances Act" means the U.S. Controlled Substances Act (or any successor thereto) and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder.

"Convertible Bond Indebtedness" means Indebtedness having a feature which entitles the holder thereof to convert or exchange all or a portion of such Indebtedness into Qualified Capital Stock of the Issuer.

"Copyrights" means all copyrights, whether statutory or common law, along with any and all (a) applications for registration, renewals, revisions, extensions, reversions, restorations, derivative works, enhancements, modifications, updates and new releases thereof, (b) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof, (c) rights to sue for past, present and future infringements thereof, and (d) foreign copyrights and any other rights corresponding thereto throughout the world.

"Corresponding Tenor" with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

"Credit Parties" means, collectively, the Issuer and each Guarantor.

"DEA" means the United States Drug Enforcement Administration and any successor administration thereto.

"Debt Issuance" means the issuance by any Credit Party or any Subsidiary of any Indebtedness other than Indebtedness permitted under Section 8.03.

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

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" has the meaning set forth in Section 2.06(b).

"Defaulting Purchaser" means, subject to Section 2.12(b), any Purchaser, as determined by the Administrative Agent, that (a) has failed to perform any of its funding or purchasing obligations hereunder, including with respect to any Second Tranche Note Purchase Commitments, within three (3) Business Days of the date required to be funded or purchase, as the case may be, by it hereunder, (b) has notified the Issuer or the Administrative Agent that it does not intend to comply with its funding or purchasing obligations hereunder or (c) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; provided, that, a Purchaser shall not be a Defaulting Purchaser solely by virtue of the ownership or acquisition of any Equity Interests in that Purchaser or any direct or indirect parent company thereof by a Governmental Authority.

"Delaware Divided LLC" means any Delaware LLC which has been formed upon the consummation of a Delaware LLC Division.

"Delaware LLC" means any limited liability company organized or formed under the laws of the State of Delaware.

"Delaware LLC Division" means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

"Deposit Account" means a "deposit account" (as defined in Article 9 of the Uniform Commercial Code), investment account or other account in which funds are held or invested to or for the credit or account of any Credit Party.

"Deposit Account Control Agreement" means any account control agreement by and among a Credit Party, the applicable depository bank and the Administrative Agent, in each case in form and substance reasonably satisfactory to the Administrative Agent.

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

"Disclosure Letter" means that certain disclosure letter dated as of the Closing Date containing certain schedules delivered by the Credit Parties to the Administrative Agent and the Purchasers (with respect to Schedules 1.01 and 6.17 to the Disclosure Letter, as such schedules are supplemented from time to time in accordance with the terms of this Agreement).

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any Sale and Leaseback Transaction or any issuance by any Subsidiary of its Equity Interests) of any property by any Credit Party or any Subsidiary, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith (including any disposition, allocation, transfer or conveyance of property to a Delaware Divided LLC pursuant to a Delaware LLC Division), but excluding the following: (a) the sale, lease, license, transfer or other disposition of inventory in the ordinary course of business, (b) the sale, lease, license, transfer or other disposition in the ordinary course of business of surplus, obsolete or worn out property no longer used or useful in the conduct of business of any Credit Party or any Subsidiary, (c) any sale, lease, license, transfer or other disposition of property to any Credit Party or any Subsidiary; provided, that, if the transferor of such property is a Credit Party, the transferee thereof must be a Credit Party, (d) the abandonment or other disposition of intellectual property that is not material and is no longer used or useful in any material respect in the business of the Issuer and its Subsidiaries, (e) licenses, sublicenses, leases or subleases (other than relating to intellectual property) granted to third parties in the ordinary course of business and not interfering with the business of the Issuer and its Subsidiaries, (f) Permitted Licenses, (g) any Involuntary Disposition, (h) dispositions of cash and Cash Equivalents in the ordinary course of business, (i) dispositions consisting of the sale, transfer, assignment or other disposition of unpaid and overdue accounts receivable in connection with the collection, compromise or settlement thereof in the ordinary course of business and not as part of a financing transaction, (j) to the extent constituting Dispositions, Investments permitted by Section 8.02 and Permitted Liens, in each case, except to the extent permitted by reference to Section 8.05 or this definition (or any clause thereof or hereof) and (k) the sale, transfer, issuance or other disposition of a de minimis number of shares of the Equity Interests of a Foreign Subsidiary in order to qualify members of the governing body of such Subsidiary if required by applicable Law.

"Disqualified Capital Stock" means any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, prior to the ninety-first (91st) day after the Maturity Date, (b) requires the payment of any cash dividends at any time prior to the ninety-first (91st) day after the Maturity Date, (c) contains any repurchase obligation which may come into effect prior to payment in full of all Obligations, or (d) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to in clause (a), (b) or (c) above, in each case at any time prior to the ninety-first (91st) day after the Maturity Date; provided, that, any Equity Interest that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests are convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem or repurchase such Equity Interest upon the occurrence of a change in control or an asset sale occurring prior to the ninety-first (91st) day after the Maturity Date shall not constitute Disqualified Capital Stock if such Equity Interest provides that the issuer thereof will not redeem or repurchase such Equity Interest pursuant to such provisions prior to the date as of which all of the following shall have occurred: (a) all of the Note Purchase Commitments have terminated and (b) all Obligations have been paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted).

"Dollar" and "$" mean lawful money of the United States.

"Domestic Credit Party" means any Credit Party that is organized under the laws of any state of the United States or the District of Columbia.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of any state of the United States or the District of Columbia.

"Early Opt-in Effective Date" means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Purchasers, so long as the Administrative Agent has not received, by 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Purchasers, written notice of objection to such Early Opt-in Election from Purchasers comprising the Required Purchasers.

"Early Opt-in Election" means the occurrence of: (a) a notification by the Administrative Agent to each of the other parties hereto that the Administrative Agent has made a determination, or a notification by the Issuer to the Administrative Agent that the Issuer has made a determination, that at least five (5) currently outstanding Dollar-denominated syndicated credit facilities contain a new benchmark interest rate to replace Three-Month LIBOR (and such syndicated credit facilities are identified in such notice and are publicly available for review); and (b) the joint election by the Administrative Agent and the Issuer to replace Three-Month LIBOR with a Benchmark Replacement and the provision by the Administrative Agent of written notice of such election to the Purchasers.

"Earn Out Obligations" means, with respect to an Acquisition, all obligations of the Issuer or any Subsidiary to make earn out or other contingency payments (including purchase price adjustments, non-competition and consulting agreements, or other indemnity obligations) pursuant to the documentation relating to such Acquisition. For purposes of determining the aggregate consideration paid for an Acquisition at the time of such Acquisition, the amount of any Earn Out Obligations shall be deemed to be the maximum amount of the earn-out payments in respect thereof as specified in the documents relating to such Acquisition. For purposes of determining the amount of any Earn Out Obligations to be included in the definition of Funded Indebtedness, the amount of Earn Out Obligations shall be deemed to be the aggregate liability in respect thereof, as determined in accordance with GAAP.

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

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

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

"Eligible Assets" means fixed or capital assets that are used or useful in the same or a similar line of business as the Issuer and its Subsidiaries were engaged in on the Closing Date (or any reasonable extension or expansions thereof).

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 11.06 (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

"EMA" means the European Medicines Agency or any successor entity.

"Environmental Laws" means any and all federal, state, local, foreign and other applicable statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Issuer, any other Credit Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member, membership or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Issuer within the meaning of Section 414(b) or (c) of the Internal Revenue Code (and Sections 414(m) and (o) of the Internal Revenue Code for purposes of provisions relating to Section 412 of the Internal Revenue Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan, (b) the withdrawal of the Issuer or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA, (c) a complete or partial withdrawal by the Issuer or any ERISA Affiliate from a Multiemployer Plan, (d) the filing of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan amendment as a termination under Sections 4041 or 4041A of ERISA, (e) the institution by the PBGC of proceedings to terminate a Pension Plan, (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Internal Revenue Code or Sections 303, 304 and 305 of ERISA, or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Issuer or any ERISA Affiliate.

"Eshelman Litigation" means that certain matter *Frederic N. Eshelman vs. Puma Biotechnology, Inc.* (E.D.N.C. Case No. 7:16-cv-00018; 4th Cir. Case No. 20-1376).

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

"Event of Default" has the meaning set forth in Section 9.01.

"Excluded Accounts" means (a) deposit accounts established solely as payroll, trust, employee benefit and other zero balance accounts and (b) other deposit accounts, so long as at any time the aggregate balance in all such accounts does not exceed $200,000.

"Excluded Property" means, with respect to any Credit Party, including any Person that becomes a Credit Party after the Closing Date as contemplated by Section 7.12, (a) any leasehold interest of such Credit Party in real property, (b) solely with respect to any Domestic Credit Party, any personal property (including, without limitation, motor vehicles) in respect of which perfection of a Lien is not either (x) governed by the Uniform Commercial Code or (y) effected by appropriate evidence of the Lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office, unless requested by the Administrative Agent or the Required Purchasers, (c) the Equity Interests of any Foreign Subsidiary, in each case, to the extent not required to be pledged to secure the Obligations pursuant to Section 7.14(a), (d) any property which, subject to the terms of Section 8.09, is subject to a Lien of the type described in Section 8.01(i) pursuant to documents which prohibit such Credit Party from granting any other Liens in such property, (e) any permit, lease, license, contract or other agreement if the grant of a security interest in such permit, lease, license, contract or other agreement in the manner contemplated by the Collateral Documents, under the terms thereof or under applicable Law, is prohibited and would result in the termination thereof or give the other parties thereto the right to terminate, accelerate or otherwise alter such Credit Party's rights, titles and interests thereunder (including upon the giving of notice or the lapse of time or both); provided, that, (i) any such limitation described in the foregoing clause (e) on the security interests granted under the Collateral Documents shall only apply to the extent that any such prohibition is not rendered ineffective pursuant to the Uniform Commercial Code or any other applicable Law, in each case, that has the effect of permitting the grant of a security interest and preventing any termination, acceleration or alteration of such Credit Party's rights, titles and interests thereunder as a result of such grant of a security interest and (ii) in the event of the termination or elimination of any such prohibition or the requirement for any consent contained in any applicable Law, permit, lease, license, contract or other agreement, or upon the granting of any such consent, or waiving or terminating any requirement for such consent, a security interest in such permit, lease, license, contract or other agreement shall be automatically and simultaneously granted under the Collateral Documents and such permit, lease, license, contract or other agreement shall be included as Collateral, (f) Excluded Accounts, (g) United States intent-to-use Trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use Trademark applications under applicable federal Laws and (h) any real or personal property as to which the Administrative Agent and the Issuer agree in writing that the costs or other consequences of obtaining a security interest or perfection thereof are excessive in view of the benefits to be obtained by the Secured Parties therefrom.

"Excluded Subsidiary" means (a) any Foreign Subsidiary, the grant or perfection of a security interest in the assets of such Foreign Subsidiary in support of, and the guaranteeing of, the Obligations (i) would be prohibited by applicable Law in the jurisdiction of formation or incorporation of such Foreign Subsidiary (as reasonably determined by the Issuer with the consent of the Administrative Agent) or (ii) would result in material adverse tax consequences to the Issuer and its Subsidiaries (as reasonably determined by the Issuer with the consent of the Administrative Agent), (b) any Foreign Subsidiary with respect to which the Administrative Agent and the Issuer agree in writing that the cost or other consequences of such Foreign Subsidiary guaranteeing the Obligations are excessive in view of the benefits to be obtained by the Secured Parties therefrom and (c) any Immaterial Foreign Subsidiary.

"Extraordinary Receipts" means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including, without limitation, tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments and any cash received in connection with the settlement or other resolution (including by judgment) of any litigation, arbitration or other dispute; provided, that, in no event shall "Extraordinary Receipts" include the proceeds of any issuance of Qualified Capital Stock by the Issuer.

"Facilities" means, at any time, a collective reference to the facilities and real properties owned, leased or operated by any Credit Party or any Subsidiary.

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

"FDA" means the United States Food and Drug Administration and any successor entity.

"FDCA" means the U.S. Food, Drug and Cosmetic Act (or any successor thereto) and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that, if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day.

"First Tranche" means, at any time, (a) on or prior to the Closing Date, the aggregate amount of the First Tranche Note Purchase Commitments at such time and (b) thereafter, the aggregate principal amount of the First Tranche Notes of all First Tranche Purchasers outstanding at such time.

"First Tranche Note" has the meaning set forth in Section 2.01(a).

"First Tranche Note Purchase Commitment" has the meaning set forth in Section 2.01(a). The aggregate principal amount of the First Tranche Note Purchase Commitments of all of the First Tranche Purchasers as in effect on the Closing Date is ONE HUNDRED MILLION DOLLARS ($100,000,000).

"First Tranche Notes Issuance" means the issuance of simultaneous First Tranche Notes by the Issuer to each of the First Tranche Purchasers pursuant to Section 2.01(a).

"First Tranche Purchaser" means (a) at any time on or prior to the Closing Date, any Purchaser that has a First Tranche Note Purchase Commitment at such time and (b) at any time after the Closing Date, any Purchaser that holds one or more First Tranche Notes at such time.

"Flood Hazard Property" means any real property subject to a Mortgage that is in an area designated by the Federal Emergency Management Agency as having special flood or mudslide hazards.

"Foreign Purchaser" has the meaning set forth in Section 3.01.

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Free and Clear Amount" has the meaning set forth in the definition of "Specified Litigation Amount".

"Fund" means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"Funded Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations, whether current or long-term, for borrowed money (including the Obligations) and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all purchase money Indebtedness;

(c) the principal portion of all obligations under conditional sale or other title retention agreements relating to property purchased by such Person or any Subsidiary thereof (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);

(d) all obligations arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(e) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than 60 days after the date on which such trade account payable was created), including, without limitation, any Earn Out Obligations;

(f) the Attributable Indebtedness of Capital Leases, Securitization Transactions and Synthetic Leases;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Disqualified Capital Stock in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends;

(h) all Funded Indebtedness of others secured by (or for which the holder of such Funded Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed;

(i) all Guarantees with respect to Funded Indebtedness of the types specified in clauses (a) through (h) above of another Person; and

(j) all Funded Indebtedness of the types referred to in clauses (a) through (i) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, except to the extent that Funded Indebtedness is expressly made non-recourse to such Person.

For purposes hereof, the amount of any direct obligation arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments shall be the maximum amount available to be drawn thereunder.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, consistently applied and as in effect from time to time.

"Governmental Authority" means any national, supranational, federal, state, county, provincial, local, municipal or other government or political subdivision thereof (including any Regulatory Agency), whether domestic or foreign, and any agency, authority, commission, ministry, instrumentality, regulatory body, court, tribunal, arbitrator, central bank or other Person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to any such government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantors" means (a) each Subsidiary identified as a "Guarantor" on the signature pages hereto and (b) each other Person that joins as a Guarantor pursuant to Section 7.12, together with their successors and permitted assigns.

"Guaranty" means the Guaranty made by the Guarantors in favor of the Secured Parties pursuant to Article IV.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"Immaterial Foreign Subsidiary" means at any time a Foreign Subsidiary that (a) as of the last day of the fiscal quarter of the Issuer most recently ended for which the Issuer was required to deliver financial statements pursuant to Section 7.01(a) or (b), did not have (together with its Subsidiaries) assets in excess of (i) five percent (5%) of the consolidated total assets of the Issuer and its Subsidiaries at the end of such fiscal quarter for any one Immaterial Foreign Subsidiary and (ii) ten percent (10%) of the consolidated total assets of the Issuer and its Subsidiaries at the end of such fiscal quarter for all Immaterial Foreign Subsidiaries in the aggregate; and (b) for the period of four fiscal quarters most recently ended for which the Issuer was required to deliver financial statements pursuant to Section 7.01(a) or (b), did not have (together with its Subsidiaries) Consolidated Revenues attributable to such Foreign Subsidiary for such period in excess of (i) five percent (5%) of Consolidated Revenues for such period for any one Immaterial Foreign Subsidiary and (ii) ten percent (10%) of Consolidated Revenues for such period for all Immaterial Foreign Subsidiaries in the aggregate; provided, that, notwithstanding anything to the contrary set forth in this Agreement or any other Note Document, any Foreign Subsidiary that as of any date of determination holds a pending marketing authorization application before the Medicines and Healthcare Products Regulatory Agency in the United Kingdom or before the European Medicines Agency and/or holds a marketing from any such agency for any products, in each case, shall not be an Immaterial Foreign Subsidiary.

"IND" means (a) (i) an investigational new drug application (as defined in the FDCA) that is required to be submitted to the FDA to propose the initiation of clinical testing in human subjects, or any successor application or procedure; and (ii) any similar application or functional equivalent required by any country, jurisdiction or Governmental Authority other than the United States; and (b) all supplements and amendments that may be filed or submitted with respect to the foregoing.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all Funded Indebtedness;

(b) the Swap Termination Value of any Swap Contract;

(c) all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) and (b) above of any other Person; and

(d) all Indebtedness of the types referred to in clauses (a) through (c) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person or a Subsidiary thereof is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to such Person or such Subsidiary.

"Indemnitee" has the meaning set forth in Section 11.04(b).

"Indirect Purchaser" means any Person that is not a U.S. Person and either (a) directly holds equity interests in a Purchaser that is treated as a partnership or disregarded entity for United States federal income tax purposes or (b) directly holds equity interests in a U.S. Person that is treated as a partnership or disregarded entity for U.S. federal income tax purposes that, directly, or indirectly through entities each of which is treated as a partnership or disregarded entity for U.S. federal income tax purposes, holds equity interests in a Purchaser.

"Information" has the meaning set forth in Section 11.07.

"Infringement" and "Infringes" mean the misappropriation or other violation of know-how, trade secrets, confidential information, and/or other Intellectual Property.

"Intellectual Property" means all (a) Patents; (b) Trademarks and all applications, registrations and renewals thereof; (c) Copyrights and other works of authorship (registered or unregistered), and all applications, registrations and renewals thereof; (d) Regulatory Authorizations; (e) computer software, databases, websites and domain registrations, data and documentation; (f) trade secrets and confidential information, whether patentable or unpatentable and whether or not reduced to practice, know-how, inventions, manufacturing processes and techniques, research and development information, data and other information included in or supporting Regulatory Authorizations; (g) financial, marketing and business data, pricing and cost information, business, finance and marketing plans, customer and prospective customer lists and information, and supplier and prospective supplier lists and information; (h) other intellectual property or similar proprietary rights; (i) copies and tangible embodiments of any of the foregoing (in whatever form or medium); and (j) any and all improvements to any of the foregoing. For the avoidance of doubt, Intellectual Property includes any of the foregoing that is licensed from Third Parties.

"Interest Payment Date" means (a) the last Business Day of each March, June, September and December and (b) the Maturity Date.

"Interest Period" means, with respect to any Note, (a) the period commencing on (and including) the applicable issuance date of such Note and ending on (and including) the first Interest Payment Date following the issuance date of such Note, and (b) thereafter, the period beginning on (and including) the first day following the end of the preceding Interest Period and ending on the earlier of (and including) (x) the first Interest Payment Date following the Interest Payment Date on which the preceding Interest Period ended and (y) the Maturity Date.

"Interest Rate" means, for any Interest Period, a rate per annum equal to the sum of (a) eight percent (8.00%) plus (b) Adjusted Three-Month LIBOR for such Interest Period.

"Interim Financial Statements" means the unaudited consolidated financial statements of the Issuer and its Subsidiaries for the fiscal quarter ended March 31, 2021, including balance sheets and statements of operations, shareholders' equity and cash flows.

"Internal Revenue Code" means the United States Internal Revenue Code of 1986.

"Internal Revenue Service" means the United States Internal Revenue Service.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"Involuntary Disposition" means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Credit Party or any of its Subsidiaries.

"Issuer" has the meaning set forth in the introductory paragraph hereto.

"Issuer Investment Policy" means the Issuer's investment policy approved by the Purchasers prior to the Closing Date together with such amendments, supplements, modifications or replacements thereto as may be approved by the Required Purchasers after the Closing Date (such approval not to be unreasonably withheld or delayed).

"Joinder Agreement" means a joinder agreement substantially in the form of Exhibit C executed and delivered by a Subsidiary in accordance with the provisions of Section 7.12.

"Key Permits" means all Permits relating to the Material Products, including all applicable Regulatory Authorizations, the loss of which could reasonably be expected to result, either individually or in the aggregate, in a material adverse effect on any Product Development and Commercialization Activities associated with any Material Product.

"Laws" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"LIBOR Screen Rate" has the meaning set forth in the definition of "Three-Month LIBOR".

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

"Make-Whole Amount" means, on any date of determination, with respect to any amount of any Note that is repaid or required to be repaid, the amount, if any, by which (a) the sum of (i) one hundred and two percent (102.00%) of the principal amount of such Note that is repaid or required to be repaid plus (ii) the present value as of such date of determination (as determined by the Administrative Agent in accordance with customary practice) of all interest that would have accrued on the principal amount of such Note that is repaid or required to be repaid through and including the second (2nd) anniversary of the Notes Issuance Date with respect to such Note, computed using a discount rate equal to the Three-Month Treasury Rate plus one-half of one percent (0.50%), exceeds (b) the principal amount of such Note that is repaid or required to be repaid.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the business, assets, properties, liabilities (actual or contingent) or financial condition of the Issuer and its Subsidiaries taken as a whole, (b) a material impairment of the rights and remedies of the Administrative Agent or any Purchaser under any Note Document to which it is a party or a material impairment in the perfection, value or priority of the Administrative Agent's security interests in the Collateral, (c) an impairment of the ability of any Credit Party to perform its material obligations under any Note Document to which it is a party, or (d) a material adverse effect upon the legality, validity, binding effect or enforceability against any Credit Party of any Note Document to which it is a party.

"Material Contracts" means (a) each contract or other agreement (other than contracts or other agreements entered into by the Issuer or any Subsidiary in the ordinary course of business in connection with the regular business operations of the Issuer and its Subsidiaries, including clinical development agreements, marketing agreements, sales agreements and general administrative agreements that have ongoing purchase orders) to which the Issuer or any Subsidiary is a party (i) that has been publicly filed with the SEC and/or (ii) involving aggregate payments of more than $2,500,000, whether such payments are being made by or to such Credit Party or such Subsidiary, (b) each material exclusive in-license and/or material out-license of Intellectual Property or any other in-license and/or out-license of Material Intellectual Property, in each case, pertaining to Product Development and Commercialization Activities with respect to any Material Product and (c) all other contracts or agreements that are, individually or in the aggregate, material to the business, assets, properties, liabilities (actual or contingent) or financial condition of the Issuer and its Subsidiaries.

"Material Intellectual Property" means all items of Intellectual Property owned or licensed by any Issuer or any Subsidiary (a) that are, individually or in the aggregate, material to the business, assets, properties, liabilities (actual or contingent) or financial condition of the Issuer and its Subsidiaries or (b) the loss of which could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

"Material Product" means (a) Nerlynx, (b) all Products that are, individually or in the aggregate, material to the business, assets, properties, liabilities (actual or contingent) or financial condition of the Issuer and its Subsidiaries, and (c) each other Product the loss of which could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

"Material Regulatory Authorization" means any Regulatory Authorization where the failure to possess or maintain such Regulatory Authorization, or any restriction placed thereon, in either case, could reasonably be expected, either individually or in the aggregate, to result in (a) a material adverse effect on any Product Development and Commercialization Activities associated with any Product or (b) a Material Adverse Effect.

"Maturity Date" means July 23, 2026; provided, that, if such date is not a Business Day, the Maturity Date shall be the first Business Day immediately preceding such date.

"Maximum Rate" has the meaning set forth in Section 11.09.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage" or "Mortgages" means, individually or collectively, as the context requires, each of the mortgages, deeds of trust or deeds to secure debt executed by a Credit Party that purport to grant to the Administrative Agent, for the benefit of the Secured Parties, a security interest in the fee interest of any Credit Party in real property (other than Excluded Property).

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Issuer or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including the Issuer or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"NDA" means a new drug application submitted with the FDA pursuant to section 505(b) of the FDCA, along with all supplements and amendments thereto, and any similar application for marketing authorization required by any country, jurisdiction or Governmental Authority other than the United States

"Nerlynx" means the neratinib tyrosine kinase inhibitor anti-cancer tablet medication manufactured, distributed, sold, licensed or otherwise commercialized by or on behalf of the Issuer or any of its Subsidiaries.

"Net Cash Proceeds" means the aggregate cash or Cash Equivalents proceeds received by any Credit Party or any Subsidiary in respect of any Disposition, Debt Issuance, Involuntary Disposition or Extraordinary Receipt, net of (a) reasonable direct costs incurred in connection therewith (including, without limitation, legal, accounting and investment banking fees, and sales commissions), (b) taxes paid or reasonably determined by the Issuer to be payable as a result thereof, and (c) in the case of any Disposition, the amount necessary to retire any Indebtedness secured by a Permitted Lien (ranking senior to any Lien of the Administrative Agent) on the related property; it being understood that "Net Cash Proceeds" shall include, without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any non-cash consideration received by any Credit Party or any Subsidiary in any Disposition, Debt Issuance, Involuntary Disposition or Extraordinary Receipt.

"Non-Consenting Purchaser" means any Purchaser that does not approve any consent, waiver or amendment that (a) requires the approval of all Purchasers or all affected Purchasers in accordance with the terms of Section 11.01 and (b) has been approved by the Required Purchasers.

"Not Otherwise Applied" means, with reference to any amount of proceeds from any issuance of Qualified Capital Stock of the Issuer, in each case, that are proposed to be applied to a particular use or transaction, that such amount was not previously applied in determining the permissibility of a transaction under the Note Documents where such permissibility was (or may have been) contingent on the receipt or availability of such amount.

"Note" or "Notes" means the First Tranche Notes and the Second Tranche Notes, individually or collectively, as appropriate.

"Note Documents" means this Agreement, the Disclosure Letter, each Note, each Joinder Agreement, the Second Tranche Joinder Agreement, each Collateral Document and any other agreement, instrument or document designated by its terms as a "Note Document".

"Note Purchase Commitment" means a First Tranche Note Purchase Commitment or a Second Tranche Note Purchase Commitment, as the context may require.

"Notes Issuance" means the First Tranche Notes Issuance or the Second Tranche Notes Issuance, as the context may require.

"Notes Issuance Date" means (a) the Closing Date, with respect to the First Tranche Notes and (b) the Second Tranche Notes Issuance Date, with respect to the Second Tranche Notes.

"Notes Issuance Notice" means a notice of a Notes Issuance pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit A.

"Notes Tranche" means the First Tranche or the Second Tranche, as the context may require.

"Obligations" means (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Credit Party arising under any Note Document or otherwise with respect to any Note and (b) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Credit Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction), and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Administrative Proceeding" means any administrative proceeding relating to a dispute involving a patent office or other relevant intellectual property registry which relates to validity, opposition, revocation, ownership or enforceability of the relevant Intellectual Property.

"Other Rate Early Opt-in" means the Administrative Agent and the Issuer have elected to replace Three-Month LIBOR with a Benchmark Replacement other than a SOFR-based rate pursuant to (a) an Early Opt-in Election, and (b) Section 3.05(b)(ii) and clause (b) of the definition of "Benchmark Replacement".

"Outstanding Amount" means with respect to any Notes on any date, the aggregate outstanding principal amount thereof after giving effect to any issuances and prepayments or repayments with respect to such Notes occurring on such date.

"Paragraph IV Certification" has the meaning specified in Section 6.17(b)(iii).

"Patents" means any patent rights of any kind, including any and all: patents, patent applications or invention disclosures, as well as all divisions, continuations, continuations in-part, provisionals, continued prosecution applications, substitutions, reissues, reexaminations, inter partes review, renewals, extensions, adjustments, restorations, supplemental protection certificates and other additions in connection therewith, whether in or related to the United States or any foreign country or other jurisdiction, together with the right to claim the priority thereto and the right to sue for past infringement of any of the foregoing.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Pension Funding Rules" means the rules of the Internal Revenue Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in Section 412, 430, 431, 432 and 436 of the Internal Revenue Code and Sections 302, 303, 304 and 305 of ERISA.

"Pension Plan" means any employee pension benefit plan (other than a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Issuer and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to minimum funding standards under Section 412 of the Internal Revenue Code.

"Permits" means all Regulatory Authorizations, permits, licenses, registrations, certificates, accreditations, orders, approvals, authorizations, consents, waivers, franchises, variances and similar rights issued by or obtained from any Governmental Authority or any other Person, including, without limitation, those relating to Environmental Laws.

"Permitted Acquisition" means an Investment consisting of an Acquisition by a Credit Party; provided, that, (a) the property acquired (or the property of the Person acquired) in such Acquisition is used or useful in the same or a related line of business as the Issuer and its Subsidiaries were engaged in on the Closing Date (or any reasonable extensions or expansions thereof), (b) no Default or Event of Default shall have occurred and be continuing or would result from such Acquisition, (c) the Administrative Agent shall have received all items in respect of the Equity Interests or property acquired in such Acquisition required to be delivered by the terms of Section 7.12 and/or Section 7.14, (d) such Acquisition shall not be a "hostile" acquisition and shall have been approved by the Board of Directors and/or the shareholders (or equivalent) of the applicable Credit Party and the target of such Acquisition, (e) the Issuer shall have delivered to the Administrative Agent *pro forma* financial statements for the Issuer and its Subsidiaries after giving effect to such Acquisition for the twelve month period ending as of the most recent fiscal quarter end in a form reasonably satisfactory to the Administrative Agent, (f) the representations and warranties made by the Credit Parties in each Note Document shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) at and as if made as of the date of such Acquisition (after giving effect thereto) except to the extent any such representation and warranty expressly relates to an earlier date, in which case it shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) as of such earlier date and (g) the aggregate consideration (including cash and non-cash consideration, deferred purchase price and any Earn Out Obligations but excluding consideration in the form of Qualified Capital Stock of the Issuer (to the extent not constituting a Change of Control)) paid by the Issuer and its Subsidiaries for all such Acquisitions during the term of this Agreement shall not exceed $1,000,000 in the aggregate.

