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

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**FORM 10-Q**

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2014
- 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 000-19319

**Vertex Pharmaceuticals Incorporated**

(Exact name of registrant as specified in its charter)

**Massachusetts**

(State or other jurisdiction of  
incorporation or organization)

**50 Northern Avenue, Boston, Massachusetts**

(Address of principal executive offices)

**04-3039129**

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

**02210**

(Zip Code)

Registrant's telephone number, including area code **(617) 341-6100**

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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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes  No

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

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

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 issuer's classes of common stock, as of the latest practicable date.

**Common Stock, par value \$0.01 per share**

Class

**238,081,533**

Outstanding at July 25, 2014

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**VERTEX PHARMACEUTICALS INCORPORATED**  
**FORM 10-Q**  
**FOR THE QUARTER ENDED JUNE 30, 2014**

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“We,” “us,” “Vertex” and the “Company” as used in this Quarterly Report on Form 10-Q refer to Vertex Pharmaceuticals Incorporated, a Massachusetts corporation, and its subsidiaries.

“Vertex,” “INCIVEK<sup>®</sup>” and “KALYDECO<sup>™</sup>” are registered trademarks of Vertex. Other brands, names and trademarks contained in this Quarterly Report on Form 10-Q, including “INCIVO<sup>™</sup>” and “TELAVIC<sup>™</sup>,” are the property of their respective owners.

**Part I. Financial Information**
**Item 1. Financial Statements**

**VERTEX PHARMACEUTICALS INCORPORATED**  
**Condensed Consolidated Statements of Operations**  
**(unaudited)**  
**(in thousands, except per share amounts)**

	Three Months Ended June 30,		Six Months Ended June 30,	
	2014	2013	2014	2013
<b>Revenues:</b>				
Product revenues, net	\$ 122,319	\$ 254,789	\$ 225,780	\$ 522,170
Royalty revenues	13,015	49,120	23,748	92,693
Collaborative revenues	3,087	6,841	7,344	24,255
<b>Total revenues</b>	<b>138,421</b>	<b>310,750</b>	<b>256,872</b>	<b>639,118</b>
<b>Costs and expenses:</b>				
Cost of product revenues	9,655	24,695	18,227	55,650
Royalty expenses	7,645	13,236	14,549	25,024
Research and development expenses	224,780	222,455	463,743	440,550
Sales, general and administrative expenses	77,446	106,521	151,658	199,400
Restructuring expenses	(270)	776	5,918	815
Intangible asset impairment charge	—	—	—	412,900
<b>Total costs and expenses</b>	<b>319,256</b>	<b>367,683</b>	<b>654,095</b>	<b>1,134,339</b>
Loss from operations	(180,835)	(56,933)	(397,223)	(495,221)
Interest expense, net	(15,585)	(6,551)	(31,302)	(10,016)
Other income (expense), net	37,731	(27)	38,182	(1,214)
Loss before provision for (benefit from) income taxes	(158,689)	(63,511)	(390,343)	(506,451)
Provision for (benefit from) income taxes	693	(1,799)	1,496	(132,112)
Net loss	(159,382)	(61,712)	(391,839)	(374,339)
Net loss attributable to noncontrolling interest (Alios)	—	4,547	—	9,158
Net loss attributable to Vertex	<u>\$ (159,382)</u>	<u>\$ (57,165)</u>	<u>\$ (391,839)</u>	<u>\$ (365,181)</u>
<b>Net loss per share attributable to Vertex common shareholders:</b>				
Basic	\$ (0.68)	\$ (0.26)	\$ (1.68)	\$ (1.67)
Diluted	\$ (0.68)	\$ (0.26)	\$ (1.68)	\$ (1.67)
<b>Shares used in per share calculations:</b>				
Basic	233,808	222,053	233,353	218,795
Diluted	233,808	222,053	233,353	218,795

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

**VERTEX PHARMACEUTICALS INCORPORATED**  
**Condensed Consolidated Statements of Comprehensive Income (Loss)**  
**(unaudited)**  
**(in thousands)**

	Three Months Ended June 30,		Six Months Ended June 30,	
	2014	2013	2014	2013
Net loss	\$ (159,382)	\$ (61,712)	\$ (391,839)	\$ (374,339)
Changes in other comprehensive loss:				
Unrealized holding gains (losses) on marketable securities	82	(170)	55	(159)
Unrealized losses on foreign currency forward contracts	(89)	—	(125)	—
Foreign currency translation adjustment	281	89	353	(521)
Total changes in other comprehensive loss	274	(81)	283	(680)
Comprehensive loss	(159,108)	(61,793)	(391,556)	(375,019)
Comprehensive loss attributable to noncontrolling interest (Alios)	—	4,547	—	9,158
Comprehensive loss attributable to Vertex	<u>\$ (159,108)</u>	<u>\$ (57,246)</u>	<u>\$ (391,556)</u>	<u>\$ (365,861)</u>

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

**VERTEX PHARMACEUTICALS INCORPORATED**  
**Condensed Consolidated Balance Sheets**  
**(unaudited)**  
**(in thousands, except share and per share amounts)**

	June 30, 2014	December 31, 2013
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 420,558	\$ 569,299
Marketable securities, available for sale	798,603	895,777
Accounts receivable, net	81,842	85,517
Inventories	11,982	14,147
Prepaid expenses and other current assets	34,399	23,836
Total current assets	1,347,384	1,588,576
Restricted cash	129	130
Property and equipment, net	730,000	696,911
Goodwill	30,992	30,992
Other assets	9,315	2,432
Total assets	\$ 2,117,820	\$ 2,319,041
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 55,363	\$ 49,327
Accrued expenses	237,789	271,077
Deferred revenues, current portion	27,174	21,510
Accrued restructuring expenses, current portion	8,498	14,286
Capital lease obligations, current portion	19,707	16,893
Other liabilities, current portion	14,442	24,736
Total current liabilities	362,973	397,829
Deferred revenues, excluding current portion	38,105	49,459
Accrued restructuring expenses, excluding current portion	10,486	14,067
Capital lease obligations, excluding current portion	45,053	48,754
Construction financing lease obligation, excluding current portion	473,268	440,937
Other liabilities, excluding current portion	15,666	11,590
Total liabilities	945,551	962,636
Commitments and contingencies		
Shareholders' equity:		
Preferred stock, \$0.01 par value; 1,000,000 shares authorized; none issued and outstanding at June 30, 2014 and December 31, 2013	—	—
Common stock, \$0.01 par value; 300,000,000 shares authorized at June 30, 2014 and December 31, 2013; 237,331,086 and 233,788,852 shares issued and outstanding at June 30, 2014 and December 31, 2013, respectively	2,347	2,320
Additional paid-in capital	5,528,679	5,321,286
Accumulated other comprehensive loss	(23)	(306)
Accumulated deficit	(4,358,734)	(3,966,895)
Total shareholders' equity	1,172,269	1,356,405
Total liabilities and shareholders' equity	\$ 2,117,820	\$ 2,319,041

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

**VERTEX PHARMACEUTICALS INCORPORATED**  
**Condensed Consolidated Statements of Shareholders' Equity and Noncontrolling Interest**  
**(unaudited)**  
**(in thousands)**

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Vertex Shareholders' Equity	Noncontrolling Interest (Alios)	Total Shareholders' Equity	Redeemable Noncontrolling Interest (Alios)
	Shares	Amount							
Balance, December 31, 2012	217,287	\$ 2,149	\$ 4,519,448	\$ (550)	\$ (3,521,867)	\$ 999,180	\$ 196,672	\$ 1,195,852	\$ 38,530
Unrealized holding losses on marketable securities				(159)		(159)		(159)	
Foreign currency translation adjustment				(521)		(521)		(521)	
Net loss					(365,181)	(365,181)	(9,158)	(374,339)	
Issuance of common stock under benefit plans	6,614	68	213,733			213,801	(72)	213,729	
Convertible senior subordinated notes (due 2015) conversion	8,276	83	402,182			402,265		402,265	
Stock-based compensation expense			73,068			73,068	238	73,306	
Change in liquidation value of noncontrolling interest							(684)	(684)	684
Balance, June 30, 2013	232,177	\$ 2,300	\$ 5,208,431	\$ (1,230)	\$ (3,887,048)	\$ 1,322,453	\$ 186,996	\$ 1,509,449	\$ 39,214
Balance, December 31, 2013	233,789	\$ 2,320	\$ 5,321,286	\$ (306)	\$ (3,966,895)	\$ 1,356,405	\$ —	\$ 1,356,405	\$ —
Unrealized holding gains on marketable securities				55		55		55	
Unrealized losses on foreign currency forward contracts				(125)		(125)		(125)	
Foreign currency translation adjustment				353		353		353	
Net loss					(391,839)	(391,839)		(391,839)	
Issuance of common stock under benefit plans	3,542	27	117,920			117,947		117,947	
Stock-based compensation expense			89,473			89,473		89,473	
Balance, June 30, 2014	237,331	\$ 2,347	\$ 5,528,679	\$ (23)	\$ (4,358,734)	\$ 1,172,269	\$ —	\$ 1,172,269	\$ —

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

**VERTEX PHARMACEUTICALS INCORPORATED**  
**Condensed Consolidated Statements of Cash Flows**  
**(unaudited)**  
**(in thousands)**

	Six Months Ended June 30,	
	2014	2013
<b>Cash flows from operating activities:</b>		
Net loss	\$ (391,839)	\$ (374,339)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization expense	29,960	21,245
Stock-based compensation expense	89,024	72,625
Other non-cash based compensation expense	—	5,857
Intangible asset impairment charge	—	412,900
Deferred income taxes	—	(130,661)
Write-down of inventories to net realizable value	—	5,083
Other non-cash items, net	22	7,455
Changes in operating assets and liabilities:		
Accounts receivable, net	2,518	(18,462)
Inventories	1,194	6,620
Prepaid expenses and other assets	(17,538)	(18,152)
Accounts payable	7,671	(53,374)
Accrued expenses and other liabilities	(9,459)	4,616
Accrued restructuring expense	(9,369)	(1,276)
Deferred revenues	(5,866)	(6,842)
Net cash used in operating activities	(303,682)	(66,705)
<b>Cash flows from investing activities:</b>		
Purchases of marketable securities	(703,977)	(898,706)
Sales and maturities of marketable securities	801,206	830,906
Expenditures for property and equipment	(27,227)	(18,408)
Decrease in restricted cash and cash equivalents	1	31,812
Decrease in restricted cash and cash equivalents (Alios)	—	11,695
Decrease (increase) in deposits	(528)	414
Net cash provided by (used in) investing activities	69,475	(42,287)
<b>Cash flows from financing activities:</b>		
Issuances of common stock from employee benefit plans	117,947	207,872
Payments to redeem secured notes (due 2015)	—	(158)
Payments on capital lease obligations	(11,884)	(12,246)
Payments on construction financing lease obligation	(30,292)	(44,115)
Payments returned related to construction financing lease obligation	8,050	—
Net cash provided by financing activities	83,821	151,353
Effect of changes in exchange rates on cash	1,645	(521)
Net (decrease) increase in cash and cash equivalents	(148,741)	41,840
Cash and cash equivalents—beginning of period	569,299	489,407
Cash and cash equivalents—end of period	\$ 420,558	\$ 531,247
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for interest	\$ 31,933	\$ 7,142
Cash paid for income taxes	\$ 798	\$ —
Conversion of convertible senior subordinated notes (due 2015) for common stock	\$ —	\$ 399,842
Unamortized deferred debt issuance costs exchanged	\$ —	\$ 4,230
Capitalization of costs related to construction financing lease obligation	\$ 25,564	\$ 130,222
Assets acquired under capital lease	\$ 8,985	\$ 21,576

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

**VERTEX PHARMACEUTICALS INCORPORATED**  
**Notes to Condensed Consolidated Financial Statements**  
**(unaudited)**

**A. Basis of Presentation and Accounting Policies**

*Basis of Presentation*

The accompanying condensed consolidated financial statements are unaudited and have been prepared by Vertex Pharmaceuticals Incorporated ("Vertex" or the "Company") in accordance with accounting principles generally accepted in the United States of America ("GAAP").

The condensed consolidated financial statements reflect the operations of (i) the Company and (ii) its wholly-owned subsidiaries. In addition, the condensed consolidated financial statements for the period from June 13, 2011 through December 31, 2013, reflect the operations of Alios BioPharma, Inc. ("Alios"), a collaborator that was a variable interest entity (a "VIE") for which the Company was deemed under applicable accounting guidance to have a variable interest and be the primary beneficiary. As of December 31, 2013, the Company deconsolidated Alios, and the Company's consolidated balance sheets as of June 30, 2014 and December 31, 2013 exclude Alios. All material intercompany balances and transactions have been eliminated. The Company operates in one segment, pharmaceuticals.

Certain information and footnote disclosures normally included in the Company's annual financial statements have been condensed or omitted. These interim financial statements, in the opinion of management, reflect all normal recurring adjustments necessary for a fair presentation of the financial position and results of operations for the interim periods ended June 30, 2014 and 2013.

The results of operations for the interim periods are not necessarily indicative of the results of operations to be expected for the full fiscal year. These interim financial statements should be read in conjunction with the audited financial statements for the year ended December 31, 2013, which are contained in the Company's Annual Report on Form 10-K for the year ended December 31, 2013 that was filed with the Securities and Exchange Commission (the "SEC") on February 11, 2014 (the "2013 Annual Report on Form 10-K").

*Use of Estimates and Summary of Significant Accounting Policies*

The preparation of condensed consolidated financial statements in accordance with GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements, and the amounts of revenues and expenses during the reported periods. Significant estimates in these condensed consolidated financial statements have been made in connection with the calculation of revenues, inventories, research and development expenses, stock-based compensation expense, restructuring expense, the fair value of intangible assets, noncontrolling interest (Alios), the consolidation and deconsolidation of a VIE, leases and the income tax provision. The Company bases its estimates on historical experience and various other assumptions, including in certain circumstances future projections, that management believes to be reasonable under the circumstances. Actual results could differ from those estimates. Changes in estimates are reflected in reported results in the period in which they become known.

The Company's significant accounting policies are described in Note A, "Nature of Business and Accounting Policies," in the 2013 Annual Report on Form 10-K.

*Recent Accounting Pronouncements*

For a discussion of recent accounting pronouncements please refer to Note A, "Nature of Business and Accounting Policies—Recent Accounting Pronouncements," in the 2013 Annual Report on Form 10-K. The Company did not adopt any new accounting pronouncements during the six months ended June 30, 2014 that had a material effect on the Company's condensed consolidated financial statements.

In the second quarter of 2014, the Financial Accounting Standards Board issued amended guidance applicable to revenue recognition that will be effective for the Company for the year ending December 31, 2017. The new guidance must be adopted using either a full retrospective approach for all periods presented or a modified retrospective approach. Early adoption is not permitted. The new guidance applies a more principles-based approach to recognizing revenue. The



**VERTEX PHARMACEUTICALS INCORPORATED**  
**Notes to Condensed Consolidated Financial Statements**  
**(unaudited)**

Company is evaluating the new guidance and the expected effect on the Company's condensed consolidated financial statements.

**B. Product Revenues, Net**

The Company sells its products principally to a limited number of major and selected regional wholesalers and specialty pharmacy providers in North America as well as government-owned and supported customers in Europe (collectively, its "Customers"). The Company's Customers in North America subsequently resell the products to patients and health care providers. The Company recognizes net revenues from product sales upon delivery as long as (i) there is persuasive evidence that an arrangement exists between the Company and the Customer, (ii) collectibility is reasonably assured and (iii) the price is fixed or determinable.

In order to conclude that the price is fixed or determinable, the Company must be able to (i) calculate its gross product revenues from sales to Customers and (ii) reasonably estimate its net product revenues upon delivery to its Customer's locations. The Company calculates gross product revenues based on the price that the Company charges its Customers. The Company estimates its net product revenues by deducting from its gross product revenues (a) trade allowances, such as invoice discounts for prompt payment and Customer fees, (b) estimated government and private payor rebates, chargebacks and discounts, (c) estimated reserves for expected product returns and (d) estimated costs of incentives offered to certain indirect customers, including patients. The Company makes significant estimates and judgments that materially affect the Company's recognition of net product revenues. In certain instances, the Company may be unable to reasonably conclude that the price is fixed or determinable at the time of delivery, in which case it defers the recognition of revenues. Once the Company is able to determine that the price is fixed or determinable, it recognizes the revenues associated with the units in which revenue recognition was deferred.

The following table summarizes activity in each of the product revenue allowance and reserve categories for the six months ended June 30, 2014:

	Trade Allowances	Rebates, Chargebacks and Discounts	Product Returns	Other Incentives	Total
	(in thousands)				
<b>Balance at December 31, 2013</b>	\$ 1,535	\$ 68,244	\$ 15,799	\$ 1,555	\$ 87,133
Provision related to current period sales	4,513	26,464	379	859	32,215
Adjustments related to prior period sales	(8)	3,861	4,124	1	7,978
Credits/payments made	(5,271)	(57,617)	(4,160)	(1,586)	(68,634)
<b>Balance at June 30, 2014</b>	<u>\$ 769</u>	<u>\$ 40,952</u>	<u>\$ 16,142</u>	<u>\$ 829</u>	<u>\$ 58,692</u>

**C. Collaborative Arrangements**

*Janssen Pharmaceutica NV*

In 2006, the Company entered into a collaboration agreement (the "Janssen NV Agreement") with Janssen Pharmaceutica NV ("Janssen NV") for the development, manufacture and commercialization of telaprevir, which Janssen NV began marketing under the brand name INCIVO in certain of its territories in September 2011. Under the Janssen NV Agreement, Janssen NV agreed to be responsible for 50% of the drug development costs incurred under the development program for the parties' territories (North America for the Company, and the rest of the world, other than specified countries in Asia, for Janssen NV) and has exclusive rights to commercialize telaprevir in its territories including Europe, South America, the Middle East, Africa and Australia. In November 2013, the Company and Janssen NV amended the collaboration agreement (the "2013 Janssen NV Amendment").

Janssen NV made a \$165.0 million up-front license payment to the Company in 2006. The Company amortized the up-front license payment over the Company's estimated period of performance under the Janssen NV Agreement through November 2013. As of November 2013, the effective date of the 2013 Janssen NV Amendment, there was \$32.1 million remaining in deferred revenues related to this up-front license payment.

**VERTEX PHARMACEUTICALS INCORPORATED**  
**Notes to Condensed Consolidated Financial Statements**  
**(unaudited)**

Janssen NV paid the Company a tiered royalty averaging in the mid-20% range as a percentage of net sales of INCIVO in Janssen NV's territories through 2013. Janssen NV was, and continues to be, responsible for certain third-party royalties on net sales of INCIVO in its territories.