"Permitted Licenses" means (a) non-exclusive licenses for the use of the Intellectual Property of the Issuer or any of its Subsidiaries entered into in the ordinary course of business and not interfering with the business of the Issuer and its Subsidiaries or the Product Development and Commercialization Activities with respect to any Product and (b) exclusive (subject to clause (iv) of the proviso of this definition) licenses for the use of the Intellectual Property of the Issuer or any of its Subsidiaries outside of the United States entered into in the ordinary course of business; provided, that, with respect to each such license, (i) no Event of Default has occurred or is continuing at the time of entry into such license, (ii) the license constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of the Issuer or any of its Subsidiaries, as applicable, to pledge, grant a Lien on, or assign or otherwise transfer any Intellectual Property, (iii) the Issuer delivers ten (10) Business Days' prior written notice and a brief summary of the terms of the proposed license to the Administrative Agent and delivers to the Administrative Agent and the Purchasers copies of the final executed licensing documents in connection with the exclusive license promptly upon consummation thereof, (iv) any such license could not result in a legal transfer of title of the licensed property but may be exclusive in respects other than territory and may be exclusive as to territory only as to discrete geographical areas outside of the United States, and (v) all upfront payments, royalties, milestone payments or other proceeds arising from the licensing agreement that are payable to the Issuer or any of its Subsidiaries are paid to a Deposit Account that is governed by a Deposit Account Control Agreement.

"Permitted Liens" means, at any time, Liens in respect of property of any Credit Party or any of its Subsidiaries permitted to exist at such time pursuant to the terms of Section 8.01.

"Person" means any natural person, corporation, limited liability company, trust, unincorporated organization, joint venture, association, company, partnership, Governmental Authority or any other legal entity, whether acting in an individual, fiduciary or other capacity.

"Personal Information" means (a) all information that could reveal the identity of any natural Person and (b) all other information regarding natural Persons the collection, use, or disclosure of which is subject to applicable Privacy Laws, including without limitation information regarding patient care or payment for patient care.

"Pfizer" has the meaning set forth in the definition of "Pfizer License Agreement".

"Pfizer License Agreement" means that certain License Agreement, dated as of August 18, 2011, by and between the Issuer and Pfizer Inc., a Delaware corporation ("Pfizer"), as amended by that certain Amendment No. 1 to License Agreement between the Issuer and Pfizer, dated as of July 18, 2014, and as amended by that certain letter agreement, dated as of June 8, 2020, between the Issuer and Pfizer.

"PHSA" means the Public Health Service Act (or any successor thereto), as amended from time to time, and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder.

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Issuer or any ERISA Affiliate or any such Plan to which the Issuer or any ERISA Affiliate is required to contribute on behalf of any of its employees.

"Pledge Agreement" means that certain pledge agreement dated as of the Closing Date executed in favor of the Administrative Agent, for the benefit of the Secured Parties, by each of the Credit Parties, as amended or modified from time to time in accordance with the terms hereof.

"Privacy Laws" means all Laws governing the privacy or security of individually identifiable information of any patient or individual, including without limitation HIPAA.

"Product" means any current or future service or product researched, designed, developed, manufactured, licensed, marketed, advertised, sold, offered for sale, performed, distributed, tested, provided or commercialized by the Issuer or any Subsidiary, including any such product in development or which may be developed, including those products set forth on Schedule 1.01(a) to the Disclosure Letter (as supplemented from time to time in accordance with the terms of this Agreement); provided, that, if the Credit Parties shall fail to comply with their obligations under this Agreement to give notice to the Administrative Agent and supplement Schedule 1.01(a) to the Disclosure Letter prior to manufacturing, selling, developing, testing or marketing any new Product, any such improperly undisclosed Product shall be deemed to be included in this definition.

"Product Agreement" means each agreement, license, document, instrument, interest (equity or otherwise) or the like under which one or more parties grants or receives any right, title or interest with respect to any Product Development and Commercialization Activities in respect of one or more Products specified therein or to exclude third parties from engaging in, or otherwise restricting any right, title or interest as to any Product Development and Commercialization Activities with respect thereto, including each contract or agreement with suppliers, manufacturers, pharmaceutical companies, distributors, clinical research organizations, hospitals, group purchasing organizations, wholesalers, pharmacies or any other Person related to any such entity.

"Product Authorizations" means any and all approvals, licenses, notifications, registrations or authorizations of any Governmental Authority for the testing, manufacture, development, distribution, use, storage, import, export, transport, promotion, marketing, sale or commercialization of a Product in any country or jurisdiction, including without limitation registration and listing, INDs, NDAs, and similar applications.

"Product Development and Commercialization Activities" means, with respect to any Product, any combination of research, development, manufacture, import, use, sale, importation, storage, labeling, marketing, promotion, supply, distribution, testing, packaging, purchasing or other commercialization activities, receipt of payment in respect of any of the foregoing, or like activities the purpose of which is to develop or commercially exploit such Product.

"Public Issuer Materials" has the meaning set forth in Section 7.02.

"Puma Netherlands" means Puma Biotechnology BV, a Wholly Owned Subsidiary organized under the laws of the Netherlands.

"Puma UK" means Puma Biotechnology Ltd., a Wholly Owned Subsidiary organized under the laws of the United Kingdom.

"Purchasers" means each of the Persons identified as a "Purchaser" on the signature pages hereto and their successors and assigns.

"Purchasing Office" means, as to any Purchaser, the office address of such Purchaser and, as appropriate, account of such Purchaser set forth on Schedule 11.02 or such other address or account as such Purchaser may from time to time notify the Issuer and the Administrative Agent.

"Qualified Capital Stock" of any Person means any Equity Interests of such Person that are not Disqualified Capital Stock.

"Qualified Equity Issuance" means, with respect to any Specified Litigation, any issuance of the Issuer's Qualified Capital Stock occurring within the period commencing on the date that is six (6) months prior to the final settlement, final and nonappealable judgment or other final resolution of such Specified Litigation and not later than the date that is three (3) months thereafter.

"Qualified Equity Issuance Proceeds" means, with respect to any Specified Litigation, the net cash proceeds received by the Issuer from any Qualified Equity Issuance in connection therewith; provided, that, a Responsible Financial Officer of the Issuer shall have delivered a certificate to the Administrative Agent (in form and substance reasonably satisfactory to the Administrative Agent) certifying that (a) such net cash proceeds are Not Otherwise Applied and (b) such net cash proceeds were received by the Issuer in connection with a Qualified Equity Issuance with respect to such Specified Litigation.

"Real Property Security Documents" means with respect to the fee interest of any Credit Party in any real property:

(a) a fully executed and notarized Mortgage encumbering the fee interest of such Credit Party in such real property;

(b) if reasonably requested by the Administrative Agent in its sole discretion, maps or plats of an as-built survey of the sites of such real property certified to the Administrative Agent and the title insurance company issuing the policies referred to in clause (c) of this definition in a manner reasonably satisfactory to each of the Administrative Agent and such title insurance company, dated a date reasonably satisfactory to each of the Administrative Agent and such title insurance company by an independent professional licensed land surveyor, which maps or plats and the surveys on which they are based shall be sufficient to delete any standard printed survey exception contained in the applicable title policy and be made in accordance with the Minimum Standard Detail Requirements for Land Title Surveys jointly established and adopted by the American Land Title Association and the National Society of Professional Surveyors, Inc. in 2016 with items 2, 3, 4, 6(b), 7(a), 7(b)(1), 7(c), 8, 9, 10, 11, 13, 14, 16,17, 18 and 19 on Table A thereof completed;

(c) ALTA mortgagee title insurance policies issued by a title insurance company acceptable to the Administrative Agent with respect to such real property, assuring the Administrative Agent that the Mortgage covering such real property creates a valid and enforceable first priority mortgage lien on such real property, free and clear of all defects and encumbrances except Permitted Liens, which title insurance policies shall otherwise be in form and substance reasonably satisfactory to the Administrative Agent and shall include such endorsements as are reasonably requested by the Administrative Agent;

(d) (i) a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to such real property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by each Credit Party relating thereto) and (ii) if such real property is a Flood Hazard Property, (A) notices to (and confirmations of receipt by) such Credit Party as to the existence of a special flood hazard and, if applicable, the unavailability of flood hazard insurance under the National Flood Insurance Program and (B) evidence of applicable flood insurance, if available, in each case in such form, on such terms and in such amounts as required by The National Flood Insurance Reform Act of 1994 or as otherwise required by the Administrative Agent;

(e) if reasonably requested by the Administrative Agent in its sole discretion, an environmental assessment report as to such real property, in form and substance and from professional firms acceptable to the Administrative Agent; and

(f) if reasonably requested by the Administrative Agent in its sole discretion, evidence reasonably satisfactory to the Administrative Agent that such real property, and the uses of such real property, are in compliance in all material respects with all applicable zoning laws (the evidence submitted as to which should include the zoning designation made for such real property, the permitted uses of such real property under such zoning designation and, if available, zoning requirements as to parking, lot size, ingress, egress and building setbacks).

"Recipient" means the Administrative Agent, any Purchaser, and any other recipient of any payment by or on account of any obligation of any Credit Party under any Note Document.

"Register" has the meaning set forth in Section 11.06(c).

"Regulatory Agencies" means any Governmental Authority that has jurisdiction over the use, control, safety, efficacy, reliability, manufacturing, marketing, distribution, sale or other Product Development and Commercialization Activities relating to any Product, including CMS, FDA, DEA, and all comparable agencies in other jurisdictions.

"Regulatory Authorizations" means all approvals, clearances, notifications, authorizations, orders, exemptions, registrations, certifications, licenses and permits granted by, submitted to or filed with any Regulatory Agencies, including all Product Authorizations.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, sub-advisors and representatives of such Person and of such Person's Affiliates.

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty-day notice period has been waived.

"Required Purchasers" means, at any time, Purchasers having Total Credit Exposures representing more than fifty percent (50%) of the Total Credit Exposures of all Purchasers. The Total Credit Exposure of any Defaulting Purchaser shall be disregarded in determining Required Purchasers at any time.

"Responsible Financial Officer" means the chief executive officer, president, chief financial officer or treasurer of a Credit Party. Any document delivered hereunder that is signed by a Responsible Financial Officer of a Credit Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Credit Party and such Responsible Financial Officer shall be conclusively presumed to have acted on behalf of such Credit Party.

"Responsible Officer" means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Credit Party and, solely for purposes of the delivery of certificates pursuant to Sections 5.01 or 7.12(b), the secretary or any assistant secretary of a Credit Party. Any document delivered hereunder that is signed by a Responsible Officer of a Credit Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Credit Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of Credit Party.

"Restricted" means, when referring to cash or Cash Equivalents of the Credit Parties, that such cash or Cash Equivalents (a) appear (or would be required to appear) as "restricted" on a consolidated balance sheet of the Issuer and its Subsidiaries as determined in accordance with GAAP or (b) are subject to any Lien in favor of any Person (other than bankers' liens and rights of setoff) other than the Administrative Agent for the benefit of the Secured Parties.

"Restricted Payment" means (a) any dividend or other distribution, direct or indirect, on account of any shares (or equivalent) of any class of Equity Interests of any Credit Party or any Subsidiary, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares (or equivalent) of any class of Equity Interests of any Credit Party or any Subsidiary, now or hereafter outstanding, (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of any Credit Party or any Subsidiary, now or hereafter outstanding and (d) any payment made in cash to the holders of Convertible Bond Indebtedness in excess of the original principal (or notional) amount thereof, interest thereon and any fees due thereunder.

"S&P" means Standard & Poor's Financial Services LLC, a subsidiary of McGraw-Hill Financial, Inc., and any successor thereto.

"Safety Notice" means any product recall, field notification, safety alert, correction, withdrawal, warning, "dear doctor" letter, investigator notice, "serious adverse event" report, clinical hold, marketing suspension, removal or the like.

"Sale and Leaseback Transaction" means, with respect to any Credit Party or any Subsidiary, any arrangement, directly or indirectly, with any Person whereby the Credit Party or such Subsidiary shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

"Sanction(s)" means any sanction administered or enforced by the United States government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury ("HMT") or other relevant sanctions authority.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Second Tranche" means, at any time (a) after the institution of the Second Tranche in accordance with Section 2.13 but prior to the purchase of the Second Tranche Notes, the aggregate amount of the Second Tranche Note Purchase Commitments at such time and (b) thereafter, the aggregate principal amount of the Second Tranche Notes of all Second Tranche Note Purchasers outstanding at such time.

"Second Tranche Joinder Agreement" means a joinder agreement, substantially in the form of Exhibit F, executed and delivered in accordance with the provisions of Section 2.13.

"Second Tranche Note" has the meaning set forth in Section 2.01(b).

"Second Tranche Note Purchase Commitment" means, as to each Second Tranche Purchaser, its commitment to purchase a Second Tranche Note, in the principal amount set forth opposite such Second Tranche Purchaser's name in the Second Tranche Joinder Agreement. The aggregate principal amount of the Second Tranche Note Purchase Commitments of all of the Second Tranche Purchasers shall not exceed TWENTY-FIVE MILLION DOLLARS ($25,000,000).

"Second Tranche Notes Issuance" means the issuance of simultaneous Second Tranche Notes by the Issuer to each of the Second Tranche Purchasers pursuant to Section 2.01(b).

"Second Tranche Notes Issuance Date" has the meaning set forth in Section 2.01(b).

"Second Tranche Purchaser" means each of the Persons identified as a "Second Tranche Purchaser" in the Second Tranche Joinder Agreement, together with their respective successors and assigns.

"Secured Parties" means, collectively, the Administrative Agent, the Purchasers, the Indemnitees and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 10.05.

"Securities Act" means the Securities Act of 1933.

"Securitization Transaction" means, with respect to any Person, any financing transaction or series of financing transactions (including factoring arrangements) pursuant to which such Person or any Subsidiary of such Person may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate of such Person.

"Security Agreement" means the security agreement dated as of the Closing Date executed in favor of the Administrative Agent, for the benefit of the Secured Parties, by each of the Credit Parties, as amended or modified from time to time in accordance with the terms hereof.

"SOFR" has the meaning specified in the definition of Term SOFR.

"SOFR Administrator" means the Federal Reserve Bank of New York, as the administrator of SOFR, or any successor administrator of SOFR designated by the Federal Reserve Bank of New York or other Person acting as the SOFR Administrator at such time.

"SOFR Early Opt-in" means the Administrative Agent and the Issuer have elected to replace Three-Month LIBOR pursuant to (a) an Early Opt-in Election, and (b) Section 3.05(b)(i) and clause (a) of the definition of "Benchmark Replacement".

"Solvent" or "Solvency" means, with respect to any Person as of a particular date, that on such date (a) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the ordinary course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature in their ordinary course, (c) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (d) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person and (e) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Specified Litigation Amount" means, with respect to any Specified Litigation, as of any date of determination, an amount equal to the sum of (a) the total of (i) the amount set forth on Schedule 8.11(b) to the Disclosure Letter (the "Free and Clear Amount") less (ii) the portion of the Free and Clear Amount that the Issuer has used to make any payment under Section 8.11(b) in respect of any other Specified Litigation on or prior to such date of determination plus (b) Qualified Equity Issuance Proceeds with respect to such Specified Litigation; provided, that, in order for the Issuer to use any portion of the Free and Clear Amount to make any payment in respect of any Specified Litigation, a Responsible Financial Officer of the Issuer shall have delivered a certificate to the Administrative Agent (in form and substance reasonably satisfactory to the Administrative Agent), (x) certifying as to the amount of the Free and Clear Amount so used in connection with such Specified Litigation and (y) setting forth a calculation of the then current amount of the Free and Clear Amount after giving effect to such use.

"Specified Litigations" means (a) the Eshelman Litigation and (b) those certain other matters, actions, suits, proceedings, claims or disputes, in each case described on Schedule 6.06(b) to the Disclosure Letter.

"Specified Milestone Payment" means the Milestone Payment (as defined in the Pfizer License Agreement) identified in the chart in Section 5.1.1 of the Pfizer License Agreement as milestone (2), as updated from time to time prior to the Closing Date, in the amounts set forth on Schedule 1.01(b) to the Disclosure Letter.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Issuer.

"SVB" has the meaning set forth in the definition of "Cash-Secured Obligations."

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Purchaser or any Affiliate of a Purchaser).

"Synthetic Lease" means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing arrangement whereby the arrangement is considered borrowed money indebtedness for tax purposes but is classified as an operating lease or does not otherwise appear on a balance sheet under GAAP.

"Systems" means any device or combination thereof that contains data and Personal Information, including any physical and electronic data information storage services and systems and in particular those that use, access, store or disclose Personal Information.

"Taxes" has the meaning set forth in Section 3.01(a).

"Term SOFR" means, for the applicable Corresponding Tenor (or if any Available Tenor of a Benchmark does not correspond to an Available Tenor for the applicable Benchmark Replacement, the closest corresponding Available Tenor and if such Available Tenor corresponds equally to two Available Tenors of the applicable Benchmark Replacement, the Corresponding Tenor of the shorter duration shall be applied), the forward-looking term rate based on the secured overnight financing rate ("SOFR") that has been selected or recommended by the Relevant Governmental Body.

"Third Party" means any Person other than the Issuer or any Subsidiary or Affiliate thereof.

"Three-Month LIBOR" means, with respect to any Interest Period, a rate per annum equal to the greater of (a) one and one-half of one percent (1.50%) per annum and (b) the three-month London Interbank Offered Rate (or a comparable or successor rate that gives due consideration to the then prevailing rate used by commercial banks in the United States which rate is reasonably determined by the Administrative Agent) for deposits in Dollars at approximately 11:00 a.m. (London, England time), as determined by the Administrative Agent from the appropriate Bloomberg or Telerate screen page selected by the Administrative Agent (or any successor thereto or similar source reasonably determined by the Administrative Agent from time to time) (the "LIBOR Screen Rate"), two (2) Business Days prior to the first Business Day of such Interest Period and rounded up to the nearest one-sixteenth ($1/16^{th}$) of one percent (1%). The Administrative Agent's determination of interest rates shall be determinative in the absence of manifest error.

"Three-Month Treasury Rate" means, as of any date of determination, the weekly average yield as of such date of determination of actually traded United States Treasury securities adjusted to a constant maturity of three (3) months (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two (2) Business Days prior to such date of determination (or, if such Federal Reserve Statistical Release H.15(519) is no longer published, any publicly available source of similar market data)). For the avoidance of doubt, this calculation is based on yields on actively traded non-inflation-indexed issues adjusted to constant maturities.

"Threshold Amount" means $750,000.

"Total Credit Exposure" means, as to any Purchaser at any time, the unused Note Purchase Commitments of such Purchaser and the Outstanding Amount of all Notes of such Purchaser at such time.

"Trademarks" means any statutory or common law trademark, service mark, trade name, logo, symbol, trade dress, domain name, corporate name or other indicator of source or origin or identifies the goods and services of one provider from another, and all applications and registrations therefor, together with all of the goodwill associated therewith.

"Tranche" means the First Tranche or the Second Tranche, as the context may require.

"Transformative Acquisition" means an Acquisition designated by the Issuer as the "Transformative Acquisition," which designation must be approved by the Administrative Agent in its sole and absolute discretion; provided, that, if the Issuer would like to designate an Acquisition as the "Transformative Acquisition," the Issuer shall provide written notice to the Administrative Agent to that effect (including such other documents and certificates as the Administrative Agent shall require in connection therewith), and within twenty (20) Business Days after receipt thereof, the Administrative Agent shall inform the Issuer by written notice whether it approves such Acquisition as the "Transformative Acquisition."

"Treasury Regulations" means the regulations, including temporary regulations, promulgated by the United States Treasury Department under the Internal Revenue Code, as such regulations may be amended from time to time (including the corresponding provisions of any future regulations).

"Uniform Commercial Code" means the Uniform Commercial Code as in effect in the State of New York; provided, that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof or of the other Note Documents relating to such perfection, effect of perfection or non-perfection or priority.

"United States" and "U.S." mean the United States of America.

"Unrestricted Cash" means, at any time, cash (which shall include, for the avoidance of doubt, cash of the Credit Parties in deposit accounts) and Cash Equivalents of the Credit Parties (without duplication) that are not Restricted at such time.

"U.S. Person" means any "United States person" as defined in Section 7701(a)(30) of the Internal Revenue Code.

"Voting Stock" means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

"Wells Fargo" means Wells Fargo Bank, National Association.

"Wells Fargo Letters of Credit" has the meaning set forth in Section 8.03(j).

"Wholly Owned Subsidiary" means any Person 100% of whose Equity Interests are at the time owned by the Issuer directly or indirectly through other Persons 100% of whose Equity Interests are at the time owned, directly or indirectly, by the Issuer. Unless otherwise specified, all references herein to a "Wholly Owned Subsidiary" or to "Wholly Owned Subsidiaries" shall refer to a Wholly Owned Subsidiary or Wholly Owned Subsidiaries of the Issuer.

"Withholding Agent" means any Credit Party and the Administrative Agent.

"Work" means any work or subject matter that is subject to protection pursuant to Title 17 of the United States Code.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.02 Other Interpretive Provisions.

With reference to this Agreement and each other Note Document, unless otherwise specified herein or in such other Note Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including the Note Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions set forth herein or in any other Note Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "hereto", "herein," "hereof" and "hereunder," and words of similar import when used in any Note Document, shall be construed to refer to such Note Document in its entirety and not to any particular provision thereof, (iv) all references in any Note Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Note Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all real and personal property and tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Note Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Note Document.

1.03 Accounting Terms.

(a) Generally. Except as otherwise specifically prescribed herein, all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein; provided, however, that, calculations of Attributable Indebtedness under any Synthetic Lease or the implied interest component of any Synthetic Lease shall be made by the Issuer in accordance with accepted financial practice and consistent with the terms of such Synthetic Lease. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, (i) Indebtedness of the Issuer and its Subsidiaries shall be deemed to be carried at one hundred percent (100%) of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded, (ii) all liability amounts shall be determined excluding any liability relating to any operating lease, all asset amounts shall be determined excluding any right-of-use assets relating to any operating lease, all amortization amounts shall be determined excluding any amortization of a right-of-use asset relating to any operating lease, and all interest amounts shall be determined excluding any deemed interest comprising a portion of fixed rent payable under any operating lease, in each case to the extent that such liability, asset, amortization or interest pertains to an operating lease under which the covenantor or a member of its consolidated group is the lessee and would not have been accounted for as such under GAAP as in effect on December 31, 2015, and (iii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB ASC Topic 825 "Financial Instruments" (or any other financial accounting standard having a similar result or effect) to value any Indebtedness of the Issuer or any Subsidiary at "fair value", as defined therein. For purposes of determining the amount of any outstanding Indebtedness, no effect shall be given to any election by the Issuer to measure an item of Indebtedness using fair value (as permitted by Financial Accounting Standards Board Accounting Standards Codification 825–10–25 (formerly known as FASB 159) or any similar accounting standard).

(b) Changes in GAAP. The Issuer will provide a written summary of material changes in GAAP and in the consistent application thereof with each annual and quarterly financial statement delivered in accordance with Section 7.01. If at any time any change in GAAP would affect the computation of any financial requirement set forth in any Note Document, and either the Issuer or the Required Purchasers shall so request, the Administrative Agent, the Purchasers and the Issuer shall negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Purchasers); provided, that, until so amended, (i) such requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Issuer shall provide to the Administrative Agent and the Purchasers financial statements and other documents required under this Agreement or as requested hereunder setting forth a reconciliation between calculations of such requirement made before and after giving effect to such change in GAAP.

(c) Calculations. For purposes of all calculations hereunder, the principal amount of Convertible Bond Indebtedness shall be the outstanding principal (or notional) amount thereof, valued at par.

(d) Consolidation of Variable Interest Rate Entities. All references herein to consolidated financial statements of the Issuer and its Subsidiaries or to the determination of any amount for the Issuer and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Issuer is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity was a Subsidiary as defined herein.

1.04 Times of Day.

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

ARTICLE II

THE NOTE PURCHASE COMMITMENTS

2.01 Note Purchase Commitments.

(a) First Tranche Notes. Subject to the terms and conditions set forth herein and in reliance upon the representations and warranties of the Credit Parties set forth herein, each First Tranche Purchaser severally and not jointly agrees to purchase from the Issuer on the Closing Date, and the Issuer agrees to issue to each such First Tranche Purchaser, a note substantially in the form of Exhibit B-1 (each a "First Tranche Note" and collectively, the "First Tranche Notes") in the amount set forth opposite such First Tranche Purchaser's name in Schedule 2.01 under the heading "First Tranche Note Purchase Commitment" (such amount being referred to herein as such First Tranche Purchaser's "First Tranche Note Purchase Commitment"). The First Tranche Notes Issuance shall consist of First Tranche Notes simultaneously issued by the Issuer to each of the First Tranche Purchasers in accordance with their respective First Tranche Note Purchase Commitments. Amounts which are repaid on the First Tranche Notes may not be reborrowed.

(b) Second Tranche Notes. Subject to Section 2.13 and the other terms and conditions set forth herein (it being understood and agreed, for the avoidance of doubt, that no Purchaser shall have any Second Tranche Note Purchase Commitment unless and until such Purchaser agrees thereto in the Second Tranche Joinder Agreement) and in reliance upon the representations and warranties of the Credit Parties set forth herein, each Second Tranche Purchaser severally and not jointly agrees to purchase from the Issuer, on the date of effectiveness of the Second Tranche Joinder Agreement (which shall be a Business Day), and the Issuer agrees to issue to each such Second Tranche Purchaser on such date (such date, the "Second Tranche Notes Issuance Date"), a note substantially in the form of Exhibit B-2 (each a "Second Tranche Note" and collectively, the "Second Tranche Notes") in an amount equal to such Second Tranche Purchaser's Second Tranche Note Purchase Commitment; provided, that, for the avoidance of doubt, it is understood and agreed that there shall be no more than one (1) Second Tranche Notes Issuance during the term of this Agreement. The Second Tranche Notes Issuance shall consist of Second Tranche Notes simultaneously issued by the Issuer to each of the Second Tranche Purchasers in accordance with their respective Second Tranche Note Purchase Commitments. Amounts which are repaid on the Second Tranche Notes may not be reborrowed.

(c) Treasury Regulations. The Issuer and the Purchasers hereby acknowledge and agree that, for United States income tax purposes, for an aggregate purchase price of $[***], the Issuer shall sell to the Purchasers, and the Purchasers shall purchase from the Issuer, the First Tranche Notes, in the respective amounts and purchase prices set forth opposite each Purchaser's name on Schedule 2.01. Furthermore, the Issuer and the Purchasers hereby acknowledge that, in the event the Second Tranche Notes are issued, for United States income tax purposes, for an aggregate purchase price of $[***], the Issuer shall sell to the Purchasers, and the Purchasers shall purchase from the Issuer, the Second Tranche Notes, in the respective amounts and purchase prices set forth opposite each Purchaser's name on Schedule 2.01. The Issuer and the Purchasers hereby acknowledge and agree that the issue price (within the meaning of Section 1273(b) of the Internal Revenue Code) of the First Tranche Notes and, if applicable, the Second Tranche Notes, is determined pursuant to Section 1272-1275 of the Code and the Treasury Regulations thereunder. The parties hereto agree to report all income tax matters with respect to the purchase of the First Tranche Notes and, if applicable, the Second Tranche Notes, consistent with the provisions of this Section 2.01(c) unless otherwise required due to a change in applicable Law.

(d) Offer of Notes; Private Offering. Subject to the accuracy of each Purchaser's several (and not joint) representations and warranties in Section 11.20, the Issuer represents and warrants to the Administrative Agent and each of the Purchasers that:

(i) as of the commencement of the offer of the Notes, and during the six (6) month period immediately preceding such offer, and concurrently with the offering of the Notes, neither the Issuer nor any of its "Affiliates" (as defined in Rule 501 of Regulation D promulgated by the SEC pursuant to the Securities Act) nor any Person acting on its or any of their behalf, directly or indirectly, offered any securities of the same or a similar class as the Notes or any part thereof or any similar securities for issue or sale to, or solicited any offer to buy any of the same from, any Person other than the Purchasers;

(ii) neither the Credit Parties nor any of their representatives or Affiliates has engaged in any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D promulgated by the SEC pursuant to the Securities Act or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act in connection with the offer or sale of the Notes;

(iii) no registration of the Notes pursuant to the provisions of the Securities Act or any "blue sky" laws of any state will be required for the offer, sale or issuance of the Notes by the Issuer pursuant to this Agreement and the Issuer has not taken, and will not take, any action which would require the issuance and sale of the Notes to be registered under the Securities Act or the Exchange Act or the registration or qualification provisions of any "blue sky" laws of any state or the securities law of any other jurisdiction;

(iv) other than Armentum Partners, the Issuer has not dealt with or paid any compensation to any broker, finder, commission agent or other Person (other than the Purchasers) in connection with the sale of the Notes and/or the other transactions contemplated by the Note Documents;

(v) the Issuer is not under any obligation to pay any broker's fee, finder's fee or commission in connection with the sale of the Notes and/or the other transactions contemplated by the Note Documents, other than the fee owed to Armentum Partners in connection with the sale of the Notes and the other transactions contemplated by the Note Documents, which fee shall be paid in full on the Closing Date;

(vi) the Notes are being offered and sold only to "accredited investors" (as defined in Rule 501 under the Securities Act) and to persons pursuant to Rule 701 under the Securities Act; and

(vii) the Notes are eligible for resale pursuant to Rule 144A and will not be of the same class as securities listed on a national securities exchange registered under Section 6 of the Exchange Act, or quoted in a U.S. automated interdealer quotation system.

2.02 Notes Issuances.

(a) Each Notes Issuance shall be made upon the Issuer's irrevocable notice (in the form of a written Notes Issuance Notice, appropriately completed and signed by a Responsible Officer of the Issuer) to the Administrative Agent requesting that the Appropriate Purchasers purchase the First Tranche Notes or the Second Tranche Notes (as the case may be), which must be given not later than 9:00 a.m. (x) on the Closing Date, in the case of the First Tranche Notes Issuance and (y) on the date at least five (5) Business Days in advance of the requested date of the Second Tranche Notes Issuance. Each Notes Issuance Notice shall specify (i) the requested date of the Notes Issuance (which shall be a Business Day) and (ii) the principal amount of the Notes to be issued. For the avoidance of doubt, the First Tranche Notes Issuance shall be in an aggregate principal amount of $100,000,000 and the Second Tranche Notes Issuance shall be in a maximum aggregate principal amount of $25,000,000.

(b) Following receipt of a Notes Issuance Notice for a Tranche, the Administrative Agent shall promptly notify each Appropriate Purchaser of the amount of its Applicable Percentage under such Tranche of the applicable Notes. Each Appropriate Purchaser shall make the amount required to purchase its Note available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Notes Issuance Notice. Upon satisfaction of the applicable conditions set forth in Sections 5.02 and 5.03 (and, if such Notes Issuance is the First Tranche Notes Issuance, Section 5.01), the Administrative Agent shall make all funds so received available to the Issuer in like funds as received by the Administrative Agent by wire transfer of such funds in accordance with instructions provided to (and acceptable to) the Administrative Agent by the Issuer.

2.03 Prepayments.

(a) Voluntary Prepayments. Subject to the payment of any repayment premium as required under Section 2.03(d), the exit fee required under Section 2.07(b) and any other fees or amounts payable hereunder at such time, the Issuer may, upon written notice from the Issuer to the Administrative Agent, voluntarily prepay the Notes, in whole or in part; provided, that, (i) such notice must be received not later than 11:00 a.m. three (3) Business Days prior to the date of prepayment and (ii) any such prepayment shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding). Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Issuer, the Issuer shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment pursuant to this Section 2.03(a) shall be accompanied by (x) all accrued interest on the principal amount of the Notes prepaid, (y) the repayment premium required under Section 2.03(d) and the exit fee required under Section 2.07(b) and (z) all fees, costs, expenses, indemnities and other amounts due and payable hereunder at the time of prepayment. Each such prepayment shall be applied (x) with respect to any such prepayment on or prior to March 31, 2024, first, to outstanding Second Tranche Notes (if any) and second, to outstanding First Tranche Notes and (y) with respect to any such prepayment after March 31, 2024, first, to outstanding Second Tranche Notes (if any) and second, to outstanding First Tranche Notes and to the principal repayment installments of each thereof in the inverse order of maturity. Each such prepayment shall be applied to the Notes of the Purchasers in accordance with their respective Applicable Percentages in respect of each of the relevant Tranches.

(b) Mandatory Prepayments of Notes.

(i) Dispositions and Involuntary Dispositions. The Issuer shall promptly (and, in any event, within three (3) Business Days) prepay the Notes in an aggregate amount equal to 100% of the Net Cash Proceeds of any Disposition or Involuntary Disposition received by any Credit Party or any Subsidiary to the extent such Net Cash Proceeds are not reinvested in Eligible Assets within one hundred and eighty (180) days of the date of such Disposition or Involuntary Disposition. Any prepayment pursuant to this clause (i) shall be applied as set forth in clause (iv) below.

(ii) Extraordinary Receipts. The Issuer shall promptly (and, in any event, within three (3) Business Days) upon the receipt by any Credit Party or any Subsidiary of the Net Cash Proceeds of any Extraordinary Receipt, prepay the Notes in an aggregate amount equal to 100% of such Net Cash Proceeds to the extent such Net Cash Proceeds are not reinvested in Eligible Assets within one hundred and eighty (180) days of the date of such receipt. Any prepayment pursuant to this clause (ii) shall be applied as set forth in clause (iv) below.

(iii) Debt Issuance. The Issuer shall promptly (and, in any event, within three (3) Business Days) upon the receipt by any Credit Party or any Subsidiary of the Net Cash Proceeds of any Debt Issuance, prepay the Notes in an aggregate amount equal to 100% of such Net Cash Proceeds. Any prepayment pursuant to this clause (iii) shall be applied as set forth in clause (iv) below.

(iv) Application of Mandatory Prepayments. All payments under this Section 2.03(b) shall be applied first to all fees (other than, for the avoidance of doubt, exit fees required by Section 2.07(b)), costs, expenses, indemnities and other amounts due and payable hereunder, then proportionately (based on the relation of such amounts to the total amount of the relevant payment under this Section 2.03(b)) to the payment or prepayment (as applicable) of the following amounts of the Obligations: default interest, if any, repayment premium required by Section 2.03(d) and exit fee required by Section 2.07(b), accrued interest and principal. Each such prepayment shall be applied (x) with respect to any such prepayment on or prior to March 31, 2024, first, to outstanding Second Tranche Notes (if any) and second, to outstanding First Tranche Notes and (y) with respect to any such prepayment after March 31, 2024, first, to outstanding Second Tranche Notes (if any) and second, to outstanding First Tranche Notes and to the principal repayment installments of each thereof on a *pro rata* basis. Each such prepayment shall be applied to the Notes of the Purchasers in accordance with their respective Applicable Percentages in respect of each of the relevant Tranches.

(c) Change of Control. Upon the occurrence of a Change of Control, the Issuer shall, at the direction of the Required Purchasers, and may, at its option upon three (3) Business Days prior written notice from the Issuer to the Administrative Agent, prepay the Outstanding Amount of the Notes together with all accrued and unpaid interest thereon plus the repayment premium required by Section 2.03(d) and the exit fee required by Section 2.07(b) plus all other Obligations. Each such direction or notice shall specify the date and amount of such prepayment. If such direction or notice is given, the Issuer shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Each prepayment under this Section 2.03(c) shall be applied to the Notes of the Purchasers in accordance with their respective Applicable Percentages.

(d) Repayment Premiums. Notwithstanding anything to the contrary in this Agreement or any other Note Document, if all or any portion of the principal amount of any Notes are repaid, or required to be repaid, pursuant to this Section 2.03, Article IX or otherwise (excluding, for the avoidance of doubt, payments made, or required to be made, by the Issuer pursuant to Section 2.05), then, in all cases, the Issuer shall pay to the Purchasers, for their respective ratable accounts, on the date on which such repayment is paid or required to be paid, in addition to the other Obligations so repaid or required to be repaid, a repayment premium equal to: (i) with respect to any repayment paid or required to be paid on or prior to the second (2nd) anniversary of the Notes Issuance Date with respect to such Notes, an amount equal to the Make-Whole Amount with respect to such repayment, (ii) with respect to any repayment paid or required to be paid after the second (2nd) anniversary of the date of the Notes Issuance Date with respect to such Notes but on or prior to the third (3rd) anniversary of the date of the Notes Issuance Date with respect to such Notes, two percent (2.00%) of the principal amount of such Notes that is repaid or required to be repaid, and (iii) with respect to any repayment paid or required to be paid thereafter, zero percent (0.00%) of the principal amount of such Notes that is repaid or required to be repaid.

2.04 Termination of Note Purchase Commitments.

The First Tranche Note Purchase Commitments will be automatically and permanently reduced to zero upon the First Tranche Notes Issuance pursuant to Section 2.01(a). The Second Tranche Note Purchase Commitments (if any) will be automatically and permanently reduced to zero upon the Second Tranche Notes Issuance pursuant to Section 2.01(b).

2.05 Repayment of Notes.

(a) First Tranche Notes.

The Issuer shall repay the outstanding principal amount of the First Tranche Notes in installments on the dates set forth below, in each case, in the respective amounts set forth in the table below (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.03), unless accelerated sooner pursuant to Section 9.02:

Payment Dates	Principal Amortization Payment (% of Aggregate Principal Amount of First Tranche Notes Outstanding on March 31, 2024)
June 30, 2024	[***]
September 30, 2024	[***]
December 31, 2024	[***]
March 31, 2025	[***]
June 30, 2025	[***]
September 30, 2025	[***]
December 31, 2025	[***]
March 31, 2026	[***]
Maturity Date	Outstanding Principal Balance Of First Tranche Notes

provided, however, that, (x) the final principal repayment installment of the First Tranche Notes shall be repaid on the Maturity Date and in any event shall be in an amount equal to the aggregate principal amount of all First Tranche Notes outstanding on such date and (y) if any principal repayment installment to be made by the Issuer shall come due on a day other than a Business Day, such principal repayment installment shall be due on the first preceding Business Day.

(b) Second Tranche Notes.

The Issuer shall repay the outstanding principal amount of the Second Tranche Notes in installments on the dates set forth below, in each case, in the respective amounts set forth in the table below (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.03), unless accelerated sooner pursuant to Section 9.02:

Payment Dates	Principal Amortization Payment (% of Aggregate Principal Amount of Second Tranche Notes Outstanding on March 31, 2024)
June 30, 2024	[***]
September 30, 2024	[***]
December 31, 2024	[***]
March 31, 2025	[***]
June 30, 2025	[***]
September 30, 2025	[***]
December 31, 2025	[***]
March 31, 2026	[***]
Maturity Date	Outstanding Principal Balance Of First Tranche Notes

provided, however, that, (x) the final principal repayment installment of the Second Tranche Notes shall be repaid on the Maturity Date and in any event shall be in an amount equal to the aggregate principal amount of all Second Tranche Notes outstanding on such date and (y) if any principal repayment installment to be made by the Issuer shall come due on a day other than a Business Day, such principal repayment installment shall be due on the first preceding Business Day.

2.06 Interest.

(a) Pre-Default Rate. Subject to the provisions of clause (b) below, each Note shall bear interest on the outstanding principal amount thereof for each Interest Period from the applicable Notes Issuance Date thereof at a rate per annum equal to the Interest Rate for such Interest Period.

(b) Default Rate. (i) Upon the occurrence and during the existence of any Event of Default, all outstanding Obligations shall thereafter bear interest at an interest rate per annum at all times equal to the Interest Rate for the applicable Interest Period plus two percent (2.00%) per annum (the "Default Rate"), to the fullest extent permitted by applicable Laws and (ii) accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable in cash on demand.

(c) Interest Generally. Interest on each Note shall be due and payable in arrears on each Interest Payment Date and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.07 Fees.

(a) Original Issue Discount.

(i) Closing Date Original Issue Discount. The First Tranche Notes shall be issued on the Closing Date with original issue discount, for the ratable benefit of the First Tranche Purchasers, in an aggregate amount equal to $[***]. Such original issue discount shall be fully earned on the Closing Date and shall be non-refundable for any reason whatsoever. It is understood and agreed that Athyrium, the Administrative Agent and the Purchasers reserve the right to allocate, in whole or in part, to their respective Affiliates, the fees and original issue discount payable to such Persons hereunder in such manner as Athyrium, the Administrative Agent, the Purchasers and such Affiliates shall agree in their sole discretion.

(ii) Second Tranche Notes Issuance Date Original Issue Discount. The Second Tranche Notes shall be issued on the Second Tranche Notes Issuance Date with original issue discount, for the ratable benefit of the Second Tranche Purchasers, in an aggregate amount equal to $[***]. Such original issue discount shall be fully earned on the Second Tranche Notes Issuance Date and shall be non-refundable for any reason whatsoever. It is understood and agreed that Athyrium, the Administrative Agent and the Purchasers reserve the right to allocate, in whole or in part, to their respective Affiliates, the fees and original issue discount payable to such Persons hereunder in such manner as Athyrium, the Administrative Agent, the Purchasers and such Affiliates shall agree in their sole discretion.

(b) Exit Fees. Upon the prepayment or repayment of all or any portion of the principal amount of the Notes (or upon the date any such prepayment or repayment is required to be paid), whether pursuant to Section 2.03, Section 2.05 or Section 9.02, or otherwise, the Issuer shall pay to the Purchasers, for their respective ratable accounts, on the date on which such prepayment or repayment is paid or required to be paid, as the case may be, in addition to the other Obligations so prepaid, repaid or required to be prepaid or repaid, an exit fee in an amount equal to two percent (2.00%) of the principal amount of the Notes prepaid, repaid or required to be prepaid or repaid, as the case may be, on such date.

2.08 Computation of Interest.

All computations of interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Note for the day on which such Note is issued, and shall not accrue on a Note, or any portion thereof, for the day on which such Note or such portion is paid.

2.09 Evidence of Debt.

The Notes issued to the Purchasers shall be evidenced by one or more accounts or records maintained by such Purchaser in the ordinary course of business. The accounts or records maintained by each Purchaser shall be conclusive absent manifest error of the amount of the Notes held by the Purchasers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Issuer hereunder to pay any amount owing with respect to the Obligations.

2.10 Payments Generally.

(a) General. All payments to be made by the Issuer shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Subject to Section 9.03, all payments of principal, interest, repayment premiums and fees on the Notes and all other Obligations payable by any Credit Party under the Note Documents shall be due, without any presentment thereof, directly to the Purchasers, at the respective Purchasing Offices of the Purchasers; provided, that, if at the time of any such payment a Purchaser is a Defaulting Purchaser, such Defaulting Purchaser's *pro rata* share of such payment shall be made directly to the Administrative Agent. The Credit Parties will make such payments in Dollars, in immediately available funds not later than 2:00 p.m. on the date due, marked for attention as indicated, or in such other manner or to such other account in any United States bank as the Purchasers may from time to time direct in writing. All payments received by the Purchasers after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Issuer shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest.

(b) Obligations of Purchasers Several. The obligations of the Purchasers hereunder to purchase the Notes and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Purchaser to purchase any Note or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Purchaser of its corresponding obligation to do so on such date, and no Purchaser shall be responsible for the failure of any other Purchaser to so purchase a Note or to make its payment under Section 11.04(c).

(c) Funding Source. Nothing herein shall be deemed to obligate any Purchaser to obtain the funds for the purchase of any Note in any particular place or manner or to constitute a representation by any Purchaser that it has obtained or will obtain the funds for the purchase of any Note in any particular place or manner.

2.11 Sharing of Payments by Purchasers.

If any Purchaser shall, by exercising any right of setoff or otherwise, obtain payment in respect of any principal of or interest on its Notes or repayment premium or exit fee in connection therewith resulting in such Purchaser's receiving payment of a proportion of the aggregate amount of the Notes and accrued interest thereon and repayment premium or exit fees in connection therewith greater than its *pro rata* share thereof as provided herein, then the Purchaser shall (a) notify the Administrative Agent of such fact and (b) purchase (for cash at face value) participations in the Notes of the other Purchasers pursuant to documentation reasonably satisfactory to the Administrative Agent, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Purchasers ratably in accordance with the aggregate amount of principal of, accrued interest on and repayment premium or exit fees in connection with their respective Notes and other amounts owing them; provided, that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section 2.11 shall not be construed to apply to (x) any payment made by or on behalf of the Issuer pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Purchaser) or (y) any payment obtained by a Purchaser as consideration for the assignment of any of its Notes to any assignee, other than an assignment to the Issuer or any Subsidiary (as to which the provisions of this Section shall apply).

Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Purchaser acquiring a participation pursuant to the foregoing arrangements may exercise against such Credit Party rights of setoff and counterclaim with respect to such participation as fully as if such Purchaser were a direct creditor of such Credit Party in the amount of such participation.

2.12 Defaulting Purchasers.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Purchaser becomes a Defaulting Purchaser, then, until such time as that Purchaser is no longer a Defaulting Purchaser, to the extent permitted by applicable Law:

(i) Waivers and Amendment. The Defaulting Purchaser's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 11.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Purchaser (whether voluntary or mandatory, at maturity, pursuant to Article IX or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Purchaser pursuant to Section 11.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Purchaser to the Administrative Agent hereunder; second, as the Issuer may request (so long as no Default or Event of Default exists), to the purchase of any Note in respect of which that Defaulting Purchaser has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Issuer, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Purchaser to purchase Note under this Agreement; fourth, to the payment of any amounts owing to the Purchasers as a result of any judgment of a court of competent jurisdiction obtained by any Purchaser against that Defaulting Purchaser as a result of that Defaulting Purchaser's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Issuer as a result of any judgment of a court of competent jurisdiction obtained by the Issuer against that Defaulting Purchaser as a result of that Defaulting Purchaser's breach of its obligations under this Agreement; and sixth, to that Defaulting Purchaser or as otherwise directed by a court of competent jurisdiction; provided, that, if (x) such payment is a payment of the principal amount of any Notes in respect of which that Defaulting Purchaser has not fully funded its appropriate share and (y) such Notes were purchased at a time when the conditions set forth in Section 5.02 were satisfied or waived, such payment shall be applied solely to pay the Notes of all non-Defaulting Purchasers on a pro rata basis prior to being applied to the payment of any Notes of that Defaulting Purchaser. Any payments, prepayments or other amounts paid or payable to a Defaulting Purchaser that are applied (or held) to pay amounts owed by a Defaulting Purchaser pursuant to this Section 2.12(a)(ii) shall be deemed paid to and redirected by that Defaulting Purchaser, and each Purchaser irrevocably consents hereto.

(b) Defaulting Purchaser Cure. If the Issuer and the Administrative Agent agree in writing in their sole discretion that a Defaulting Purchaser should no longer be deemed to be a Defaulting Purchaser, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Purchaser will cease to be a Defaulting Purchaser; provided, that, no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Issuer while that Purchaser was a Defaulting Purchaser; provided, further, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Purchaser to Purchaser will constitute a waiver or release of any claim of any party hereunder arising from that Purchaser having been a Defaulting Purchaser.

2.13 Second Tranche.

At any time on or after the Closing Date but prior to the earlier to occur of (x) January 23, 2023 and (y) the termination of all unused Note Purchase Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted) under the Note Documents, upon prior written notice by the Issuer to the Administrative Agent, the Issuer may institute the Second Tranche in an aggregate amount not to exceed TWENTY-FIVE MILLION DOLLARS ($25,000,000); provided, that,

(a) the Issuer shall have obtained commitments for the amount of the Second Tranche from existing Purchasers or other Persons reasonably acceptable to the Administrative Agent, which Purchasers shall join in this Agreement pursuant to such agreements as are reasonably acceptable to the Administrative Agent;

(b) any such institution of the Second Tranche shall be in a minimum aggregate principal amount of $10,000,000 and integral multiples of $1,000,000 in excess thereof;

(c) (i) no Default or Event of Default shall exist and be continuing at the time of such institution, (ii) the Second Tranche shall only be used to fund the Transformative Acquisition and to pay fees and expenses in connection therewith and (iii) the conditions precedent set forth in Section 5.03 shall have been satisfied prior to or contemporaneously with the purchase of the Second Tranche Notes;

(d) (i) the final maturity date with respect to the Second Tranche Notes shall be the Maturity Date, (ii) the scheduled principal amortization payments for the Second Tranche shall be as set forth in Section 2.05(b) and (iii) the interest rate, repayment premiums and exit fees for the Second Tranche shall be identical to the interest rate, repayment premiums and exit fees, as the case may be, for the First Tranche;

(e) the Issuer shall have paid all fees and original issue discount required to be paid in connection therewith, including pursuant to Section 2.07(a);

(f) Schedule 2.01 shall be deemed revised to reflect the commitments and commitment percentages of the Second Tranche Note Purchasers, as set forth in the Second Tranche Joinder Agreement;

(g) no Purchaser shall be obligated to participate in the Second Tranche, which decision shall be made in the sole discretion of each Purchaser;

(h) the Second Tranche Purchasers, the Administrative Agent and the Credit Parties shall have entered into (i) the Second Tranche Joinder Agreement and (ii) such technical amendments to this Agreement as are necessary, in the Administrative Agent's reasonable discretion, to effect the inclusion of the Second Tranche herein; and

(i) as a condition precedent to such institution of the Second Tranche and the effectiveness of the Second Tranche Joinder Agreement, the Issuer shall have delivered to the Administrative Agent a certificate of each Credit Party dated as of the date of such institution and effectiveness (in sufficient copies for each Purchaser) signed by a Responsible Officer of such Credit Party (i) certifying and attaching the resolutions adopted by such Credit Party approving or consenting to the Second Tranche, and (ii) certifying that, before and after giving effect to the issuance of the Second Tranche Notes, (x) the representations and warranties contained in Article VI and the other Note Documents are true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) on and as of the date of such issuance, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) as of such earlier date, and except that for purposes of this Section 2.13, the representations and warranties contained in subsections (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 7.01, and (y) no Default or Event of Default exists.

ARTICLE III

TAXES, INCREASED COSTS AND YIELD PROTECTION

3.01 Taxes.

(a) All payments of principal and interest on the Notes and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future income, excise, stamp, documentary, property or franchise taxes and other taxes, fees, duties, levies, assessments, withholdings or other charges of any nature whatsoever (including interest and penalties thereon) imposed by any taxing authority, excluding (x) taxes imposed on or measured by net income imposed by the jurisdiction under which a Recipient is organized or conducts business (other than solely as the result of entering into any of the Note Documents or taking any action thereunder), (y) U.S. federal withholding taxes imposed on amounts payable to or for the account of a Recipient with respect to an applicable interest in a Note or Note Purchase Commitment pursuant to a Law in effect on the date on which (i) such Recipient acquires such interest in the Note or Note Purchase Commitment (other than pursuant to an assignment request by the Issuer pursuant to Section 11.13) or (ii) such Recipient changes its Purchasing Office, except in each case to the extent that, pursuant to this Section 3.01, amounts with respect to such taxes were payable either to such Recipient's assignor immediately before such Recipient became a party hereto or to such Recipient immediately before it changed its Purchasing Office and (z) any withholding tax imposed under FATCA (all non-excluded items being called "Taxes"). If any withholding or deduction of any Taxes from any payment by or on account of any obligation of any Credit Party hereunder is required in respect of any Taxes pursuant to any applicable Law, then (i) the applicable Withholding Agent shall be entitled to make such withholding or deduction and shall pay directly to the relevant Governmental Authority the full amount required to be so withheld or deducted, (ii) the applicable Withholding Agent shall promptly forward to the Administrative Agent an official receipt or other documentation reasonably satisfactory to the Administrative Agent evidencing such payment to such Governmental Authority and (iii) the sum payable by the applicable Credit Party shall be increased by such additional amount or amounts as is necessary to ensure that the net amount actually received by the applicable Recipient will equal the full amount such Recipient would have received had no such withholding or deduction (including such withholdings or deductions applicable to additional sums payable under this Section) been required.

(b) If, due to a change in Sections 871(h) or 881(c) of the Internal Revenue Code (or any successor provisions) after the date a Person becomes an Indirect Purchaser under this Agreement, any withholding is required to be made by a Purchaser or any Affiliate thereof to such Indirect Purchaser attributable to payments made by any Credit Party hereunder, such Credit Party shall pay to such Purchaser such additional amount or amounts as is necessary to ensure that the net amount actually received by any Indirect Purchaser will equal the full amount such Purchaser would have received had no such withholding or deduction been required; provided, that, in the event additional amounts are due in respect of an Indirect Purchaser, immediately before such Indirect Purchaser transfers a direct or indirect interest in a Purchaser to a transferee and withholding is required to be made by a Purchaser or any Affiliate to such transferee Indirect Purchaser attributable to payments to be made by any Credit Party hereunder, a Credit Party shall be required to pay additional amounts pursuant to this Section in an amount not exceeding the additional amounts payable prior to the transfer by the transferor Indirect Purchaser; provided, further, that, no such additional amounts shall be payable by a Credit Party to the extent such withholding could have been avoided by any Indirect Purchaser and each entity in the chain of ownership between such Indirect Purchaser and the Purchaser providing Internal Revenue Service Forms W-9, W-8ECI, W-8BEN, W-8BEN-E or W-8IMY (as applicable) or any successor forms thereto, to the Purchaser or other entity in the chain of ownership between such Indirect Purchaser and the Purchaser, as applicable.

(c) The Issuer shall indemnify each Recipient, within ten (10) days after demand therefor, for (i) the full amount of any Taxes (including Taxes imposed on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment by such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority and (ii) any amounts required to be paid by a Credit Party pursuant to clause (b) of this Section and any reasonable expenses arising therefrom or with respect thereto.

(d) Each Purchaser that is not a U.S. Person that purports to become an assignee of an interest pursuant to Section 11.06 after the Closing Date (each such Purchaser a "Foreign Purchaser") shall execute and deliver to each of the Issuer and the Administrative Agent on or prior to the date that such Purchaser becomes a party hereto (and from time to time thereafter upon the reasonable request of the Issuer or the Administrative Agent), one or more (as the Issuer or the Administrative Agent may reasonably request) duly completed and executed copies of Internal Revenue Service Forms W-8ECI, W-8BEN, W-8BEN-E, W-8IMY (as applicable) and other applicable forms, certificates or documents prescribed by the Internal Revenue Service or reasonably requested by the Issuer or the Administrative Agent certifying as to such Purchaser's entitlement to any available exemption from or reduction of withholding or deduction of taxes, including FATCA. Solely for purposes of this clause (c), FATCA shall include any amendments made to FATCA after the date of this Agreement. Each Purchaser that is a "United States person" as defined in Section 7701(a)(30) of the Internal Revenue Code shall execute and deliver to the Issuer and the Administrative Agent on or prior to the date such Purchaser becomes a party hereto (and from time to time thereafter upon the reasonable request of the Issuer or the Administrative Agent), one or more (as the Issuer or the Administrative Agent may reasonably request) duly completed and executed copies of Internal Revenue Service Form W-9 certifying that such Purchaser is not subject to United States backup withholding. The Issuer shall not be required to pay additional amounts to any Foreign Purchaser pursuant to this Section 3.01 with respect to taxes attributable to the failure of such Foreign Purchaser to comply with this paragraph.

(e) Each Purchaser agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall promptly update such form or certification or promptly notify the Administrative Agent and the Issuer of its inability to do so.

3.02 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Purchaser;

(ii) subject any Recipient to any taxes (other than (A) Taxes that are covered by Section 3.01(a) and (B) taxes that are excluded from the definition of Taxes in Section 3.01(a)) on its notes (or any portion thereof), commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Purchaser or the London interbank market any other condition, cost or expense (other than taxes) affecting this Agreement;

and the result of any of the foregoing shall be to increase the cost to such Purchaser of purchasing or maintaining any Note (or of maintaining its obligation to purchase any Note), then, upon written demand of such Purchaser, the Issuer will pay to such Purchaser, as the case may be, such additional amount or amounts as will compensate such Purchaser, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Purchaser determines that any Change in Law affecting such Purchaser or any Purchasing Office of such Purchaser or such Purchaser's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Purchaser's capital or on the capital of such Purchaser's holding company, if any, as a consequence of this Agreement, the Note Purchase Commitments of such Purchaser or the Notes purchased by such Purchaser to a level below that which such Purchaser or such Purchaser's holding company could have achieved but for such Change in Law (taking into consideration such Purchaser's policies and the policies of such Purchaser's holding company with respect to capital adequacy), then from time to time the Issuer will pay to such Purchaser, as the case may be, such additional amount or amounts as will compensate such Purchaser or such Purchaser's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Purchaser setting forth the amount or amounts necessary to compensate such Purchaser or its holding company, as the case may be, as specified in clause (a) or (b) of this Section and delivered to the Issuer shall be conclusive absent manifest error. The Issuer shall pay such Purchaser the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Reserves. The Issuer shall pay to each Purchaser, (i) as long as such Purchaser shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Note equal to the actual costs of such reserves allocated to such Note by such Purchaser (as determined by such Purchaser in good faith, which determination shall be conclusive), and (ii) as long as such Purchaser shall be required to comply with any reserve ratio requirement or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Note Purchase Commitments or the purchase of the Notes, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Note Purchase Commitment or Note by such Purchaser (as determined by such Purchaser in good faith, which determination shall be conclusive), which in each case shall be due and payable on each date on which interest is payable on such Note; provided, that, the Issuer shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Purchaser. If a Purchaser fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

(e) Delay in Requests. Failure or delay on the part of any Purchaser to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Purchaser's right to demand such compensation; provided, that, the Issuer shall not be required to compensate a Purchaser pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Purchaser notifies the Issuer of the Change in Law giving rise to such increased costs or reductions and of such Purchaser's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.03 Mitigation Obligations; Replacement of Purchasers.

(a) Designation of a Different Purchasing Office. If any Purchaser requests compensation under Section 3.02 or requires the Issuer to pay any Taxes or additional amounts to any Purchaser or any Governmental Authority for the account of any Purchaser pursuant to Section 3.01 or if any Purchaser gives a notice pursuant to Section 3.02, then at the request of the Issuer such Purchaser shall, as applicable, use reasonable efforts to designate a different Purchasing Office for funding or booking its Notes hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Purchaser, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.02, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.04, as applicable, and (ii) in each case, would not subject such Purchaser, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Purchaser. The Issuer hereby agrees to pay all reasonable costs and expenses incurred by any Purchaser in connection with any such designation or assignment.

(b) Replacement of Purchasers. If any Purchaser requests compensation under Section 3.02, or if the Issuer is required to pay any Taxes or additional amounts to any Purchaser or any Governmental Authority for the account of any Purchaser pursuant to Section 3.01 and, in each case, such Purchaser has declined or is unable to designate a different Purchasing Office in accordance with Section 3.03(a), the Issuer may replace such Purchaser in accordance with Section 11.13.

3.04 Illegality.

If any Purchaser determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Purchaser or its Purchasing Office to perform any of its obligations hereunder or to make, maintain or fund or charge interest with respect to any Note, or any Governmental Authority has imposed material restrictions on the authority of such Purchaser to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Purchaser to the Issuer through the Administrative Agent, any obligation of such Purchaser to issue, make, maintain, fund or charge interest with respect to any such Note or to purchase any Note shall be suspended until such Purchaser notifies the Administrative Agent and the Issuer that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Issuer shall, upon demand from such Purchaser (with a copy to the Administrative Agent), prepay the Notes of such Purchaser immediately.

3.05 Inability to Determine Rates.

(a) If, prior to the commencement of any Interest Period:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining Three-Month LIBOR (or, the then current Benchmark) for such Interest Period; or

(ii) the Administrative Agent is advised by the Required Purchasers that Three-Month LIBOR (or, the then current Benchmark) for such Interest Period will not adequately and fairly reflect the cost to such Purchasers of making or maintaining the Notes for such Interest Period;

(iii) then the Administrative Agent shall give notice thereof to the Issuer and the Purchasers as promptly as practicable thereafter. In the event of any such determination, until the Administrative Agent has advised the Issuer that the circumstances giving rise to such notice no longer exist, Adjusted Three-Month LIBOR (or, the then current Benchmark) shall be determined by the Administrative Agent solely by reference to clause (b) of the definition of Adjusted Three-Month LIBOR (or, the corresponding clause with respect to the then current Benchmark, as the case may be).