Pursuant to the 2013 Janssen NV Amendment, (i) Janssen NV made a payment of \$152.0 million to the Company in the fourth quarter of 2013; (ii) Janssen NV's obligations to pay the Company royalties on net sales of INCIVO (telaprevir) terminated after the fourth quarter of 2013; and (iii) Janssen NV received a fully-paid license to commercialize INCIVO in its territories, subject to the continued payment of certain third-party royalties on its net sales of INCIVO.

The Company determined that the 2013 Janssen NV Amendment was a material modification to the Janssen NV Agreement because there was a material change to the consideration and deliverables under the agreement and determined that there is one undelivered element under the Janssen NV Agreement, as amended, which is the continuation of certain telaprevir development activities. The Company recognized \$182.4 million of collaborative revenues pursuant to the Janssen NV Agreement in the fourth quarter of 2013. This amount was primarily attributable to (i) the residual consideration received from Janssen NV, including the \$152.0 million fourth quarter 2013 payment and the remaining deferred revenues related to the 2006 up-front payment, less (ii) the best estimate of selling price for the remaining telaprevir development activities. As of June 30, 2014, the remaining deferred revenue balance related to the Janssen NV collaboration was \$4.2 million and will be recognized as collaborative revenues as telaprevir development program activities are completed. In addition to the collaborative revenues, the Company will continue to record royalty revenues and corresponding royalty expenses related to third-party royalties that Janssen NV remains responsible for based on INCIVO net sales.

The agreement will continue in effect until the expiration of Janssen NV's third-party royalty obligations, which expire on a country-by-country basis on the later of (a) the last-to-expire patent covering INCIVO or (b) the last required payment by Janssen NV to the Company pursuant to the agreement. In the European Union, the Company has a patent covering the composition-of-matter of INCIVO that expires in 2026.

During the three and six months ended June 30, 2014 and 2013, the Company recognized the following revenues attributable to the Janssen NV collaboration:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2014	2013	2014	2013
	(in thousands)			
Royalty revenues (INCIVO)	\$ 5,698	\$ 44,070	\$ 10,633	\$ 83,114
Collaborative revenues:				
Up-front and amendment payments revenues	\$ —	\$ 3,107	\$ —	\$ 6,214
Net reimbursement for telaprevir development costs	1,483	37	2,872	9
Reimbursement for manufacturing services	—	—	—	10,299
Total collaborative revenues attributable to the Janssen NV collaboration	\$ 1,483	\$ 3,144	\$ 2,872	\$ 16,522
Total revenues attributable to the Janssen NV collaboration	\$ 7,181	\$ 47,214	\$ 13,505	\$ 99,636

*Mitsubishi Tanabe Pharma Corporation*

The Company has a collaboration agreement (the "MTPC Agreement") with Mitsubishi Tanabe Pharma Corporation ("Mitsubishi Tanabe") pursuant to which Mitsubishi Tanabe has a fully-paid license to manufacture and commercialize TELAVIC (the brand name under which Mitsubishi Tanabe is marketing telaprevir) in Japan and other specified countries in Asia. The Company recognized no collaborative revenues attributable to the Mitsubishi Tanabe collaboration in the three and six months ended June 30, 2014 and 2013.

*Cystic Fibrosis Foundation Therapeutics Incorporated*

In April 2011, the Company entered into an amendment (the "April 2011 Amendment") to its existing collaboration agreement with Cystic Fibrosis Foundation Therapeutics Incorporated ("CFFT") pursuant to which CFFT agreed to provide financial support for (i) development activities for VX-661, a corrector compound discovered under the collaboration, and

**VERTEX PHARMACEUTICALS INCORPORATED**  
**Notes to Condensed Consolidated Financial Statements**  
**(unaudited)**

(ii) additional research and development activities directed at discovering new corrector compounds. Under the April 2011 Amendment, CFFT agreed to provide the Company with up to \$75.0 million in funding over approximately five years for corrector-compound research and development activities. The Company retains the right to develop and commercialize KALYDECO (ivacaftor), lumacaftor (VX-809), VX-661 and any other compounds discovered during the course of the research collaboration with CFFT.

During the three and six months ended June 30, 2014 and 2013, the Company recognized the following revenues attributable to the CFFT collaboration:

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2014</b>	<b>2013</b>	<b>2014</b>	<b>2013</b>
	<b>(in thousands)</b>			
Collaborative revenues attributable to the CFFT collaboration	\$ 1,604	\$ 4,244	\$ 4,472	\$ 7,803

In the original agreement, as amended prior to the April 2011 Amendment, the Company agreed to pay CFFT tiered royalties calculated as a percentage, ranging from single digits to sub-teens, of annual net sales of any approved drugs discovered during the research term that ended in 2008, including KALYDECO, lumacaftor and VX-661. The April 2011 Amendment provides for a tiered royalty in the same range on net sales of corrector compounds discovered during the research term that began in 2011 and ended in February 2014. In each of the third quarter of 2012 and first quarter of 2013, CFFT earned a commercial milestone payment of \$9.3 million from the Company upon achievement of certain sales levels for KALYDECO. These milestones were reflected in the Company's cost of product revenues. There are no additional commercial milestone payments payable by the Company to CFFT related to sales levels for KALYDECO. The Company also is obligated to make up to two one-time commercial milestone payments to CFFT upon achievement of certain sales levels for corrector compounds such as lumacaftor or VX-661.

The Company began marketing KALYDECO in the United States in the first quarter of 2012 and began marketing KALYDECO in certain countries in the European Union in the third quarter of 2012. The Company has royalty obligations to CFFT for each compound commercialized pursuant to this collaboration until the expiration of patents covering that compound. The Company has patents in the United States and European Union covering the composition-of-matter of ivacaftor that expire in 2027 and 2025, respectively, subject to potential patent life extensions. CFFT may terminate its funding obligations under the collaboration, as amended, in certain circumstances, in which case there will be a proportional adjustment to the royalty rates and commercial milestone payments for certain corrector compounds. The collaboration also may be terminated by either party for a material breach by the other, subject to notice and cure provisions.

*Alios BioPharma, Inc.*

License and Collaboration Agreement

In June 2011, the Company entered into a license and collaboration agreement (the "Alios Agreement") with Alios, a privately-held biotechnology company. Pursuant to the Alios Agreement, the Company and Alios collaborated on the research, development and commercialization of HCV nucleotide analogues discovered by Alios through April 2014. In April 2014, Vertex and Alios amended the Alios Agreement to eliminate the Company's obligations to conduct further development activities with respect to VX-135. The Company does not expect to conduct any further development activities with respect to VX-135 and plans to seek to outlicense its rights to VX-135.

Under the terms of the Alios Agreement, the Company received exclusive worldwide rights to ALS-2200 (now formulated as VX-135) and ALS-2158, a second HCV nucleotide analogue discovered by Alios that was developed pursuant to the Alios agreement through the third quarter of 2012. Alios and the Company began clinical development of ALS-2200 (VX-135) and ALS-2158 in December 2011. The Company is responsible for all costs related to development, commercialization and manufacturing of each compound licensed to the Company pursuant to the Alios Agreement and provided funding to Alios to conduct the Phase 1 clinical trials for ALS-2200 and ALS-2158. In addition, the Company provided funding for a research program, which ended in 2013, directed to the discovery of additional HCV nucleotide analogues that act on the HCV polymerase.

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Upon entering into the Alios Agreement, the Company paid Alios a \$60.0 million up-front payment. As of June 30, 2014, Alios also had earned an aggregate of \$60.0 million in development milestone payments pursuant to the Alios Agreement. The Alios Agreement provides for development milestone payments if VX-135 is approved and commercialized. In addition, Alios is eligible to receive commercial milestone payments, as well as tiered royalties on net sales of VX-135.

The Company may terminate the Alios Agreement upon 60 days' notice to Alios. The Alios Agreement also may be terminated by either party for a material breach by the other, or if the Company challenges certain Alios patents, in each case subject to notice and cure provisions. Unless earlier terminated, the Alios Agreement will continue in effect until the expiration of the Company's royalty obligations, which expire on a country-by-country basis on the later of (a) the date the last-to-expire patent covering a licensed product expires or (b) 10 years after the first commercial sale in the applicable country.

Under applicable accounting guidance, the Company determined that Alios was a VIE, its license to VX-135 and ALS-2158 was a variable interest in Alios, that Alios was a business and that the Company was Alios' primary beneficiary for the period from June 13, 2011 through December 31, 2013. The Company based these determinations on, among other factors, the significance to Alios of the licensed compounds and on the Company's power, through the joint steering committee for the licensed compounds established under the Alios Agreement, to direct the activities that most significantly affect the economic performance of Alios.

Accordingly, the Company consolidated Alios' financial statements with the Company's condensed consolidated financial statements from June 13, 2011 through December 31, 2013. However, the Company's interests in Alios were limited to those accorded to the Company in the Alios Agreement. In particular, the Company did not acquire any equity interest in Alios, any interest in Alios' cash and cash equivalents or any control over Alios' activities that do not relate to the Alios Agreement. Alios does not have any right to the Company's assets except as provided in the Alios Agreement.

As of December 31, 2013, the Company determined that it no longer had a variable interest in Alios as a whole and did not possess the power to direct the activities that most significantly affect the economic performance of Alios based on, among other factors, the decline in significance to Alios of the licensed HCV nucleotide analogue program. The Company deconsolidated Alios based on this conclusion as of December 31, 2013.

The Company continues to have significant continuing involvement with Alios due to the Alios Agreement, as amended; therefore, the deconsolidation of Alios is not presented as discontinued operations in the Company's condensed consolidated financial statements as of June 30, 2014. The Company will evaluate whether it continues to have significant continuing involvement with Alios for a period of one year from the December 31, 2013 deconsolidation date.

Noncontrolling Interest (Alios)

Prior to the deconsolidation, the Company recorded net loss (income) attributable to noncontrolling interest (Alios) on its condensed consolidated statements of operations, reflecting Alios' net loss (income) for the reporting period, adjusted for changes in the fair value of contingent milestone payments and royalties payable by the Company to Alios, which was evaluated each reporting period. A summary of net loss attributable to noncontrolling interest (Alios) for the three and six months ended June 30, 2013 is as follows:

	<b>Three Months Ended June 30, 2013</b>	<b>Six Months Ended June 30, 2013</b>
	<b>(in thousands)</b>	
Loss before benefit from income taxes	\$ 6,824	\$ 12,121
Decrease in fair value of contingent milestone and royalty payments	80	2,820
Benefit from income taxes	(2,357)	(5,783)
Net loss attributable to noncontrolling interest (Alios)	<u>\$ 4,547</u>	<u>\$ 9,158</u>

The Company did not have a corresponding net loss (income) attributable to noncontrolling interest (Alios) for the three and six months ended June 30, 2014 due to the deconsolidation of Alios.

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The Company used present-value models to determine the estimated fair value of the contingent milestone and royalty payments until it deconsolidated Alios, based on assumptions regarding the probability of achieving the relevant milestones, estimates regarding the time to develop drug candidates, estimates of future product sales and the appropriate discount and tax rates. The Company based its estimate of the probability of achieving the relevant milestones on industry data for similar assets and its own experience. The discount rates used in the valuation model represented a measure of credit risk associated with settling the liability. Significant judgment was used in determining the appropriateness of these assumptions at each reporting period.

*Janssen Pharmaceuticals, Inc.*

On June 11, 2014, the Company entered into a license, development and commercialization agreement (the "Janssen Inc. Agreement") with Janssen Pharmaceuticals, Inc. ("Janssen Inc.") pursuant to which it granted Janssen Inc. an exclusive worldwide license to develop and commercialize VX-787 and a backup compound referred to as VX-353, for the treatment of influenza. In connection with the execution of the Janssen Inc. Agreement, the Company received from Janssen Inc. an up-front payment of \$30.0 million in the third quarter of 2014. In addition, Vertex has the potential to receive development and commercial milestone payments as well as royalties on any future product sales.

Janssen Inc. will be responsible for costs related to the development and commercialization of the compounds. Janssen Inc. may terminate the Janssen Inc. Agreement, subject to certain exceptions, upon six months' notice. The Janssen Inc. Agreement also may be terminated by either party for a material breach by the other, subject to notice and cure provisions. Unless earlier terminated, the Janssen Inc. Agreement will continue in effect until the expiration of Janssen Inc.'s royalty obligations, which expire on a country-by-country basis on the later of (i) the date the last-to-expire patent covering a licensed product expires or (ii) ten years after the first commercial sale in the applicable country.

The Company will evaluate the deliverables pursuant to the Janssen Inc. Agreement under multiple element arrangement guidance for collaborative arrangements during the third quarter of 2014. The collaboration with Janssen Inc. was subject to the expiration of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The waiting period expired in July 2014; therefore, there was no accounting impact for the three and six months ended June 30, 2014.

**D. Net Loss Per Share Attributable to Vertex Common Shareholders**

Basic net loss attributable to Vertex per common share is based upon the weighted-average number of common shares outstanding during the period, excluding restricted stock and restricted stock units that have been issued but are not yet vested. Diluted net loss per share attributable to Vertex common shareholders is based upon the weighted-average number of common shares outstanding during the period plus additional weighted-average common equivalent shares outstanding during the period when the effect is dilutive.

The Company did not include the securities described in the following table in the computation of the net loss attributable to Vertex per common share calculations because the effect would have been anti-dilutive during each period:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2014	2013	2014	2013
	(in thousands)			
Stock options	14,549	16,802	14,549	16,802
Unvested restricted stock and restricted stock units	2,584	2,600	2,584	2,600

**E. Fair Value Measurements**

The fair value of the Company's financial assets and liabilities reflects the Company's estimate of amounts that it would have received in connection with the sale of the assets or paid in connection with the transfer of the liabilities in an orderly transaction between market participants at the measurement date. In connection with measuring the fair value of its assets

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and liabilities, the Company seeks to maximize the use of observable inputs (market data obtained from sources independent from the Company) and to minimize the use of unobservable inputs (the Company's assumptions about how market participants would price assets and liabilities). The following fair value hierarchy is used to classify assets and liabilities based on the observable inputs and unobservable inputs used in order to value the assets and liabilities:

- Level 1: Quoted prices in active markets for identical assets or liabilities. An active market for an asset or liability is a market in which transactions for the asset or liability occur with sufficient frequency and volume to provide pricing information on an ongoing basis.
- Level 2: Observable inputs other than Level 1 inputs. Examples of Level 2 inputs include quoted prices in active markets for similar assets or liabilities and quoted prices for identical assets or liabilities in markets that are not active.
- Level 3: Unobservable inputs based on the Company's assessment of the assumptions that market participants would use in pricing the asset or liability.

The Company's investment strategy is focused on capital preservation. The Company invests in instruments that meet the credit quality standards outlined in the Company's investment policy. This policy also limits the amount of credit exposure to any one issue or type of instrument. As of June 30, 2014, the Company's investments were in money market funds, government-sponsored enterprise securities, corporate debt securities and commercial paper.

As of June 30, 2014, all of the Company's financial assets that were subject to fair value measurements were valued using observable inputs. The Company's financial assets valued based on Level 1 inputs consisted of money market funds and government-sponsored enterprise securities. The Company's financial assets valued based on Level 2 inputs consisted of corporate debt securities and commercial paper, which consist of investments in highly-rated investment-grade corporations. During the three and six months ended June 30, 2014 and 2013, the Company did not record an other-than-temporary impairment charge related to its financial assets.

The following table sets forth the Company's financial assets subject to fair value measurements:

	<b>Fair Value Measurements as of June 30, 2014</b>			
	<b>Total</b>	<b>Fair Value Hierarchy</b>		
		<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>
<b>(in thousands)</b>				
<b>Financial assets carried at fair value:</b>				
<b>Cash equivalents:</b>				
Money market funds	\$ 123,469	\$ 123,469	\$ —	\$ —
<b>Marketable securities:</b>				
Government-sponsored enterprise securities	497,587	497,587	—	—
Commercial paper	69,243	—	69,243	—
Corporate debt securities	231,773	—	231,773	—
<b>Total</b>	<b>\$ 922,072</b>	<b>\$ 621,056</b>	<b>\$ 301,016</b>	<b>\$ —</b>

The fair value of the Company's foreign currency forward contracts, which were not material as of June 30, 2014, were based on Level 2 inputs. The fair value of the outstanding foreign currency forward contract were determined using third party pricing services. Please refer to Note H, "Hedging," for further information regarding the Company's foreign currency forward contracts.

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**F. Marketable Securities**

A summary of the Company's cash, cash equivalents and marketable securities is shown below:

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
(in thousands)				
<b>As of June 30, 2014</b>				
Cash and cash equivalents:				
Cash and money market funds	\$ 420,558	\$ —	\$ —	\$ 420,558
Total cash and cash equivalents	\$ 420,558	\$ —	\$ —	\$ 420,558
Marketable securities:				
Government-sponsored enterprise securities (due within 1 year)	\$ 497,601	\$ 8	\$ (22)	\$ 497,587
Commercial paper (due within 1 year)	69,144	99	—	69,243
Corporate debt securities (due within 1 year)	216,426	33	(26)	216,433
Corporate debt securities (due after 1 year through 5 years)	15,335	5	—	15,340
Total marketable securities	\$ 798,506	\$ 145	\$ (48)	\$ 798,603
Total cash, cash equivalents and marketable securities	\$ 1,219,064	\$ 145	\$ (48)	\$ 1,219,161
<b>As of December 31, 2013</b>				
Cash and cash equivalents:				
Cash and money market funds	\$ 569,299	\$ —	\$ —	\$ 569,299
Total cash and cash equivalents	\$ 569,299	\$ —	\$ —	\$ 569,299
Marketable securities:				
Government-sponsored enterprise securities (due within 1 year)	\$ 600,496	\$ 7	\$ (53)	\$ 600,450
Commercial paper (due within 1 year)	83,384	109	—	83,493
Corporate debt securities (due within 1 year)	189,674	14	(34)	189,654
Corporate debt securities (due after 1 year through 5 years)	22,181	6	(7)	22,180
Total marketable securities	\$ 895,735	\$ 136	\$ (94)	\$ 895,777
Total cash, cash equivalents and marketable securities	\$ 1,465,034	\$ 136	\$ (94)	\$ 1,465,076

**G. Accumulated Other Comprehensive Loss**

A summary of the Company's changes in accumulated other comprehensive loss by component is shown below:

	Foreign Currency Translation Adjustment	Unrealized Holding Gains on Marketable Securities	Unrealized Losses on Foreign Currency Forward Contracts	Total
(in thousands)				
<b>Balance at December 31, 2013</b>	\$ (325)	\$ 42	\$ (23)	\$ (306)
Other comprehensive income (loss) before reclassifications	353	55	(108)	300
Amounts reclassified from accumulated other comprehensive loss	—	—	(17)	(17)
Net current period other comprehensive income (loss)	\$ 353	\$ 55	\$ (125)	\$ 283
<b>Balance at June 30, 2014</b>	\$ 28	\$ 97	\$ (148)	\$ (23)

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	Foreign Currency Translation Adjustment	Unrealized Holding Gains (Losses) on Marketable Securities	Unrealized Gains (Losses) on Foreign Currency Forward Contracts	Total
	(in thousands)			
<b>Balance at December 31, 2012</b>	\$ (746)	\$ 196	\$ —	\$ (550)
Other comprehensive loss before reclassifications	(521)	(159)	—	(680)
Amounts reclassified from accumulated other comprehensive loss	—	—	—	—
Net current period other comprehensive loss	\$ (521)	\$ (159)	\$ —	\$ (680)
<b>Balance at June 30, 2013</b>	<b>\$ (1,267)</b>	<b>\$ 37</b>	<b>\$ —</b>	<b>\$ (1,230)</b>

## H. Hedging

In December 2013, the Company initiated a hedging program intended to mitigate the effect of changes in foreign exchange rates for a portion of the Company's forecasted product revenues denominated in certain foreign currencies. The program included foreign currency forward contracts that were designated as cash flow hedges under GAAP having remaining contractual durations from one to twelve months.