(b) Notwithstanding anything to the contrary in this Agreement or any other Note Document:

(i) On March 5, 2021 the Financial Conduct Authority ("FCA"), the regulatory supervisor of Three-Month LIBOR's administrator ("IBA"), announced in a public statement the future cessation or loss of representativeness of Three-Month LIBOR tenor settings. On the earliest of (A) the date that Three-Month LIBOR has permanently or indefinitely ceased to be provided by IBA or has been announced by the FCA pursuant to public statement or publication of information to be no longer representative, (B) June 30, 2023, and (C) the Early Opt-in Effective Date in respect of a SOFR Early Opt-in, if the then-current Benchmark is Three-Month LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Note Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Note Document.

(ii) (A)Upon (1) the occurrence of a Benchmark Transition Event, or (2) a determination by the Administrative Agent that the rate under clause (a) of the definition of "Benchmark Replacement" is not available or does not adequately and fairly reflect the cost to the Purchasers of purchasing and maintaining the Notes, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Note Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Purchasers without any amendment to, or further action or consent of any other party to, this Agreement or any other Note Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Purchasers comprising the Required Purchasers (and any such objection shall be conclusive and binding absent manifest error).

(B) On the Early Opt-in Effective Date in respect of an Other Rate Early Opt-in, the Benchmark Replacement will replace Three-Month LIBOR for all purposes hereunder and under any Note Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Note Document.

(iii) In connection with the implementation and administration of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Note Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iv) The Administrative Agent will promptly notify the Issuer and the Purchasers of (A) the implementation of any Benchmark Replacement, and (B) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent pursuant to this Section 3.05(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.05(b).

(v) At any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or Three-Month LIBOR), then the Administrative Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings, and (B) the Administrative Agent may reinstate any such previously removed tenor for such Benchmark (including Benchmark Replacement) settings.

3.06 Survival.

All of the Issuer's obligations under this Article III shall survive termination of the Note Purchase Commitments, repayment of all Obligations hereunder and resignation of the Administrative Agent.

ARTICLE IV

GUARANTY

4.01 The Guaranty.

Each of the Guarantors hereby jointly and severally guarantees to each Secured Party and the Administrative Agent as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Notwithstanding any provision to the contrary contained herein or in any other of the Note Documents, the obligations of each Guarantor under this Agreement and the other Note Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under the Debtor Relief Laws or any comparable provisions of any applicable state law.

4.02 Obligations Unconditional.

The obligations of the Guarantors under Section 4.01 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Note Documents, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any law or regulation or other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 4.02 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Issuer or any other Guarantor for amounts paid under this Article IV until such time as the Obligations (other than contingent indemnification obligations for which no claim has been asserted) have been paid in full and the Note Purchase Commitments have expired or terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of any of the Note Documents, or any other agreement or instrument referred to in the Note Documents shall be done or omitted;

(c) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Note Documents, or any other agreement or instrument referred to in the Note Documents shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, any Secured Party as security for any of the Obligations shall fail to attach or be perfected; or

(e) any of the Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Secured Parties exhaust any right, power or remedy or proceed against any Person under any of the Note Documents, or any other agreement or instrument referred to in the Note Documents, or against any other Person under any other guarantee of, or security for, any of the Obligations.

4.03 Reinstatement.

The obligations of the Guarantors under this Article IV shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any Secured Party, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify the Secured Parties on demand for all reasonable costs and expenses (including, without limitation, the fees, charges and disbursements of counsel) incurred by the Secured Parties in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

4.04 Certain Additional Waivers.

Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to Section 4.02 and through the exercise of rights of contribution pursuant to Section 4.06.

4.05 Remedies.

The Guarantors agree that, to the fullest extent permitted by law, as between the Guarantors, on the one hand, and the Secured Parties, on the other hand, the Obligations may be declared to be forthwith due and payable as provided in Section 9.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in said Section 9.02) for purposes of Section 4.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 4.01. The Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the Secured Parties may exercise their remedies thereunder in accordance with the terms thereof.

4.06 Rights of Contribution.

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable law. Such contribution rights shall be subordinate and subject in right of payment to the obligations of such Guarantors under the Note Documents and no Guarantor shall exercise such rights of contribution until all Obligations (other than contingent indemnification obligations for which no claim has been asserted) have been paid in full and the Note Purchase Commitments have terminated.

4.07 Guarantee of Payment; Continuing Guarantee.

The guarantee in this Article IV is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Obligations whenever arising.

ARTICLE V

CONDITIONS PRECEDENT TO PURCHASE OF NOTES

5.01 Conditions to Purchase of First Tranche Notes.

This Agreement shall become effective upon and the obligation of each Purchaser to purchase its First Tranche Note on the Closing Date is subject to satisfaction of the following conditions precedent:

(a) Note Documents. Receipt by the Administrative Agent of executed counterparts of this Agreement and the other Note Documents, each properly executed by a Responsible Officer of the signing Credit Party and each other party to such Note Documents, including without limitation the First Tranche Notes, duly executed and issued by the Issuer and in each case in form and substance reasonably satisfactory to the Administrative Agent.

(b) Opinions of Counsel. Receipt by the Administrative Agent of favorable opinions of legal counsel to the Credit Parties, addressed to the Administrative Agent and each Purchaser, dated as of the Closing Date, and in form and substance reasonably satisfactory to the Administrative Agent.

(c) Financial Statements; Due Diligence. The Administrative Agent shall have received the Audited Financial Statements, the Interim Financial Statements and such other reports, statements and due diligence items as the Administrative Agent or any Purchaser shall request.

(d) No Material Adverse Change. There shall not have occurred since December 31, 2020 any event or condition that has had or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(e) Litigation. There shall not exist any action, suit, investigation or proceeding pending or threatened in any court or before an arbitrator or Governmental Authority, other than the Specified Litigations, that could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(f) Organization Documents, Resolutions, Etc. Receipt by the Administrative Agent of the following, each of which shall be originals or facsimiles (followed promptly by originals), in form and substance reasonably satisfactory to the Administrative Agent and its legal counsel:

(i) copies of the Organization Documents of each Credit Party certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a secretary or assistant secretary of such Credit Party to be true and correct as of the Closing Date;

(ii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Credit Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Note Documents to which such Credit Party is a party; and

(iii) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Credit Party is duly organized or formed, and is validly existing, in good standing and qualified to engage in business in its state of organization or formation.

(g) Perfection and Priority of Liens. Receipt by the Administrative Agent of the following:

(i) searches of Uniform Commercial Code filings in the jurisdiction of formation of each Credit Party or where a filing would need to be made in order to perfect the Administrative Agent's security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens;

(ii) Uniform Commercial Code financing statements for each appropriate jurisdiction as is necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Collateral;

(iii) all certificates evidencing any certificated Equity Interests pledged to the Administrative Agent pursuant to the Pledge Agreement, together with duly executed in blank and undated stock powers attached thereto;

(iv) searches of ownership of, and Liens on, the Intellectual Property of each Credit Party in the appropriate governmental offices;

(v) duly executed notices of grant of security interest in the form required by the Security Agreement as are necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Intellectual Property of the Credit Parties;

(vi) subject to Section 7.22, in the case of any personal property Collateral located at a premises leased by a Credit Party, such Collateral Access Agreements as may be reasonably required by the Administrative Agent; and

(vii) subject to Section 7.22, such Deposit Account Control Agreements as shall be necessary to cause the Credit Parties to be in compliance with Section 7.16.

(h) Real Property Collateral. Receipt by the Administrative Agent of Real Property Security Documents, if any, with respect to the fee interest of any Credit Party in each real property identified on Schedule 6.20(a) to the Disclosure Letter (other than Excluded Property).

(i) Evidence of Insurance. Receipt by the Administrative Agent of copies of insurance policies or certificates of insurance of the Credit Parties evidencing liability and casualty insurance meeting the requirements set forth in the Note Documents, including, but not limited to, naming the Administrative Agent as additional insured (in the case of liability insurance) or lender's loss payee (in the case of hazard insurance) on behalf of the Secured Parties.

(j) Closing Certificate. Receipt by the Administrative Agent of a certificate signed by a Responsible Financial Officer of the Issuer certifying (i) that the conditions specified in Sections 5.01(d), (e) and (l) and Sections 5.02(a) and (b) have been satisfied, (ii) that the Issuer and its Subsidiaries (after giving effect to the transactions contemplated hereby and the incurrence of Indebtedness related thereto) are Solvent on a consolidated basis and (iii) that neither the Issuer nor any Subsidiary as of the Closing Date has outstanding any Disqualified Capital Stock.

(k) Existing Indebtedness. All of the existing Indebtedness for borrowed money of the Issuer and its Subsidiaries (excluding Indebtedness permitted to exist under Section 8.03) shall be repaid in full and all security interests related thereto shall be terminated on or prior to the Closing Date.

(l) Governmental and Third Party Approvals. The Issuer and its Subsidiaries shall have received all material governmental, shareholder and third party consents and approvals necessary in connection with the transactions contemplated by this Agreement and the other Note Documents and the other transactions contemplated hereby and all applicable waiting periods shall have expired without any action being taken by any Person that could reasonably be expected to restrain, prevent or impose any material adverse conditions on the Issuer or any of its Subsidiaries or such other transactions or that could seek to threaten any of the foregoing, and no law or regulation shall be applicable which could reasonably be expected to have such effect.

(m) Corporate Structure and Capitalization. The capital and ownership structure and the equity holder arrangements of the Issuer on the Closing Date, on a *pro forma* basis after giving effect to the transactions contemplated by the Note Documents shall be reasonably satisfactory to the Purchasers.

(n) Letter of Direction. Receipt by the Administrative Agent of a reasonably satisfactory letter of direction containing funds flow information with respect to the proceeds of the Notes to be made on the Closing Date.

(o) Fees. Receipt by Athyrium, the Administrative Agent and the Purchasers of any fees required to be paid on or before the Closing Date.

(p) Attorney Costs; Due Diligence Expenses. The Issuer shall have paid all reasonable and documented fees, charges and disbursements of counsel to the Administrative Agent and all reasonable and documented due diligence expenses of Athyrium and the Purchasers, in each case, incurred to the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided, that, such estimate shall not thereafter preclude a final settling of accounts between the Issuer and the Administrative Agent).

(q) Other. Receipt by the Administrative Agent and the Purchasers of such other documents, instruments, agreements and information as reasonably requested by the Administrative Agent, including, but not limited to, information regarding litigation, tax, accounting, labor, insurance, pension liabilities (actual or contingent), real estate leases, material contracts, debt agreements, property ownership, environmental matters, contingent liabilities, commercial trends, pipeline indications and associated clinical data, competitive landscape, regulatory exclusivity, intellectual property and management of the Issuer and its Subsidiaries.

Without limiting the generality of the provisions of the last paragraph of Section 10.03, for purposes of determining compliance with the conditions specified in this Section 5.01, each Purchaser that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Purchaser unless the Administrative Agent shall have received notice from such Purchaser prior to the proposed Closing Date specifying its objection thereto.

5.02 Conditions to all Notes Issuances.

The obligation of each Purchaser to purchase any Note is subject to the following conditions precedent:

(a) The representations and warranties of the Issuer and each other Credit Party contained in Article VI or any other Note Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) on and as of the date of such Notes Issuance, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) as of such earlier date, and except that for purposes of this Section 5.02, the representations and warranties contained in clauses (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 7.01.

(b) No Default or Event of Default shall exist or would result from such proposed Notes Issuance or from the application of the proceeds thereof.

(c) The Administrative Agent shall have received a Notes Issuance Notice in accordance with the requirements hereof.

Each Notes Issuance Notice submitted by the Issuer shall be deemed to be a representation and warranty that the conditions specified in Sections 5.02(a) and (b) have been satisfied on and as of the date of the applicable Notes Issuance.

5.03 Additional Conditions to Second Tranche Notes Issuance.

The obligation of each Purchaser to purchase any Second Tranche Note is subject to the following additional conditions precedent:

(a) The Second Tranche shall have been established pursuant to Section 2.13;

(b) The Administrative Agent shall have received an executed copy of the definitive transaction agreements for the Transformative Acquisition, together with all exhibits and schedules thereto, certified by a Responsible Officer of the Issuer as true and complete, in each case in form and substance satisfactory to the Administrative Agent; and

(c) The Administrative Agent shall have received satisfactory evidence that the Transformative Acquisition shall have been consummated in compliance with applicable Law and regulatory approvals and in accordance in all material respects with the definitive transaction agreements for the Transformative Acquisition.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

The Credit Parties represent and warrant to the Administrative Agent and the Purchasers that:

6.01 Existence, Qualification and Power.

Each Credit Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Note Documents to which it is a party, and (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.02 Authorization; No Contravention.

The execution, delivery and performance by each Credit Party of each Note Document to which such Person is party have been duly authorized by all necessary corporate or other organizational action, and do not (a) contravene the terms of any of such Person's Organization Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject, or (c) violate, in any material respect, any Law (including, without limitation, Regulation U or Regulation X issued by the FRB), except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (b)(i) to the extent that such conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect.

6.03 Governmental Authorization; Other Consents.

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Credit Party of this Agreement or any other Note Document other than (a) those that have already been obtained and are in full force and effect and (b) filings to perfect the Liens created by the Collateral Documents.

6.04 Binding Effect.

Each Note Document has been duly executed and delivered by each Credit Party that is party thereto. Each Note Document constitutes a legal, valid and binding obligation of each Credit Party that is party thereto, enforceable against each such Credit Party in accordance with its terms, subject to applicable Debtor Relief Laws or other Laws affecting creditors' rights generally and subject to general principles of equity.

6.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, (ii) fairly present in all material respects the financial condition of the Issuer and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Issuer and its Subsidiaries as of the date thereof, including material liabilities for taxes, commitments and Indebtedness.

(b) The Interim Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, (ii) fairly present in all material respects the financial condition of the Issuer and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments, and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Issuer and its Subsidiaries as of the date thereof, including material liabilities for taxes, material commitments and Indebtedness.

(c) From the date of the Audited Financial Statements to and including the Closing Date, there has been no Disposition by any Credit Party or any Subsidiary, or any Involuntary Disposition, of any material part of the business or property of any Credit Party or any Subsidiary, and no purchase or other acquisition by any of them of any business or property (including any Equity Interests of any other Person) material to any Credit Party or any Subsidiary, in each case, which is not reflected in the foregoing financial statements or in the notes thereto and has not otherwise been disclosed in writing to the Purchasers on or prior to the Closing Date.

(d) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

6.06 Litigation.

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Credit Parties, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against any Credit Party or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Note Document, or any of the transactions contemplated hereby or (b) except for the Specified Litigations, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

6.07 No Default.

(a) Neither any Credit Party nor any Subsidiary is in default under or with respect to any Contractual Obligation that could reasonably be expected to have a Material Adverse Effect.

(b) No Default has occurred and is continuing.

6.08 Ownership of Property; Liens.

Each Credit Party and its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of each Credit Party and its Subsidiaries is subject to no Liens, other than Permitted Liens.

6.09 Environmental Compliance.

Except as could not reasonably be expected to have a Material Adverse Effect:

(a) Each of the Facilities and all operations at the Facilities are in compliance with all applicable Environmental Laws, and there is no violation of any Environmental Law with respect to the Facilities or the Businesses, and there are no conditions relating to the Facilities or the Businesses that could give rise to liability under any applicable Environmental Laws.

(b) None of the Facilities contains, or has previously contained, any Hazardous Materials at, on or under the Facilities in amounts or concentrations that constitute or constituted a violation of, or could give rise to liability under, Environmental Laws.

(c) Neither any Credit Party nor any Subsidiary has received any written or verbal notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Facilities or the Businesses, nor does any Responsible Officer of any Credit Party have knowledge or reason to believe that any such notice will be received or is being threatened.

(d) Hazardous Materials have not been transported or disposed of from the Facilities, or generated, treated, stored or disposed of at, on or under any of the Facilities or any other location, in each case by or on behalf of any Credit Party or any Subsidiary in violation of, or in a manner that would be reasonably likely to give rise to liability under, any applicable Environmental Law.

(e) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Credit Parties, threatened, under any Environmental Law to which any Credit Party or any Subsidiary is or will be named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to any Credit Party, any Subsidiary, the Facilities or the Businesses.

(f) There has been no release or threat of release of Hazardous Materials at or from the Facilities, or arising from or related to the operations (including, without limitation, disposal) of any Credit Party or any Subsidiary in connection with the Facilities or otherwise in connection with the Businesses, in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws.

6.10 Insurance.

(a) The properties of the Credit Parties and their Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of such Persons, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Credit Party or the applicable Subsidiary operates. The insurance coverage of the Credit Parties and their Subsidiaries as in effect on the Closing Date is outlined as to carrier, policy number, expiration date, type, amount and deductibles on Schedule 6.10 to the Disclosure Letter.

(b) Each Credit Party and each of their respective Subsidiaries maintains, if available, fully paid flood hazard insurance on all fee-owned real property, if any, that is located in a special flood hazard area and that constitutes Collateral, on such terms and in such amounts as required by The National Flood Insurance Reform Act of 1994 or as otherwise required by the Administrative Agent.

6.11 Taxes.

The Credit Parties and their respective Subsidiaries have filed all federal, material state and other material tax returns and reports required to be filed, and have paid all federal, material state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Credit Party or any Subsidiary that could, if made, have a Material Adverse Effect. Neither any Credit Party nor any Subsidiary is party to any tax sharing agreement with any Person that is not a Credit Party.

6.12 ERISA Compliance.

(a) Each Plan maintained or sponsored by the Issuer is in compliance in all respects with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state laws, except where any non-compliance could not reasonably be expected to have a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Internal Revenue Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Internal Revenue Code or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Credit Parties, nothing has occurred that would prevent, or cause the loss of, such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Credit Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan (other than routine claims for benefits) that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred and the Issuer is not aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan, (ii) the Issuer and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained, (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Internal Revenue Code) is sixty percent (60%) or higher and neither the Issuer nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below sixty percent (60%) as of the most recent valuation date, (iv) neither the Issuer nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid, (v) neither the Issuer nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA, and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

6.13 Subsidiaries and Capitalization.

(a) Set forth on Schedule 6.13(a) to the Disclosure Letter is a complete and accurate list as of the Closing Date of each Subsidiary, together with (i) jurisdiction of organization, (ii) number of shares of each class of Equity Interests outstanding, (iii) number and percentage of outstanding shares of each class owned (directly or indirectly) by any Credit Party or any Subsidiary, (iv) number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto and (v) identification of each Subsidiary that is an Excluded Subsidiary and/or an Immaterial Foreign Subsidiary (together with a detailed description of the cash, Cash Equivalents and other assets held by each Immaterial Foreign Subsidiary as of the Closing Date). The outstanding Equity Interests of each Subsidiary are validly issued, fully paid and non-assessable.

(b) As of the Closing Date, except as described on Schedule 6.13(b) to the Disclosure Letter, there are no outstanding commitments or other obligations of the Issuer or any Subsidiary to issue, and no rights of any Person to acquire, any shares of any Equity Interests of the Issuer or any of its Subsidiaries. All issued and outstanding Equity Interests of the Issuer and each of its Subsidiaries is duly authorized and validly issued, fully paid and non-assessable and such Equity Interests were issued in compliance with all applicable Laws.

6.14 Margin Regulations; Investment Company Act.

(a) The Issuer is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Notes Issuance, not more than 25% of the value of the assets (either of the Issuer only or of the Issuer and its Subsidiaries on a consolidated basis) subject to the provisions of Section 8.01 or Section 8.05 or subject to any restriction contained in any agreement or instrument between the Issuer and any Purchaser or any Affiliate of any Purchaser relating to Indebtedness and within the scope of Section 9.01(e) will be margin stock.

(b) None of any Credit Party, any Person Controlling any Credit Party, or any Subsidiary is or is required to be, or after giving effect to the offering and sale of the Notes and the application of the proceeds thereof will or will be required to be, registered as an "investment company" under the Investment Company Act of 1940.

6.15 Disclosure.

Each Credit Party has disclosed to the Administrative Agent and the Purchasers all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether written or oral) by or on behalf of any Credit Party to the Administrative Agent or any Purchaser in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Note Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

6.16 Compliance with Laws.

Each Credit Party and each Subsidiary is in compliance with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.17 Intellectual Property; Licenses, Etc.

(a) Schedule 6.17 to the Disclosure Letter sets forth a complete and accurate list of all registrations and applications for registration for each of the following (i) Patents, (ii) Trademarks (including domain names), (iii) Copyrights, and (iv) each other item of Material Intellectual Property, in each case of the foregoing clauses (i) through (iv), that (A) is owned or controlled by the Issuer or any of its Subsidiaries or (B) in the case of the foregoing clause (iv), is in-licensed by the Issuer or any of its Subsidiaries from any Third Parties. For each item of Intellectual Property listed on Schedule 6.17 to the Disclosure Letter, the Issuer has, where relevant, indicated on such schedule the owner of record, jurisdiction of application and/or registration, the application numbers, the registration or patent numbers or patent application numbers, and the date of application and/or registration. Schedule 6.17 to the Disclosure Letter also sets forth a complete and accurate list as of the Closing Date of all license agreements wherein Material Intellectual Property is licensed (inbound or outbound) to or by the Issuer or any of its Subsidiaries.

(b) With respect to all Material Intellectual Property:

(i) the Issuer or any of its Subsidiaries, as applicable, owns or has a valid license to such Intellectual Property free and clear of any and all Liens other than Permitted Liens;

(ii) the Issuer and each of its Subsidiaries, as applicable, have taken commercially reasonable actions to maintain and protect such Intellectual Property, to the extent it has the right to maintain and protect such Intellectual Property;

(iii) except for rejections issued by a Governmental Authority in the ordinary course of prosecuting Patent or Trademark applications, to the knowledge of the Issuer, (A) except as set forth on Schedule 6.17 to the Disclosure Letter, there is no proceeding challenging the validity or enforceability of any such Material Intellectual Property, (B) neither the Issuer nor any of its Subsidiaries is involved in any such proceeding with any Person, (C) none of such Material Intellectual Property is the subject of any Other Administrative Proceeding and (D) no Person has made any certification pursuant to the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417), as amended, including but not limited to any such certification pursuant to 21 U.S.C. §355(b)(2)(A)(iv) or 21 U.S.C. §355(j)(2)(A)(vii)(IV), or any reasonably similar or equivalent certification or notice in the United States or any other jurisdiction or any associated litigation (a "Paragraph IV Certification"), asserting the non-infringement, invalidity, or unenforceability of any Patent listed on Schedule 6.17 to the Disclosure Letter;

(iv) all such Material Intellectual Property that is owned or controlled by the Issuer or any of its Subsidiaries thereof is subsisting, and to the knowledge of the Issuer, valid and enforceable and (B) to the knowledge of the Issuer, no event has occurred, and nothing has been done or omitted to have been done, that would affect the validity or enforceability of any such Material Intellectual Property that is owned or controlled by the Issuer or any of its Subsidiaries thereof, and all such Material Intellectual Property that is owned or controlled by the Issuer or any of its Subsidiaries thereof is in full force and effect and has not lapsed, or been forfeited or cancelled or abandoned (except for routine abandonments associated with patent prosecution) and there are no unpaid maintenance, renewal or other fees payable or owing by the Issuer or any of its Subsidiaries for any such Intellectual Property that is owned or controlled by the Issuer or any of its Subsidiaries;

(v) the Issuer or any of its Subsidiaries, as applicable, is the sole and exclusive owner of all right, title and interest in and to all such Material Intellectual Property that is owned by it;

(vi) to the extent any such Material Intellectual Property was authored, developed, conceived or created, in whole or in part, for or on behalf of the Issuer or any of its Subsidiaries by any Person, then the Issuer or its Subsidiaries, as applicable, have entered into a written agreement with such Person in which such Person has assigned all right, title and interest in and to such Material Intellectual Property to the Issuer or its Subsidiaries, as applicable, except to the extent that the failure to have entered into such written agreements could not reasonably be expected to have a material adverse effect on the Issuer's or its Subsidiaries' rights in such Material Intellectual Property; and

(vii) no such Material Intellectual Property is subject to any license grant by the Issuer or any of its Subsidiaries or similar arrangement, except for (x) license grants between the Issuer or any of its Subsidiaries and (y) those license grants disclosed on Schedule 6.17 to the Disclosure Letter.

(c) To the knowledge of the Issuer, no Third Party is committing any act of Infringement of any Material Intellectual Property listed on Schedule 6.17 to the Disclosure Letter.

(d) With respect to each license agreement listed on Schedule 6.17 to the Disclosure Letter, such license agreement (i) is in full force and effect and is binding upon and enforceable against the Issuer or any of its Subsidiaries, as applicable, thereto and, to the knowledge of the Issuer, all other parties thereto in accordance with its terms, (ii) has not been amended or otherwise modified and (iii) has not suffered a default or breach thereunder by the Issuer or any of its Subsidiaries thereof or, to the knowledge of the Issuer, any other party thereto, in each case of (i), (ii) and (iii), except to the extent that any such event could not reasonably be expected to have a material adverse event on the Businesses or Product Development and Commercialization Activities concerning any Material Product. Neither the Issuer nor any of its Subsidiaries has taken or omitted to take any action that would permit any other Person party to any such license agreement to have, and to the knowledge of the Issuer, no such Person otherwise has, any defenses, counterclaims or rights of setoff thereunder.

(e) (i) Neither the Issuer nor any of its Subsidiaries nor, to the knowledge of the Issuer, any licensees of any Intellectual Property owned by the Issuer or any of its Subsidiaries has received written notice from any Third Party alleging that the conduct of its business (including the development, manufacture, use, sale or other commercialization of any Product) Infringes any Intellectual Property of that Third Party, and (ii) the conduct of the business of the Issuer and any of its Subsidiaries and, to the knowledge of the Issuer, any licensees of any Intellectual Property owned by the Issuer or any of its Subsidiaries (including the development, manufacture, use, sale or other commercialization of any Product) does not Infringe any Intellectual Property of any Third Party.

(f) Neither the Issuer or any of its Subsidiaries has made any assignment or agreement in conflict with the security interest in the Intellectual Property of the Issuer under the Collateral Documents and no license agreement with respect to any such Intellectual Property conflicts with the security interest granted to the Administrative Agent, on behalf of the Secured Parties, pursuant to the terms of the Collateral Documents. The consummation of the transactions contemplated hereby and the exercise by the Administrative Agent or the Secured Parties of any right or protection set forth in the Note Documents will not constitute a breach or violation of, or otherwise affect the enforceability or approval of, any licenses associated with any Intellectual Property owned or licensed by the Issuer or any of its Subsidiaries.

6.18 Solvency.

The Issuer is Solvent on an individual basis, and the Issuer and its Subsidiaries are Solvent, on a consolidated basis.

6.19 Perfection of Security Interests in the Collateral.

The Collateral Documents create valid security interests in, and Liens on, the Collateral purported to be covered thereby, which security interests and Liens will be, upon the timely and proper filings, deliveries, notations and other actions contemplated in the Collateral Documents perfected security interests and Liens (to the extent that such security interests and Liens can be perfected by such filings, deliveries, notations and other actions), prior to all other Liens other than Permitted Liens.

6.20 Business Locations.

Set forth on Schedule 6.20(a) to the Disclosure Letter is a list of all real property located in the United States that is owned or leased by the Credit Parties as of the Closing Date (with (x) a description of each real property that is Excluded Property and (y) a designation of whether such real property is owned or leased). Set forth on Schedule 6.20(b) to the Disclosure Letter is the taxpayer identification number and organizational identification number of each Credit Party as of the Closing Date. The exact legal name and state of organization of (a) the Issuer is as set forth on the signature pages hereto and (b) each Guarantor is (i) as set forth on the signature pages hereto, (ii) as set forth on the signature pages to the Joinder Agreement pursuant to which such Guarantor became a party hereto or (iii) as may be otherwise disclosed by the Credit Parties to the Administrative Agent in accordance with Section 8.12(c). Except as set forth on Schedule 6.20(c) to the Disclosure Letter, no Credit Party has during the five years preceding the Closing Date, (i) changed its legal name, (ii) changed its state of organization, or (iii) been party to a merger, consolidation or other change in structure.

6.21 Sanctions Concerns; Anti-Corruption Laws; PATRIOT Act.

(a) Sanctions Concerns. No Credit Party, nor any Subsidiary, nor, to the knowledge of the Credit Parties and their Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by, any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) Anti-Corruption Laws. The Credit Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

(c) PATRIOT Act. To the extent applicable, each Credit Party and each Subsidiary is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the PATRIOT Act.

6.22 Material Contracts.

Set forth on Schedule 6.22 to the Disclosure Letter is a complete and accurate list of all Material Contracts of the Issuer and its Subsidiaries as of the Closing Date, with an adequate description of the parties thereto, and amendments and modifications thereto. Each Material Contract (a) is in full force and effect and is binding upon and enforceable against the Issuer and its Subsidiaries party thereto and, to the knowledge of the Issuer, all other parties thereto in accordance with its terms, and (b) is not currently subject to any material breach or default by the Issuer or any Subsidiary or, to the knowledge of the Issuer, any other party thereto. None of the Issuer nor any of its Subsidiaries has taken or failed to take any action that would permit any other Person party to any Material Contract to have, and, to the knowledge of the Issuer, no such Person otherwise has, any defenses, counterclaims or rights of setoff thereunder. None of the Material Contracts are non-assignable by their terms (other than those certain agreements separately noted in Schedule 6.22 to the Disclosure Letter as being non-assignable) or as a matter of law or prevent the granting of a security interest therein.

6.23 Compliance of Products.

(a) The Issuer and its Subsidiaries have obtained all required Regulatory Authorizations necessary for compliance with all Laws and all such Regulatory Authorizations are in full force and effect. All Regulatory Authorizations held by the Credit Parties and their respective Subsidiaries are (i) legally and beneficially owned exclusively by the Credit Parties or their respective Subsidiaries, free and clear of all Liens other than Permitted Liens, and (ii) validly registered and on file with the applicable Regulatory Agency, in compliance with all filing and maintenance requirements (including any fee requirements) thereof, and are in good standing, valid and enforceable with the applicable Regulatory Agency. All required notices, registrations and listings, supplemental applications or notifications, reports (including reports of adverse experiences) and other required filings with respect to the Products have been submitted to the FDA, the DEA, and all other applicable Regulatory Agencies when due, except where the failure to do so could not reasonably be expected to result in (x) a material adverse effect on any Product Development and Commercialization Activities or (y) a Material Adverse Effect.