The Company formally documents the relationship between foreign currency forward contracts (hedging instruments) and forecasted product revenues (hedged items), as well as the Company's risk management objective and strategy for undertaking various hedging activities, which includes matching all foreign currency forward contracts that are designated as cash flow hedges to forecasted transactions. The Company also formally assesses, both at the hedge's inception and on an ongoing basis, whether the foreign currency forward contracts are highly effective in offsetting changes in cash flows of hedged items on a prospective and retrospective basis. If the Company determines that (i) a foreign currency forward contract is not highly effective as a cash flow hedge, (ii) it has ceased to be a highly effective hedge or (iii) a forecasted transaction is no longer probable of occurring, the Company would discontinue hedge accounting treatment prospectively. The Company measures effectiveness based on the change in fair value of the forward contracts and the fair value of the hypothetical foreign currency forward contracts with terms that match the critical terms of the risk being hedged. As of June 30, 2014, all hedges were determined to be highly effective.

The following table summarizes the notional amount of the Company's outstanding foreign currency forward contracts designated as cash flow hedges:

Foreign Currency	As of June 30, 2014		As of December 31, 2013	
	(in thousands)			
Euro	\$	23,334	\$	17,468
British pound sterling		16,921		—
Total foreign currency forward contracts	\$	40,255	\$	17,468

Changes in fair value of these foreign currency forward contracts are included in accumulated other comprehensive loss as unrealized gains and losses until the forecasted underlying transaction occurs. Unrealized gains and losses on these foreign currency forward contracts are included in (i) prepaid expenses and other current assets and (ii) other liabilities, current portion, respectively, on the Company's condensed consolidated balance sheets. Realized gains and losses for the effective portion of such contracts are recognized in product revenues, net in the condensed consolidated statement of operations when the contract is settled with the counterparty. Cash flows from foreign currency forward contracts are classified within cash flows from operating activities in the same category as the cash flows from the hedged item.

The following table summarizes the fair value of the Company's outstanding foreign currency forward contracts included on the Company's condensed consolidated balance sheets:



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	As of June 30, 2014	As of December 31, 2013
	(in thousands)	
Fair value - assets	\$ 50	\$ —
Fair value - liabilities	(198)	(23)
Net carrying value	\$ (148)	\$ (23)

### I. Inventories

The following table sets forth the Company's inventories by type:

	As of June 30, 2014	As of December 31, 2013
	(in thousands)	
Raw materials	\$ —	\$ 489
Work-in-process	11,013	9,981
Finished goods	969	3,677
Total	\$ 11,982	\$ 14,147

### J. Intangible Assets and Goodwill

#### *Intangible Assets*

As of June 30, 2014, the Company had no intangible assets recorded on its condensed consolidated balance sheet. The intangible assets that were previously reflected on the Company's condensed consolidated balance sheets related to drug candidates for the treatment of HCV infection. The field of HCV infection treatment is highly competitive and characterized by rapid technological advances and the development of drug candidates for the treatment of HCV infection is subject to numerous risks. Two of the Company's competitors received approval in the fourth quarter of 2013 for new treatment regimens for HCV infection that include pegylated-interferon and ribavirin, and several of the Company's competitors are conducting Phase 3 clinical trials evaluating all-oral combinations of their drug candidates for the treatment of HCV infection.

#### **ViroChem Acquisition**

The Company determined that the fair value of the VX-222 intangible asset of \$412.9 million acquired from ViroChem was zero as of March 31, 2013. Accordingly, the Company recorded a \$412.9 million impairment charge in the three months ended March 31, 2013 and the six months ended June 30, 2013. In connection with this impairment charge, the Company recorded a credit of \$127.6 million in its provision for income taxes. In the six months ended June 30, 2013, the increase to the Company's net loss attributable to Vertex related to this impairment charge, net of the tax credit, was \$285.3 million, and the net increase to the Company's net loss per share attributable to Vertex common shareholders was \$1.30 per share.

#### **Alios Collaboration**

In June 2011, the Company recorded \$250.6 million of intangible assets on its condensed consolidated balance sheet based on the Company's estimate of the fair value of Alios' HCV nucleotide analogue program, including the intellectual property related to ALS-2200 and ALS-2158. In the fourth quarter of 2013, the Company determined that the fair value of the HCV nucleotide analogue program was zero as of December 31, 2013. Accordingly, in the fourth quarter of 2013, the Company recorded a \$250.6 million impairment charge and a \$102.1 million benefit from income taxes.

#### *Goodwill*

As of June 30, 2014 and December 31, 2013, goodwill of \$31.0 million was recorded on the Company's condensed consolidated balance sheets. There was no change to goodwill recorded during the three and six months ended June 30, 2014 or 2013.

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### **K. Convertible Senior Subordinated Notes**

In 2010, the Company completed an offering of \$400.0 million in aggregate principal amount of 3.35% convertible senior subordinated notes due 2015 (the "2015 Notes"). This offering resulted in \$391.6 million of net proceeds to the Company. The underwriting discount and other expenses of \$8.4 million were recorded as debt issuance costs and were included in other assets on the Company's condensed consolidated balance sheets.

The 2015 Notes were convertible at any time, at the option of the holder, into common stock at a price equal to approximately \$48.83 per share, or 20.4794 shares of common stock per \$1,000 principal amount of the 2015 Notes. If the closing price of the Company's common stock exceeded 130% of the conversion price for at least 20 trading days within a period of 30 consecutive trading days, the Company had the right to redeem the 2015 Notes at its option at a redemption price equal to 100% of the principal amount of the 2015 Notes to be redeemed.

In the second quarter of 2013, the Company's common stock exceeded 130% of the conversion price of the 2015 Notes for at least 20 trading days within a period of 30 consecutive trading days, and the Company notified the holders of the 2015 Notes that it would redeem the 2015 Notes on June 17, 2013. In response to the Company's call of the 2015 Notes for redemption, in accordance with the provisions of the 2015 Notes, the holders of \$399.8 million in aggregate principal amount of 2015 Notes elected to convert their 2015 Notes into the Company's common stock at the conversion price of approximately \$48.83 per share. As a result of these conversions, the Company issued 8,188,448 shares of common stock. The remaining \$0.2 million in aggregate principal amount of 2015 Notes was redeemed on June 17, 2013.

Pursuant to the terms of the 2015 Notes, the Company made an additional payment of \$16.75 per \$1,000 principal amount, payable in shares of the Company's common stock, to the holders of the 2015 Notes that converted or redeemed their 2015 Notes after the Company called the 2015 Notes for redemption. These payments resulted in the issuance of an additional 87,109 shares of the Company's common stock. In the second quarter of 2013, the Company recognized an aggregate of \$6.7 million in interest expense related to the 2015 Notes. Unamortized debt issuance costs for the 2015 Notes of \$4.2 million were recorded as an offset to additional paid-in capital.

### **L. Long-term Obligations**

#### *Fan Pier Leases*

In 2011, the Company entered into two leases, pursuant to which the Company leases approximately 1.1 million square feet of office and laboratory space in two buildings (the "Buildings") at Fan Pier in Boston, Massachusetts (the "Fan Pier Leases"). The Company commenced lease payments in December 2013, and will make lease payments pursuant to the Fan Pier Leases through December 2028. The Company has an option to extend the term of the Fan Pier Leases for an additional ten years.

Because the Company was involved in the construction project, including having responsibility to pay for a portion of the costs of finish work and structural elements of the Buildings, the Company was deemed for accounting purposes to be the owner of the Buildings during the construction period. Therefore, the Company recorded project construction costs incurred by the landlord as an asset and a related financing obligation during the construction period. The Company evaluated the Fan Pier Leases in the fourth quarter of 2013 and determined that the Fan Pier Leases did not meet the criteria for "sale-leaseback" treatment. This determination was based on, among other things, the Company's continuing involvement with the property in the form of non-recourse financing to the lessor. Accordingly, the Company began depreciating the asset and incurring interest expense related to the financing obligation during the fourth quarter of 2013. The Company bifurcates its lease payments pursuant to the Fan Pier Leases into (i) a portion that is allocated to the Buildings and (ii) a portion that is allocated to the land on which the Buildings were constructed. The portion of the lease obligations allocated to the land is treated as an operating lease that commenced in 2011.

Property and equipment, net, included \$522.2 million and \$503.4 million as of June 30, 2014 and December 31, 2013, respectively, related to construction costs for the Buildings at Fan Pier in Boston, Massachusetts. The construction financing lease obligation related to the Buildings at Fan Pier was \$473.6 million and \$440.9 million as of June 30, 2014 and December 31, 2013, respectively.

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*Capital Leases*

The Company has outstanding capital leases for equipment, leasehold improvements and software licenses with terms through 2019. The following table sets forth the Company's future minimum payments due under capital leases as of June 30, 2014:

Year	(in thousands)
2014	\$ 9,519
2015	20,792
2016	14,254
2017	13,129
2018	13,027
2019	3,047
Thereafter	—
Total payments	\$ 73,768
Less: amount representing interest	(9,008)
Present value of payments	<u>\$ 64,760</u>

*Financing Arrangements*

The Company has outstanding \$33.5 million in irrevocable stand-by letters of credit issued in connection with property leases and other similar agreements that currently are supported by an unsecured credit facility that expires in September 2014.

**M. Stock-based Compensation Expense**

The Company issues stock options, restricted stock and restricted stock units with service conditions, which are generally the vesting periods of the awards. The Company also has issued, to certain members of senior management, restricted stock and restricted stock units that vest upon the earlier of the satisfaction of (i) a performance condition or (ii) a service condition, and stock options that vest upon the earlier of the satisfaction of (a) performance conditions or (b) a service condition. In addition, the Company issues shares pursuant to an employee stock purchase plan ("ESPP").

Effective for equity awards granted on or after February 5, 2014, the Company provides to employees who have rendered significant service to the Company and meet certain age requirements, partial or full acceleration of vesting of certain equity awards upon a termination of employment other than for cause. Less than 5% of the Company's employees were eligible for partial or full acceleration of their equity awards as of June 30, 2014. The Company recognizes stock-based compensation expense related to these awards over the service period from the date of grant until the qualified employees become eligible for partial or full acceleration of vesting.

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During the three and six months ended June 30, 2014 and 2013, the Company recognized the following stock-based compensation expense:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2014	2013	2014	2013
(in thousands)				
Stock-based compensation expense by type of award:				
Stock options	\$ 26,985	\$ 29,949	\$ 52,112	\$ 49,623
Restricted stock and restricted stock units	14,020	9,732	33,013	19,110
ESPP share issuances	1,681	2,051	4,348	4,573
Less stock-based compensation expense capitalized to inventories	(242)	(382)	(449)	(681)
Total stock-based compensation expense included in costs and expenses	<u>\$ 42,444</u>	<u>\$ 41,350</u>	<u>\$ 89,024</u>	<u>\$ 72,625</u>
Stock-based compensation expense by line item:				
Research and development expenses	\$ 27,253	\$ 25,740	\$ 60,153	\$ 45,089
Sales, general and administrative expenses	15,191	15,610	28,871	27,536
Total stock-based compensation expense included in costs and expenses	<u>\$ 42,444</u>	<u>\$ 41,350</u>	<u>\$ 89,024</u>	<u>\$ 72,625</u>

The following table sets forth the Company's unrecognized stock-based compensation expense, net of estimated forfeitures, by type of award and the weighted-average period over which that expense is expected to be recognized:

Type of award:	As of June 30, 2014	
	Unrecognized Expense, Net of Estimated Forfeitures	Weighted-average Recognition Period
	(in thousands)	(in years)
Stock options	\$ 158,362	2.33
Restricted stock and restricted stock units	\$ 102,006	2.14
ESPP share issuances	\$ 4,082	0.58

The following table summarizes information about stock options outstanding and exercisable at June 30, 2014:

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number Outstanding	Weighted- average Remaining Contractual Life	Weighted- average Exercise Price	Number Exercisable	Weighted- average Exercise Price
	(in thousands)	(in years)	(per share)	(in thousands)	(per share)
\$10.41–\$20.00	368	2.01	\$15.59	368	\$15.59
\$20.01–\$30.00	889	5.42	\$29.46	708	\$29.35
\$30.01–\$40.00	4,876	5.17	\$36.20	3,758	\$35.73
\$40.01–\$50.00	3,508	8.37	\$46.32	890	\$46.55
\$50.01–\$60.00	1,348	7.34	\$54.11	800	\$54.63
\$60.01–\$70.00	129	9.15	\$65.71	20	\$64.33
\$70.01–\$80.00	2,095	9.60	\$76.73	308	\$74.18
\$80.01–\$88.18	1,336	9.02	\$83.11	375	\$82.53
Total	14,549	7.10	\$49.77	7,227	\$41.65

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**N. Sale of HIV Protease Inhibitor Royalty Stream**

In 2008, the Company sold to a third party its rights to receive royalty payments from GlaxoSmithKline plc, net of royalty amounts to be earned by and due to a third party, for a one-time cash payment of \$160.0 million. These royalty payments relate to net sales of HIV protease inhibitors, which had been developed pursuant to a collaboration agreement between the Company and GlaxoSmithKline plc. As of June 30, 2014, the Company had \$53.9 million in deferred revenues related to the one-time cash payment, which it is recognizing over the life of the collaboration agreement with GlaxoSmithKline plc based on the units-of-revenue method. In addition, the Company continues to recognize royalty revenues equal to the amount of the third-party subroyalty and an offsetting royalty expense for the third-party subroyalty payment.

**O. Income Taxes**

The Company is subject to U.S. federal, state, and foreign income taxes. For the three and six months ended June 30, 2014, the Company recorded a net provision for income taxes of \$0.7 million and \$1.5 million, respectively, related to state income taxes and income earned in various foreign jurisdictions. For the three and six months ended June 30, 2013, the Company recorded a benefit from income taxes of \$1.8 million and \$132.1 million, respectively. The benefit from income taxes in the six months ended June 30, 2013 primarily related to a tax benefit associated with the Company's impairment of VX-222 in the first quarter of 2013. Please refer to "Note J, "Intangible Assets and Goodwill," for further information regarding the impairment charge.

As of June 30, 2014 and December 31, 2013, the Company had unrecognized tax benefits of \$3.0 million and \$2.0 million, respectively. The Company recognizes interest and penalties related to income taxes as a component of income tax expense. As of June 30, 2014, no interest and penalties have been accrued. The Company does not expect that its unrecognized tax benefits will materially increase within the next twelve months. The Company did not recognize any material interest or penalties related to uncertain tax positions as of June 30, 2014 and December 31, 2013.

The Company continues to maintain a valuation allowance against certain deferred tax assets where it is more likely than not that the deferred tax asset will not be realized because of its extended history of annual losses.

The Company files U.S. federal income tax returns and income tax returns in various state, local and foreign jurisdictions. The Company is no longer subject to any tax assessment from an income tax examination in the United States before 2010 and any other major taxing jurisdiction for years before 2007, except where the Company has net operating losses or tax credit carryforwards that originated before 2005. The Company concluded an audit by Revenue Quebec for the year ended December 31, 2011 with no material changes. The Company is currently under examination by Revenue Quebec for the year ended December 31, 2012 as well as the Massachusetts Department of Revenue and the Internal Revenue Service for the year ended December 31, 2011. No adjustments have been reported. The Company is not under examination by any other jurisdictions for any tax year.

The Company currently intends to reinvest the total amount of its unremitted earnings, which have not been significant to date, in the local international jurisdiction or to repatriate the earnings only when tax-effective. As a result, the Company has not provided for U.S. federal income taxes on the unremitted earnings of its international subsidiaries. Upon repatriation of those earnings, in the form of dividends or otherwise, the Company would be subject to U.S. federal income taxes (subject to an adjustment for foreign tax credits) and withholding taxes payable to the various foreign countries. At June 30, 2014, foreign earnings, which were not significant, have been retained indefinitely by foreign subsidiary companies for reinvestment; therefore, no provision has been made for income taxes that would be payable upon the distribution of such earnings, and it would not be practicable to determine the amount of the related unrecognized deferred income tax liability.

**P. Restructuring Liabilities***2003 Kendall Restructuring*

In 2003, the Company adopted a plan to restructure its operations to coincide with its increasing internal emphasis on advancing drug candidates through clinical development to commercialization. The restructuring liability relates to specialized laboratory and office space that is leased to the Company pursuant to a 15-year lease that terminates in 2018. The

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Company has not used more than 50% of this space since it adopted the plan to restructure its operations in 2003. This unused laboratory and office space currently is subleased to third parties.

The activities related to the restructuring liability for the three and six months ended June 30, 2014 and 2013 were as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2014	2013	2014	2013
	(in thousands)			
Liability, beginning of the period	\$ 18,324	\$ 22,459	\$ 19,115	\$ 23,328
Cash payments	(3,960)	(3,849)	(7,822)	(7,422)
Cash received from subleases	2,689	2,666	5,378	5,331
Restructuring (income) expense	(2,117)	776	(1,735)	815
Liability, end of the period	\$ 14,936	\$ 22,052	\$ 14,936	\$ 22,052

*Fan Pier Move Restructuring*

In connection with the relocation of its Massachusetts operations to Fan Pier in Boston, Massachusetts, the Company is incurring restructuring charges related to its remaining lease obligations at its facilities in Cambridge, Massachusetts, which will include lease obligations related to the 120,000 square feet of the Kendall Square facility that the Company continued to use for its operations following its 2003 Kendall Restructuring. The Company started incurring these charges in the fourth quarter of 2013 and expects them to continue through April 2018. The majority of these restructuring charges relate to cease use charges that the Company expects to incur in the third quarter of 2014 once it has vacated the buildings in Cambridge in their entirety. Once the Company completes the relocation, the continuing charges will relate to the difference between the Company's estimated future cash flows related to its lease obligations and its actual cash flows.

The activities related to the restructuring liability for the three and six months ended June 30, 2014 were as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2014		2014	
	(in thousands)			
Liability, beginning of the period	\$	3,722	\$	797
Cash payments		(2,143)		(4,377)
Restructuring expense		1,677		6,836
Liability, end of the period	\$	3,256	\$	3,256

*Strategic Restructuring*

In October 2013, the Company adopted a restructuring plan. The restructuring plan included (i) a workforce reduction primarily related to the commercial support of INCIVEK following the continued and rapid decline in the number of patients being treated with INCIVEK as new medicines for the treatment of HCV infection neared approval and (ii) the write-off of certain assets. This action resulted from the Company's decision to focus its investment on future opportunities in cystic fibrosis and other research and development programs.

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The activities related to the restructuring liability for the three and six months ended June 30, 2014 were as follows:

	Three Months Ended June 30, 2014	Six Months Ended June 30, 2014
	(in thousands)	
Liability, beginning of the period	\$ 1,821	\$ 8,441
Cash payments	(1,199)	(8,466)
Restructuring expense	170	817
Liability, end of the period	\$ 792	\$ 792

**Q. Other Income (Expense), Net**

In April 2014, the Company received a one-time cash payment of \$36.7 million from its landlord pursuant to the Fan Pier Leases. This payment related to bonds issued pursuant to an Infrastructure Development Assistance Agreement between The Commonwealth of Massachusetts and the Company's landlord. The bonds were issued in connection with the landlord's contribution to infrastructure improvements and also were dependent upon employment levels at the Company through the bond issuance date. The Company accounted for the cash payment as a government grant as it was provided in part related to the Company's employment level in Massachusetts. Such grants are recognized in income in the period in which the conditions of the grant are met and there is reasonable assurance that the grant will be received, provided it is not subject to refund. In the second quarter of 2014, the Company recorded \$36.7 million as a credit to other income (expense), net in its condensed consolidated statements of operations for the three and six months ended June 30, 2014 because the Company's employment obligations related to these funds were satisfied as of the date of issuance of the bonds and the payment received is not subject to refund.

**R. Legal Proceedings**

*City of Bristol Pension Fund v. Vertex Pharmaceuticals Incorporated, et al.*

On September 6, 2012, a purported shareholder class action, *City of Bristol Pension Fund v. Vertex Pharmaceuticals Incorporated, et al.*, was filed in the United States District Court for the District of Massachusetts, naming the Company and certain of the Company's current and former officers and directors as defendants. The lawsuit alleged that the Company made material misrepresentations and/or omissions of material fact in the Company's disclosures during the period from May 7, 2012 through June 28, 2012, all in violation of Section 10(b) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder. By order dated December 12, 2012, the court appointed the City of Bristol lead plaintiff and appointed the City of Bristol's attorneys lead counsel. The plaintiffs filed an amended complaint on February 11, 2013. The Company filed a motion to dismiss the complaint on April 12, 2013. On May 28, 2013, the plaintiffs filed an opposition to the Company's motion to dismiss the complaint. On June 27, 2013, the Company filed a reply in further support of the Company's motion to dismiss the plaintiffs' complaint. The court conducted a hearing on the Company's motion to dismiss on November 25, 2013, and the court dismissed the plaintiffs' complaint on March 31, 2014. The plaintiffs filed a motion (i) for reconsideration and (ii) to file a second amended complaint on April 28, 2014. On May 23, 2014, the court denied the plaintiffs' motion and dismissed the complaint with prejudice.

*Local No. 8 IBEW Retirement Plan & Trust v. Vertex Pharmaceuticals Incorporated, et al.*

On May 28, 2014, a purported shareholder class action *Local No. 8 IBEW Retirement Plan & Trust v. Vertex Pharmaceuticals Incorporated, et al.* was filed in the United States District Court for the District of Massachusetts, naming the Company and certain of the Company's current and former officers and directors as defendants. The lawsuit alleged that the Company made material misrepresentations and/or omissions of material fact in the Company's disclosures during the period from May 7, 2012 through May 29, 2012, all in violation of Section 10(b) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder. The purported class consists of all persons (excluding defendants) who purchased the Company's common stock between May 7, 2012 and May 29, 2012. The plaintiffs seek unspecified monetary damages, costs and attorneys' fees as well as disgorgement of the proceeds from certain individual defendants' sales of the Company's stock. The Company believes the claims to be without merit and intends to vigorously defend the litigation. As of June 30, 2014, the Company has not recorded any reserves for this purported class action.

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## **S. Contingencies**

The Company has certain contingent liabilities that arise in the ordinary course of its business activities. The Company accrues a reserve for contingent liabilities when it is probable that future expenditures will be made and such expenditures can be reasonably estimated. There were no material contingent liabilities accrued as of June 30, 2014 or December 31, 2013.

## **T. Guarantees**

As permitted under Massachusetts law, the Company's Articles of Organization and By-laws provide that the Company will indemnify certain of its officers and directors for certain claims asserted against them in connection with their service as an officer or director. The maximum potential amount of future payments that the Company could be required to make under these indemnification provisions is unlimited. However, the Company has purchased directors' and officers' liability insurance policies that could reduce its monetary exposure and enable it to recover a portion of any future amounts paid. No indemnification claims currently are outstanding, and the Company believes the estimated fair value of these indemnification arrangements is minimal.

The Company customarily agrees in the ordinary course of its business to indemnification provisions in agreements with clinical trial investigators and sites in its drug development programs, sponsored research agreements with academic and not-for-profit institutions, various comparable agreements involving parties performing services for the Company, and its real estate leases. The Company also customarily agrees to certain indemnification provisions in its drug discovery, development and commercialization collaboration agreements. With respect to the Company's clinical trials and sponsored research agreements, these indemnification provisions typically apply to any claim asserted against the investigator or the investigator's institution relating to personal injury or property damage, violations of law or certain breaches of the Company's contractual obligations arising out of the research or clinical testing of the Company's compounds or drug candidates. With respect to lease agreements, the indemnification provisions typically apply to claims asserted against the landlord relating to personal injury or property damage caused by the Company, to violations of law by the Company or to certain breaches of the Company's contractual obligations. The indemnification provisions appearing in the Company's collaboration agreements are similar to those for the other agreements discussed above, but in addition provide some limited indemnification for its collaborator in the event of third-party claims alleging infringement of intellectual property rights. In each of the cases above, the indemnification obligation generally survives the termination of the agreement for some extended period, although the Company believes the obligation typically has the most relevance during the contract term and for a short period of time thereafter. The maximum potential amount of future payments that the Company could be required to make under these provisions is generally unlimited. The Company has purchased insurance policies covering personal injury, property damage and general liability that reduce its exposure for indemnification and would enable it in many cases to recover all or a portion of any future amounts paid. The Company has never paid any material amounts to defend lawsuits or settle claims related to these indemnification provisions. Accordingly, the Company believes the estimated fair value of these indemnification arrangements is minimal.

## **U. Subsequent Events**

On July 9, 2014, the Company entered into a credit agreement with the lenders party thereto, and Macquarie US Trading LLC ("Macquarie"), as administrative agent. The credit agreement provides for a \$300.0 million senior secured term loan. The credit agreement also provides that, subject to satisfaction of certain conditions, the Company may request that the lenders establish an incremental senior secured term loan facility in an aggregate amount not to exceed \$200.0 million.

The loan initially bears interest at a rate of 7.2% per annum but shall be reduced to 6.2% per annum on the later to occur of (i) FDA approval in the United States of a product with a label claim for treating patients with cystic fibrosis 12 years of age and older who are homozygous with the F508del mutation, or FDA Approval, and (ii) the one year anniversary of the closing, in each case, until the second anniversary of the closing. On and after the second anniversary of the closing, the loan will bear interest at a rate per annum equal to LIBOR plus 5.0% to 7.5% depending on the receipt of FDA Approval.

The maturity date of all loans under the facilities is July 9, 2017. Interest is payable quarterly and on the maturity date. The Company is required to repay principal on the loan in installments of \$15.0 million per quarter from October 1, 2015 through July 1, 2016 and in installments of \$60.0 million per quarter from October 1, 2016 through the maturity date. The



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Company may prepay the loans, in whole or in part, at any time; provided that prepayments prior to the second anniversary of the closing are subject to a make-whole premium.

The Company's obligations under the facilities are unconditionally guaranteed by certain of its domestic subsidiaries. All obligations under the facilities, and the guarantees of those obligations, are secured, subject to certain exceptions, by substantially all of the Company's assets and the assets of all guarantors, including the pledge of all or a portion of the equity interests of certain of its subsidiaries.

The credit agreement requires that the Company maintain, on a quarterly basis, a minimum level of KALYDECO net revenues. Further, the credit agreement includes negative covenants, subject to exceptions, restricting or limiting the Company's ability and the ability of its subsidiaries to, among other things, incur additional indebtedness, grant liens, engage in certain investment, acquisition and disposition transactions, pay dividends, repurchase capital stock and enter into transactions with affiliates. The credit agreement also contains customary representations and warranties, affirmative covenants and events of default, including payment defaults, breach of representations and warranties, covenant defaults and cross defaults. If an event of default occurs, the administrative agent would be entitled to take various actions, including the acceleration of amounts due under outstanding loans.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

### OVERVIEW

We are in the business of discovering, developing, manufacturing and commercializing small molecule drugs. We invest in scientific innovation to create transformative medicines for patients with serious diseases in specialty markets. Our business is focused on developing and commercializing therapies for the treatment of cystic fibrosis, or CF, and advancing our other research and early-stage development programs, while maintaining our financial strength.

We have marketed KALYDECO (ivacaftor) in the United States, European Union and Canada since it was approved in 2012 for the treatment of patients six years of age and older with CF who have specific genetic mutations in their cystic fibrosis transmembrane conductance regulator, or *CFTR*, gene. In June 2014, we announced positive data from two Phase 3 clinical trials, referred to as TRAFFIC and TRANSPORT, of lumacaftor, a *CFTR* corrector compound, in combination with ivacaftor, a *CFTR* potentiator compound. In TRAFFIC and TRANSPORT, we evaluated the combination regimen in patients 12 years of age and older with CF who have two copies (homozygous) of the F508del mutation in their *CFTR* gene, which is the most prevalent form of CF. We plan to submit a New Drug Application, or NDA, to United States Food and Drug Administration, or FDA, and a Marketing Authorization Application, or MAA, to the European Medicines Agency, or EMA, for lumacaftor in combination with ivacaftor in the fourth quarter of 2014.

### Cystic Fibrosis

Our plan is to (i) increase the number of patients eligible for treatment with ivacaftor, (ii) seek marketing approval for lumacaftor in combination with ivacaftor for the treatment of patients with CF who have two copies of the F508del mutation in their *CFTR* gene and (iii) research and develop earlier-stage compounds for the treatment of CF.

#### Ivacaftor

KALYDECO was approved in 2012 in the United States, European Union and Canada as a treatment for patients with CF six years of age and older who have the G551D mutation in their *CFTR* gene. We believe that most patients with CF six years of age and older who have the G551D mutation in the United States and Europe are being treated with KALYDECO. In June 2014, we signed a letter of intent with the pan-Canadian Pricing Alliance to enable the public reimbursement of KALYDECO for the treatment of eligible Canadians with CF six years of age and older who have the G551D mutation in their *CFTR* gene. Patients in the Canadian provinces of Ontario and Alberta are now able to receive KALYDECO under public reimbursement programs, and discussions are ongoing in the remaining Canadian provinces and territories. KALYDECO also is approved in Australia for the treatment of patients with CF six years of age and older who have the G551D mutation in their *CFTR* gene, and we are in discussions with Australia's Therapeutic Goods Administration regarding public reimbursement of KALYDECO.

In February 2014, the FDA approved KALYDECO for the treatment of patients with CF six years of age and older who have one of eight other mutations in their *CFTR* gene, which were studied in our first Phase 3 label-expansion clinical trial for ivacaftor. In July 2014, the European Commission approved KALYDECO for this patient group. In Canada, we also recently received approval for KALYDECO for the treatment of this patient group and patients with CF who have the G970R mutation in their *CFTR* gene.

We are seeking to further expand the number of patients eligible for treatment with ivacaftor by (i) evaluating ivacaftor as a potential treatment for patients with CF who have residual *CFTR* function, including patients with CF who have the R117H mutation in their *CFTR* gene and (ii) evaluating ivacaftor as a potential treatment for patients with CF two to five years of age with specific mutations in their *CFTR* gene.

Our Phase 3 clinical trial to evaluate ivacaftor in patients with the R117H mutation in their *CFTR* gene did not meet its primary endpoint of a statistically significant absolute change from baseline in percent predicted forced expiratory volume in one second, or ppFEV<sub>1</sub>. However, a pre-specified subgroup analysis demonstrated a statistically significant clinical benefit in patients with CF 18 years of age and older who have the R117H mutation on at least one allele. Based on these data, we submitted a supplemental New Drug Application, or sNDA, to the FDA in June 2014 and an MAA variation to the EMA in July 2014 seeking approval of KALYDECO in patients with CF 18 years of age and older who have the R117H mutation on at least one allele in their *CFTR* gene. We believe there are approximately 700 patients with CF 18 years of age or older who have the R117H mutation in their *CFTR* gene in North America, Europe and Australia.

Our Phase 3 clinical trial to evaluate ivacaftor as a treatment for children with CF two to five years of age with specific gating mutations in their *CFTR* gene, including the G551D mutation, is complete, and we expect data from this clinical trial in the third quarter of 2014. The primary endpoint of this clinical trial is safety, and secondary endpoints

include pharmacokinetics, change in sweat chloride and change in weight. If this clinical trial is successful, we plan to submit an NDA and an MAA variation based on this clinical trial in the fourth quarter of 2014. We believe there are approximately 300 children with CF two to five years of age who have the mutations evaluated in this clinical trial in North America, Europe and Australia.

In the second quarter of 2014, we announced data from a two-part proof-of-concept clinical trial of ivacaftor in 24 patients with CF who have a residual function mutation. This clinical trial was the first to evaluate the use of ivacaftor in multiple residual function mutations in their *CFTR* gene. Based on the data from the clinical trial, we plan to initiate a larger Phase 3 clinical trial in patients with residual function mutations that will evaluate longer-duration treatment with ivacaftor, subject to discussions with regulatory authorities. In North America, Europe and Australia, more than 3,000 patients with CF six years of age and older have non-R117H mutations that result in residual function.

Lumacaftor in Combination with Ivacaftor

We are evaluating combinations of lumacaftor and ivacaftor, our most advanced investigational CFTR corrector compound. In the second quarter of 2014, we completed TRAFFIC and TRANSPORT, which were Phase 3 randomized, double-blind, placebo-controlled clinical trials of lumacaftor in combination with ivacaftor. Based on the data from TRAFFIC and TRANSPORT, we plan to submit an NDA to the FDA and an MAA to the EMA for lumacaftor in combination with ivacaftor in patients with CF 12 years of age and older who have two copies (homozygous) of the F508del mutation in their *CFTR* gene in the fourth quarter of 2014. In June 2014, the FDA granted the combination of lumacaftor and ivacaftor Orphan Drug Designation. The combination of lumacaftor and ivacaftor also recently received Orphan designation in Europe. We believe that there are more than 22,000 patients with CF 12 years of age and older who have two copies of the F508del mutation in North America, Europe and Australia.

*TRAFFIC and TRANSPORT*

TRAFFIC and TRANSPORT evaluated patients with CF 12 years of age and older who have two copies (homozygous) of the F508del mutation in their *CFTR* gene and included two combination treatment groups and one placebo group. The combination treatment groups evaluated lumacaftor dosed at either 600 mg once daily or 400 mg every 12 hours (q12h) in combination with ivacaftor dosed at 250 mg q12h. 1,108 patients enrolled and received at least one dose of study drug in the two clinical trials. The primary endpoint of TRAFFIC and TRANSPORT was the mean absolute change from baseline in ppFEV<sub>1</sub> at the end of the 24-week treatment period as assessed by the average change in lung function at Week 16 and at Week 24.