(b) Except where the failure to do so could not reasonably be expected to result in the termination or restriction of a Material Regulatory Authorization, all applications, notifications, submissions, information, claims, reports and statistics and other data and conclusions derived therefrom, utilized as the basis for or submitted in connection with any and all requests for a Regulatory Authorization from the FDA or other Regulatory Agency relating to the Issuer or any Subsidiary, their business operations and Products, when submitted to the FDA or other Regulatory Agency were true, complete and correct in all material respects as of the date of submission (including any necessary or required updates, changes, corrections or modifications to such applications, submissions, information and data that have been submitted to the FDA or other Regulatory Agency). The Regulatory Authorizations issued by the FDA and other Regulatory Agencies for the Products are valid and supported by proper research, design, testing, analysis and disclosure. There has been no material untrue statement of fact and/or no fraudulent statement made by the Credit Parties or their respective Subsidiaries, or any of their respective agents or representatives to the FDA, the DEA, or any other Regulatory Agency, and there has been no failure to disclose any material fact required to be disclosed, commission of an act, making of a statement, or failure to make a statement to the FDA, the DEA, or any other Regulatory Agency that could reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Regulation 46191 (September 10, 1991).

(c) Except as could not reasonably be expected to result in a material adverse effect on any Product Development and Commercialization Activities:

(i) The Products, as well as the business of the Credit Parties and their respective Subsidiaries, materially comply with (A) all applicable Laws, rules, regulations, orders, injunctions and decrees of the FDA, the DEA, and any other applicable Regulatory Agency, including, without limitation, all applicable requirements of the FDCA, the PHSA, the Controlled Substances Act, and similar state Laws, and (B) all applicable Product Authorizations, Regulatory Authorizations, and all other Permits;

(ii) None of the Credit Parties, their respective Subsidiaries nor, to the knowledge of the Issuer, their respective suppliers have received, and do not otherwise have knowledge of: any inspection reports, warning letters, untitled letters or similar documents with respect to any Product or the manufacture, processing, packing, distribution, or holding thereof, as well as the business of the Credit Parties and their respective Subsidiaries, from any Regulatory Agency that assert lack of compliance with any applicable Laws, rules, regulations, orders, injunctions, or decrees;

(iii) None of the Credit Parties, their respective Subsidiaries nor, to the knowledge of the Issuer, their respective suppliers have received any written notice of, and does not otherwise have knowledge of, any pending regulatory enforcement action, investigation or inquiry (other than non-material routine or periodic inspections or reviews) against the Credit Parties, any of their respective Subsidiaries or any of their respective suppliers with respect to the Products, and, to the knowledge of the Issuer, there is no basis for any adverse regulatory action against the Credit Parties or their respective Subsidiaries or, to the knowledge of the Issuer, their respective suppliers with respect to the Products; and

(iv) Without limiting the foregoing, (A) to the knowledge of the Issuer, no supplier of any Credit Party or any Subsidiary has received, during the two (2) years prior to the Closing Date, any Form FDA 483 from the FDA asserting a lack of compliance with respect to any Product or Product Development and Commercialization Activities, (B) to the knowledge of the Credit Parties (1) there have been no Safety Notices conducted, undertaken or issued by any Person, whether or not at the request, demand or order of any Regulatory Agency or otherwise, with respect to any Product, (2) no Safety Notice has been requested, demanded or ordered by any Regulatory Agency, and, to the knowledge of the Issuer, there is no basis for the issuance of any Safety Notice by any Person with respect to any Products, and (C) the Issuer has not received any written notice of, and does not otherwise have knowledge of, any criminal, injunctive, seizure, detention or civil penalty actions that have at any time been commenced or threatened in writing by any Regulatory Agency with respect to or in connection with any Products, or any consent decrees (including plea agreements) which relate to any Products, and, to the knowledge of the Issuer, there is no basis for the commencement for any criminal injunctive, seizure, detention or civil penalty actions by any Regulatory Agency relating to the Products or for the issuance of any consent decrees. None of the Credit Parties or their respective Subsidiaries nor, to the knowledge of the Issuer, any of their respective suppliers is employing or utilizing the services of any individual who has been convicted of any crime or engaged in any conduct for which debarment or temporary suspension under any applicable Law, rule or regulation is warranted.

(d) Neither the Issuer nor any Subsidiary has received any communication from any Regulatory Agency regarding, and there are no facts or circumstances that are likely to give rise to (i) any material adverse change in any applicable Regulatory Authorization, or any failure to materially comply with any Laws or any term or requirement of any applicable Regulatory Authorization or (ii) any revocation, withdrawal, suspension, cancellation, material limitation, termination or material modification of any applicable Regulatory Authorization.

(e) Except as could not reasonably be expected, either individually or in the aggregate, to result in a material adverse effect on any Product Development and Commercialization Activities, all studies, tests, preclinical trials and clinical trials conducted by or on behalf of any Credit Party or any of its respective Subsidiaries with respect to any Product have been conducted in material compliance with applicable Laws, including cGCPs. No Credit Party nor any of their respective Subsidiaries has received any notice from the FDA or any other Regulatory Agency alleging any material non-compliance with applicable Laws, including cGCPs or otherwise terminating or suspending any clinical trial conducted by or on behalf of such Credit Party or Subsidiary with respect to any Product. All results of such studies, tests and trials, and all other material information related to such studies, tests and trials, have been made available to the Administrative Agent. The summaries and descriptions of any of the foregoing provided to the Administrative Agent are accurate and contain no material omissions. None of the Credit Parties, their respective Subsidiaries, or, to the knowledge of the Issuer, any of their respective licensees, licensors or third party services providers or consultants, has received from the FDA or other applicable Regulatory Agency any notices or correspondence requiring the termination, suspension, material modification or clinical hold of any studies, tests or clinical trials in any material respect with respect to or in connection with the Products.

(f) Except as could not reasonably be expected, either individually or in the aggregate, to result in a material adverse effect on any Product Development and Commercialization Activities, (i) all design, manufacturing, storage, distribution, packaging, labeling, sale, recordkeeping and other activities by the Credit Parties, their respective Subsidiaries and their respective suppliers relating to the Products have been conducted, and are currently being conducted, in compliance with applicable Laws and the requirements of all applicable Regulatory Agencies, including, without limitation, cGMPs, adverse event reporting requirements, and state and federal requirements relating to the handling of controlled substances and (ii) none of the Credit Parties or their respective Subsidiaries, or, to the knowledge of the Issuer, any of their respective suppliers has received written notice or are aware of a threat of commencement of action by any Governmental Authority to initiate any action against the Issuer or any Subsidiary, any action to enjoin the Issuer or any Subsidiary, its officers, directors, employees, shareholders or its agents and Affiliates, from conducting its business at any facility owned or used by it or for any material civil penalty, injunction, seizure or criminal action. No Product in the inventory of the Credit Parties or their respective Subsidiaries is adulterated or misbranded. All labels and labeling (including package inserts) and product information are in material compliance with applicable FDA and other Regulatory Agency requirements, and the Products are in material compliance with all classification, registration, listing, marking, tracking, reporting, recordkeeping and audit requirements of the FDA, the DEA, and any other Regulatory Agency. No Product is an article prohibited from introduction into interstate commerce under the provisions of Sections 404, 505 or 512 of the FDCA.

(g) All manufacturing facilities owned or operated by the Credit Parties and their respective Subsidiaries are and have been operated in material compliance with cGMPs and all other applicable Laws. The FDA has not issued any Form 483, warning letter, or untitled letter with respect to any such facility, or otherwise alleged any material non-compliance with cGMPs. All such facilities are operated in material compliance with the Controlled Substances Act, applicable DEA regulations, and other applicable federal and state Laws.

(h) The Issuer has made available to the Administrative Agent all material adverse event reports and material communications to or from the FDA and other relevant Regulatory Agencies, including material inspection reports, warning letters, untitled letters, and material reports, studies and other correspondence, other than opinions of counsel that are attorney-client privileged, with respect to regulatory matters relating to the Credit Parties and their respective Subsidiaries, the conduct of their business, the operation of any manufacturing facilities owned or operated by the Credit Parties and their respective Subsidiaries, and the Products.

(i) Neither the Issuer nor any Subsidiary has experienced any significant failures in the manufacturing of any Material Product such that, due to any such manufacturing failure, the amount of such Material Product successfully manufactured by the Issuer or any of its Subsidiaries in accordance with all specifications thereof and the Regulatory Authorizations related thereto in any month shall decrease significantly with respect to the quantities of such Material Product produced in the prior month.

(j) None of the Products is currently, and have not for the past six (6) years been, the subject of any material claim or allegation, formal or informal, that any Product, or its use, is defective or has resulted in or proximately caused any material injury to any Person or property.

(k) No Credit Party nor any of their respective Subsidiaries has received any notice from the United States Department of Justice, any U.S. Attorney, any State Attorney General, or other similar federal, state, or foreign Governmental Authority alleging any violation of the Federal Anti-kickback Statute, the Federal False Claims Act, the Foreign Corrupt Practices Act, any federal Law, or similar applicable state or foreign Law. No Credit Party nor any of their respective Subsidiaries is aware of any conduct that reasonably could be interpreted as a violation of any such law.

(l) The transactions contemplated by the Note Documents and the exercise by the Administrative Agent or the Secured Parties of any right or protection set forth in the Note Documents will not (i) constitute a breach or violation of, or otherwise materially affect, the enforceability or approval of any Regulatory Authorization relating to the Products or (ii) impair the Credit Parties' ownership of or rights under (or the license or other right to use, as the case may be) any Regulatory Authorizations relating to the Products in any material manner.

(m) No Credit Party nor any of their respective Subsidiaries is enrolled in or currently receives payments from any federal or state government or private healthcare reimbursement program or has ever been terminated from any federal or state government or private healthcare reimbursement program (including Medicare or Medicaid) or otherwise had its rights to receive payments from any government or private healthcare reimbursement program adversely affected as a result of any investigation or enforcement action, whether by any Governmental Authority or other Third Party.

(n) The Credit Parties and their respective Subsidiaries are in compliance in all material respects with the U.S. Physician Payments Sunshine Act and similar state Laws regarding the reporting of certain payments to physicians and hospitals.

(o) (i) the Credit Parties and their respective Subsidiaries are in compliance in all material respects with the privacy and security requirements of HIPAA, (ii) neither the Credit Parties nor any of their respective Subsidiaries has received any written communication from any Governmental Authority that alleges non-compliance with HIPAA and (iii) no breach or violation has occurred, to the knowledge of the Issuer, with respect to any unsecured protected health information maintained by or for the Credit Parties or any of their respective Subsidiaries that is subject to the notification requirements of 45 C.F.R. §§ 164.406 or 164.408(b) or similar state Laws, and no information security or privacy breach event has occurred that would require notification under any applicable Laws.

(p) No Credit Party nor any of their respective Subsidiaries nor, to the Issuer's knowledge, any individual who is an officer, director, manager, employee, stockholder, agent or managing agent of any Credit Party or any of their respective Subsidiaries, has been convicted of, charged with or, to the Issuer's knowledge, investigated for any federal or state health program-related offense or any other offense related to healthcare or been terminated, excluded or suspended from participation in any such program; or, to the Issuer's knowledge, has been convicted of, charged with or investigated for a violation of Laws related to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, obstruction of an investigation or controlled substances, or has been subject to any judgment, stipulation, order or decree of, or criminal or civil fine or penalty imposed by, any Regulatory Agency related to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, obstruction of an investigation or controlled substances. No Credit Party nor any of their respective Subsidiaries nor, to the Issuer's knowledge, any individual who is an officer, director, employee, stockholder, agent or managing agent of any Credit Party or any of their respective Subsidiaries has been convicted of any crime or engaged in any conduct that has resulted or could reasonably be expected to result in a debarment or exclusion (i) under 21 U.S.C. Section 335a, or (ii) any similar applicable Law. No debarment proceedings or investigations in respect of the business of any Credit Party or any of their respective Subsidiaries are pending or, to the Issuer's knowledge, threatened against any Credit Party or any of their respective Subsidiaries or any individual who is an officer, director, manager, employee, stockholder, agent or managing agent of any Credit Party or any of their respective Subsidiaries.

(q) As of the Closing Date, all Products are listed on Schedule 1.01(a) to the Disclosure Letter and the Issuer has delivered to the Administrative Agent on or prior to the Closing Date copies of all Regulatory Authorizations relating to such Products issued or outstanding as of the Closing Date.

6.24 Labor Matters.

There are no existing or threatened strikes, lockouts or other labor disputes involving the Issuer or any Subsidiary that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of the Issuer and its Subsidiaries are not in material violation of the Fair Labor Standards Act or any other applicable material law, rule or regulation dealing with such matters.

6.25 EEA Financial Institution.

Neither any Credit Party nor any Subsidiary is an EEA Financial Institution.

6.26 Limited Offering of Notes.

Subject to the accuracy of each Purchaser's several (and not joint) representations and warranties in Section 11.20, the offer and sale of the Notes are not required to be registered pursuant to the provisions of Section 5 of the Securities Act or the registration or qualification provisions of the blue sky laws of any state. Neither the Issuer nor any agent on the Issuer's behalf, has solicited or will solicit any offers to sell all or any part of the Notes to any Person so as to bring the sale of the Notes by the Issuer within the registration provisions of the Securities Act or any state securities laws.

6.27 Registration Rights.

Subject to the accuracy of each Purchaser's several (and not joint) representations and warranties in Section 11.20, and except as described in the Notes, the Issuer is under no requirement to register under the Securities Act, or the Trust Indenture Act of 1939, as amended, any of its presently outstanding securities or any of its securities that may subsequently be issued.

6.28 Regulation H.

No real property subject to a Mortgage is a Flood Hazard Property unless the Administrative Agent shall have received the following: (a) the applicable Credit Party's written acknowledgment of receipt of written notification from the Administrative Agent (i) as to the fact that such Mortgaged Property is a Flood Hazard Property and (ii) as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program, (b) copies of insurance policies or certificates of insurance of the applicable Credit Party evidencing flood insurance reasonably satisfactory to the Administrative Agent and naming the Administrative Agent as loss payee on behalf of the Purchasers and (c) such other flood hazard determination forms, notices and confirmations thereof as reasonably requested by the Administrative Agent. All flood hazard insurance policies required hereunder have been obtained and remain in full force and effect, and the premiums thereon have been paid in full.

6.29 Compliance with Privacy Laws.

Except as could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect or a material adverse effect on Product Development and Commercialization Activities concerning any Material Product, to the extent that any Credit Party or any Subsidiary has access to any Personal Information, the Credit Parties and their respective Subsidiaries are in compliance with applicable Privacy Laws, and maintain information security processes that (a) are designed to safeguard the security, privacy, confidentiality, and integrity of transactions and confidential or proprietary data or Personal Information used, disclosed, or accessed by the Credit Parties and their respective Subsidiaries, and (b) are designed to protect against unauthorized access to the Systems and data of the Credit Parties and their respective Subsidiaries, in compliance with applicable Privacy Laws. Neither any Credit Party nor any Subsidiary has received written notice of any claim that such Credit Party or Subsidiary or any of their respective contractors or employees, have suffered a breach of Personal Information as defined under applicable Privacy Law or is not in compliance with applicable Privacy Laws, except to the extent any such breach or non-compliance: (i) did not require and is not likely to require such Credit Party or such Subsidiary to provide notification in accordance with applicable Privacy Law to affected customers, patients or other impacted individuals, or to any Governmental Authority, (ii) could not be reasonably likely, either individually or in the aggregate, to have a Material Adverse Effect, and (iii) has not resulted in any claim or notice from any Governmental Authority alleging a breach of Personal Information or non-compliance with Privacy Law.

ARTICLE VII

AFFIRMATIVE COVENANTS

So long as any Purchaser shall have any Note Purchase Commitment hereunder, any Note or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which no claim has been asserted), the Credit Parties shall and shall cause each Subsidiary to:

7.01 Financial Statements.

Deliver to the Administrative Agent and each Purchaser, in form and detail reasonably satisfactory to the Administrative Agent and the Required Purchasers:

(a) as soon as available, and in any event within ninety (90) days after the end of each fiscal year of the Issuer (or, if earlier, when required to be filed with the SEC), a consolidated balance sheet of the Issuer and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing acceptable to the Required Purchasers, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit; and

(b) as soon as available, and in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Issuer (or, if earlier, when required to be filed with the SEC), a consolidated balance sheet of the Issuer and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of operations, changes in shareholders' equity and cash flows for such fiscal quarter and for the portion of the Issuer's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Financial Officer of the Issuer as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Issuer and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

7.02 Certificates; Other Information.

Deliver to the Administrative Agent and each Purchaser, in form and detail reasonably satisfactory to the Administrative Agent and the Required Purchasers:

(a) concurrently with the delivery of the financial statements referred to in Sections 7.01(a) and (b), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Issuer (in each case, which is a Responsible Financial Officer of the Issuer), certifying compliance with the covenants set forth in Sections 8.16 and 8.17;

(b) as soon as practicable, and in any event not later than thirty (30) days after the commencement of each fiscal year of the Issuer, an annual business plan and budget of the Issuer and its Subsidiaries for the then current fiscal year containing, among other things, projections for each quarter of such fiscal year, in form and substance reasonably satisfactory to the Administrative Agent; provided, that, if such annual business plan and budget has not been approved by the Board of Directors of the Issuer within thirty (30) days of the commencement of a fiscal year of the Issuer, the Issuer shall deliver the not yet approved annual business plan and budget of the Issuer within thirty (30) days of the commencement of such fiscal year of the Issuer, with the approved annual business plan and budget to follow as soon as available thereafter (and, in any event, within sixty (60) days of the commencement of such fiscal year of the Issuer);

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the equityholders of any Credit Party, and copies of all annual, regular, periodic and special reports and registration statements which a Credit Party may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) concurrently with the delivery of the financial statements referred to in Sections 7.01(a) and (b), a certificate of a Responsible Financial Officer of the Issuer containing information regarding the amount of all Dispositions, Involuntary Dispositions, Debt Issuances, Extraordinary Receipts and Acquisitions, in each case, in excess of $500,000 that occurred during the period covered by such financial statement;

(e) promptly after any request by the Administrative Agent or any Purchaser, copies of any detailed audit reports or management letters submitted to the Board of Directors (or the audit committee of the Board of Directors) of the Issuer by independent accountants in connection with the accounts or books of the Issuer or any Subsidiary, or any audit of any of them;

(f) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Credit Party or any Subsidiary pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Purchasers pursuant to Section 7.01 or any other clause of this Section 7.02;

(g) promptly, and in any event within ten (10) Business Days after receipt thereof by any Credit Party or any Subsidiary, (i) copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Credit Party or any Subsidiary and (ii) copies of any material written correspondence or any other material written communication from the FDA or any other regulatory body;

(h) promptly, such additional information regarding the business, financial or corporate affairs of any Credit Party or any Subsidiary, or compliance with the terms of the Note Documents, as the Administrative Agent or any Purchaser may from time to time request;

(i) concurrently with the delivery of the financial statements referred to in Sections 7.01(a) and (b), a certificate of a Responsible Officer of the Issuer (i) listing (A) all applications by any Credit Party, if any, for Copyrights, Patents or Trademarks made since the date of the prior certificate (or, in the case of the first such certificate, the Closing Date), (B) all issuances of registrations, letters or patents on existing applications by any Credit Party for Copyrights, Patents and Trademarks received since the date of the prior certificate (or, in the case of the first such certificate, the Closing Date), (C) any outbound license of any Intellectual Property of the Issuer or any of its Subsidiaries and any in-license of Material Intellectual Property entered into by any Credit Party since the date of the prior certificate (or, in the case of the first such certificate, the Closing Date), (D) such supplements to Schedule 6.17 to the Disclosure Letter as are necessary to cause such schedule to be true and complete in all material respects as of the date of such certificate, (ii) attaching the insurance binder or other evidence of insurance for any material insurance coverage of any Credit Party or any Subsidiary that was renewed, replaced or modified during the period covered by such financial statements and (iii) listing (A) all new Material Contracts of the type specified under clause (a) of the definition thereof entered into by the Issuer or any Subsidiary since the date of the prior certificate (or, in the case of the first such certificate, the Closing Date) and (B) all amendments or terminations of any Material Contracts of the type specified under clause (a) of the definition thereof occurring since the date of the prior certificate (or, in the case of the first such certificate, the Closing Date);

(j) promptly, and in any event prior to the Issuer or any Subsidiary manufacturing, selling, developing, testing or marketing any Product not then listed on Schedule 1.01(a) to the Disclosure Letter, the Credit Parties shall give written notice to the Administrative Agent of such intention (which shall include a brief description of such Product, plus copies of all Regulatory Authorizations relating to such new Product and/or the Issuer's or such Subsidiary's manufacture, sale, development, testing or marketing thereof issued or outstanding as of the date of such notice) along with a copy of an updated Schedule 1.01(a) to the Disclosure Letter;

(k) promptly, and in any event within ten (10) Business Days after the Issuer or any Subsidiary obtains any new or additional material Regulatory Authorizations from the FDA, or parallel state or local authorities, or foreign counterparts of the FDA, or parallel state or local authorities, with respect to any Product which has previously been disclosed to the Administrative Agent, the Issuer shall promptly give written notice to the Administrative Agent of such new or additional material Regulatory Authorizations, along with a copy thereof; and

(l) promptly, and in any event within ten (10) Business Days after receipt thereof by any Credit Party or any Subsidiary, copies of all subpoenas, requests for information and other notices regarding any active or potential investigation of, or claim or litigation against, any Credit Party or any Subsidiary by any Governmental Authority, and the findings of any inspections of any manufacturing facilities of any Credit Party, any Subsidiary or any Third Party suppliers of any Credit Party or any Subsidiary by any Governmental Authority (including any Form 483s and warning letters).

Documents required to be delivered pursuant to Section 7.01(a) or (b) or Section 7.02 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Issuer posts such documents, or provides a link thereto on the Issuer's website on the Internet at the website address listed on Schedule 11.02, or (ii) on which such documents are posted on the Issuer's behalf on an Internet or intranet website, if any, to which each Purchaser and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided, that: (x) the Issuer shall deliver paper copies of such documents to the Administrative Agent or any Purchaser upon its request to the Issuer to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Purchaser and (y) the Issuer shall notify the Administrative Agent and each Purchaser (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Issuer with any such request for delivery by a Purchaser, and each Purchaser shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Issuer hereby acknowledges that certain of the Purchasers may have personnel who do not wish to receive material non-public information with respect to the Issuer or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Issuer hereby agrees that if reasonably requested by the Administrative Agent (x) it will in good faith identify that portion of the materials and/or information provided by, or to be provided by, or on behalf of the Issuer hereunder that does not constitute material non-public information with respect to the Issuer or its Affiliates or their respective securities (the "Public Issuer Materials") and (y) it will clearly and conspicuously mark all Public Issuer Materials "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof (it being understood that by marking Public Issuer Materials "PUBLIC," the Issuer shall be deemed to have authorized the Administrative Agent, any Affiliate thereof and the Purchasers to treat such Public Issuer Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Issuer or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Public Issuer Materials constitute Information, they shall be treated as set forth in Section 11.07)).

7.03 Notices.

(a) Promptly (and in any event, within three (3) Business Days) notify the Administrative Agent of the occurrence of any Default.

(b) Promptly (and in any event, within ten (10) Business Days) notify the Administrative Agent of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Promptly (and in any event, within ten (10) Business Days) notify the Administrative Agent of the occurrence of any ERISA Event.

(d) Promptly (and in any event, within ten (10) Business Days) notify the Administrative Agent of any material change in accounting policies or financial reporting practices by the Issuer or any Subsidiary.

(e) Promptly (and in any event, within ten (10) Business Days) notify the Administrative Agent of (i) any litigation, arbitration or governmental investigation or proceeding not previously disclosed by the Issuer which has been instituted (or, in each case, any material development with respect thereto) or, to the knowledge of the Issuer, is threatened against the Issuer or any Subsidiary or to which any of the properties of any thereof is subject which could reasonably be expected to result in losses and/or expenses in excess of the Threshold Amount or (ii) any material development in any Specified Litigation, including without limitation any court ruling, any allowed loss claims amount update, financial settlement, judgment or other final resolution.

(f) Promptly (and in any event within five (5) Business Days) notify the Administrative Agent of any return, recovery, dispute or claim related to any Product or inventory that involves more than $500,000.

(g) Promptly (and in any event within five (5) Business Days) notify the Administrative Agent after (i) the Issuer or any Subsidiary enters into a new Material Contract of the type specified under clause (b) or clause (c) of the definition thereof or (ii) an existing Material Contract of the type specified under clause (b) or clause (c) of the definition thereof is amended or terminated.

Each notice pursuant to this Section 7.03(a) through (g) shall be accompanied by a statement of a Responsible Officer of the Issuer setting forth the material details of the occurrence referred to therein and stating what action the applicable Credit Party has taken and proposes to take with respect thereto. Each notice pursuant to Section 7.03(a) shall describe with reasonable particularity any and all provisions of this Agreement and any other Note Document that have been breached.

7.04 Payment of Obligations.

Pay and discharge, as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Credit Party or such Subsidiary, (b) all lawful claims which, if unpaid, would by law become a Lien upon its property, and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

7.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 8.04 or Section 8.05.

(b) Preserve, renew and maintain in full force and effect its good standing under the Laws of the jurisdiction of its organization, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(c) Take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

7.06 Maintenance of Properties.

(a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted.

(b) Make all necessary repairs thereto and renewals and replacements thereof, except where the failure to do so could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(c) Use the reasonable standard of care typical in the industry in the operation and maintenance of its facilities.

7.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies not Affiliates of the Issuer, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

(b) Without limiting the foregoing, (i) maintain, if available, fully paid flood hazard insurance on all real property that is located in a special flood hazard area and that constitutes Collateral, on such terms and in such amounts as required by The National Flood Insurance Reform Act of 1994 or as otherwise required by the Administrative Agent, (ii) furnish to the Administrative Agent evidence of the renewal (and payment of renewal premiums therefor) of all such policies prior to the expiration or lapse thereof, and (iii) furnish to the Administrative Agent prompt written notice of any redesignation of any such improved real property into or out of a special flood hazard area.

(c) Cause the Administrative Agent and its successors and/or assigns to be named as lender's loss payee or mortgagee as its interest may appear, and/or additional insured with respect to any such insurance providing liability coverage or coverage in respect of any Collateral, and cause each provider of any such insurance to agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Administrative Agent, that it will give the Administrative Agent thirty (30) days (or such lesser amount as the Administrative Agent may agree) prior written notice before any such policy or policies shall be altered or canceled.

(d) Promptly notify the Administrative Agent of any real property subject to a Mortgage that is, or becomes, a Flood Hazard Property.

7.08 Compliance with Laws.

Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted, or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

7.09 Books and Records.

(a) Maintain proper books of record and account, in which full, true and correct entries sufficient to enable the preparation of financial statements in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Credit Party or such Subsidiary, as the case may be.

(b) Maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Credit Party or such Subsidiary, as the case may be.

7.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent and each Purchaser to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Issuer and at such reasonable times during normal business hours and as often as may be desired, upon reasonable advance notice to the Issuer; provided, however, so long as no Event of Default exists, the Issuer shall only be required to reimburse the Administrative Agent (but not any Purchaser) for one (1) such visit (excluding any such visits during the continuance of an Event of Default) and inspection in any fiscal year (and only the Administrative Agent may exercise rights under this Section 7.10); provided, further, however, when an Event of Default exists, the Administrative Agent or any Purchaser (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Issuer at any time during normal business hours upon reasonable advance notice.

7.11 Use of Proceeds.

(a) Use the proceeds of the First Tranche Notes (i) to support the commercialization of Nerlynx and (ii) for other general corporate purposes; provided, that, in no event shall the proceeds of the First Tranche Notes be used in contravention of any Law or of any Note Document.

(b) Use the proceeds of the Second Tranche Notes to consummate the Transformative Acquisition and to pay fees and expenses in connection therewith; provided, that, in no event shall the proceeds of the Second Tranche Notes be used in contravention of any Law or of any Note Document.

7.12 Additional Subsidiaries.

Within forty-five (45) days (or such longer period as may be agreed to by the Administrative Agent in its sole discretion) after the acquisition or formation of any Subsidiary (including, without limitation, upon the formation of any Subsidiary that is a Delaware Divided LLC) (it being understood that any Excluded Subsidiary ceasing to be an Excluded Subsidiary but remaining a Subsidiary shall be deemed to be the acquisition of a Subsidiary for purposes of this Section):

(a) notify the Administrative Agent thereof in writing, together with the (i) jurisdiction of organization, (ii) number of shares of each class of Equity Interests outstanding, (iii) number and percentage of outstanding shares of each class owned (directly or indirectly) by the Issuer or any Subsidiary and (iv) number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto; and

(b) cause such Person (other than any Excluded Subsidiary) to (i) become a Guarantor by executing and delivering to the Administrative Agent a Joinder Agreement or such other documents as the Administrative Agent shall reasonably request for such purpose, and (ii) deliver to the Administrative Agent documents of the types referred to in Sections 5.01(f) and (g) and, upon the reasonable request of the Administrative Agent, favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (i)), all in form, content and scope reasonably satisfactory to the Administrative Agent.

7.13 ERISA Compliance.

Except as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, do, and use commercially reasonable efforts to cause each of its ERISA Affiliates to do, each of the following: (a) maintain each Plan in compliance with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state law, (b) cause each Plan that is qualified under Section 401(a) of the Internal Revenue Code to maintain such qualification, and (c) make all required contributions to any Plan subject to Section 412, Section 430 or Section 431 of the Internal Revenue Code.

7.14 Pledged Assets.

(a) Equity Interests. Cause (i) 100% of the issued and outstanding Equity Interests of each Domestic Subsidiary (including, without limitation, each Subsidiary that is a Delaware Divided LLC) directly owned by a Credit Party and (ii) 65% (or such greater percentage that (A) could not reasonably be expected to cause the undistributed earnings of such Foreign Subsidiary as determined for United States federal income tax purposes to be treated as a deemed dividend to such Foreign Subsidiary's United States parent and (B) could not reasonably be expected to cause any material adverse tax consequences) of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) in each Foreign Subsidiary (other than any Immaterial Foreign Subsidiary) directly owned by a Credit Party, in each case, to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent, for the benefit of the Secured Parties, pursuant to the terms and conditions of the Collateral Documents, together with opinions of counsel (to the extent reasonably requested by the Administrative Agent) and any filings and deliveries necessary in connection therewith to perfect the security interests therein, all in form and substance reasonably satisfactory to the Administrative Agent.