All four treatment arms within TRAFFIC and TRANSPORT met their primary endpoint. Additionally, statistically significant mean absolute and relative improvements in lung function were observed for all four treatment groups, both within group and versus placebo, at all time points within the clinical trials (Weeks 2, 4, 8, 16 and 24). As patients in the clinical trials continued to be treated with their standard CF medicines, improvements observed for patients in the combination treatment arms were in addition to any benefits experienced with the use of other CF medicines. The mean baseline lung function of patients was approximately 61 ppFEV<sub>1</sub> for patients who received the combination regimen and for patients who received placebo. Detailed data from each arm of TRAFFIC and TRANSPORT are provided below:

Change in ppFEV <sub>1</sub>		TRAFFIC Trial			TRANSPORT Trial		
		Placebo (n=184)	Lumacaftor (600 mg once daily) + Ivacaftor (250 mg q12h) (n=183)	Lumacaftor (400 mg q12h) + Ivacaftor (250 mg q12h) (n=182)	Placebo (n=187)	Lumacaftor (600 mg once daily) + Ivacaftor (250 mg q12h) (n=185)	Lumacaftor (400 mg q12h) + Ivacaftor (250 mg q12h) (n=187)
Mean Absolute Change (percentage points)	Treatment Difference	N/A	4.0 (p<0.0001)	2.6 (p=0.0003)	N/A	2.6 (p=0.0004)	3.0 (p<0.0001)
	Within Group	-0.44 (p=0.4002)	3.6 (p<0.0001)	2.2 (p<0.0001)	-0.15 (p=0.7744)	2.5 (p<0.0001)	2.9 (p<0.0001)
Mean Relative Change (%)	Treatment Difference	N/A	6.7% (p<0.0001)	4.3% (p=0.0006)	N/A	4.4% (p=0.0007)	5.3% (p<0.0001)
	Within Group	-0.34% (p=0.7113)	6.4% (p<0.0001)	4.0% (p<0.0001)	0.0% (p=0.9983)	4.4% (p<0.0001)	5.3% (p<0.0001)

Within TRAFFIC and TRANSPORT, patients who received the combination regimens experienced a 28 to 43 percent decrease in the rate of pulmonary exacerbations (events of worsening signs and symptoms of the disease requiring

treatment with antibiotics) over the 24-week treatment period compared to placebo. Detailed data for all key secondary endpoints from each arm of the clinical trials are provided below:

Key Secondary Endpoints		TRAFFIC Trial			TRANSPORT Trial		
		Placebo (n=184)	Lumacaftor (600 mg once daily) + Ivacaftor (250 mg q12h) (n=183)	Lumacaftor (400 mg q12h) + Ivacaftor (250 mg q12h) (n=182)	Placebo (n=187)	Lumacaftor (600 mg once daily) + Ivacaftor (250 mg q12h) (n=185)	Lumacaftor (400 mg q12h) + Ivacaftor (250 mg q12h) (n=187)
Change in Body Mass Index	Treatment Difference	N/A	+0.16 (p=0.1122)	+0.13 (p=0.1938)	N/A	+0.41 (p<0.0001)	+0.36 (p=0.0001)
	Within Group	+0.19 (p=0.0065)	+0.35 (p<0.0001)	+0.32 (p<0.0001)	+0.07 (p=0.2892)	+0.48 (p<0.0001)	+0.43 (p<0.0001)
Change in CFQ-R	Treatment Difference	N/A	+3.9 (p=0.0168)	+1.5 (p=0.3569)	N/A	+2.2 (p=0.1651)	+2.9 (p=0.0736)
	Within Group	+1.1 (p=0.3423)	+5.0 (p<0.0001)	+2.6 (p=0.0295)	+2.8 (p=0.0152)	+5.0 (p<0.0001)	+5.7 (p<0.0001)
Patients with 5% or Greater Relative Improvement in ppFEV <sub>1</sub>	%	22%	46%	37%	23%	46%	41%
	Odds Ratio	N/A	2.94 (p<0.0001)	2.06 (p=0.0023)	N/A	2.96 (p<0.0001)	2.38 (p=0.0001)
Number of Pulmonary Exacerbations	Number of Events (rate per 48 weeks)	112 (1.07)	79 (0.77)	73 (0.71)	139 (1.18)	94 (0.82)	79 (0.67)
	Rate Ratio	N/A	0.72 (p=0.0491)	0.66 (p=0.0169)	N/A	0.69 (p=0.0116)	0.57 (p=0.0002)

The combination regimens were generally well tolerated. The most common adverse events, regardless of treatment group, were infective pulmonary exacerbation, cough, headache and increased sputum, and adverse events that occurred more frequently in patients who received the combination regimens than those who received placebo were generally respiratory in nature and included dyspnea and respiration abnormal. 4.2 percent of all patients who received combination therapy, regardless of dosing group, discontinued treatment because of adverse events compared to 1.6 percent of those who received placebo. Across TRAFFIC and TRANSPORT, elevated liver enzymes (greater than three times the upper limit of normal) were observed in 5.2 percent of patients who received combination therapy compared to 5.1 percent of those who received placebo. Seven patients who received combination therapy experienced serious adverse events related to abnormal liver function tests, compared to zero patients who received placebo. Following discontinuation or interruption of the combination treatment, liver function tests returned to baseline for six of the seven patients and the seventh patient's liver function tests improved substantially.

*Exploratory Clinical Trial in Patients Heterozygous for the F508del Mutation*

In the third quarter of 2014, we completed a Phase 2, 8-week exploratory clinical trial of lumacaftor in combination with ivacaftor in 125 patients with CF 18 years of age and older who have one copy (heterozygous) of the F508del mutation and a second mutation in their *CFTR* gene that is not expected to respond to either ivacaftor or VX-809 alone.

The clinical trial evaluated a twice daily (q12h) combination of VX-809 (400mg) and ivacaftor (250mg) compared to placebo. The primary endpoints were safety, tolerability and mean absolute change in ppFEV<sub>1</sub> from baseline at Day 56, and key secondary endpoints included absolute change in body mass index (BMI), absolute change in patient-reported respiratory symptoms as reported in the CF questionnaire-revised (CFQ-R) and absolute change in sweat chloride, among others.

In the clinical trial, the within-group mean absolute change in ppFEV<sub>1</sub> for the patients who received the combination regimen was -0.62 percentage points (p=0.4550) compared to -1.23 percentage points (p=0.1287) for those who received placebo. The mean absolute treatment difference was 0.61 percentage points (p=0.5978) at day 56. The clinical trial did not meet its primary efficacy endpoint. For patients who received the combination, the mean absolute improvement in CFQ-R at day 56 was +6.48 points (p=0.0131) versus placebo. Additionally, there was a -11.03 mmol/L (p < 0.0001) decrease in sweat chloride at day 56 for those who received the combination compared to those who received placebo. There was no increase observed in body mass index, or BMI.

Safety results from this clinical trial were consistent with the Phase 3 TRAFFIC and TRANSPORT clinical trials in patients with two copies of the F508del mutation. The combination regimen was generally well tolerated. The most common adverse events, regardless of treatment group, were respiration abnormal, infective pulmonary exacerbation, cough, increased sputum and headache, and adverse events that occurred more frequently in patients who received the combination regimen than those who received placebo were generally respiratory in nature and included dyspnea and respiration abnormal, as well as gastroesophageal reflux. 6.5 percent of patients who received combination therapy discontinued treatment because of adverse events compared to 0.0 percent of those who received placebo.

#### Ivacaftor in Combination with VX-661

We are evaluating VX-661, a second investigational CFTR corrector, in combination with ivacaftor, in Phase 2 clinical development. VX-661 was granted Orphan Drug Designation by the FDA in 2014.

In May 2014, we announced data from a Phase 2 double-blind clinical trial evaluating VX-661 in combination with KALYDECO in patients with CF 12 years of age and older who have one copy of the G551D mutation and one copy of the F508del mutation in their *CFTR* gene. In this clinical trial, VX-661 was generally well-tolerated when dosed in combination with KALYDECO, and all 18 patients completed the clinical trial. The most common adverse events in the treatment group were cough, pulmonary exacerbation, headache and upper respiratory tract infection. One serious adverse event of arthritis occurred in the VX-661 treatment arm and was deemed unrelated to VX-661 or KALYDECO.

The baseline lung function and sweat chloride levels for patients who were randomized to receive VX-661 and KALYDECO were 59.1 ppFEV<sub>1</sub> and 52.9 mmol/L, respectively. A summary of the lung function and sweat chloride data for patients who received VX-661 in combination with KALYDECO is provided below:

<b>VX-661 + KALYDECO (Within-Group; n=14)</b>	<b>Day 0 Through Day 28 (End of VX-661 Treatment)</b>	<b>Day 28 to Day 56 (4 Weeks Following the End of VX-661 Treatment)</b>
Mean Absolute Change in Lung Function (ppFEV <sub>1</sub> )	+4.6 percentage points (p=0.012)	-3.4 percentage points (p=0.010)
Mean Relative Change in Lung Function (ppFEV <sub>1</sub> )	+7.3% (p=0.012)	-5.4% (p=0.008)
Sweat Chloride	-7.02 mmol/L (p=0.053)	+12.26 mmol/L (p=0.001)

Additional clinical trials of longer duration and with additional patients will be required to further validate the results of this clinical trial in patients with CF who have the G551D mutation in their *CFTR* gene.

We are dosing patients in a 12-week clinical trial of VX-661 in combination with ivacaftor in patients with CF who are homozygous for the F508del mutation in their *CFTR* gene. This clinical trial is designed to evaluate safety, efficacy and pharmacokinetics to characterize VX-661 for further development.

Based on the data from the clinical trial evaluating VX-661 in combination with KALYDECO in patients who have the G551D mutation in their *CFTR* gene and pending data from the ongoing 12-week clinical trial in patients homozygous for the F508del mutation and discussions with regulatory authorities, we plan to evaluate multiple development pathways for VX-661 in combination with ivacaftor, including the potential evaluation of this combination in patients with one copy of the F508del mutation and one copy of a mutation in their *CFTR* gene known to respond to ivacaftor and in patients with CF who have two copies of the F508del mutation. Additionally, VX-661 and ivacaftor may be evaluated in combination with, or without, a next-generation corrector in patients with one copy of the F508del mutation and a mutation that is not expected to respond to ivacaftor or a first-generation corrector alone.

#### Next-generation CFTR Corrector Compounds

We also are seeking to identify and develop next-generation CFTR corrector compounds that could be evaluated in regimens combining ivacaftor with two CFTR corrector compounds. We have multiple next-generation correctors in the lead-optimization stage of research and expect to begin clinical development of a next-generation corrector in 2015.

#### **HCV Infection**

In 2012 and 2013, we recognized most of our product revenues based on INCIVEK sales and focused a large portion of our resources on commercializing INCIVEK and seeking to develop other drug candidates for the treatment of HCV infection. Our INCIVEK net product revenues declined rapidly over the course of 2013 and represented approximately 8% of our net product revenues in the second quarter of 2014. In 2013, in response to declining sales of INCIVEK and increased competition, we reduced our focus on marketing INCIVEK, eliminating the U.S. field-based sales force that had

been promoting INCIVEK. In addition, in the first quarter of 2013 and fourth quarter of 2013, we incurred intangible asset impairment charges of \$412.9 million and \$250.6 million, respectively, related to drug candidates for the treatment of HCV infection. In April 2014, we amended our collaboration with Alios BioPharma, Inc., or Alios, and following this amendment, we have no further obligations to continue development of VX-135. We do not plan to further develop VX-135 independently and are seeking to outlicense our rights to VX-135.

### ***Research and Early-Stage Development***

We are engaged in a number of other research and early-stage development programs, including programs in the areas of oncology, multiple sclerosis and other serious and rare diseases. We plan to continue investing in our research programs as well as our early-stage development programs and fostering scientific innovation in order to identify and develop transformative medicines. We believe that pursuing research in diverse areas allows us to balance the risks inherent in drug development and may provide drug candidates that will form our pipeline in future years.

### ***Drug Discovery and Development***

Discovery and development of a new pharmaceutical product is a difficult and lengthy process that requires significant financial resources along with extensive technical and regulatory expertise and can take 10 to 15 years or more. Potential drug candidates are subjected to rigorous evaluations, driven in part by stringent regulatory considerations, designed to generate information concerning efficacy, side-effects, proper dosage levels and a variety of other physical and chemical characteristics that are important in determining whether a drug candidate should be approved for marketing as a pharmaceutical product. Most chemical compounds that are investigated as potential drug candidates never progress into development, and most drug candidates that do advance into development never receive marketing approval. Because our investments in drug candidates are subject to considerable risks, we closely monitor the results of our discovery research, clinical trials and nonclinical studies and frequently evaluate our drug development programs in light of new data and scientific, business and commercial insights, with the objective of balancing risk and potential. This process can result in abrupt changes in focus and priority as new information becomes available and we gain additional understanding of our ongoing programs and potential new programs as well as those of our competitors.

If we believe that data from a completed registration program support approval of a drug candidate, we submit an NDA to the FDA requesting approval to market the drug candidate in the United States and seek analogous approvals from comparable regulatory authorities in foreign jurisdictions. To obtain approval, we must, among other things, demonstrate with evidence gathered in nonclinical studies and well-controlled clinical trials that the drug candidate is safe and effective for the disease it is intended to treat and that the manufacturing facilities, processes and controls for the manufacture of the drug candidate are adequate. The FDA and foreign regulatory authorities have substantial discretion in deciding whether or not a drug candidate should be granted approval based on the benefits and risks of the drug candidate in the treatment of a particular disease, and could delay, limit or deny regulatory approval. If regulatory delays are significant or regulatory approval is limited or denied altogether, our financial results and the commercial prospects for the drug candidate involved will be harmed.

### ***Regulatory Compliance***

Our marketing of pharmaceutical products is subject to extensive and complex laws and regulations. We have a corporate compliance program designed to actively identify, prevent and mitigate risk through the implementation of compliance policies and systems and the promotion of a culture of compliance. Among other laws, regulations and standards, we are subject to various U.S. federal and state and comparable foreign laws pertaining to health care fraud and abuse, including anti-kickback and false claims statutes, and laws prohibiting the promotion of drugs for unapproved, or off-label, uses. Anti-kickback laws make it illegal for a prescription drug manufacturer to solicit, offer, receive or pay any remuneration in exchange for, or to induce, the referral of business, including the purchase or prescription of a particular drug. False claims laws prohibit anyone from presenting for payment to third-party payors, including Medicare and Medicaid, claims for reimbursed drugs or services that are false or fraudulent, claims for items or services not provided as claimed or claims for medically unnecessary items or services. We expect to continue to devote substantial resources to maintain, administer and expand these compliance programs globally.

### ***Recent Financing and Business Development Activities***

#### ***Business Development***

In June 2014, we entered into a license, development and commercialization agreement with Janssen Pharmaceuticals, Inc., or Janssen Inc., pursuant to which we granted Janssen Inc. an exclusive worldwide license to develop and commercialize VX-787 and a backup compound referred to as VX-353, for the treatment of influenza.

Pursuant to this agreement, Janssen Inc. paid us an up-front payment of \$30.0 million in the third quarter of 2014. In addition, we have the potential to receive development and commercial milestone payments as well as royalties on any future product sales. Janssen Inc. is responsible for costs related to the development and commercialization of the compounds.

We are seeking to license or acquire drugs, drug candidates and other technologies that have the potential to add to our pipeline, enhance research and development programs or to provide us with new commercial opportunities. We also are planning to seek to outlicense our rights to VX-135 and VX-509, our JAK3 inhibitor, which we have evaluated as a potential treatment for patients with rheumatoid arthritis in a Phase 2 clinical trial.

#### *Credit Agreement*

In July 2014, we entered into a credit agreement that provides for a \$300.0 million senior secured term loan. The credit agreement also provides that, subject to satisfaction of certain conditions, we may request that the lenders establish an incremental senior secured term loan facility in an aggregate amount not to exceed \$200.0 million. The loan initially bears interest at a rate of 7.2% per annum but is subject to adjustment over the course of the loan and matures in July 2017. Interest is payable quarterly and on the maturity date. We are required to repay principal on the loan in installments of \$15.0 million per quarter from October 1, 2015 through July 1, 2016 and in installments of \$60.0 million per quarter from October 1, 2016 through the maturity date.

**RESULTS OF OPERATIONS**

	Three Months Ended June 30,		Increase/(Decrease)		Six Months Ended June 30,		Increase/(Decrease)	
	2014	2013	\$	%	2014	2013	\$	%
	(in thousands)				(in thousands)			
Revenues	\$ 138,421	\$ 310,750	\$ (172,329)	(55)%	\$ 256,872	\$ 639,118	\$ (382,246)	(60)%
Operating costs and expenses	\$ 319,256	\$ 367,683	\$ (48,427)	(13)%	\$ 654,095	\$ 1,134,339	\$ (480,244)	(42)%
Other items, net	\$ 21,453	\$ (4,779)	N/A	N/A	\$ 5,384	\$ 120,882	\$ (115,498)	(96)%
Net loss attributable to noncontrolling interest (Alios)	\$ —	\$ 4,547	\$ (4,547)	(100)%	\$ —	\$ 9,158	\$ (9,158)	(100)%
Net loss attributable to Vertex	\$ (159,382)	\$ (57,165)	\$ 102,217	179%	\$ (391,839)	\$ (365,181)	\$ 26,658	7%

**Net Loss Attributable to Vertex**

Net loss attributable to Vertex was \$159.4 million in the second quarter of 2014 compared to a net loss attributable to Vertex of \$57.2 million in the second quarter of 2013. Our revenues decreased in the second quarter of 2014 as compared to the second quarter of 2013 due to decreased INCIVEK net product revenues partially offset by increased KALYDECO net product revenues. Our operating costs and expenses decreased in the second quarter of 2014 as compared to the second quarter of 2013 primarily due to reductions in sales, general and administrative expenses and cost of product revenues.

Net loss attributable to Vertex was \$391.8 million in the first half of 2014 compared to net loss attributable to Vertex of \$365.2 million in the first half of 2013. Our revenues decreased in the first half of 2014 as compared to the first half of 2013 due to decreased INCIVEK net product revenues partially offset by increased KAYDECO net product revenues. Our operating costs and expenses decreased from \$1.1 billion in the first half of 2013 to \$654.1 million in the first half of 2014. The decrease in operating expenses in the first half of 2014 compared to the first half of 2013 was primarily due to a \$412.9 million impairment charge related to VX-222, a non-nucleoside HCV polymerase inhibitor, we recorded in the first quarter of 2013, which was included in operating costs and expenses. In connection with this impairment charge, we recorded a benefit from income taxes of \$127.6 million in the first quarter of 2013, which was included in other items, net. The net effect of the impairment charge and the benefit from income taxes was to increase net loss attributable to Vertex in the first half of 2013 by \$285.3 million.

We have incurred and expect to continue to incur net losses on a quarterly basis. In order to execute our business plan and become profitable, we need to obtain approval to market lumacaftor in combination with ivacaftor on a timely basis and to effectively market this combination in the United States and international markets.

**Net Loss Attributable to Vertex per Diluted Share**

Net loss attributable to Vertex was \$0.68 per diluted share in the second quarter of 2014 as compared to net loss attributable to Vertex of \$0.26 per diluted share in the second quarter of 2013. Net loss attributable to Vertex was \$1.68 per diluted share in the first half of 2014 as compared to net loss attributable to Vertex of \$1.67 per diluted share in the first half of 2013.



## Revenues

	Three Months Ended June 30,		Increase/(Decrease)		Six Months Ended June 30,		Increase/(Decrease)	
	2014	2013	\$	%	2014	2013	\$	%
	(in thousands)				(in thousands)			
Product revenues, net	\$ 122,319	\$ 254,789	\$ (132,470)	(52)%	\$ 225,780	\$ 522,170	\$ (296,390)	(57)%
Royalty revenues	13,015	49,120	(36,105)	(74)%	23,748	92,693	(68,945)	(74)%
Collaborative revenues	3,087	6,841	(3,754)	(55)%	7,344	24,255	(16,911)	(70)%
Total revenues	\$ 138,421	\$ 310,750	\$ (172,329)	(55)%	\$ 256,872	\$ 639,118	\$ (382,246)	(60)%

### Product Revenues, Net

	Three Months Ended June 30,		Increase/(Decrease)		Six Months Ended June 30,		Increase/(Decrease)	
	2014	2013	\$	%	2014	2013	\$	%
	(in thousands)				(in thousands)			
KALYDECO	\$ 113,055	\$ 98,973	\$ 14,082	14%	\$ 212,570	\$ 160,800	\$ 51,770	32%
INCIVEK	9,264	155,816	(146,552)	(94)%	13,210	361,370	(348,160)	(96)%
Total product revenues, net	\$ 122,319	\$ 254,789	\$ (132,470)	(52)%	\$ 225,780	\$ 522,170	\$ (296,390)	(57)%

Our total net product revenues decreased in the second quarter and first half of 2014 as compared to the second quarter and first half of 2013 due to decreased INCIVEK net product revenues, partially offset by increased KALYDECO net product revenues.