(b) Other Property. Cause all property (other than Excluded Property) of each Credit Party (including each Credit Party that is a Delaware Divided LLC) to be subject at all times to first priority, perfected and, in the case of real property, title insured Liens in favor of the Administrative Agent to secure the Obligations pursuant to the Collateral Documents or, with respect to any such property acquired subsequent to the Closing Date, such other additional security documents as the Administrative Agent shall reasonably request and, in connection with the foregoing, deliver to the Administrative Agent such other documentation as the Administrative Agent may reasonably request including filings and deliveries necessary to perfect such Liens, Organization Documents, resolutions, Real Property Security Documents, and favorable opinions of counsel to such Person, all in form, content and scope reasonably satisfactory to the Administrative Agent.

7.15 Compliance with Material Contracts.

Comply in all material respects with each Material Contract of such Person.

7.16 Deposit Accounts.

(a) Within thirty (30) days after the acquisition or establishment of any Deposit Account by any Credit Party, provide written notice thereof to the Administrative Agent.

(b) Cause all Deposit Accounts of the Credit Parties (other than Excluded Accounts) at all times to be subject to Deposit Account Control Agreements, in each case in form and substance reasonably satisfactory to the Administrative Agent (it being understood that the Credit Parties shall have sixty (60) days to comply with this Section 7.16(b) solely with respect to any Deposit Account acquired or established after the Closing Date (such period to be measured from the date of acquisition or establishment)).

7.17 Products and Permits.

(a) With respect to all Products, obtain, maintain and preserve, comply with in all material respects, and take all necessary action to timely renew all Permits and accreditations which are necessary or material to the conduct of the business of the Issuer and its Subsidiaries.

(b) (i) Maintain each applicable Permit, including each Key Permit, from, or file any notice or registration in, each jurisdiction in which such Credit Party or such Subsidiary is required to obtain any Permit or Regulatory Authorization or file any notice or registration that are necessary and material for the sale and distribution of the Products, it being understood that this Section 7.17(b) does not concern Permits required to be maintained by customers of the Issuer or any of its Affiliates for any research, development, design, investigation, manufacture, marketing or distribution conducted or sponsored by such customer of the Issuer or any of its Affiliates of any finished product that is a combination of any Product with any drugs of such customers, and (ii) promptly provide evidence of the same to the Administrative Agent.

7.18 Consent of Licensors.

Promptly after entering into or becoming bound by any inbound license of Intellectual Property or any agreement that constitutes a Material Contract (other than over-the-counter software that is commercially available to the public) after the Closing Date: (a) provide written notice to the Administrative Agent of the material terms of such license or agreement with a description of its anticipated and projected impact on the business and financial condition of the Issuer and its Subsidiaries and (b) in good faith take such commercially reasonable actions as the Administrative Agent may request to obtain the consent of, or waiver by, any Person whose consent or waiver is necessary for (i) the applicable Credit Party's interest in such license or agreement to be deemed Collateral and for the Administrative Agent to have a security interest in it that might otherwise be restricted by the terms of the applicable license or agreement, whether now existing or entered into in the future and (ii) the Administrative Agent to have the ability in the event of a liquidation of any of the Collateral to dispose of such Collateral in accordance with the Administrative Agent's rights and remedies under this Agreement and the other Note Documents.

7.19 Anti-Corruption Laws.

Conduct its business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions and maintain policies and procedures designed to promote and achieve compliance with such laws.

7.20 Maintenance of Regulatory Authorizations, Contracts, Intellectual Property, Etc.

(a) With respect to the Material Products, (i) maintain in full force and effect all Regulatory Authorizations, contract rights, authorizations or other rights necessary or material for the operations of the business of the Issuer and its Subsidiaries, and comply with the terms and conditions applicable to the foregoing excluding the maintenance of the Regulatory Authorizations that in the commercially reasonable business judgment of the Credit Parties are not necessary or material for the conduct of the business of the Issuer and its Subsidiaries; (ii) promptly notify the Administrative Agent of any Safety Notice conducted, to be undertaken or issued, by such Credit Party, its respective Subsidiaries or its respective suppliers whether or not at the request, demand or order of any Governmental Authority or otherwise with respect to any Material Product or manufacturing facility owned or operated by any Credit Party or their respective Subsidiaries, or any basis for undertaking or issuing any such action or item, in each case, that could reasonably be expected to have a material effect on any Product Development and Commercialization Activities; (iii) design, manufacture, store, transport, label, sell, market, and distribute all Material Products in compliance with applicable Laws, including without limitation, cGMPs, the FDCA, the PHSA, the Controlled Substances Act, except where the failure to do so could not reasonably be expected to have a material adverse effect on any Product Development and Commercialization Activities; (iv) conduct all studies, tests and preclinical and clinical trials relating to the Material Products in accordance with all cGCPs, and other applicable Laws, except where the failure to do so could not reasonably be expected to have a material effect on any Product Development and Commercialization Activities; and (v) operate all manufacturing facilities in material compliance with applicable Laws, including without limitation, cGMPs, the Controlled Substances Act, except where the failure to do so could not reasonably be expected to have a material effect on any Product Development and Commercialization Activities.

(b) (i) Maintain in full force and effect or pursue the prosecution of, as the case may be, and pay all costs and expenses relating to, all Intellectual Property owned or controlled by such Credit Party or its respective Subsidiaries and all Material Contracts excluding the maintenance of Intellectual Property that in the commercially reasonable business judgment of the Issuer is not necessary or material for the conduct of the business of any Credit Party or any Subsidiary or to Product Development and Commercialization Activities with respect to any Material Product; (ii) promptly notify the Administrative Agent of any Infringement or other material violation by any Person of its Intellectual Property; (iii) use commercially reasonable efforts to pursue, enforce, and maintain in full force and effect legal protection for all Intellectual Property, including Patents, developed or controlled by such Credit Party or any of its respective Subsidiaries; and (iv) promptly notify the Administrative Agent of any claim by any Person that the conduct of such Credit Party's or such Subsidiary's business (including the development, manufacture, use, sale or other commercialization of any Product) Infringes any Intellectual Property of that Person and, if reasonably requested by the Administrative Agent, use commercially reasonable efforts to resolve such claim.

(c) Furnish to the Administrative Agent prompt written notice of the following:

(i) Any written notice that the FDA or any other Governmental Authority is limiting, suspending or revoking any Regulatory Authorization applicable to any Material Product, or adversely changing the market classification or labeling of or otherwise materially restricting any Material Product or considering any of the foregoing;

(ii) any Credit Party or any Subsidiary becoming subject to any administrative or regulatory action, any non-routine FDA or EMA inspection or any non-routine inspection by any other Person, receipt of adverse inspectional observations (e.g., on FDA Form 483), warning letter, or written notice of violation letter, or any Material Product being seized, withdrawn, recalled, detained, or subject to a suspension of manufacturing, or the commencement of any proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, suspension, import detention, or seizure of any Product are pending or threatened against any Credit Party or any Subsidiary;

(iii) any written recommendation (together with a copy thereof) from any Governmental Authority that any Credit Party or any Subsidiary, or any obligor to which any Credit Party or any Subsidiary provides Products or services, should have its licensure, provider or supplier number, or accreditation suspended, revoked, or limited in any way, or any penalties or sanctions imposed; or

(iv) any notice relating to a Paragraph IV Certification concerning any Material Product and asserting the non-infringement, invalidity or unenforceability of any Patent owned by or licensed to any Credit Party or any Subsidiary or any associated litigation.

7.21 Information Required by Rule 144A.

Upon the reasonable request of any Purchaser, provide such Purchaser, and any qualified institutional buyer designated by such Purchaser, such financial and other information as such Purchaser may reasonably determine to be necessary in order to permit compliance with the information requirements of Rule 144A under the Securities Act in connection with the resale of the Notes, except at such times as the Issuer is subject to and in compliance with the reporting requirements of Section 13 or 15(d) of the Exchange Act. For purposes of this Section 7.21, the term "qualified institutional buyer" shall have the meaning specified in Rule 144A under the Securities Act.

7.22 Post-Closing Obligations.

Within the time periods set forth on Schedule 7.22 (or such longer periods as the Administrative Agent may agree in its sole discretion), deliver to the Administrative Agent such documents, instruments, certificates or agreements as are listed on Schedule 7.22, in each case in form and substance reasonably satisfactory to the Administrative Agent.

ARTICLE VIII

NEGATIVE COVENANTS

So long as any Purchaser shall have any Note Purchase Commitment hereunder, any Note or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which no claim has been asserted), no Credit Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

8.01 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Note Document;

(b) Liens existing on the Closing Date and listed on Schedule 8.01 to the Disclosure Letter and any renewals or extensions thereof; provided, that, (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 8.03(b), (iii) the direct or any contingent obligor with respect thereto is not changed and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 8.03(b);

(c) Liens (other than Liens imposed under ERISA) for taxes, assessments or governmental charges or levies not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and suppliers and other Liens imposed by law or pursuant to customary reservations or retentions of title arising in the ordinary course of business, provided, that, such Liens secure only amounts not yet due and payable or, if due and payable, are unfiled and no other action has been taken to enforce the same or are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, indemnity and performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments) not constituting an Event of Default under Section 9.01(h);

(i) Liens securing Indebtedness permitted under Section 8.03(e); provided, that: (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, (ii) the Indebtedness secured thereby does not exceed the cost (negotiated on an arm's length basis) of the property being acquired on the date of acquisition and (iii) such Liens attach to such property concurrently with or within one hundred and eighty (180) days after the acquisition thereof;

(j) (i) licenses, sublicenses, leases or subleases (other than relating to intellectual property) granted to others in the ordinary course of business not interfering in any material respect with the business of any Credit Party or any Subsidiary and (ii) Permitted Licenses;

(k) any interest of title of a lessor under, and Liens arising from Uniform Commercial Code financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, leases permitted by this Agreement;

(l) Liens arising in the ordinary course of business by virtue of any contractual, statutory or common law provision relating to banker's Liens, rights of set off or similar rights and remedies covering deposit or securities accounts (including funds or other assets credited thereto) or other funds maintained with a depository institution or securities intermediary, in each case incurred in the ordinary course of business;

(m) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection;

(n) Liens arising from precautionary Uniform Commercial Code financing statements or similar filings under applicable law regarding operating leases entered into by the Issuer or any Subsidiary in the ordinary course of business;

(o) (i) Liens in favor of SVB on cash, to the extent securing the Cash-Secured Obligations and (ii) solely until the final settlement, final and nonappealable judgment or other final resolution of the Eshelman Litigation, Liens in favor of SVB on restricted cash account no. [***] (and the amounts therein), to the extent securing Indebtedness permitted by Section 8.03(i)(ii);

(p) Liens in favor of Wells Fargo solely on that certain restricted cash account no. [***] (and the amounts therein) to the extent securing (i) the Wells Fargo Letters of Credit, so long as the amount in such restricted cash account in respect of such letters of credit does not exceed $4,000,000 in the aggregate and (ii) the Issuer's credit card issued by Wells Fargo, so long as the amount in such restricted cash account in respect of such credit card does not exceed $220,000; and

(q) Liens (other than Liens securing Indebtedness for borrowed money) not otherwise permitted by the foregoing clauses of this Section 8.01, in an amount not to exceed $1,000,000 in the aggregate for all such Liens at any time.

8.02 Investments.

Make any Investments, except:

(a) (i) Investments held by the Issuer or any Subsidiary in the form of cash or Cash Equivalents and (ii) any other Investments made pursuant to the Issuer Investment Policy;

(b) Investments existing as of the Closing Date and set forth in Schedule 8.02 to the Disclosure Letter;

(c) (i) Investments in any Person that is a Credit Party prior to giving effect to such Investment, (ii) Investments by any Subsidiary that is not a Credit Party in any other Subsidiary that is not a Credit Party and (iii) Investments by Credit Parties in Subsidiaries that are not Credit Parties, in an aggregate amount not to exceed $500,000 at any one time outstanding; provided, that, no Investment otherwise permitted by this clause (d)(iii) shall be permitted to be made if any Default has occurred and is continuing or would result therefrom;

(d) (i) Permitted Acquisitions and (ii) the Transformative Acquisition;

(e) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business and (ii) loans to employees, officers or directors relating to the purchase of Qualified Capital Stock of the Issuer pursuant to employee stock purchase plans approved by the Issuer's Board of Directors, in an aggregate amount for all such Investments made in reliance of this clause (f) not to exceed $1,000,000 at any one time outstanding; provided, that, no Investment otherwise permitted by this clause (f) shall be permitted to be made if any Default has occurred and is continuing or would result therefrom;

(g) Investments consisting of obligations of any Credit Party or any Subsidiary under Swap Contracts permitted under Section 8.03(d) that are incurred for non-speculative purposes in the ordinary course of business;

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

(i) Investments consisting of (i) negotiable instruments held for collection in the ordinary course of business or (ii) lease, utility and other similar deposits in the ordinary course of business;

(j) Investments in joint ventures or strategic alliances in the ordinary course of business to the extent consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support; provided, that, any cash Investments in all such joint ventures and strategic alliances do not exceed $1,000,000 in the aggregate in any fiscal year; and

(k) Investments not exceeding $750,000 in the aggregate at any one time outstanding.

8.03 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Note Documents;

(b) Indebtedness of the Issuer and its Subsidiaries existing on the Closing Date and described on Schedule 8.03 to the Disclosure Letter, and any refinancings, refundings, renewals or extensions thereof; provided, that, (i) the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder, (ii) the direct or any contingent obligor with respect thereto is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension; (iii) such refinancing, refunding, renewing or extending Indebtedness has a later or equal final maturity and longer or equal weighted average life than the Indebtedness being refinanced, refunded, renewed or extended; (iv) if the Indebtedness being refinanced, refunded, renewed or extended is subordinated in right of payment to the Obligations, such refinancing, refunding, renewal or extension is subordinated in right of payment to the Obligations on terms, taken as a whole, as favorable in all material respects to the Purchasers (including, if applicable, as to Collateral) as those contained in the documentation governing the Indebtedness being refinanced, refunded, renewed or extended; (v) if the Indebtedness being refinanced, refunded, renewed or extended is secured, such refinancing, refunding, renewal or extension is, if secured, subject to intercreditor arrangements on terms, taken as a whole, as favorable in all material respects to the Purchasers (including as to the applicable Collateral) as those contained in the documentation governing the Indebtedness being refinanced, refunded, renewed or extended; (vi) the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate; and (vii) such refinancing, refunding, renewing or extending Indebtedness may not have guarantors, obligors or security in any case more extensive than that which applied to the Indebtedness being refinanced, refunded, renewed or extended;

(c) intercompany Indebtedness permitted under Section 8.02 (other than by reference to this Section 8.03 (or any sub-clause hereof));

(d) obligations (contingent or otherwise) of the Issuer or any Subsidiary existing or arising under any Swap Contract, provided, that, (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view;" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) purchase money Indebtedness (including obligations in respect of Capital Leases or Synthetic Leases) hereafter incurred by the Issuer or any Subsidiary to finance the purchase of fixed assets, and renewals, refinancings and extensions thereof; provided, that, (i) no Default has occurred and is continuing both immediately prior to and after giving effect thereto, (ii) the total of all such Indebtedness for all such Persons taken together shall not exceed an aggregate principal amount of $1,000,000 at any one time outstanding, (iii) such Indebtedness when incurred shall not exceed the purchase price of the asset(s) financed and (iv) no such Indebtedness shall be refinanced for a principal amount in excess of the principal balance outstanding thereon at the time of such refinancing;

(f) to the extent constituting Indebtedness, the Specified Milestone Payment; provided, that, any and all obligations of the Issuer and its Subsidiaries with respect to the Specified Milestone Payment shall be unsecured;

(g) Indebtedness incurred in the ordinary course of business in respect of credit cards, credit processing services, debit cards, stored value cards and purchase cards (including so-called "procurement cards" or "P-cards") in an aggregate amount not to exceed $350,000 at any one time outstanding;

(h) the Cash-Secured Obligations;

(i) solely until the final settlement, final and nonappealable judgment or other final resolution of the Eshelman Litigation, (i) that certain supersedeas bond in the amount of $29,500,000 issued in connection with the appeal of the jury verdict and judgment entered against the Issuer in the Eshelman Litigation pending disposition of any and all post-trial motions and the appeal thereof and (ii) that certain letter of credit SVBSF013889 issued by SVB, for the benefit of the Issuer, in favor of Fidelity and Deposit Company of Maryland and Zurich American Insurance Company with respect to the supersedeas bond described in the foregoing sub-clause (i), in an aggregate amount not to exceed $8,850,000 at any time (or any replacement thereof (to the extent that the aggregate amount thereof is not increased));

(j) those certain standby letters of credit issued by Wells Fargo with respect to the Issuer's leases of office space, in an aggregate amount not to exceed $4,000,000 (collectively, the "Wells Fargo Letters of Credit"); and

(k) Indebtedness not otherwise permitted by the foregoing clauses of this Section 8.03, not to exceed $1,000,000 in the aggregate at any one time outstanding.

8.04 Fundamental Changes.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (including, in each case, pursuant to a Delaware LLC Division); provided, that, notwithstanding the foregoing provisions of this Section 8.04 but subject to the terms of Sections 7.12 and 7.14, (a) the Issuer may merge or consolidate with any of its Subsidiaries, provided that the Issuer shall be the continuing or surviving corporation, (b) any Credit Party (other than the Issuer) may merge or consolidate with any other Credit Party (other than the Issuer), (c) any Subsidiary that is not a Credit Party may be merged or consolidated with or into any Credit Party, provided that such Credit Party shall be the continuing or surviving corporation, (d) any Subsidiary that is not a Credit Party may be merged or consolidated with or into any other Subsidiary that is not a Credit Party and (e) any Subsidiary that is not a Credit Party may dissolve, liquidate or wind up its affairs at any time provided that such dissolution, liquidation or winding up could not reasonably be expected to have a Material Adverse Effect and all of its assets and business are transferred to a Credit Party prior to or concurrently with such dissolution, liquidation or winding up.

8.05 Dispositions.

Make any Disposition unless (a) the consideration paid in connection therewith shall be cash or Cash Equivalents paid contemporaneous with consummation of the transaction and shall be in an amount not less than the fair market value of the property disposed of, (b) no Default shall have occurred and be continuing both immediately prior to and after giving effect to such Disposition, (c) such transaction does not involve the sale or other disposition of a minority equity interest in any Subsidiary, and (d) the aggregate fair market value of all of the assets sold or otherwise disposed of in such Disposition together with the aggregate fair market value of all assets sold or otherwise disposed of by the Issuer and its Subsidiaries in all such transactions occurring during the term of this Agreement does not exceed $1,000,000.

8.06 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary may make Restricted Payments to any Credit Party;

(b) the Issuer may make (i) any payment of cash in lieu of a fractional share in accordance with the terms of any indenture governing Convertible Bond Indebtedness and (ii) subject to any subordination provisions applicable thereto, regularly scheduled interest payments and normal course fee payments as and when due in accordance with the terms of any indenture governing Convertible Bond Indebtedness; and

(c) the Issuer may declare and make dividend payments or other distributions payable solely in its Qualified Capital Stock.

8.07 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Issuer and its Subsidiaries on the Closing Date or any business substantially related or incidental thereto.

8.08 Transactions with Affiliates and Insiders.

Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person other than (a) advances of working capital to any Credit Party, (b) transfers of cash and assets to any Credit Party, (c) intercompany transactions expressly permitted by Section 8.02, Section 8.03, Section 8.04, Section 8.05 or Section 8.06 (in each case, other than by reference to this Section 8.08 (or any sub-clause hereof)), (d) compensation and benefit arrangements (including the granting of options or other equity compensation arrangements) and any indemnification arrangements with employees, officers, directors or consultants approved by, or pursuant to, any plan approved by the Board of Directors of the Issuer in the ordinary course of business and consistent with past practices, (e) issuances by the Issuer of its Qualified Capital Stock and (f) except as otherwise specifically limited in this Agreement, other transactions which are entered into in the ordinary course of such Person's business on terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arms-length transaction with a Person other than an officer, director or Affiliate.

8.09 Burdensome Agreements.

Enter into, or permit to exist, any Contractual Obligation that (a) encumbers or restricts the ability of any such Person to (i) make Restricted Payments to any Credit Party, (ii) pay any Indebtedness or other obligations owed to any Credit Party, (iii) make loans or advances to any Credit Party, (iv) transfer any of its property to any Credit Party, (v) pledge its property pursuant to the Note Documents or any renewals, refinancings, exchanges, refundings or extension thereof or (vi) act as a Credit Party pursuant to the Note Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (i) through (v) above) for (1) this Agreement and the other Note Documents, (2) any document or instrument governing Indebtedness incurred pursuant to Section 8.03(e); provided, that, any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (3) customary provisions in joint venture agreements with respect to joint ventures permitted under Section 8.02 and applicable solely to such joint venture entered into in the ordinary course of business and (4) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 8.05 pending the consummation of such sale, or (b) requires the grant of any security for any obligation if such property is given as security for the Obligations.

8.10 Use of Proceeds.

Use the proceeds of any Note, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

8.11 Prepayment of Other Indebtedness; Payments with Respect to Specified Litigations.

(a) Make (or give any notice with respect thereto) any voluntary or optional payment or prepayment or redemption or acquisition for value of (including without limitation, by way of depositing money or securities with the trustee with respect thereto before due for the purpose of paying when due), refund, refinance or exchange of any Indebtedness of any Credit Party or any Subsidiary (other than (x) Indebtedness arising under the Note Documents, (y) Indebtedness permitted by Section 8.03(e) (solely to the extent made with the proceeds of additional issuances of Indebtedness permitted by Section 8.03(e)) and (z) Indebtedness permitted by Section 8.03(g)).

(b) Make any payment (inclusive of any and all judgment and/or settlement amounts, costs and fees (including, but not limited to, attorneys' fees)) with respect to any Specified Litigation (or any related derivative litigation(s) in connection therewith) (other than any such payment to the extent made in the form of Qualified Capital Stock of the Issuer) that is in excess of the Specified Litigation Amount with respect thereto.

8.12 Organization Documents; Fiscal Year; Legal Name, State of Formation and Form of Entity; Certain Amendments.

(a) Amend, modify or change its Organization Documents in a manner materially adverse to the Administrative Agent or any Purchaser.

(b) Change its fiscal year.

(c) Without providing ten (10) days prior written notice to the Administrative Agent, change its name, state of organization or form of organization.

(d) Amend, modify or change (or permit the amendment, modification or change of) any of the terms or provisions of the Pfizer License Agreement in any manner that increases, or could have the effect of increasing, the aggregate amount payable thereunder by the Issuer and its Subsidiaries in respect of the Specified Milestone Payment.

(e) Amend, supplement, waive or otherwise modify, or enter into any forbearance from exercising any rights with respect to, any Material Contract or any document or other agreement evidencing Indebtedness in excess of the Threshold Amount, in each case in a manner materially adverse to the Administrative Agent or any Purchaser.

8.13 Ownership of Subsidiaries, etc.

(a) Notwithstanding any other provisions of this Agreement to the contrary, (a) permit any Person (other than any Credit Party or any Wholly Owned Subsidiary) to own any Equity Interests of any Subsidiary, except to qualify directors where required by applicable law or to satisfy other requirements of applicable law with respect to the ownership of Equity Interests of Foreign Subsidiaries, (b) permit any Credit Party or any Subsidiary to issue or have outstanding any shares of Disqualified Capital Stock or (c) create, incur, assume or suffer to exist any Lien on any Equity Interests of any Subsidiary, except for Permitted Liens.

(b) Permit the aggregate value of cash, Cash Equivalents and other assets held by (i) Puma UK to exceed $2,000,000 at any time or (ii) Puma Netherlands to exceed $2,000,000 at any time.

8.14 Sale Leasebacks.

Enter into any Sale and Leaseback Transaction.

8.15 Sanctions; Anti-Corruption Laws.

(a) Directly or indirectly, use the proceeds of any Note, or lend, contribute or otherwise make available such proceeds of any Note to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Purchaser, Administrative Agent, or otherwise) of Sanctions.

(b) Directly or indirectly, use the proceeds of any Note for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions.

8.16 Liquidity.

Permit Unrestricted Cash of the Credit Parties held in Deposit Accounts for which the Administrative Agent shall have received a Deposit Account Control Agreement at any time to be less than [***].

8.17 Minimum Consolidated U.S. Net Product and Ex-U.S. Royalty Revenues.

Permit Consolidated U.S. Net Product and Ex-U.S. Royalty Revenues to be less than [***] for any four (4) consecutive fiscal quarter period.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

9.01 Events of Default.

Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Issuer or any other Credit Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Note, or (ii) within five (5) Business Days after the same becomes due, any interest on any Note, or any repayment premium or fee due hereunder, or (iii) within five (5) Business Days after the same becomes due, any other amount payable hereunder or under any other Note Document; or

(b) Specific Covenants. Any Credit Party fails to perform or observe any term, covenant or agreement contained in any of Section 7.01, 7.02, 7.03, 7.05, 7.10, 7.11, 7.12, 7.14, 7.15, 7.16, 7.17, 7.18, 7.19 or 7.20 or Article VIII; or

(c) Other Defaults. Any Credit Party fails to perform or observe any other covenant or agreement (not specified in clause (a) or (b) above) contained in any Note Document on its part to be performed or observed and such failure continues for thirty (30) days after the earlier of the date on which (i) a Responsible Officer of any Credit Party becomes aware of such failure and (ii) written notice thereof shall have been given to the Issuer by the Administrative Agent or any Purchaser; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Issuer or any other Credit Party herein, in any other Note Document, or in any document delivered in connection herewith or therewith shall be materially incorrect or misleading when made or deemed made; or

(e) Cross-Default. (i) Any Credit Party or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Issuer or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Issuer or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Issuer or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Credit Party or any Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Credit Party or any Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty days after its issue or levy; or

(h) Judgments. There is entered against any Credit Party or any Subsidiary one or more final judgments or orders for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage) or any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (i) enforcement proceedings are commenced by any creditor upon such judgment or order, except where such enforcement proceedings have been initiated in violation of a stay of enforcement issued by a court of competent jurisdiction and such Credit Party or such Subsidiary, as the case may be, immediately upon initiation of such enforcement proceedings, exercises reasonable best efforts to obtain dismissal of any such enforcement proceeding; provided, that, an Event of Default shall immediately exist under this Section 9.01(h)(i) if any such enforcement proceeding continues after the expiration of a stay of enforcement or any enforcement proceeding is commenced not in violation of a stay of enforcement; or (ii) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal, pending or scheduled payment, settlement in fact or in principle or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Credit Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Issuer or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Note Documents. Any Note Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder, ceases to be in full force and effect; or any Credit Party or any other Person contests in any manner the validity or enforceability of any Note Document; or any Credit Party denies that it has any or further liability or obligation under any Note Document, or purports to revoke, terminate or rescind any Note Document; or

(k) Material Adverse Effect. There occurs any circumstance or circumstances that result in a Material Adverse Effect; or

(l) Change of Control. There occurs any Change of Control; or

(m) Invalidity of Subordination Provisions. Any subordination provision in any document or instrument governing Indebtedness that is purported to be subordinated to the Obligations or any subordination provision in any subordination agreement that relates to any Indebtedness that is to be subordinated to the Obligations, or any subordination provision in any guaranty by any Credit Party of any such Indebtedness, shall cease to be in full force and effect, or any Person (including the holder of any such Indebtedness) shall contest in any manner the validity, binding nature or enforceability of any such provision; or

(n) Injunction. Any court order enjoins, restrains, or prevents any Credit Party from conducting any material part of its business; or

(o) Material Products. (i) The FDA shall revoke, withdraw, suspend, cancel, materially limit, terminate or materially adversely modify any approved Key Permit related to any Material Product; or (ii) any Governmental Authority (other than the FDA) shall revoke, withdraw, suspend, cancel, materially limit, terminate or materially modify any approved Key Permit related to any Material Product (in each case, a "Non-FDA Governmental Action") and, in any such case, Consolidated Revenues shall decrease by greater than twenty percent (20%), as assessed as at the end of each of the four fiscal quarters immediately following such Non-FDA Governmental Action by comparing Consolidated Revenues for the four fiscal quarter period most recently ended prior to such Non-FDA Governmental Action for which the Issuer was required to deliver financial statements pursuant to Section 7.01(a) or (b) as against Consolidated Revenues for the four fiscal quarter period ending on the applicable date of assessment; or (iii) any Safety Notice is issued or initiated in connection with any Material Product after approval by the FDA or any other Governmental Authority and Consolidated Revenues shall decrease by greater than twenty percent (20%), as assessed as at the end of each of the four fiscal quarters immediately following the issuance or initiation of such Safety Notice by comparing Consolidated Revenues for the four fiscal quarter period most recently ended prior to the issuance or initiation of such Safety Notice for which the Issuer was required to deliver financial statements pursuant to Section 7.01(a) or (b) as against Consolidated Revenues for the four fiscal quarter period ending on the applicable date of assessment; or

(p) Regulatory Matters. If any of the following occurs: (i) the FDA, CMS, EMA, DEA, or any other Governmental Authority issues a letter or other communication asserting that any Product lacks a required Regulatory Authorization; (ii) any involuntary or voluntary recall of any Product or any part thereof which could reasonably be expected to result in losses and/or expenses in excess of $1,000,000; or (iii) any Credit Party or any Subsidiary enters into a settlement agreement with the FDA, CMS, EMA, DEA, or any other Governmental Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions in excess of $1,000,000.

(q) Delisting. The shares of common stock of the Issuer are delisted from NASDAQ Capital Market because of failure to comply with continued listing standards thereof or due to a voluntary delisting which results in such shares not being listed on any other nationally recognized stock exchange in the United States having listing standards at least as restrictive as the NASDAQ Capital Market.

9.02 Remedies Upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Purchasers, take any or all of the following actions:

(a) declare the commitment of each Purchaser to purchase Notes to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Notes, all interest accrued and unpaid thereon, and all other amounts (including any repayment premium) owing or payable hereunder or under any other Note Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Issuer; and

(c) exercise on behalf of itself and the Purchasers all rights and remedies available to it and the Purchasers under the Note Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Issuer under the Bankruptcy Code of the United States, the obligation of each Purchaser to purchase Notes shall automatically terminate, the unpaid principal amount of all outstanding Notes and all interest and other amounts (including any repayment premium) as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Purchaser.

If the Obligations are accelerated for any reason, the repayment premium required by Section 2.03(d) and the exit fee required by Section 2.07(b) will also be due and payable as though such Obligations were voluntarily prepaid and any discount on the Notes shall be deemed earned in full and, in each case, shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Purchaser's lost profits as a result thereof. Any repayment premium required by Section 2.03(d) and any exit fee required by Section 2.07(b) payable pursuant to the preceding sentence shall be presumed to be the liquidated damages sustained by each Purchaser as the result of the early termination and the Issuer agrees that it is reasonable under the circumstances currently existing. The repayment premium required by Section 2.03(d) and the exit fee required by Section 2.07(b) shall also be payable and any discount on the Notes shall be deemed earned in full, in each case, in the event that the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE ISSUER AND THE OTHER CREDIT PARTIES EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING REPAYMENT PREMIUM, EXIT FEE AND ANY DISCOUNT ON THE NOTES IN CONNECTION WITH ANY SUCH ACCELERATION. The Issuer and the other Credit Parties expressly agree that (i) the repayment premium required by Section 2.03(d), the exit fee required by Section 2.07(b) and any discount on the Notes provided for herein is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel, (ii) the repayment premium required by Section 2.03(d), the exit fee required by Section 2.07(b) and any discount on the Notes shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between the Purchasers and the Issuer and the other Credit Parties giving specific consideration in this transaction for such agreement to pay the repayment premium required by Section 2.03(d), the exit fee required by Section 2.07(b) and any discount on the Notes, (iv) the Issuer and the other Credit Parties shall be estopped hereafter from claiming differently than as agreed to in this paragraph and (v) the repayment premium required by Section 2.03(d), the exit fee required by Section 2.07(b) and any discount on the Notes represent a good faith, reasonable estimate and calculation of the lost profits or damages of the Purchasers and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Purchasers or profits lost by the Purchasers as a result of any early termination. The Issuer and the other Credit Parties expressly acknowledge that their agreement to pay the repayment premium required by Section 2.03(d), the exit fee required by Section 2.07(b) and any discount on the Notes to the Purchasers as herein described is a material inducement to the Purchasers to purchase the Notes hereunder.

9.03 Application of Funds.

After the exercise of remedies provided for in Section 9.02 (or after the Notes have automatically become immediately due and payable as set forth in the proviso to Section 9.02), any amounts received by any Purchaser or the Administrative Agent on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, repayment premium and exit fees) payable to the Purchasers (including fees, charges and disbursements of counsel to the respective Purchasers) arising under the Note Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on, and repayment premium and exit fees with respect to, the Notes, ratably among the Purchasers in proportion to the respective amounts described in this clause Third held by them;

Fourth, to payment of that portion of the Obligations constituting accrued and unpaid principal of the Notes, ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Issuer or as otherwise required by Law.

ARTICLE X

ADMINISTRATIVE AGENT

10.01 Appointment and Authority.

(a) Each of the Purchasers hereby irrevocably appoints Athyrium Opportunities IV Co-Invest 1 LP, a Delaware limited partnership, to act on its behalf as the Administrative Agent hereunder and under the other Note Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Purchasers, and neither the Issuer nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Note Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "collateral agent" under the Note Documents, and each of the Purchasers hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Purchaser for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Credit Parties to secure any of the Obligations, together with such powers and discretion as are incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 10.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article X and Article XI (including Section 11.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Note Documents) as if set forth in full herein with respect thereto.

10.02 Rights as a Purchaser.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Purchaser as any other Purchaser and may exercise the same as though it were not the Administrative Agent and the term "Purchaser" or "Purchasers" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Credit Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Purchasers.

10.03 Exculpatory Provisions.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Note Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Note Documents that the Administrative Agent is required to exercise as directed in writing by the Required Purchasers (or such other number or percentage of the Purchasers as shall be expressly provided for herein or in the other Note Documents); provided, that, the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Note Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may affect a forfeiture, modification or termination of property of a Defaulting Purchaser in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Note Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Credit Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Purchasers (or such other number or percentage of the Purchasers as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 11.01 and Section 9.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Issuer or a Purchaser.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Note Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Note Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

10.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the purchase of a Note that by its terms must be fulfilled to the satisfaction of a Purchaser, the Administrative Agent may presume that such condition is satisfactory to such Purchaser unless the Administrative Agent shall have received notice to the contrary from such Purchaser prior to the purchase of such Note. The Administrative Agent may consult with legal counsel (who may be counsel for the Credit Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Note Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the purchase of the notes provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

10.06 Resignation of Administrative Agent.

The Administrative Agent may resign as Administrative Agent at any time by giving thirty (30) days advance notice thereof to the Purchasers and the Issuer and, thereafter, the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. Upon any such resignation, the Required Purchasers shall have the right, subject to the approval of the Issuer (so long as no Event of Default has occurred and is continuing; such approval not to be unreasonably withheld), to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Purchasers, been approved (so long as no Event of Default has occurred and is continuing) by the Issuer or have accepted such appointment within thirty (30) days after the Administrative Agent's giving of notice of resignation, then the Administrative Agent may, on behalf of the Purchasers, appoint a successor Administrative Agent reasonably acceptable to the Issuer (so long as no Default or Event of Default has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all rights, powers, privileges and duties of the retiring Administrative Agent. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Section 10.06 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent. If no successor has accepted appointment as Administrative Agent by the date which is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Required Purchasers shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Purchasers appoint a successor agent as provided for above.

10.07 Non-Reliance on Administrative Agent and Other Purchasers.

Each Purchaser acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Purchaser or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Purchaser also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Purchaser or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Note Document or any related agreement or any document furnished hereunder or thereunder.

10.08 Administrative Agent May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Note shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Issuer) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Notes and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Purchasers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Purchasers and the Administrative Agent and their respective agents and counsel and all other amounts due the Purchasers and the Administrative Agent under Section 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Purchaser to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Purchasers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Purchaser any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Purchaser or to authorize the Administrative Agent to vote in respect of the claim of any Purchaser in any such proceeding.

10.09 Collateral and Guaranty Matters.

The Purchasers irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any Collateral granted to or held by the Administrative Agent under any Note Document (i) upon termination of all unused Note Purchase Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted) under the Note Documents, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other Disposition permitted hereunder or any Involuntary Disposition, or (iii) as approved in accordance with Section 11.01;

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Note Document to the holder of any Lien on such property that is permitted by Section 8.01(i); and

(c) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Note Documents.

Upon request by the Administrative Agent at any time, the Required Purchasers will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty, pursuant to this Section 10.09.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Purchasers for any failure to monitor or maintain any portion of the Collateral.

ARTICLE XI

MISCELLANEOUS

11.01 Amendments, Etc.

No amendment or waiver of any provision of this Agreement or any other Note Document, and no consent to any departure by the Issuer or any other Credit Party therefrom, shall be effective unless in writing signed by the Required Purchasers and the Issuer or the applicable Credit Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, further, that:

(a) no such amendment, waiver or consent shall:

(i) extend or increase the Note Purchase Commitment of a Purchaser (or reinstate any Note Purchase Commitment terminated pursuant to Section 9.02) without the written consent of such Purchaser whose Note Purchase Commitment is being extended or increased (it being understood and agreed that a waiver of any condition precedent set forth in Section 5.02 or of any Default or a mandatory reduction in Note Purchase Commitments is not considered an extension or increase in the Note Purchase Commitments of any Purchaser);

(ii) postpone any date fixed by this Agreement or any other Note Document for any payment of principal (excluding mandatory prepayments), interest, repayment premiums, fees or other amounts due to the Purchasers (or any of them) or any scheduled or mandatory reduction of the Note Purchase Commitments hereunder or under any other Note Document without the written consent of each Purchaser entitled to receive such payment or whose Note Purchase Commitments are to be reduced;

(iii) reduce the principal of, the rate of interest specified herein on or the repayment premium specified herein on any Note, or any fees or other amounts payable hereunder or under any other Note Document without the written consent of each Purchaser entitled to receive such payment of principal, interest, fees or other amounts; provided, however, that, only the consent of the Required Purchasers shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Issuer to pay interest at the Default Rate;

(iv) change any provision of this Section 11.01(a) or the definition of "Required Purchasers" without the written consent of each Purchaser directly affected thereby;

(v) except in connection with a Disposition permitted under Section 8.05, release all or substantially all of the Collateral without the written consent of each Purchaser directly affected thereby;

(vi) release the Issuer or, except in connection with a merger or consolidation permitted under Section 8.04 or a Disposition permitted under Section 8.05, all or substantially all of the Guarantors without the written consent of each Purchaser directly affected thereby, except to the extent the release of any Guarantor is permitted pursuant to Section 10.09 (in which case such release may be made by the Administrative Agent acting alone); and

(b) unless also signed by the Administrative Agent, no amendment, waiver or consent shall affect the rights or duties of the Administrative Agent under this Agreement or any other Note Document;

provided, however, that, notwithstanding anything to the contrary herein, (i) the Disclosure Letter may be supplemented as provided in Section 7.02(i) and Section 7.02(j), (ii) no Defaulting Purchaser shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Purchasers or each affected Purchaser may be effected with the consent of the applicable Purchasers other than Defaulting Purchasers), except that (x) the Note Purchase Commitment of any Defaulting Purchaser may not be increased or extended without the consent of such Purchaser and (y) any waiver, amendment or modification requiring the consent of all Purchasers or each affected Purchaser that by its terms affects any Defaulting Purchaser more adversely than other affected Purchasers shall require the consent of such Defaulting Purchaser, (iii) each Purchaser is entitled to vote as such Purchaser sees fit on any bankruptcy reorganization plan that affects the Notes, and each Purchaser acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and (iv) the Required Purchasers shall determine whether or not to allow a Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Purchasers.

11.02 Notices and Other Communications; Facsimile Copies.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in clause (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Issuer or any other Credit Party or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Purchaser, to the address, facsimile number, electronic mail address or telephone number of its Purchasing Office (whether specified on Schedule 11.02 or separately specified to the Issuer and the Administrative Agent).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in clause (b) below, shall be effective as provided in such clause (b).

(b) Electronic Communications. Notices and other communications to the Purchasers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided, that, the foregoing shall not apply to notices to any Purchaser pursuant to Article II if such Purchaser has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Issuer may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided, that, approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided, that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Change of Address, Etc. Each of the Issuer, the Purchasers and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. In addition, each Purchaser agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Purchaser.

(d) Reliance by Administrative Agent and Purchasers. The Administrative Agent and the Purchasers shall be entitled to rely and act upon any notices (including telephonic or electronic Note Issuance Notices) purportedly given by or on behalf of any Credit Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Credit Parties shall indemnify the Administrative Agent, each Purchaser and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Credit Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies; Enforcement.

No failure by any Purchaser or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Note Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Note Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Note Document, the authority to enforce rights and remedies hereunder and under the other Note Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 10.01 for the benefit of all the Secured Parties; provided, however, that, the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Note Documents, (b) any Purchaser from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.11), or (c) any Purchaser from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any Debtor Relief Law; and provided, further, that, if at any time there is no Person acting as Administrative Agent hereunder and under the other Note Documents, then (i) the Required Purchasers shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 10.01 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.11, any Purchaser may, with the consent of the Required Purchasers, enforce any rights and remedies available to it and as authorized by the Required Purchasers.

11.04 Expenses; Indemnity; and Damage Waiver.

(a) Costs and Expenses. The Credit Parties shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of outside counsel for the Administrative Agent), in connection with (A) the preparation, negotiation, execution and delivery of this Agreement and the other Note Documents and (B) any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) or the administration of this Agreement and the other Note Documents and (ii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or any Purchaser (including the fees, charges and disbursements of any outside counsel for the Administrative Agent or any Purchaser), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Note Documents, including its rights under this Section, or (B) in connection with the Notes purchased hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Notes.

(b) Indemnification by the Credit Parties. The Credit Parties shall indemnify the Administrative Agent (and any sub-agent thereof) and each Purchaser, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable and documented out-of-pocket fees, charges and disbursements of any outside counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Issuer or any other Credit Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Note Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Note Documents, (ii) any Note or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by a Credit Party or any of its Subsidiaries, or any Environmental Liability related in any way to a Credit Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Issuer or any other Credit Party, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided, that, such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from (i) the gross negligence or willful misconduct of such Indemnitee, if the Issuer or such Credit Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (ii) a claim brought by any Credit Party against an Indemnitee for material breach of such Indemnitee's obligations hereunder or under any other Note Document, if the Issuer or such Credit Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Purchasers. To the extent that the Credit Parties for any reason fail to indefeasibly pay any amount required under clause (a) or (b) of this Section to be paid by them to the Administrative Agent (or any sub-agent thereof) or any Related Party thereof, each Purchaser severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Purchaser's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Purchaser's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Purchaser), such payment to be made severally among them based on such Purchasers' Applicable Percentages (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); provided, further, that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), or against any Related Party thereof acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Purchasers under this clause (c) are subject to the provisions of Section 2.10(b).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no party hereto shall assert, and each party hereto hereby waives, any claim against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Note Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Note or the use of the proceeds thereof; provided, however, that the Credit Parties' obligations to indemnify the Indemnitees as otherwise set forth in this Agreement from claims brought by third parties shall not be limited by the foregoing. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Note Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than fifteen (15) Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 11.02(d) shall survive the resignation of the Administrative Agent, the replacement of any Purchaser, the termination of the Note Purchase Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.05 Payments Set Aside.

To the extent that any payment by or on behalf of any Credit Party is made to the Administrative Agent or any Purchaser, or the Administrative Agent or any Purchaser exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Purchaser in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Purchaser severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Purchasers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Note Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that the Issuer may not assign or otherwise transfer any of its rights or obligations hereunder or thereunder without the prior written consent of the Administrative Agent and each Purchaser and no Purchaser may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of clause (b) of this Section, or (ii) by way of pledge or assignment of a security interest subject to the restrictions of clause (d) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Purchasers) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Purchasers. Any Purchaser may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Note Documents (including all or a portion of its Note Purchase Commitments under any Tranche and the Notes at the time owing to it (in each case with respect to any Tranche)); provided, that, any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Purchaser's Note Purchase Commitment with respect to any Tranche and/or the Notes with respect to any Tranche at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Purchaser, an Affiliate of a Purchaser or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in clause (b)(i)(A) of this Section, the aggregate amount of the applicable Note Purchase Commitment or, if the applicable Note Purchase Commitment is not then in effect, the principal outstanding balance of the Notes with respect to any Tranche of the assigning Purchaser subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $1,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Issuer otherwise consents (each such consent not to be unreasonably withheld or delayed);

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all of the assigning Purchaser's rights and obligations under this Agreement with respect to the Notes or the Note Purchase Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (b)(i)(B) of this Section and, in addition:

(A) the consent of the Issuer (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Purchaser, an Affiliate of a Purchaser or an Approved Fund; provided, that, the Issuer shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) any unfunded Note Purchase Commitment if such assignment is to a Person that is not a Purchaser with a Note Purchase Commitment in respect of the applicable Tranche, an Affiliate of such Purchaser or an Approved Fund with respect to such Purchaser or (ii) any Note to a Person that is not a Purchaser, an Affiliate of a Purchaser or an Approved Fund;

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption. The assignee, if it is not a Purchaser, shall deliver to the Administrative Agent such information, including notice information, as the Administrative Agent shall reasonably require.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Issuer or any of the Issuer's Affiliates or Subsidiaries, (B) to any Defaulting Purchaser or any of its Subsidiaries or any Person who, upon becoming a Purchaser hereunder, would constitute any of the foregoing Persons described in this clause (B) or (C) to a natural Person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Purchaser hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Issuer and the Administrative Agent, the applicable pro rata share of Notes previously requested to be purchased but not purchased by the Defaulting Purchaser, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Purchaser to the Administrative Agent or any Purchaser hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Notes in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Purchaser hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Purchaser for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Purchaser under this Agreement, and the assigning Purchaser thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Purchaser's rights and obligations under this Agreement, such Purchaser shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.02 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Issuer (at its expense) shall execute and deliver a Note to the assignee Purchaser.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Issuer (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Purchasers, and the Note Purchase Commitments of, and principal amounts (and stated interest) of the Notes held by, each Purchaser pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Issuer, the Administrative Agent and the Purchasers shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Purchaser hereunder for all purposes of this Agreement. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Purchaser as a Defaulting Purchaser. The Register shall be available for inspection by the Issuer and any Purchaser, at any reasonable time and from time to time upon reasonable prior notice.

(d) Certain Pledges. Any Purchaser may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note(s)) to secure obligations of such Purchaser, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided, that, no such pledge or assignment shall release such Purchaser from any of its obligations hereunder or substitute any such pledgee or assignee for such Purchaser as a party hereto.

11.07 Treatment of Certain Information; Confidentiality.

Each of the Administrative Agent and the Purchasers agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) as may be reasonably necessary in connection with the exercise of any remedies hereunder or under any other Note Document or any action or proceeding relating to this Agreement or any other Note Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of, or any prospective assignee of o, any of its rights and obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to a Credit Party and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Issuer or its Subsidiaries or the notes to be purchased hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the notes to be purchased hereunder, (h) with the consent of the Issuer, (i) to the members of its investment committee (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential) or (j) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Purchaser or any of their respective Affiliates on a nonconfidential basis from a source other than the Issuer.

For purposes of this Section, "Information" means all information received from a Credit Party or any Subsidiary relating to the Credit Parties or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Purchaser on a nonconfidential basis prior to disclosure by such Credit Party or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

11.08 Set-off.

If an Event of Default shall have occurred and be continuing, each Purchaser and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Purchaser or any such Affiliate to or for the credit or the account of the Issuer or any other Credit Party against any and all of the obligations of the Issuer or such Credit Party now or hereafter existing under this Agreement or any other Note Document to such Purchaser or its Affiliates, irrespective of whether or not such Purchaser or Affiliate shall have made any demand under this Agreement or any other Note Document and although such obligations of the Issuer or such Credit Party may be contingent or unmatured or are owed to a branch office or Affiliate of such Purchaser different from the branch office or Affiliate holding such deposit or obligated on such indebtedness; provided, that, in the event that any Defaulting Purchaser shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.12 and, pending such payment, shall be segregated by such Defaulting Purchaser from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Purchasers and (y) the Defaulting Purchaser shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Purchaser as to which it exercised such right of setoff. The rights of each Purchaser and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Purchaser or their respective Affiliates may have. Each Purchaser agrees to notify the Issuer and the Administrative Agent promptly after any such setoff and application; provided, that, the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Note Document, the interest paid or agreed to be paid under the Note Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Purchaser shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Notes or, if it exceeds such unpaid principal, refunded to the Issuer. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Purchaser exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Counterparts; Integration; Effectiveness.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Note Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

11.11 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Note Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof and shall continue in full force and effect as long as any Note or other Obligation hereunder shall remain unpaid or unsatisfied. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Purchaser, regardless of any investigation made by the Administrative Agent or any Purchaser or on their behalf and notwithstanding that the Administrative Agent or any Purchaser may have had notice or knowledge of any Default at the time of any Notes Issuance, and shall continue in full force and effect as long as any Note or any other Obligation hereunder shall remain unpaid or unsatisfied.

11.12 Severability.

If any provision of this Agreement or the other Note Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Note Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Purchasers shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 Replacement of Purchasers.

If the Issuer is entitled to replace a Purchaser pursuant to the provisions of Section 3.03 or if any Purchaser is a Defaulting Purchaser or a Non-Consenting Purchaser, then the Issuer may, at its sole expense and effort, upon written notice to such Purchaser and the Administrative Agent, require such Purchaser to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.02) and obligations under this Agreement and the related Note Documents to an assignee that shall assume such obligations (which assignee may be another Purchaser, if a Purchaser accepts such assignment); provided, that:

(a) such Purchaser shall have received payment of an amount equal to one hundred percent (100%) of (x) the outstanding principal of its Notes, accrued interest thereon and all other amounts payable to it hereunder and under the other Note Documents (other than repayment premium and exit fees) from the assignee (to the extent of such outstanding principal and accrued interest) or the Issuer (in the case of all other amounts) and (y) the repayment premium required by Section 2.03(d) and the exit fee required by Section 2.07(b), in each case, from the Issuer, as if such assignment was a prepayment of one hundred percent (100%) of the outstanding principal amount of such assignor's Notes on the effective date of such assignment;

(b) such assignment does not conflict with applicable Laws;

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.02 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) in the case of any such assignment resulting from a Non-Consenting Purchaser's failure to consent to a proposed change, waiver, discharge or termination with respect to any Note Document, the applicable replacement bank, financial institution or Fund consents to the proposed change, waiver, discharge or termination; provided, that, the failure by such Non-Consenting Purchaser to execute and deliver an Assignment and Assumption shall not impair the validity of the removal of such Non-Consenting Purchaser and the mandatory assignment of such Non-Consenting Purchaser's outstanding Notes pursuant to this Section 11.13 shall nevertheless be effective without the execution by such Non-Consenting Purchaser of an Assignment and Assumption.

A Purchaser shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Purchaser or otherwise, the circumstances entitling the Issuer to require such assignment and delegation cease to apply.

11.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER NOTE DOCUMENTS (EXCEPT, AS TO ANY OTHER NOTE DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER NOTE DOCUMENT (EXCEPT, AS TO ANY OTHER NOTE DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ANOTHER PARTY OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER NOTE DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY OTHER FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK AND ANY UNITED STATES DISTRICT COURT IN THE STATE OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF LOCATED IN NEW YORK COUNTY, NEW YORK, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER NOTE DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY PURCHASER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER NOTE DOCUMENT AGAINST THE ISSUER OR ANY OTHER CREDIT PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION, SOLELY TO THE EXTENT REQUIRED TO ENFORCE RIGHTS RELATED TO THE COLLATERAL (INCLUDING, WITHOUT LIMITATION, IN CONNECTION WITH FORECLOSURE ON THE COLLATERAL) OR TO ENFORCE A JUDGMENT.

(c) WAIVER OF VENUE. THE ISSUER AND EACH OTHER CREDIT PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER NOTE DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.15 Waiver of Right to Trial by Jury.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER NOTE DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER NOTE DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.16 Electronic Execution of Assignments and Certain Other Documents.

The words "execute," "execution," "signed," "signature" and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11.17 USA PATRIOT Act.

Each Purchaser that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Purchaser) hereby notifies the Issuer and the other Credit Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Purchaser or the Administrative Agent, as applicable, to identify each Credit Party in accordance with the Act. The Issuer and the Credit Parties agree to, promptly following a request by the Administrative Agent or any Purchaser, provide all such other documentation and information that the Administrative Agent or such Purchaser requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

11.18 No Advisory or Fiduciary Relationship.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Note Document), the Issuer acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a)(i) the arranging and other services regarding this Agreement provided by the Administrative Agent, Athyrium, and the Purchasers are arm's-length commercial transactions between the Issuer and its Affiliates, on the one hand, and the Administrative Agent, Athyrium and the Purchaser on the other hand, (ii) the Issuer has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Issuer is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Note Documents; (b)(i) the Administrative Agent, Athyrium and each Purchaser is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not and will not be acting as an advisor, agent or fiduciary, for the Issuer or any of Affiliates or any other Person and (ii) neither the Administrative Agent nor any Purchaser has any obligation to the Issuer or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Note Documents; and (c) the Administrative Agent, Athyrium and the Purchasers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Issuer and its Affiliates, and neither the Administrative Agent, Athyrium nor any Purchaser has any obligation to disclose any of such interests to the Issuer or its Affiliates. To the fullest extent permitted by law, the Issuer hereby waives and releases, any claims that it may have against the Administrative Agent, Athyrium or any Purchaser with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.19 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Note Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Purchaser that is an EEA Financial Institution arising under any Note Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Purchaser that is an EEA Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable: (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Note Document; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

11.20 Representations of Purchasers.

Each Purchaser, severally and not jointly, hereby represents and warrants to the Issuer that, as of the Closing Date and immediately following the closing of the transactions under this Agreement, the following are true and correct: (a) such Purchaser is not acquiring the Notes to be purchased by it hereunder with a view to or for sale in connection with any distribution thereof within the meaning of the Securities Act and (b) such Purchaser (i) is an "accredited investor" as defined in Rule 501 promulgated under the Securities Exchange Act of 1934 as in effect as of the Closing Date, (ii) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment in the Notes being purchased by it and (iii) has had (A) access to representatives of the Issuer during the course of this transaction and prior to the purchase of the Notes, (B) the opportunity to ask questions of and receive answers from the Issuer and its representatives concerning the terms and conditions of the Notes, and (C) the opportunity to obtain any additional information necessary to verify the information related to the Notes or otherwise to the proposed activities of the Issuer.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

ISSUER:

PUMA BIOTECHNOLOGY, INC.,
a Delaware corporation

By: /s/ Maximo Nougues
Name: Maximo Nougues
Title: Chief Financial Officer

ADMINISTRATIVE AGENT:

ATHYRIUM OPPORTUNITIES IV CO-INVEST 1 LP, a Delaware limited partnership

By: ATHYRIUM OPPORTUNITIES ASSOCIATES IV CO-INVEST LLC

By: /s/ Rashida Adams
Name: Rashida Adams
Title: Authorized Signatory

PURCHASERS:

ATHYRIUM OPPORTUNITIES IV CO-INVEST 1 LP, a Delaware limited partnership

By: ATHYRIUM OPPORTUNITIES ASSOCIATES IV CO-INVEST LLC

By: /s/ Rashida Adams
Name: Rashida Adams
Title: Authorized Signatory

EXHIBIT A

FORM OF NOTES ISSUANCE NOTICE

Date: _____, 20__

To: Athyrium Opportunities IV Co-Invest 1 LP, as Administrative Agent

Re: Note Purchase Agreement dated as of July 23, 2021 (as amended, modified, restated, supplemented or extended from time to time, the "Note Purchase Agreement") among Puma Biotechnology, Inc., a Delaware corporation (the "Issuer"), the Guarantors from time to time party thereto, the Purchasers from time to time party thereto and Athyrium Opportunities IV Co-Invest 1 LP, as Administrative Agent. Capitalized terms used but not otherwise defined herein have the meanings provided in the Note Purchase Agreement.

Ladies and Gentlemen:

The undersigned hereby requests the purchase of the [First Tranche Notes] [Second Tranche Notes] by the Appropriate Purchasers on [__] (which is a Business Day) in the aggregate principal amount of $[100,000,000] [25,000,000].

The Issuer hereby represents and warrants that each of the conditions set forth in [Section 5.01 and] Section 5.02 of the Note Purchase Agreement has been satisfied on and as of the date of such Notes Issuance.

IN WITNESS WHEREOF, the Issuer has caused this Notes Issuance Notice to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

PUMA BIOTECHNOLOGY, INC.,
a Delaware corporation

By: _____
Name:
Title:

EXHIBIT B-1

FORM OF FIRST TRANCHE NOTE

_____, 20__

FOR VALUE RECEIVED, the undersigned (the "Issuer") promises to pay to _____ or registered assigns (the "Purchaser"), in accordance with the provisions of the Note Purchase Agreement (as hereinafter defined), the principal amount of the Note issued to the Purchaser by the Issuer under that certain Note Purchase Agreement dated as of July 23, 2021 (as amended, modified, restated, supplemented or extended from time to time, the "Note Purchase Agreement") among the Issuer, the Guarantors from time to time party thereto, the Purchasers from time to time party thereto and Athyrium Opportunities IV Co-Invest 1 LP, as Administrative Agent. Capitalized terms used but not otherwise defined herein have the meanings provided in the Note Purchase Agreement.

The Issuer promises to pay interest on the unpaid principal amount of the First Tranche Note made by the Purchaser to the Issuer under the Note Purchase Agreement from the Closing Date until such principal amount is paid in full, at such interest rates and at such times as provided in the Note Purchase Agreement. All payments of principal and interest owed to the Purchaser shall be made to the Purchaser for the account of the Purchaser in Dollars in immediately available funds at the Purchaser's Purchasing Office; provided, that, if at the time of such payment the Purchaser is a Defaulting Purchaser, such payment shall be made directly to the Administrative Agent. In accordance with the Note Purchase Agreement, upon the occurrence of any Event of Default, if any amount is not paid in full when due under the Note Purchase Agreement, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Note Purchase Agreement.

This First Tranche Note is one of the First Tranche Notes referred to in the Note Purchase Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and during the continuation of one or more of the Events of Default specified in the Note Purchase Agreement, all amounts then remaining unpaid on this First Tranche Note shall become, or may be declared to be, immediately due and payable all as provided in the Note Purchase Agreement. The First Tranche Note Purchase Commitment made by the Purchaser to the Issuer under the Note Purchase Agreement shall be evidenced by one or more accounts or records maintained by the Purchaser in the ordinary course of business. The Purchaser may also attach schedules to this First Tranche Note and endorse thereon the date, amount and maturity of the First Tranche Note made by the Purchaser to the Issuer under the Note Purchase Agreement and payments with respect thereto.

The Issuer, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and nonpayment of this First Tranche Note.

This First Tranche Note may only be transferred in accordance with the limitations and restrictions set forth in the Note Purchase Agreement. THIS FIRST TRANCHE NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

THIS FIRST TRANCHE NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). UPON WRITTEN REQUEST, THE ISSUER WILL PROMPTLY MAKE AVAILABLE TO ANY HOLDER OF THIS FIRST TRANCHE NOTE THE FOLLOWING INFORMATION: (1) THE ISSUE PRICE AND ISSUE DATE OF THE FIRST TRANCHE NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THE FIRST TRANCHE NOTE AND (3) THE YIELD TO MATURITY OF THE FIRST TRANCHE NOTE.