We began marketing KALYDECO in the United States in the first quarter of 2012 and in certain international markets in the third quarter of 2012. The FDA approved the first label expansion for KALYDECO in the first quarter of 2014 and the European Commission approved a similar label expansion in July 2014. KALYDECO net product revenues were \$113.1 million in the second quarter of 2014 including \$50.0 million of net product revenues from international markets and were \$212.6 million in the first half of 2014, including \$93.9 million of net product revenues from international markets. The increase in KALYDECO net product revenues in the second quarter of 2014 compared to the second quarter of 2013 was primarily due to additional patients being treated with KALYDECO as a result of label-expansion. The increase in KALYDECO net product revenues in the first half of 2014 as compared to the first half of 2013 was primarily due to additional European countries beginning to provide reimbursement for KALYDECO in the second quarter of 2013. Future increases in KALYDECO net product revenues are dependent on (i) the potential for obtaining public reimbursement for the cost of KALYDECO in additional markets, and (ii) potential additional label expansions that could increase the number of patients with CF who are eligible for treatment with KALYDECO.

We plan to submit an NDA to the FDA and an MAA to the EMA for lumacaftor in combination with ivacaftor in the fourth quarter of 2014. Obtaining regulatory approval can be a lengthy, time consuming and uncertain process. Even if we are successful in obtaining marketing approval on a timely basis, we currently do not expect to recognize revenue from lumacaftor in combination with ivacaftor until at least mid-2015.

INCIVEK net product revenues have been declining over the past two years and were \$9.3 million in the second quarter of 2014 and \$13.2 million in the first half of 2014. In future periods, we expect INCIVEK net product revenues to continue to represent a small portion of our total net product revenues.

### Royalty Revenues

Our royalty revenues were \$13.0 million and \$23.7 million, respectively, in the second quarter and first half of 2014 compared to \$49.1 million and \$92.7 million, respectively, in the second quarter and first half of 2013. The decreased royalty revenues in the 2014 periods compared to the 2013 periods were primarily due to the amendment to our collaboration agreement with Janssen NV in the fourth quarter of 2013, under which Janssen NV's obligations to pay us royalties on net sales of INCIVO terminated, subject to the continued payment of certain third-party royalties on its net sales of INCIVO.

Since the beginning of 2014, our royalty revenues have consisted of (i) revenues related to a cash payment we received in 2008 when we sold our rights to certain HIV royalties and (ii) revenues related to certain third-party royalties payable by our collaborators on sales of HIV and HCV drugs that also result in corresponding royalty expenses.

### Collaborative Revenues

	Three Months Ended June 30,		Six Months Ended June 30,	
	2014	2013	2014	2013
	(in thousands)		(in thousands)	
Janssen NV	\$ 1,483	\$ 3,144	\$ 2,872	\$ 16,522
CFFT and other	1,604	3,697	4,472	7,733
Total collaborative revenues	\$ 3,087	\$ 6,841	\$ 7,344	\$ 24,255

Our collaborative revenues for the second quarter and the first half of 2014 related to net reimbursements from Janssen NV for our remaining telaprevir development costs and research funding provided by CFFT. Our collaborative revenues from Janssen NV for the first half of 2013 included \$10.3 million in reimbursements for manufacturing services. We do not expect to recognize significant collaborative revenues related to the Janssen NV collaboration in future periods.

In June 2014, we entered into an agreement with Janssen Inc. pursuant to which we outlicensed VX-787 to Janssen, Inc. We expect to recognize collaborative revenues related to this agreement in the second half of 2014.

### Operating Costs and Expenses

	Three Months Ended June 30,		Increase/(Decrease)		Six Months Ended June 30,		Increase/(Decrease)	
	2014	2013	\$	%	2014	2013	\$	%
	(in thousands)				(in thousands)			
Cost of product revenues	\$ 9,655	\$ 24,695	\$ (15,040)	(61)%	\$ 18,227	\$ 55,650	\$ (37,423)	(67)%
Royalty expenses	7,645	13,236	\$ (5,591)	(42)%	14,549	25,024	\$ (10,475)	(42)%
Research and development expenses	224,780	222,455	\$ 2,325	1%	463,743	440,550	\$ 23,193	5%
Sales, general and administrative expenses	77,446	106,521	\$ (29,075)	(27)%	151,658	199,400	\$ (47,742)	(24)%
Restructuring expense (credit)	(270)	776	N/A	N/A	5,918	815	\$ 5,103	626%
Intangible asset impairment charge	—	—	N/A	N/A	—	412,900	\$ (412,900)	(100)%
Total costs and expenses	\$ 319,256	\$ 367,683	\$ (48,427)	(13)%	\$ 654,095	\$ 1,134,339	\$ (480,244)	(42)%

### Cost of Product Revenues

Our cost of product revenues includes the cost of producing inventories that corresponded to product revenues for the reporting period, plus the third-party royalties payable on our net sales of KALYDECO and INCIVEK. Cost of product revenues decreased in the second quarter of 2014 as compared to the second quarter of 2013 and in the first half of 2014 as compared to the first half of 2013 primarily due to decreased product revenues from INCIVEK. In addition, a \$9.3 million commercial milestone payment payable under our agreement with CFFT was recognized in the first quarter of 2013 and is included in cost of product revenues for the first half of 2013.

### Royalty Expenses

Royalty expenses include third-party royalties payable upon net sales of telaprevir by our collaborators and royalty expenses related to a subroyalty payable to a third party on net sales of an HIV protease inhibitor sold by GlaxoSmithKline. Royalty expenses in the second quarter of 2014 decreased by \$5.6 million, or 42%, as compared to the second quarter of 2013, and decreased by \$10.5 million, or 42% in the first half of 2014 as compared to the first half of 2013 as a result of decreased INCIVO sales by Janssen NV.

## Research and Development Expenses

	Three Months Ended June 30,		Increase/(Decrease)		Six Months Ended June 30,		Increase/(Decrease)	
	2014	2013	\$	%	2014	2013	\$	%
	(in thousands)				(in thousands)			
Research expenses	\$ 65,342	\$ 64,740	\$ 602	1%	\$ 132,365	\$ 126,083	\$ 6,282	5%
Development expenses	159,438	157,715	1,723	1%	331,378	314,467	16,911	5%
Total research and development expenses	\$ 224,780	\$ 222,455	\$ 2,325	1%	\$ 463,743	\$ 440,550	\$ 23,193	5%

Our research and development expenses include internal and external costs incurred for research and development of our drugs and drug candidates. We do not assign our internal costs, such as salary and benefits, stock-based compensation expense, laboratory supplies and other direct expenses and infrastructure costs, to individual drugs or drug candidates, because the employees within our research and development groups typically are deployed across multiple research and development programs. These internal costs are significantly greater than our external costs, such as the costs of services provided to us by clinical research organizations and other outsourced research, which we do allocate by individual program. All research and development costs for our drugs and drug candidates are expensed as incurred.

To date, we have incurred \$6.9 billion in research and development expenses associated with drug discovery and development. The successful development of our drug candidates is highly uncertain and subject to a number of risks. In addition, the duration of clinical trials may vary substantially according to the type, complexity and novelty of the drug candidate and the disease indication being targeted. The FDA and comparable agencies in foreign countries impose substantial requirements on the introduction of therapeutic pharmaceutical products, typically requiring lengthy and detailed laboratory and clinical testing procedures, sampling activities and other costly and time-consuming procedures. Data obtained from nonclinical and clinical activities at any step in the testing process may be adverse and lead to discontinuation or redirection of development activities. Data obtained from these activities also are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. The duration and cost of discovery, nonclinical studies and clinical trials may vary significantly over the life of a project and are difficult to predict. Therefore, accurate and meaningful estimates of the ultimate costs to bring our drug candidates to market are not available.

In 2014, costs related to our CF programs have represented the largest portion of our development costs. Any estimates regarding development and regulatory timelines for our drug candidates are highly subjective and subject to change. We received data from a Phase 3 clinical development program evaluating lumacaftor in combination with ivacaftor in June 2014 and plan to submit an NDA to the FDA and an MAA to the EMA in the fourth quarter of 2014. Obtaining regulatory approval can be a lengthy, time consuming and uncertain process. Even if we are successful in obtaining marketing approval on a timely basis, we currently do not expect to recognize revenues from lumacaftor in combination with ivacaftor until at least mid-2015. We cannot make a meaningful estimate when, if ever, our other clinical development programs will generate revenues and cash flows.

### Research Expenses

	Three Months Ended June 30,		Increase/(Decrease)		Six Months Ended June 30,		Increase/(Decrease)	
	2014	2013	\$	%	2014	2013	\$	%
	(in thousands)				(in thousands)			
Research Expenses:								
Salary and benefits	\$ 20,983	\$ 22,935	\$ (1,952)	(9)%	\$ 41,386	\$ 44,595	\$ (3,209)	(7)%
Stock-based compensation expense	8,837	7,849	988	13 %	20,891	14,675	6,216	42 %
Laboratory supplies and other direct expenses	11,974	11,425	549	5 %	22,701	22,075	626	3 %
Contractual services	3,604	5,609	(2,005)	(36)%	6,664	11,256	(4,592)	(41)%
Infrastructure costs	19,944	16,922	3,022	18 %	40,723	33,482	7,241	22 %
Total research expenses	\$ 65,342	\$ 64,740	\$ 602	1 %	\$ 132,365	\$ 126,083	\$ 6,282	5 %

We maintain a substantial investment in research activities. Our research expenses in the second quarter and the first half of 2014 were consistent with our research expenses for the second quarter and the first half of 2013. Increased infrastructure costs and stock-based compensation expenses were largely offset by decreased salary and benefits and contractual services expenses in the 2014 periods as compared to the 2013 periods. We expect to continue to invest in our research programs with a focus on identifying drug candidates for specialty markets.

#### Development Expenses

	Three Months Ended June 30,		Increase/(Decrease)		Six Months Ended June 30,		Increase/(Decrease)	
	2014	2013	\$	%	2014	2013	\$	%
	(in thousands)				(in thousands)			
Development Expenses:								
Salary and benefits	\$ 38,772	\$ 45,248	\$ (6,476)	(14)%	\$ 80,734	\$ 88,395	\$ (7,661)	(9)%
Stock-based compensation expense	18,416	17,891	525	3 %	39,262	30,414	8,848	29 %
Laboratory supplies and other direct expenses	21,385	10,563	10,822	102 %	35,870	21,527	14,343	67 %
Contractual services	48,322	50,422	(2,100)	(4)%	108,058	104,962	3,096	3 %
Drug supply costs	1,557	5,376	(3,819)	(71)%	4,524	14,976	(10,452)	(70)%
Infrastructure costs	30,986	28,215	2,771	10 %	62,930	54,193	8,737	16 %
Total development expenses	\$ 159,438	\$ 157,715	\$ 1,723	1 %	\$ 331,378	\$ 314,467	\$ 16,911	5 %

Our development expenses increased by \$1.7 million, or 1%, in the second quarter of 2014 as compared to the second quarter of 2013, and increased by \$16.9 million, or 5%, in the first half of 2014 as compared to the first half of 2013. We expect that our development expenses will decrease in the second half of 2014 due to the completion in the first half of 2014 of our Phase 3 clinical development program for ivacaftor in combination with lumacaftor.

#### Sales, General and Administrative Expenses

	Three Months Ended June 30,		Increase/(Decrease)		Six Months Ended June 30,		Increase/(Decrease)	
	2014	2013	\$	%	2014	2013	\$	%
	(in thousands)				(in thousands)			
Sales, general and administrative expenses	\$ 77,446	\$ 106,521	\$ (29,075)	(27)%	\$ 151,658	\$ 199,400	\$ (47,742)	(24)%

Sales, general and administrative expenses decreased by 27% in the second quarter of 2014 as compared to the second quarter of 2013 and decreased by 24% in the first half of 2014 as compared to the first half of 2013, due primarily to decreased headcount following our October 2013 restructuring activities.

#### Restructuring Expense

We recorded a restructuring credit of \$0.3 million in the second quarter of 2014 as compared to restructuring expenses of \$0.8 million in the second quarter of 2013 and restructuring expenses of \$5.9 million in the first half of 2014 as compared to restructuring expenses of \$0.8 million in the first half of 2013. Our restructuring expenses in the first half of 2014 primarily related to the relocation of our corporate headquarters to Boston, Massachusetts from Cambridge, Massachusetts. We expect to incur approximately \$50 million in additional restructuring charges, primarily related to the relocation of our corporate headquarters, during the remainder of 2014.

#### Intangible Asset Impairment Charge

In the first quarter of 2013, we recorded a \$412.9 million impairment charge related to VX-222. In connection with this impairment charge, we recorded a credit of \$127.6 million in our provision for income taxes in the first quarter of 2013. The net effect on net loss attributable to Vertex related to this impairment charge was \$285.3 million in the first half of 2013. We did not record any intangible asset impairment charges in the second quarter or first half of 2014.

**Other Items****Interest Expense, net**

Interest expense, net was \$15.6 million and \$31.3 million in the second quarter and first half of 2014, respectively, compared to \$6.6 million and \$10.0 million in the second quarter and first half of 2013, respectively. The increases in interest expense, net during the 2014 periods as compared to the 2013 periods was primarily due to interest expense associated with the leases for our corporate headquarters. We expect to incur approximately \$30 million of additional interest expense associated with the leases for our corporate headquarters during the second half of 2014. In addition, we expect that our interest expense, net will increase in the second half of 2014 as compared to the first half of 2014 due to approximately \$10 million in interest expense that we will incur in the second half of 2014 based on the \$300.0 million we borrowed in July 2014 pursuant to our credit agreement.

**Other Income (Expense), net**

Other income (expense), net was \$37.7 million and \$38.2 million in the second quarter and first half of 2014, respectively, compared to \$27 thousand and \$1.2 million in the second quarter and first half of 2013, respectively. Other income (expense), net in the second quarter and first half of 2014 was primarily due to a credit of \$36.7 million related to a one-time cash payment in the second quarter of 2014 from our landlord pursuant to leases for our corporate headquarters.

**Income Taxes**

We recorded a net provision for income taxes of \$0.7 million and \$1.5 million in the second quarter and first half of 2014, respectively. In the second quarter of 2013, we recorded a net benefit from income taxes of \$1.8 million. In the first half of 2013, we recorded a benefit from income taxes of \$132.1 million primarily due to the impairment of VX-222. In connection with the VX-222 impairment charge, we wrote-off the associated deferred tax liability of \$127.6 million as a benefit in our condensed consolidated statements of operations during the first half of 2013.

**Noncontrolling Interest (Alios)**

We consolidated Alios from June 2011 through December 2013. A summary of net loss (income) attributable to noncontrolling interest (Alios) in the second quarter and first half of 2013 is as follows:

	<b>Three Months Ended June 30, 2013</b>	<b>Six Months Ended June 30, 2013</b>
	<b>(in thousands)</b>	
Loss before benefit from income taxes	\$ 6,824	\$ 12,121
Decrease in fair value of contingent milestone and royalty payments	80	2,820
Benefit from income taxes	(2,357)	(5,783)
<b>Net loss attributable to noncontrolling interest (Alios)</b>	<b>\$ 4,547</b>	<b>\$ 9,158</b>

As a result of the deconsolidation of Alios in December 2013, we did not record any net loss (income) attributable to noncontrolling interest (Alios) in the second quarter and first half of 2014 and do not expect to record any net loss (income) attributable to noncontrolling interest (Alios) in future periods.

**LIQUIDITY AND CAPITAL RESOURCES**

As of June 30, 2014, we had cash, cash equivalents and marketable securities of \$1.22 billion, which represented a decrease of \$245.9 million from \$1.47 billion as of December 31, 2013. This decrease was due to cash expenditures we made during the first half of 2014 related to, among other things, research and development expenses and sales, general and administrative expenses and \$39.1 million for capital expenditures, partially offset by cash receipts from product sales, royalties, a one-time cash payment of \$36.7 million from our landlord pursuant to the terms of the leases for our corporate headquarters and \$117.9 million in cash we received from issuances of common stock pursuant to our employee benefit plans. We expect to continue to incur losses on a quarterly basis until we can substantially increase revenues as a result of potential future regulatory approvals, the timing of which are uncertain.

## **Sources of Liquidity**

We intend to rely on cash flows from product sales as our primary source of liquidity. Our cash flows from product sales have been decreasing in recent periods. Our near-term cash flows from product sales will be dependent on continued sales of KALYDECO, the outcomes of our reimbursement discussions with governmental authorities in international markets and potential future regulatory approvals based on our label-expansion programs for ivacaftor. In 2015, we expect our cash flows from revenues will be dependent on our ability to obtain regulatory approval for lumacaftor in combination with ivacaftor based on data from TRAFFIC and TRANSPORT. In addition, subject to certain conditions, we may request up to an additional \$200.0 million under the credit agreement we entered into in the third quarter of 2014. In recent periods, we also have received significant proceeds from the issuance of common stock under our employee benefit plans, but the amount and timing of future proceeds from employee benefits plans is uncertain. Other possible sources of liquidity include strategic collaborative agreements that include research and/or development funding, commercial debt, public and private offerings of our equity and debt securities, development milestones and royalties on sales of products, software and equipment leases, strategic sales of assets or businesses and financial transactions.

## **Future Capital Requirements**

We incur substantial operating expenses to conduct research and development activities and operate our organization. In addition, we must repay the principal amount on the \$300.0 million we borrowed in July 2014 as follows: \$15.0 million in the second half of 2015, \$105.0 million in 2016 and \$180.0 million in 2017. We also have substantial facility and capital lease obligations, including leases for two buildings in Boston, Massachusetts that continue through 2028. We expect that cash flows from KALYDECO together with our current cash, cash equivalents and marketable securities will be sufficient to fund our operations for at least the next twelve months. The adequacy of our available funds to meet our future operating and capital requirements will depend on many factors, including the amounts of future revenues generated by KALYDECO, potential revenues from lumacaftor in combination with ivacaftor, and the potential introduction or one or more of our other drug candidates to the market, and the number, breadth, cost and prospects of our research and development programs.