[Signature Page Follows]

IN WITNESS WHEREOF, the Issuer has caused this First Tranche Note to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

PUMA BIOTECHNOLOGY, INC.,
a Delaware corporation

By: _____
Name:
Title:

EXHIBIT B-2

FORM OF SECOND TRANCHE NOTE

_____, 20__

FOR VALUE RECEIVED, the undersigned (the "Issuer") promises to pay to _____ or registered assigns (the "Purchaser"), in accordance with the provisions of the Note Purchase Agreement (as hereinafter defined), the principal amount of the Note issued to the Purchaser by the Issuer under that certain Note Purchase Agreement dated as of July 23, 2021 (as amended, modified, restated, supplemented or extended from time to time, the "Note Purchase Agreement") among the Issuer, the Guarantors from time to time party thereto, the Purchasers from time to time party thereto and Athyrium Opportunities IV Co-Invest 1, LP, as Administrative Agent. Capitalized terms used but not otherwise defined herein have the meanings provided in the Note Purchase Agreement.

The Issuer promises to pay interest on the unpaid principal amount of the Second Tranche Note made by the Purchaser to the Issuer under the Note Purchase Agreement from the Closing Date until such principal amount is paid in full, at such interest rates and at such times as provided in the Note Purchase Agreement. All payments of principal and interest owed to the Purchaser shall be made to the Purchaser for the account of the Purchaser in Dollars in immediately available funds at the Purchaser's Purchasing Office; provided, that, if at the time of such payment the Purchaser is a Defaulting Purchaser, such payment shall be made directly to the Administrative Agent. In accordance with the Note Purchase Agreement, upon the occurrence of any Event of Default, if any amount is not paid in full when due under the Note Purchase Agreement, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Note Purchase Agreement.

This Second Tranche Note is one of the Second Tranche Note referred to in the Note Purchase Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and during the continuation of one or more of the Events of Default specified in the Note Purchase Agreement, all amounts then remaining unpaid on this Second Tranche Note shall become, or may be declared to be, immediately due and payable all as provided in the Note Purchase Agreement. The Second Tranche Note Purchase Commitment made by the Purchaser to the Issuer under the Note Purchase Agreement shall be evidenced by one or more accounts or records maintained by the Purchaser in the ordinary course of business. The Purchaser may also attach schedules to this Second Tranche Note and endorse thereon the date, amount and maturity of the Second Tranche Note mase by the Purchaser to the Issuer under the Note Purchase Agreement and payments with respect thereto.

The Issuer, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and nonpayment of this Second Tranche Note.

This Second Tranche Note may only be transferred in accordance with the limitations and restrictions set forth in the Note Purchase Agreement. THIS SECOND TRANCHE NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

THIS SECOND TRANCHE NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). UPON WRITTEN REQUEST, THE ISSUER WILL PROMPTLY MAKE AVAILABLE TO ANY HOLDER OF THIS SECOND TRANCHE NOTE THE FOLLOWING INFORMATION: (1) THE ISSUE PRICE AND ISSUE DATE OF THE SECOND TRANCHE NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THE SECOND TRANCHE NOTE AND (3) THE YIELD TO MATURITY OF THE SECOND TRANCHE NOTE.

[Signature Page Follows]

IN WITNESS WHEREOF, the Issuer has caused this Second Tranche Note to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

PUMA BIOTECHNOLOGY, INC.
a Delaware corporation

By: _____
Name:
Title:

EXHIBIT C

FORM OF JOINDER AGREEMENT

THIS JOINDER AGREEMENT (this "Agreement") dated as of _____, 20__ is by and between _____, a _____ (the "New Subsidiary"), and Athyrium Opportunities IV Co-Invest 1 LP, in its capacity as Administrative Agent under that certain Note Purchase Agreement dated as of July 23, 2021 (as amended, modified, restated, supplemented or extended from time to time, the "Note Purchase Agreement") among Puma Biotechnology, Inc., a Delaware corporation (the "Issuer"), the Guarantors from time to time party thereto, the Purchasers from time to time party thereto and Athyrium Opportunities IV Co-Invest 1 LP, as Administrative Agent. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Note Purchase Agreement.

The Credit Parties are required by Section 7.12 of the Note Purchase Agreement to cause the New Subsidiary to become a "Guarantor" thereunder. Accordingly, the New Subsidiary hereby agrees as follows with the Administrative Agent:

1. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a party to the Note Purchase Agreement and a "Guarantor" for all purposes of the Note Purchase Agreement, and shall have all of the obligations of a Guarantor thereunder as if it had executed the Note Purchase Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions applicable to the Guarantors contained in the Note Purchase Agreement. Without limiting the generality of the foregoing terms of this paragraph 1, the New Subsidiary hereby jointly and severally together with the other Guarantors, guarantees to each Secured Party, as provided in Article IV of the Note Purchase Agreement, as primary obligor and not as surety, the prompt payment of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof.

2. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a party to the Security Agreement and a "Grantor" for all purposes of the Security Agreement, and shall have all the obligations of a Grantor thereunder as if it had executed the Security Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Security Agreement applicable to Grantors. Without limiting the generality of the foregoing terms of this paragraph 2, the New Subsidiary hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in any and all right, title and interest of the New Subsidiary in and to the Collateral (as defined in the Security Agreement) of the New Subsidiary to secure the prompt payment in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Obligations.

3. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a party to the Pledge Agreement and a "Pledgor" for all purposes of the Pledge Agreement, and shall have all the obligations of a Pledgor thereunder as if it had executed the Pledge Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Pledge Agreement applicable to Pledgors. Without limiting the generality of the foregoing terms of this paragraph 3, the New Subsidiary hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in any and all right, title and interest of the New Subsidiary in and to the Pledged Collateral (as defined in the Pledge Agreement) of the New Subsidiary to secure the prompt payment and performance in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Obligations.

4. The New Subsidiary hereby represents and warrants to the Administrative Agent and the Purchasers that, as of the date hereof:

(a) The New Subsidiary's exact legal name and state of organization are as set forth on the signature pages hereto.

(b) The New Subsidiary's taxpayer identification number and organizational identification number are set forth on Schedule 1 hereto.

(c) Other than as set forth on Schedule 2 hereto, the New Subsidiary has not changed its legal name, changed its state of organization, or been party to a merger, consolidation or other change in structure in the five years preceding the date hereof.

(d) Schedule 3 hereto sets forth a complete and accurate list of all (i) Patents including any Patent applications and other material defined herein as Patents, (ii) registered Trademarks (including domain names) and any pending registrations for Trademarks, (iii) any other registered Intellectual Property (including any copyright registrations or applications for registration), and (iv) each other item of Material Intellectual Property, in each case of the foregoing clauses (i) through (iv), that (A) is owned by the New Subsidiary or (B) constitutes Material Intellectual Property and is being licensed by the New Subsidiary. For each item of Intellectual Property listed on Schedule 3 hereto, the New Subsidiary has, where relevant, indicated on such schedule the owner of record, jurisdiction of application and/or registration, the application numbers, the registration or patent numbers or patent application numbers, and the date of application and/or registration. Schedule 3 hereto also sets forth a complete and accurate list of all license agreements (inbound or outbound) of any of the foregoing items of Intellectual Property.

With respect to all Intellectual Property on Schedule 3 hereto, (A) the New Subsidiary owns or has a valid license to such Intellectual Property free and clear of any and all Liens other than Permitted Liens; (B) the New Subsidiary has taken commercially reasonable actions to maintain and protect such Intellectual Property; (C) except for rejections issued by a Governmental Authority in the ordinary course of prosecuting Patent or Trademark applications, to the knowledge of the New Subsidiary, (1) there is no proceeding challenging the validity or enforceability of any such Intellectual Property, (2) the New Subsidiary is not involved in any such proceeding with any Person, (3) none of the Intellectual Property is the subject of any Other Administrative Proceeding and (4) no Person has made any Paragraph IV Certification, asserting the non-infringement, invalidity, or unenforceability of any Patent listed on Schedule 3 hereto; (D)(1) such Intellectual Property that is owned or controlled by the New Subsidiary is subsisting, and to the knowledge of the New Subsidiary, valid and enforceable and (2) to the knowledge of the New Subsidiary, no event has occurred, and nothing has been done or omitted to have been done, that would affect the validity or enforceability of such Intellectual Property that is owned or controlled by the New Subsidiary, and all such Intellectual Property that is owned or controlled by the New Subsidiary is in full force and effect and has not lapsed, or been forfeited or cancelled or abandoned (except for routine abandonments associated with patent prosecution) and there are no unpaid maintenance, renewal or other fees payable or owing by the New Subsidiary for any such Intellectual Property that is owned or controlled by the New Subsidiary; (E) the New Subsidiary is the sole and exclusive owner of all right, title and interest in and to all such Intellectual Property that is owned by it; (F) to the extent any such Intellectual Property was authored, developed, conceived or created, in whole or in part, for or on behalf of the New Subsidiary by any Person, then the New Subsidiary has entered into a written agreement with such Person in which such Person has assigned all right, title and interest in and to such Intellectual Property to the New Subsidiary, except to the extent that the failure to have entered into such written agreements could not reasonably be expected to have a material adverse effect on the New Subsidiary's rights in such Intellectual Property; and (G) no such Intellectual Property is subject to any license grant by the New Subsidiary or similar arrangement, except for (x) license grants between the Credit Parties and (y) those license grants disclosed on Schedule 3 hereto.

To the knowledge of the New Subsidiary, as of the date hereof no Third Party is committing any act of Infringement of any Material Intellectual Property listed on Schedule 3 hereto. With respect to each license agreement listed on Schedule 3 hereto, such license agreement (i) is in full force and effect and is binding upon and enforceable against the New Subsidiary and, to the knowledge of the New Subsidiary, all other parties thereto in accordance with its terms, (ii) has not been amended or otherwise modified and (iii) has not suffered a material default or breach thereunder by the New Subsidiary thereof or, to the knowledge of the New Subsidiary, any other party thereto, in each case of (i), (ii) and (iii), except to the extent that any such event could not reasonably be expected to have a material adverse effect on the Businesses or Product Development and Commercialization Activities concerning any Material Product. The New Subsidiary has not taken or omitted to take any action that would permit any other Person party to any such license agreement to have, and to the knowledge of the New Subsidiary, no such Person otherwise has, any defenses, counterclaims or rights of setoff thereunder. (A) The New Subsidiary has not received written notice from any Third Party alleging that the conduct of its business (including the development, manufacture, use, sale or other commercialization of any Product) Infringes any Intellectual Property of that Third Party, and (B) the conduct of the business of the New Subsidiary (including the development, manufacture, use, sale or other commercialization of any Product) does not Infringe any Intellectual Property of any Third Party. The New Subsidiary has not made any assignment or agreement in conflict with the security interest in the Intellectual Property of the New Subsidiary under the Collateral Documents and no license agreement with respect to any such Intellectual Property conflicts with the security interest granted to the Administrative Agent, on behalf of the Secured Parties, pursuant to the terms of the Collateral Documents. The consummation of the transactions contemplated hereby and the exercise by the Administrative Agent or the Secured Parties of any right or protection set forth in the Note Documents will not constitute a breach or violation of, or otherwise affect the enforceability or approval of, any licenses associated with any Intellectual Property owned or licensed by the New Subsidiary.

(e) Schedule 4 hereto includes all Commercial Tort Claims (as defined in the Security Agreement) with a value in excess of $500,000 by or in favor of the New Subsidiary.

(f) Schedule 5 hereto lists all real property located in the United States that is owned or leased by the New Subsidiary as of the date hereof, together with (i) a description of each real property that is Excluded Property and (ii) a designation as to whether such property is owned or leased.

(g) Schedule 6 hereto is a complete and accurate list of each Subsidiary of the New Subsidiary as of the date hereof, together with (i) jurisdiction of organization, (ii) number of shares of each class of Equity Interests outstanding, (iii) number and percentage of outstanding shares of each class owned (directly or indirectly) by the New Subsidiary and (iv) number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto. The outstanding Equity Interests of each Subsidiary of the New Subsidiary are validly issued, fully-paid and non-assessable. Schedule 6 hereto includes the certificate number and number of shares for each certificate with respect to any Equity Interests of any Subsidiary of the New Subsidiary evidenced by certificates.

(h) Set forth on Schedule 7 hereto is a complete and accurate list of all Material Contracts of the New Subsidiary, together with an adequate description of the parties thereto, and all amendments and modifications thereto. Each such Material Contract (i) is in full force and effect and is binding upon and enforceable against the New Subsidiary and, to the knowledge of the New Subsidiary, all other parties thereto in accordance with its terms, and (ii) is not currently subject to any material breach or default by the New Subsidiary or, to the knowledge of the New Subsidiary, any other party thereto. The New Subsidiary has not taken or failed to take any action that would permit any other Person party to any Material Contract to have, and, to the knowledge of the New Subsidiary, no such Person otherwise has, any defenses, counterclaims or rights of setoff thereunder. None of the New Subsidiary's Material Contracts are non-assignable by their terms (other than those certain agreements separately noted in Schedule 7 hereto as being non-assignable) or as a matter of law, or prevent the granting of a security interest therein.

(i) Except as described on Schedule 8 hereto, as of the date hereof, there are no outstanding commitments or other obligations of the New Subsidiary to issue, and no rights of any Person to acquire, any shares of any Equity Interests of the New Subsidiary.

(j) As of the date hereof, all Equipment (as defined in the Security Agreement) and Inventory (as defined in the Security Agreement) of the New Subsidiary and in the possession of a bailee, warehouseman, agent or processor is listed on Schedule 9 hereto. No Inventory of the New Subsidiary is held by a Person other than the New Subsidiary pursuant to consignment, sale or return, sale on approval or similar arrangement.

(k) As of the date hereof, the New Subsidiary does not hold any Instruments (as defined in the Security Agreement), Documents (as defined in the Security Agreement) or Tangible Chattel Paper (as defined in the Security Agreement) required to be pledged and delivered pursuant to the terms of the Security Agreement other than as set forth on Schedule 10 hereto.

5. The address of the New Subsidiary for purposes of all notices and other communications is the address designated for all Credit Parties on Schedule 11.02 to the Note Purchase Agreement or such other address as the New Subsidiary may from time to time notify the Administrative Agent in writing.

6. The New Subsidiary hereby waives acceptance by the Purchasers of the guaranty by the New Subsidiary under Article IV of the Note Purchase Agreement upon the execution of this Agreement by the New Subsidiary.

7. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

8. THIS AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

[Signature Page Follows]

IN WITNESS WHEREOF, the New Subsidiary has caused this Agreement to be duly executed by its authorized officer, and the Administrative Agent has caused the same to be accepted by its authorized officer, as of the day and year first above written.

[NEW SUBSIDIARY]

By: _____
Name:
Title:

Acknowledged and accepted:

ATHYRIUM OPPORTUNITIES IV CO-INVEST 1 LP,
a Delaware limited partnership

By: ATHYRIUM OPPORTUNITIES ASSOCIATES IV CO-INVEST LLC,

By: _____
Name:
Title:

EXHIBIT D

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below (the "Effective Date") and is entered into by and between [Insert name of Assignor] (the "Assignor") and [Insert name of Assignee] (the "Assignee"). Capitalized terms used but not defined herein have the meanings provided in the Note Purchase Agreement identified below, receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto (the "Standard Terms and Conditions") are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Note Purchase Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations as a Purchaser under the Note Purchase Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount[s] and equal to the percentage interest[s] identified below of all of such outstanding rights and obligations of the Assignor under the respective notes[s] identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Purchaser) against any Person, whether known or unknown, arising under or in connection with the Note Purchase Agreement, any other documents or instruments delivered pursuant thereto or the transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____
   [Assignor [is][is not] a Defaulting Purchaser]

2. Assignee: _____
   [and is an Affiliate/Approved Fund of [identify Purchaser]]

3. Issuer: Puma Biotechnology, Inc., a Delaware corporation

4. Administrative Agent: Athyrium Opportunities IV Co-Invest 1 LP

5. Note Purchase Agreement: Note Purchase Agreement dated as of July 23, 2021 (as amended, modified, restated, supplemented or extended from time to time, the "Note Purchase Agreement") among Puma Biotechnology, Inc., a Delaware corporation (the "Issuer"), the Guarantors from time to time party thereto, the Purchasers from time to time party thereto and Athyrium Opportunities IV Co-Invest 1 LP, as Administrative Agent.

6. Assigned Interest:

Facility Assigned[2]	Aggregate Amount of the Note Purchase Commitment/Notes for all Purchasers	Amount of the Note Purchase Commitment/Notes Assigned[3]	Percentage Assigned of the Note Purchase Commitment/Notes[4]

7. Trade Date: _____

8. Effective Date: _____

[Signature Pages Follow]

[2] Fill in the appropriate terminology for the types of facilities under the Note Purchase Agreement that are being assigned under this Assignment and Assumption (e.g. "First Tranche Note Purchase Commitment", "First Tranche Note", "Second Tranche Note Purchase Commitment", "Second Tranche Note").

[3] Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

[4] Set forth, to at least 9 decimals, as a percentage of the Note Purchase Commitment/Notes of all Purchasers thereunder.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR: [NAME OF ASSIGNOR]

By: _____
Name:
Title:

ASSIGNEE: [NAME OF ASSIGNEE]

By: _____
Name:
Title:

[Consented to and][5] Accepted:

ATHYRIUM OPPORTUNITIES IV CO-INVEST 1 LP,
a Delaware limited partnership

By: ATHYRIUM OPPORTUNITIES ASSOCIATES IV CO-INVEST LP,

By: _____
Name:
Title:

[Consented to:][6]

PUMA BIOTECHNOLOGY, INC.,
a Delaware corporation

By:_____
Name:
Title:

[5] To be added only if the consent of the Administrative Agent is required by the terms of the Note Purchase Agreement.
[6] To be added only if the consent of the Issuer is required by the terms of the Note Purchase Agreement.

Annex 1 to Assignment and Assumption

STANDARD TERMS AND CONDITIONS

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is [not] a Defaulting Purchaser; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Note Purchase Agreement or any other Note Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Note Documents or any collateral thereunder, (iii) the financial condition of the Issuer, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Note Document or (iv) the performance or observance by the Issuer, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Note Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Purchaser under the Note Purchase Agreement, (ii) it meets the requirements to be an assignee under Sections 11.06(b)(iii) and (v) of the Note Purchase Agreement (subject to such consents, if any, as may be required under Section 11.06(b)(iii) of the Note Purchase Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Note Purchase Agreement as a Purchaser thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Purchaser thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Note Purchase Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 7.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Purchaser and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, and (vii) attached hereto is any documentation required to be delivered by it pursuant to the terms of the Note Purchase Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Purchaser, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Note Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Note Documents are required to be performed by it as a Purchaser.

2. Payments. From and after the Effective Date, the Issuer shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts payable or paid in kind from and after the Effective Date to the Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile or other electronic imaging means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the laws of the State of New York.

EXHIBIT E

FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: _____, 20___ (the "Financial Statement Date")

To: Athyrium Opportunities IV Co-Invest 1 LP, as Administrative Agent

Re: Note Purchase Agreement dated as of July 23, 2021 (as amended, modified, restated, supplemented or extended from time to time, the "Note Purchase Agreement") among Puma Biotechnology, Inc., a Delaware corporation (the "Issuer"), the Guarantors from time to time party thereto, the Purchasers from time to time party thereto and Athyrium Opportunities IV Co-Invest 1 LP, as Administrative Agent. Capitalized terms used but not otherwise defined herein have the meanings provided in the Note Purchase Agreement.

Date: _____, 20___

Ladies and Gentlemen:

The undersigned Responsible Financial Officer hereby certifies as of the date hereof that [he][she] is the _____[7] of the Issuer, and that, in [his][her] capacity as such, [he][she] is authorized to execute and deliver this Compliance Certificate to the Administrative Agent on the behalf of the Issuer, and that:

[Use following paragraph 1 for fiscal year-end financial statements:]

[1. The Issuer has delivered to the Administrative Agent (by any method of delivery permitted under the Note Purchase Agreement, including under Section 7.02 thereof) the year-end audited financial statements required by Section 7.01(a) of the Note Purchase Agreement for the fiscal year of the Issuer ended as of the Financial Statement Date, together with the report and opinion of an independent certified public accountant required by such Section.]

[Use following paragraph 1 for fiscal quarter-end financial statements:]

[1. The Issuer has delivered to the Administrative Agent (by any method of delivery permitted under the Note Purchase Agreement, including under Section 7.02 thereof) the unaudited financial statements required by Section 7.01(b) of the Note Purchase Agreement for the fiscal quarter of the Issuer ended as of the Financial Statement Date. Such financial statements fairly present in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Issuer and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.]

2. The undersigned has reviewed and is familiar with the terms of the Note Purchase Agreement and has made, or has caused to be made, a reasonably detailed review of the transactions and condition (financial or otherwise) of the Issuer during the accounting period covered by the attached financial statements.

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[7] Must be signed by chief executive officer, chief financial officer, treasurer or controller of the Issuer (in each case, which is a Responsible Financial Officer of the Issuer).

3. A review of the activities of the Issuer during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period the Issuer performed and observed all of its Obligations, and

[select one:]

[to the knowledge of the undersigned during such fiscal period, the Issuer performed and observed each covenant and condition of the Note Documents applicable to it, and no Default has occurred and is continuing.]

[or:]

[the following covenants or conditions have not been performed or observed and the following is a list of each such Default and its nature and status:]

4. The analysis of the financial covenants set forth in Sections 8.16 and 8.17 of the Note Purchase Agreement, set forth on Schedule 1 attached hereto is true and accurate on and as of the date of this Compliance Certificate.

5. Set forth below is information regarding the amount of all Dispositions, Involuntary Dispositions, Debt Issuances, Extraordinary Receipts and Acquisitions, in each case, in excess of $500,000 that occurred during the accounting period covered by the attached financial statements.

6. Attached hereto as Schedule 2 is (i) a list of (A) all applications by any Credit Party, if any, for Copyrights, Patents or Trademarks made since [the Closing Date] [the date of the prior Compliance Certificate], (B) all issuances of registrations, letters or patents on existing applications by any Credit Party for Copyrights, Patents and Trademarks received since [the Closing Date] [the date of the prior Compliance Certificate], (C) any outbound license of Intellectual Property of the Issuer or any of its Subsidiaries and any in-license of Material Intellectual Property entered into by any Credit Party since [the Closing Date] [the date of the prior Compliance Certificate], (D) such supplements to Schedule 6.17 of the Disclosure Letter as are necessary to cause such schedule to be true and complete in all material respects as of the date hereof and (ii) attaching the insurance binder or other evidence of insurance for any material insurance coverage of any Credit Party or any Subsidiary that was renewed, replaced or modified during the accounting period covered by the attached financial statements.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Compliance Certificate as of the date set forth above.

PUMA BIOTECHNOLOGY, INC.,
a Delaware corporation

By: _____
Name:
Title:

EXHIBIT F

FORM OF SECOND TRANCHE JOINDER AGREEMENT

THIS SECOND TRANCHE JOINDER AGREEMENT (this "Agreement") dated as of [____], 20[_] (the "Second Tranche Notes Issuance Date") is by and among [_____] (the "Second Tranche Purchasers"), Puma Biotechnology, Inc., a Delaware corporation (the "Issuer"), the Guarantors party hereto, and Athyrium Opportunities IV Co-Invest 1 LP, as the Administrative Agent. Capitalized terms used but not otherwise defined herein have the meanings provided in the Note Purchase Agreement (as defined below).

W I T N E S S E T H

WHEREAS, pursuant to that certain Note Purchase Agreement dated as of July 23, 2021 (as amended, modified, supplemented, increased or extended from time to time, the "Note Purchase Agreement") among the Issuer, the Guarantors, the Purchasers from time to time party thereto and the Administrative Agent, the Second Tranche Purchasers have agreed to make an investment in the Issuer by purchasing Second Tranche Notes as set forth therein;

WHEREAS, pursuant to Section 2.13 of the Note Purchase Agreement, the Issuer has requested that Second Tranche Purchasers purchase Second Tranche Notes in the aggregate principal amount of $[_____]; and

WHEREAS, the Second Tranche Purchasers have agreed to purchase the Second Tranche Notes on the terms and conditions set forth herein and to become a "Second Tranche Purchaser" under the Note Purchase Agreement in connection therewith;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Each Second Tranche Purchaser agrees to purchase a Second Tranche Note from the Issuer on the Second Tranche Notes Issuance Date in the amount of its Second Tranche Note Purchase Commitment; provided, that, after giving effect to all such purchases of Second Tranche Notes, the aggregate principal amount of all Second Tranche Notes shall not exceed $25,000,000.

2. The final maturity date with respect to the Second Tranche Notes shall be the Maturity Date.

3. The scheduled principal amortization payments with respect to the Second Tranche shall be as set forth in Section 2.05(b) of the Note Purchase Agreement.

4. The interest rate with respect to the Second Tranche shall be as set forth in Section 2.06 of the Note Purchase Agreement, repayment premiums with respect to the Second Tranche shall be as set forth in Section 2.03(d) of the Note Purchase Agreement and exit fees with respect to the Second Tranche shall be as set forth in Section 2.07(b) of the Note Purchase Agreement.

5. Schedule 2.01 to the Note Purchase Agreement shall be deemed revised to reflect the commitments and commitment percentages of the Second Tranche Note Purchasers, as set forth opposite such Second Tranche Purchaser's name on Schedule 1 attached to this Agreement.

6. The Issuer represents and warrants that (a) all fees required to be paid in connection with the Second Tranche, including pursuant to Section 2.07(a)(ii) of the Note Purchase Agreement, have been paid prior to or contemporaneously with the purchase of the Second Tranche Notes, (b) the proceeds of the Second Tranche Notes will only be used to fund the Transformative Acquisition and to pay fees and expenses in connection therewith, (c) the conditions precedent set forth in Sections 5.02 and 5.03 of the Note Purchase Agreement have been satisfied prior to or contemporaneously with the purchase of the Second Tranche Notes and (d) all documents required to be delivered pursuant to Section 2.13(i) of the Note Purchase Agreement (including this Agreement) have been delivered to the Administrative Agent.

7. Each Second Tranche Purchaser (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Agreement and to consummate the transactions contemplated hereby and to become a Second Tranche Purchaser under the Note Purchase Agreement, (ii) it meets all requirements of an Eligible Assignee under the Note Purchase Agreement (subject to receipt of such consents as may be required under the Note Purchase Agreement), (iii) from and after the date hereof, it shall be bound by the provisions of the Note Purchase Agreement as a Purchaser thereunder and shall have the obligations of a Purchaser thereunder, (iv) it has received a copy of the Note Purchase Agreement, together with copies of the most recent financial statements delivered pursuant to Section 7.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Purchaser, and (v) if it is a Foreign Purchaser, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Note Purchase Agreement; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent or any other Purchaser, and based on such documents and information as it shall deem appropriate at the time, make its own credit decisions in taking or not taking action under the Note Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Note Documents are required to be performed by it as a Purchaser.

8. Each of the Administrative Agent, the Issuer, and the Guarantors agrees that, as of the date hereof, each Second Tranche Purchaser shall (a) be a party to the Note Purchase Agreement and the other Note Documents, (b) be a "Purchaser" for all purposes of the Note Purchase Agreement and the other Note Documents and (c) have the rights and obligations of a Purchaser under the Note Purchase Agreement and the other Note Documents.

9. For purposes of all notices and other communications, Schedule 11.02 of the Note Purchase Agreement shall be deemed revised to reflect the address of each Second Tranche Note Purchaser, as set forth on Schedule 2 attached to this Agreement.

10. This Agreement may be executed in any number of counterparts and by the various parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one contract. Delivery of an executed counterpart of this Agreement by facsimile or other secure electronic format (.pdf) shall be effective as delivery of a manually executed counterpart of this Agreement.

11. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

12. This Agreement shall constitute a Note Document under the terms of the Note Purchase Agreement.

[*signature pages follow*]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by a duly authorized officer as of the date first above written.

SECOND TRANCHE PURCHASER[S]: [_____]

ISSUER: PUMA BIOTECHNOLOGY, INC.,
a Delaware corporation

By: _____
Name:
Title:

[GUARANTOR[S]: [_____]]

Accepted and Agreed:

ATHYRIUM OPPORTUNITIES IV CO-INVEST 1 LP,
as the Administrative Agent

By: _____
Name:
Title:

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Alan H. Auerbach, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Puma Biotechnology, Inc. for the quarter ended September 30, 2021;

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: November 4, 2021

/s/ Alan H. Auerbach
Alan H. Auerbach
Principal Executive Officer

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Maximo F. Nougues, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Puma Biotechnology, Inc. for the quarter ended September 30, 2021;

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: November 4, 2021

/s/ Maximo F. Nougues
Maximo F. Nougues
Chief Financial Officer

Exhibit 32.1

CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

The following certification is being furnished solely to accompany the Quarterly Report on Form 10-Q of Puma Biotechnology, Inc. for the quarter ended September 30, 2021, pursuant to 18 U.S.C. § 1350 and in accordance with SEC Release No. 33-8238. This certification shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall it be incorporated by reference in any filing of Puma Biotechnology, Inc. under the Securities Act of 1933, as amended, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Certification of Principal Executive Officer

I, Alan H. Auerbach, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Puma Biotechnology, Inc. for the quarter ended September 30, 2021, fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and that the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Puma Biotechnology, Inc.

Date: November 4, 2021

/s/ Alan H. Auerbach
Alan H. Auerbach
Principal Executive Officer

A signed original of this written statement required by Section 906 has been provided to Puma Biotechnology, Inc. and will be retained by Puma Biotechnology, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

Exhibit 32.2

CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

The following certification is being furnished solely to accompany the Quarterly Report on Form 10-Q of Puma Biotechnology, Inc. for the quarter ended September 30, 2021, pursuant to 18 U.S.C. § 1350 and in accordance with SEC Release No. 33-8238. This certification shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall it be incorporated by reference in any filing of Puma Biotechnology, Inc. under the Securities Act of 1933, as amended, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Certification of Principal Financial Officer

I, Maximo F. Nougues, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Puma Biotechnology, Inc. for the quarter ended September 30, 2021, fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and that the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Puma Biotechnology, Inc.

Date: November 4, 2021

/s/ Maximo F. Nougues
Maximo F. Nougues
Principal Financial and Accounting Officer

A signed original of this written statement required by Section 906 has been provided to Puma Biotechnology, Inc. and will be retained by Puma Biotechnology, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.