## **Financing Strategy**

In the third quarter of 2014, we borrowed \$300.0 million pursuant to a credit agreement. In addition, subject to certain conditions, we may request that the lenders loan us up to an additional \$200.0 million under the credit agreement. Although we do not have any plans to do so in the near term, we may raise additional capital through public offerings or private placements of our securities. In addition, we may raise additional capital through securing new collaborative agreements or other methods of financing. We will continue to manage our capital structure and to consider all financing opportunities, whenever they may occur, that could strengthen our long-term liquidity profile. There can be no assurance that any such financing opportunities will be available on acceptable terms, if at all.

## **CONTRACTUAL COMMITMENTS AND OBLIGATIONS**

Our commitments and obligations were reported in our Annual Report on Form 10-K for the year ended December 31, 2013, which was filed with the Securities and Exchange Commission, or SEC, on February 11, 2014. There have been no material changes from the contractual commitments and obligations previously disclosed in that Annual Report on Form 10-K, other than the \$300.0 million borrowed under the credit agreement we entered into in the third quarter of 2014.

## **CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

Our discussion and analysis of our financial condition and results of operations is based upon our condensed consolidated financial statements prepared in accordance with generally accepted accounting principles in the United States. The preparation of these financial statements requires us to make certain estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reported periods. These items are monitored and analyzed by management for changes in facts and circumstances, and material changes in these estimates could occur in the future. Changes in estimates are reflected in reported results for the period in which the change occurs. We base our estimates on historical experience and various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ from our estimates if past experience or other assumptions do not turn out to be substantially accurate. During the first half of 2014, there were no material changes to our critical accounting policies as

reported in our Annual Report on Form 10-K for the year ended December 31, 2013, which was filed with the SEC on February 11, 2014.

## **RECENT ACCOUNTING PRONOUNCEMENTS**

Refer to Note A, "Basis of Presentation and Accounting Policies," in the accompanying notes to the condensed consolidated financial statements for a discussion of recent accounting pronouncements. There were no new accounting pronouncements adopted during the first half of 2014 that had a material effect on our financial statements.

In the second quarter of 2014, the Financial Accounting Standards Board issued amended guidance applicable to revenue recognition which will be effective for us for the year ending December 31, 2017. Early adoption is not permitted. The new guidance applies a more principle-based approach to recognizing revenue. The new guidance must be adopted using either a full retrospective approach for all periods presented or a modified retrospective approach. We are in process of evaluating the new guidance and determining the expected effect on our consolidated financial statements.

## **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

As part of our investment portfolio, we own financial instruments that are sensitive to market risks. The investment portfolio is used to preserve our capital until it is required to fund operations, including our research and development activities. None of these market risk-sensitive instruments are held for trading purposes.

### **Interest Rate Risk**

We invest our cash in a variety of financial instruments, principally money market funds, securities issued by the U.S. government and its agencies, investment-grade corporate bonds and commercial paper. These investments are denominated in U.S. dollars. All of our interest-bearing securities are subject to interest rate risk and could decline in value if interest rates fluctuate. Substantially all of our investment portfolio consists of marketable securities with active secondary or resale markets to help ensure portfolio liquidity, and we have implemented guidelines limiting the term-to-maturity of our investment instruments. Due to the conservative nature of these instruments, we do not believe that we have a material exposure to interest rate risk.

### **Foreign Exchange Market Risk**

As a result of our foreign operations, we face exposure to movements in foreign currency exchange rates, primarily the Euro, Swiss Franc, British Pound, Australian Dollar and Canadian Dollar against the U.S. dollar. The current exposures arise primarily from cash, accounts receivable, intercompany receivables, payables and inventories. Both positive and negative affects to our net revenues from international product sales from movements in foreign currency exchange rates are partially mitigated by the natural, opposite affect that foreign currency exchange rates have on our international operating costs and expenses.

We maintain a foreign currency management program with the objective of reducing the impact of exchange rate fluctuations on our operating results and forecasted revenues and expenses denominated in foreign currencies. The change in fair value of these foreign currency forward contracts included in accumulated other comprehensive loss and the gross fair value of foreign currency forward assets and liabilities included on the condensed consolidated balance sheet as of June 30, 2014 were not material.

#### **Item 4. Controls and Procedures**

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

Our chief executive officer and chief financial officer, after evaluating the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this Quarterly Report on Form 10-Q, have concluded that, based on such evaluation, as of June 30, 2014 our disclosure controls and procedures were effective and designed to provide reasonable assurance that the information required to be disclosed is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. In designing and evaluating our disclosure controls and procedures, our management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving

the desired control objectives, and our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

## Changes in Internal Controls Over Financial Reporting

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended) occurred during the three months ended June 30, 2014 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II. Other Information

### Item 1. Legal Proceedings

*City of Bristol Pension Fund v. Vertex Pharmaceuticals Incorporated, et al.*

On September 6, 2012, a purported shareholder class action, *City of Bristol Pension Fund v. Vertex Pharmaceuticals Incorporated, et al.*, was filed in the United States District Court for the District of Massachusetts, naming us and certain of our current and former officers and directors as defendants. The lawsuit alleged that we made material misrepresentations and/or omissions of material fact in our disclosures during the period from May 7, 2012 through June 28, 2012, all in violation of Section 10(b) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder. By order dated December 12, 2012, the court appointed the City of Bristol lead plaintiff and appointed the City of Bristol's attorneys lead counsel. The plaintiffs filed an amended complaint on February 11, 2013. We filed a motion to dismiss the complaint on April 12, 2013. On May 28, 2013, the plaintiffs filed an opposition to our motion to dismiss the complaint. On June 27, 2013, we filed a reply in further support of our motion to dismiss the plaintiffs' complaint. The court conducted a hearing on our motion to dismiss on November 25, 2013, and the court dismissed the plaintiffs' complaint on March 31, 2014. The plaintiffs filed a motion (i) for reconsideration and (ii) to file a second amended complaint on April 28, 2014. On May 23, 2014, the Court denied the plaintiffs' motion and clarified that their Complaint had been dismissed with prejudice.

*Local No. 8 IBEW Retirement Plan & Trust v. Vertex Pharmaceuticals Incorporated, et al.*

On May 28, 2014, a purported shareholder class action *Local No. 8 IBEW Retirement Plan & Trust v. Vertex Pharmaceuticals Incorporated, et al.* was filed in the United States District Court for the District of Massachusetts, naming us and certain of our current and former officers and directors as defendants. The lawsuit alleged that we made material misrepresentations and/or omissions of material fact in our disclosures during the period from May 7, 2012 through May 29, 2012, all in violation of Section 10(b) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder. The purported class consists of all persons (excluding defendants) who purchased our common stock between May 7, 2012 and May 29, 2012. The plaintiffs seek unspecified monetary damages, costs and attorneys' fees as well as disgorgement of the proceeds from certain individual defendants' sales of our stock. We believe the claims to be without merit and intend to vigorously defend the litigation.

### Item 1A. Risk Factors

Information regarding risk factors appears in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2013, which was filed with the SEC on February 11, 2014. There have been no material changes from the risk factors previously disclosed in that Annual Report on Form 10-K, except that:

***Our business and future net product revenues depend heavily on the success of lumacaftor in combination with ivacaftor, which has not been approved by the FDA or the European Commission. If we are unable to obtain marketing approval or experience material delays in obtaining marketing approval for lumacaftor in combination with ivacaftor our business will be materially harmed.***

We believe that a significant portion of the value attributed to our company by investors is based on the commercial potential of lumacaftor in combination with ivacaftor. We plan to submit a New Drug Application, or NDA, in the United States and a Marketing Authorization Application, or MAA, in Europe for this potential combination regimen in the fourth quarter of 2014. Obtaining approval of an NDA or an MAA is a lengthy, expensive and uncertain process, and we may not be successful. Obtaining marketing approval for the combination of lumacaftor and ivacaftor in one country or region does not ensure that we will be able to obtain marketing approval in any other country or region.

Obtaining approval to market the combination of lumacaftor and ivacaftor will depend on many factors, including:

- whether or not the FDA and European regulatory authorities determine that the evidence gathered in well-controlled clinical trials, other clinical trials and nonclinical studies demonstrates that lumacaftor in combination with ivacaftor is safe and effective as a treatment for patients with CF 12 years of age and older who have two copies of the F508del mutation;
- whether or not the FDA and European regulatory authorities are satisfied that the manufacturing facilities, processes and controls for the combination of lumacaftor and ivacaftor are adequate, that the labeling is satisfactory and that plans for post-marketing studies, safety monitoring and risk evaluation and mitigation are sufficient; and
- the timing and nature of the FDA and European Medicines Agency, or EMA's, comments and questions regarding the NDA and MAA for the combination of lumacaftor and ivacaftor, the scheduling and recommendations of any advisory committee meeting to consider the combination of lumacaftor and ivacaftor, the time required to respond to the FDA or EMA's comments and questions and to obtain the final labeling for the combination of lumacaftor and ivacaftor and any other delays that may be associated with the NDA and MAA review process.

Even if a product is approved, the FDA or the European Commission, as the case may be, may limit the indications for which the product may be marketed, require extensive warnings on the product labeling or require expensive and time-consuming clinical trials or reporting as conditions of approval. If we experience material delays in obtaining marketing approval for the combination of lumacaftor and ivacaftor in either the United States or Europe, our future net product revenues and cash flows will be adversely effected. If we do not obtain approval to market the combination of lumacaftor and ivacaftor in the United States or Europe, our business will be materially harmed.

Additionally, even if the combination of lumacaftor and ivacaftor receives marketing approval, coverage and reimbursement may not be available and, even if it is available, the level of reimbursement may not be satisfactory. The regulations that govern pricing, coverage and reimbursement for drugs vary



widely from country to country. Some countries require approval of the sale price of a drug before it can be marketed. In many countries, the pricing review period begins after marketing approval is granted. Adverse pricing limitations or a delay in obtaining coverage and reimbursement will hinder our future net product revenues and may harm our business.

***Our indebtedness could materially and adversely affect our financial condition and the terms of our credit agreement impose restrictions on our business, reducing our operational flexibility and creating default risks.***

In July 2014, we entered into a credit agreement that provides for a \$300.0 million senior secured term loan. We are required to repay principal on the loan in installments of \$15.0 million per quarter from October 1, 2015 through July 1, 2016 and in installments of \$60.0 million per quarter from October 1, 2016 through July 9, 2017.

Our indebtedness could have important consequences to our business, including increasing our vulnerability to general adverse financial, business, economic and industry conditions, as well as other factors that are beyond our control. Beginning in October 2015, we will be required to begin repayment of the principal amount of our indebtedness, thereby reducing the availability of future cash flows to fund working capital, capital expenditures, acquisitions, research and development efforts and other general corporate purposes.

The credit agreement requires that we maintain, on a quarterly basis, a minimum level of KALYDECO net revenues. Further, the credit agreement includes negative covenants, subject to exceptions, restricting or limiting our ability and the ability of our subsidiaries to, among other things, incur additional indebtedness, grant liens, engage in certain investment, acquisition and disposition transactions, pay dividends, repurchase capital stock and enter into transactions with affiliates. As a result, we may be restricted from engaging in business activities that may otherwise improve our business. Failure to comply with the covenants could result in an event of default that could trigger acceleration of our indebtedness, which would require us to repay all amounts owing under the credit agreement and/or our capital leases and could have a material adverse impact on our business.

Additionally, our obligations under the facilities are unconditionally guaranteed by certain of our domestic subsidiaries. All obligations under the facilities, and the guarantees of those obligations, are secured, subject to certain exceptions, by substantially all of our assets and the assets of all guarantors, including the pledge of all or a portion of the equity interests of

certain of our subsidiaries. If we fail to satisfy our obligations under the credit agreement or are unable to obtain sufficient funds to make payments, the lenders could foreclose on our pledged collateral.

### **SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This Quarterly Report on Form 10-Q and, in particular, our Management’s Discussion and Analysis of Financial Condition and Results of Operations set forth in Part I-Item 2, contain or incorporate a number of forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, including statements regarding:

- our expectations regarding the amount of, timing of and trends with respect to our revenues, costs and expenses and other gains and losses, including those related to net product revenues from KALYDECO and INCIVEK;
- our expectations regarding clinical trials, development timelines and regulatory authority filings and submissions for ivacaftor, lumacaftor and VX-661, including the expected NDA and MAA filings for lumacaftor in combination with ivacaftor;
- our ability to successfully market KALYDECO, lumacaftor in combination with ivacaftor, if approved, or any of our other drug candidates for which we obtain regulatory approval;
- our expectations regarding the timing and structure of clinical trials of our drugs and drug candidates, including, ivacaftor, lumacaftor and VX-661, and the expected timing of our receipt of data from our ongoing and planned clinical trials;
- the data that will be generated by ongoing and planned clinical trials and the ability to use that data to advance compounds, continue development or support regulatory filings;
- our beliefs regarding the support provided by clinical trials and preclinical and nonclinical studies of our drug candidates for further investigation, clinical trials or potential use as a treatment;
- our plan to continue investing in our research and development programs and our strategy to develop our drug candidates, alone or with third party-collaborators;
- the establishment, development and maintenance of collaborative relationships;
- potential business development activities;
- our ability to use our research programs to identify and develop new drug candidates to address serious diseases and significant unmet medical needs; and
- our liquidity and our expectations regarding the possibility of raising additional capital.

Any or all of our forward-looking statements in this Quarterly Report on Form 10-Q may turn out to be wrong. They can be affected by inaccurate assumptions or by known or unknown risks and uncertainties. Many factors mentioned in this Quarterly Report on Form 10-Q will be important in determining future results. Consequently, no forward-looking statement can be guaranteed. Actual future results may vary materially from expected results. We also provide a cautionary discussion of risks and uncertainties under “Risk Factors” in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2013, which was filed with the SEC on February 11, 2014, and above in this Item 1A of this Quarterly Report on Form 10-Q for the quarter ended June 30, 2014. These are factors and uncertainties that we think could cause our actual results to differ materially from expected results. Other factors and uncertainties besides those listed there could also adversely affect us.

Without limiting the foregoing, the words “believes,” “anticipates,” “plans,” “intends,” “expects” and similar expressions are intended to identify forward-looking statements. There are a number of factors and uncertainties that could cause actual events or results to differ materially from those indicated by such forward-looking statements, many of which are beyond our control. In addition, the forward-looking statements contained herein represent our estimate only as of the date of this filing and should not be relied upon as representing our estimate as of any subsequent date. While we may elect to update these forward-looking statements at some point in the future, we specifically disclaim any obligation to do so to reflect actual results, changes in assumptions or changes in other factors affecting such forward-looking statements.

## **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

### **Issuer Repurchases of Equity Securities**

The table set forth below shows all repurchases of securities by us during the three months ended June 30, 2014:

<b>Period</b>	<b>Total Number of Shares Purchased</b>	<b>Average Price Paid per Share</b>	<b>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</b>	<b>Maximum Number of Shares that May Yet be Purchased Under the Plans or Programs</b>
April 1, 2014 to April 30, 2014	52,238	\$0.01	—	—
May 1, 2014 to May 31, 2014	137,533	\$0.01	—	—
June 1, 2014 to June 30, 2014	42,399	\$0.01	—	—

The repurchases were made under the terms of our Amended and Restated 2006 Stock and Option Plan. Under this plan, we award shares of restricted stock to our employees that typically are subject to a lapsing right of repurchase by us. We may exercise this right of repurchase if a restricted stock recipient’s service to us is terminated. If we exercise this right, we are required to repay the purchase price paid by or on behalf of the recipient for the repurchased restricted shares, which typically is the par value per share of \$0.01. Repurchased shares are returned to the Amended and Restated 2006 Stock and Option Plan and are available for future awards under the terms of that plan.

## **Item 6. Exhibits**

<b>Exhibit Number</b>	<b>Exhibit Description</b>
10.1	2013 Stock and Option Plan, as amended. (1)
10.2	Credit Agreement, dated as of July 9, 2014, among Vertex Pharmaceuticals Incorporated, Macquarie US Trading LLC and the other lenders party thereto.

31.1 Certification of the Chief Executive Officer under Section 302 of the Sarbanes-Oxley Act of 2002.

31.2 Certification of the Chief Financial Officer under Section 302 of the Sarbanes-Oxley Act of 2002.

32.1 Certification of the Chief Executive Officer and the Chief Financial Officer under Section 906 of the Sarbanes-Oxley Act of 2002.

101.INS XBRL Instance

101.SCH XBRL Taxonomy Extension Schema

101.CAL XBRL Taxonomy Extension Calculation

101.LAB XBRL Taxonomy Extension Labels

101.PRE XBRL Taxonomy Extension Presentation

101.DEF XBRL Taxonomy Extension Definition

(1) Incorporated by reference to Appendix A to Vertex's definitive proxy statement, filed on March 28, 2014.

**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.

**Vertex Pharmaceuticals Incorporated**

July 31, 2014

By:

/s/ Ian F. Smith

---

Ian F. Smith

*Executive Vice President and Chief Financial Officer  
(principal financial officer and  
duly authorized officer)*

**CREDIT AGREEMENT**

Dated as of July 9, 2014

among

**VERTEX PHARMACEUTICALS INCORPORATED,**  
as the Borrower,

**MACQUARIE US TRADING LLC,**  
as Administrative Agent,

and

The Other Lenders Party Hereto

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## **EXHIBITS**

### ***Form of***

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- B Note
- C-1 Assignment and Assumption
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## CREDIT AGREEMENT

This CREDIT AGREEMENT (“Agreement”) is entered into as of July 9, 2014, among VERTEX PHARMACEUTICALS INCORPORATED, a Massachusetts corporation (the “Borrower”), each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), and MACQUARIE US TRADING LLC, as Administrative Agent.

The Borrower has requested that the Lenders provide a term loan credit facility, and the Lenders 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:

“Abbreviated New Drug Application” means an abbreviated new drug application (including all applicable supplements and amendments that may be filed with respect thereto) filed with the FDA or any similar or successor applications or procedures seeking authorization and approval to Manufacture, package, ship, and sell a Product in the United States pursuant to the FDCA including an application under 21 U.S.C. § 355(j).

“Act” has the meaning specified in Section 11.18.

“Administrative Agent” means Macquarie US Trading LLC in its capacity as administrative agent under any of the Loan 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 to the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit C-2 or any other form approved by the Administrative Agent.

“Affected Subsidiary” means (i) any direct or indirect Foreign Subsidiary that is a “controlled foreign corporation” within the meaning of Section 957 of the Code, (ii) any direct or indirect Domestic Subsidiary substantially all of the assets of which consist of Equity Interests in or Indebtedness of one or more direct or indirect Foreign Subsidiaries that are “controlled foreign corporations” within the meaning of Section 957 of the Code and (iii) any direct or indirect Domestic Subsidiary of a direct or indirect Foreign Subsidiary.

“Affiliate” means, with respect to any 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.

“Agent Indemnitee” has the meaning specified in Section 9.10(c).

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” has the meaning specified in the introductory paragraph hereto.

“Applicable Percentage” means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of (i) on or prior to the Closing Date, the Aggregate Commitments represented by such Lender’s Commitment at such time and (ii) thereafter, Total Outstandings represented by such Lender’s Loans at such time. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

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

“Assignment and Assumption” means an assignment and assumption entered into by a Lender 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 C-1 or any other form (including electronic documentation generated by MarkitClear or other electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capitalized 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 Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease and (c) all Synthetic Debt of such Person.

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2013, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“Base Rate” means, for any day, a floating rate equal to the greater of (x) the higher of (i) the per annum rate publicly quoted from time to time by The Wall Street Journal as the “Prime Rate” in the United States (or, if The Wall Street Journal ceases quoting a base rate of the type described, either (a) the per annum rate quoted as the base rate on such corporate loans in a different national publication as selected by Administrative Agent or (b) the highest per annum rate of interest published by the Federal Reserve Board in Federal Reserve statistical release H.15 (519) entitled “Selected Interest Rates” as the Bank prime loan rate or its equivalent), and (ii) the Federal Funds Rate plus fifty (50) basis points per annum, (y) the sum of (a) the Eurodollar Rate calculated for each such day based on a Interest Period of one (1) month determined two (2) Business Days prior to the first day of the then current month plus (b) 100 basis points, for such day. Each change in

any interest rate provided for in this Agreement based upon the Base Rate shall take effect at the time of such change in the Base Rate.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Indemnitee” has the meaning specified in Section 11.04(b).

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a borrowing of Loans of the same Type and having the same Interest Period.

“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, the state where the Administrative Agent’s Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any of its Subsidiaries free and clear of all Liens (other than Liens created under the Collateral Documents and other Liens permitted hereunder):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(d) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition;

(e) repurchase obligations for underlying securities of the types described in clauses (a) and (b) entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (b) above; and

(f) other readily marketable investments permitted by the Borrower's Investment Policy adopted by the Audit and Finance Committee of its board of directors and set forth in Schedule 1.01 hereto, with any changes consented to by the Required Lenders, whose consent shall not be unreasonably withheld or delayed; provided that any change to the Investment Policy that further restricts permitted investments shall not require such consent.

"Casualty Event" shall mean any loss of title (other than through a consensual disposition of such property in accordance with this Agreement) or any loss of or damage to or any destruction of, or any condemnation or other taking (including by any Governmental Authority) of, any property of the Borrower or any of its Subsidiaries. "Casualty Event" shall include any taking of all or any part of any real property of any person or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any Law, or by reason of the temporary requisition of the use or occupancy of all or any part of any real property of any person or any part thereof by any Governmental Authority, or any settlement in lieu thereof.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

"CERCLIS" means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

"Change in Law" means the occurrence, after the date of this Agreement, 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 an event or series of events by which:

(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 35% or more of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower 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);

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body 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 or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); or

(c) the passage of thirty days from the date upon which any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Borrower, or control over the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing 35% or more of the combined voting power of such securities; or

(d) a “change of control” or any comparable term under, and as defined in, any Subordinated Indebtedness or other significant debt shall have occurred.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 11.01.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means all of the “Collateral” and “Mortgaged Property” or “Trust Property” or other similar term referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Documents” means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages, each of the mortgages, collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Commitment” means, as to each Lender, its obligation to make Loans to the Borrower pursuant to Section 2.01 in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01, as such amount may be adjusted from time to time in accordance with this Agreement.

“Conditional Marketing Authorization Application” refers to a time-limited approval granted by a foreign Governmental Authority for sale of a drug in the European Union under certain conditions for its use to treat seriously debilitating or life-threatening diseases, address emergency threats and to treat orphan medical conditions.

“Confidential Information” means all non-public information, whether written, oral or in any electronic, visual or other medium, that is the subject of reasonable efforts to keep it confidential and that is owned by the Borrower or any Subsidiary or that the Borrower or any Subsidiary is licensed, authorized or otherwise granted rights under or to.

“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.

“Copyright License” means any agreement, whether written or oral, providing for the grant of any right to use any Work under any Copyright.

“Copyrights” means (a) all proprietary rights afforded Works pursuant to Title 17 of the United States Code, including, without limitation, all rights in mask works, copyrights and original designs, and all proprietary rights afforded such Works by other countries for the full term thereof (and including all rights accruing by virtue of bilateral or international treaties and conventions thereto), whether registered or unregistered, including, but not limited to, all applications for registration, renewals, extensions, reversions or restorations thereof now or hereafter provided for



by law and all rights to make applications for registrations and recordings, regardless of the medium of fixation or means of expression, which are owned by the Borrower or any Subsidiary or which the Borrower or any Subsidiary is licensed, authorized or otherwise granted rights under or to; and (b) all copyright rights under the copyright laws of the United States and all other countries for the full term thereof (and including all rights accruing by virtue of bilateral or international copyright treaties and conventions), whether registered or unregistered, including, but not limited to, all applications for registration, renewals, extensions, reversions or restorations of copyrights now or hereafter provided for by law and all rights to make applications for copyright registrations and recordings, regardless of the medium of fixation or means of expression, which are owned by the Borrower or any Subsidiary or which the Borrower or any Subsidiary is licensed, authorized or otherwise granted rights under or to.

“Credit Extension” means a Borrowing.

“Customer Agreement” means a license or other agreement between any Loan Party or any Affiliate of any Loan Party, on the one part, and any customer, licensee, distributor or other Person (each, a “Customer”), on the other part, for the research, development or commercialization of any product.

“Cystic Fibrosis Drug Franchise Assets” means (1) ivacaftor (tradename KALYDECO), for use in treating patients with cystic fibrosis six years of age and older who carry the G551D mutation in the CFTR gene; (2) lumacaftor in combination with ivacaftor which is being developed for potential use in treating patients twelve years and older who are homozygous for the F508del mutation in their CFTR gene; (3) VX-661 in combination with ivacaftor which is being developed for use in treating patients twelve years and older who carry certain mutations in the CFTR gene and (4) all proceeds, IP Rights, Permits and other assets related thereto and all Products, IP Rights or other assets developed or acquired in connection with cystic fibrosis.

“DEA” means the Drug Enforcement Administration of the United States of America and any successor agency thereof.

“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” means an interest rate equal to the then Interest Rate plus 2% per annum.

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

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of

any option or other right to do any of the foregoing), 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.

“Dollar” and “\$” mean lawful money of the United States.

“Domain Names” means all domain names and URLs that are registered and/or owned by the Borrower or any Subsidiary or which the Borrower or any Subsidiary is licensed, authorized or otherwise granted rights under or to.

“Domestic Subsidiary” means any Subsidiary organized under the laws of the United States of America, any state thereof or the District of Columbia.

“Drug Application” means a New Drug Application (including a supplemental New Drug Application), a Biologics License Application, an Abbreviated New Drug Application, or a product license application, as those terms are defined in the Food, Drugs and Cosmetics Act (21 U.S.C. ch. 9 § 301 et seq.), for any Product, as appropriate, in each case of the Borrower or any Subsidiary, and equivalents thereof, including Conditional Marketing Authorizations, for submission to Governmental Authorities outside of the United States.

“Drug Approval” means an approval, authorization or license (including, without limitation, an Investigational New Drug Application (“IND”) authorizing human testing of a drug, New Drug Application, conditional Marketing Authorization Application and Marketing Authorization Application) granted by a Governmental Authorities (including, without limitation, the FDA and the European Commission) to permit the use in human use, sale and marketing of a Product.

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

“Environment” means ambient air, indoor air, surface water (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwater, drinking water, soil, surface and subsurface strata, flora and fauna, and any other environmental medium or natural resource.

“Environmental Laws” means any and all Laws, including regulations, ordinances, rules, judgments, orders, decrees, permits, agreements or governmental restrictions, relating to pollution or the protection of the Environment, to human health and safety in respect of Hazardous Materials, including those relating to the manufacture, generation, handling, transport, storage, treatment, Release or threat of a Release of or exposure to Hazardous Materials.

“Environmental Liability” means any liabilities, monetary obligations, losses, damages, costs and expenses (including all fees, disbursements and expenses of counsel, experts, or consultants, and costs of corrective measures, investigation, feasibility studies, and remediation), fines, penalties, sanctions, indemnities, and interest contingent or otherwise of the Borrower, any other Loan Party or any of their respective Subsidiaries arising under or in connection with

Environmental Laws, including those directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment, disposal or other management of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“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 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. For purposes of Section 6.12 and the Security Agreement, Equity Interests shall include Indebtedness that the Borrower and the Administrative Agent agree in good faith is properly treated as equity for U.S. federal income tax purposes or, if the Borrower and the Administrative Agent cannot agree on the proper treatment of the Indebtedness, as determined in the opinion of a tax advisor reasonably acceptable to each the Borrower and the Administrative Agent.

“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 Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower 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 Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 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 Code or Sections 303, 304 and 305 of ERISA; (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 Borrower or any ERISA Affiliate; or (i) a failure by the Borrower or any ERISA Affiliate to meet all applicable requirements under

the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by the Borrower or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

“Eurodollar Rate” means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) or a comparable or successor rate, which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two Business Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day;

provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate”.

“European Commission” refers to the European Commission or any successor entity thereto.

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, imposed as a result of such Recipient being organized under the laws of, or having its principal office or its Lending Office (or relevant office for receiving payments from or on account of the Borrower or making funds available to or for the benefit of the Borrower) located in, the jurisdiction imposing such Tax (or any political subdivision thereof) (b) Other Connection Taxes, (c) U.S. federal withholding Taxes that are (or would be) required to be withheld pursuant to a Law in effect on the date on which (i) such Recipient acquires such interest in the Loan or Commitment or becomes the Administrative Agent (other than pursuant to an assignment request by the Borrower under Section 11.13) or (ii) such Recipient changes its Lending Office (or relevant office for receiving payments from or on account of the Borrower or making funds available to or for the benefit of the Borrower), except in each case to the extent that, pursuant to Section 3.01(a)(ii), (a)(iii) or (c), amounts with respect to such Taxes were payable either to such Recipient’s predecessor

immediately before such Recipient became a party hereto or to such Recipient immediately before it changed its Lending Office (or relevant office for receiving payments from or on account of the Borrower or making funds available to or for the benefit of the Borrower), (d) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) (e) any U.S. federal withholding Taxes imposed pursuant to FATCA and (f) U.S. backup withholding Taxes.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantially comparable and not materially more onerous to comply with) and, in each case, any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471 (b) (1) of the Code, and any intergovernmental agreements entered into in connection therewith (and any legislation or guidance issued with respect to such intergovernmental agreements).

“FDA” means the Food and Drug Administration of the United States of America or any successor entity thereto.

“FDCA” means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. Section 301 et seq. and all regulations promulgated thereunder.

“Federal” means the federal government of the United States.

“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 (a) 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, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“Fixed Rate Loan” means a Loan that bears interest in accordance with clauses (a) and (b) of the definition of “Interest Rate”.

“Foreign Recipient” means (a) if the Borrower is a U.S. Person, a Recipient that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Recipient that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means any Subsidiary of the Borrower that is not a Domestic Subsidiary.

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

“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.

“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 or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Governmental Licenses” means all applications to and requests for approval from a Governmental Authority for the right to manufacture, import, store, market, promote, advertise, offer for sale, sell, use and/or otherwise distribute a Product, including, without limitation, any such filings filed with the FDA, and all authorizations issuing from a Governmental Authority based upon or as a result of such applications and requests, which are owned by the Borrower or any Subsidiary, acquired by the Borrower or any Subsidiary via assignment, purchase or otherwise or that the Borrower or any Subsidiary is licensed, authorized or otherwise granted rights under or to.

“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, collectively, each Person that executes this Agreement as a Guarantor or any other Guaranty.

“Guaranty” means each Guaranty made by the Guarantors under Article X in favor of the Secured Parties, or any other guaranty substantially similar to Article X and otherwise in form and substance reasonably satisfactory to the Administrative Agent, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.12.

“Hazardous Materials” means any material, chemical, compound, substance, mixture, waste or by-product (regardless of physical form or concentration) that (a) is hazardous, toxic, infectious, explosive, radioactive, carcinogenic, mutagenic, ignitable, corrosive, reactive, or otherwise deleterious to living things or the environment, or (b) is or becomes identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws. Without limiting the foregoing, Hazardous Materials include petroleum or petroleum distillates, natural gas, natural gas liquids, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, and infectious or medical wastes.

“HHS” means the United States Department of Health and Human Services and any successor agency thereof.

“Immaterial Subsidiary” means any Foreign Subsidiary with annual revenues not exceeding \$1,000,000 and with total assets not exceeding \$1,000,000.

“Impacted Loans” has the meaning assigned to such term in Section 3.03.

“Increase Effective Date” has the meaning assigned to such term in Section 2.11(a).

“Increase Joinder” has the meaning assigned to such term in Section 2.11(c).

“Incremental Commitments” has the meaning assigned to such term in Section 2.11(b).

“Incremental Loan Maturity Date” has the meaning assigned to such term in Section 2.11(c).

“Incremental Loans” means any loans made pursuant to any Incremental Commitments.

“IND” has the meaning specified in the definition of “Drug Approval”.

“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 of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under standby letters of credit, bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and contingent obligations);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;

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

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness 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 a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Information” has the meaning specified in Section 11.07.

“Intangible Assets” means assets that are considered to be intangible assets under GAAP, including customer lists, goodwill, computer software, copyrights, trade names, trademarks, patents, franchises, licenses, unamortized deferred charges, unamortized debt discount and capitalized research and development costs.

“Intellectual Property Security Agreement” has the meaning specified in Section 4.01(a)(iv).



“Interest Payment Date” means, (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan or Fixed Rate Loan, the first Business Day of each January, April, July and October and the Maturity Date.

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months thereafter (in each case, subject to availability), as selected by the Borrower in its Loan Notice; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Rate Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period pertaining to a Eurodollar Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the Maturity Date.

“Interest Rate” means, from time to time, the following percentages per annum as set forth below:

(a) at any time on and after the Closing Date, but subject to clauses (b) – (d) below, 7.20 % per annum;

(b) at any time on and after the first full quarterly Interest Payment Date that occurs after the later of (i) the Administrative Agent has received a certificate from the Borrower certifying the FDA approval in the United States of a Product with a label claim for treating patients with cystic fibrosis 12 years of age and older who are homozygous with the F508del population and (ii) the one year anniversary of the Closing Date, in each case, until the second anniversary of the Closing Date, 6.20% per annum;

(c) at any time on and after the second anniversary of the Closing Date in the event the event in clause (b)(i) above has not been satisfied, the Eurodollar Rate plus 7.50% (or, at any time the Interest Rate is based on the Base Rate in accordance with this Agreement, the Base Rate plus 6.50%);

(d) at any time on and after the second anniversary of the Closing Date in the event the event in clause (b)(i) above has been satisfied, the Eurodollar Rate plus 5.00% (or, at any time the Interest Rate is based on the Base Rate in accordance with this Agreement, the Base Rate plus 4.00%).

“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 interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of, such Person (other than ordinary course trade payables). 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.

“IP Event of Default” means the occurrence of any of the following events:

(a) the institution of any proceeding by the FDA or similar Governmental Authority to temporarily order the withdrawal of any Product or Product category from the market or to permanently enjoin the Borrower or any Subsidiary or any representative of the Borrower or any Subsidiary from manufacturing, marketing, selling or distributing any Product or Product category wherein such institution, withdrawal or injunction could reasonably be expected to result in a Material Adverse Effect or, solely with respect to the Cystic Fibrosis Drug Franchise Assets, could reasonably be expected to result in liabilities or loss of revenue in excess of \$50,000,000 or a Material Adverse Effect;

(b) the institution of any action or proceeding by the DEA, FDA, or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Required Permit held by the Borrower or any Subsidiary or any representative of the Borrower or any Subsidiary and any such institution, revoke, suspension, rejection, withdrawal, limitation, or restriction could reasonably be expected to result in a Material Adverse Effect or, solely with respect to the Cystic Fibrosis Drug Franchise Assets, could reasonably be expected to result in liabilities or loss of revenue in excess of \$50,000,000 or a Material Adverse Effect;

(c) the commencement of any enforcement action against the Borrower or any Subsidiary by the DEA, FDA, or any other Governmental Authority wherein such enforcement action could reasonably be expected to result in a Material Adverse Effect or, solely with respect to the Cystic Fibrosis Drug Franchise Assets, could reasonably be expected to result in liabilities or loss of revenue in excess of \$50,000,000 or a Material Adverse Effect;

(d) the Recall of any Product from the market, the voluntary withdrawal of any Products from the market, or the discontinuation of the sale of any Products primarily due to the threat of Recall, in each case which could reasonably be expected to result in a Material Adverse Effect or, solely with respect to the Cystic Fibrosis Drug Franchise Assets, could reasonably be expected to result in liabilities or loss of revenue in excess of \$50,000,000 or a Material Adverse Effect;

(e) a change in Law, including a change in FDA or DEA policies or procedures, occurs which would reasonably be expected to have a Material Adverse Effect; or

(f) the termination of any agreement with a manufacturer that supplies any Product or any component of any Product or any material change to any agreement with a manufacturer that supplies any Product or any components of any Product, in each case, that is not replaced by a reasonably equivalent agreement (or any such material change is not fully ameliorated by a curative agreement, supplement or amendment) within a reasonable period of time and, as a consequence of such failure to replace (or amend or supplement), the loss of such agreement or material change to such agreement would reasonably be expected to have a Material Adverse Effect.

“IP Rights” means, collectively, all Confidential Information, all Copyrights, all Copyright Licenses, all Domain Names, all Drug Applications, all Governmental Licenses, all Other Intellectual Property, all Other IP Agreements, all Patents, all Patent Licenses, all Proprietary Databases, all Proprietary Software, all Trademarks, all Trademark Licenses, all Trade Secrets, all Websites and all Website Agreements.

“IRS” means the United States Internal Revenue Service.

“Kalydeco Product” means ivacaftor for use in treating patients six years and older who carry certain mutations in the CFTR gene.

“Kalydeco Product US Revenue” means, with respect to any date of determination, total revenue from sales of the Kalydeco Product derived from customers located in the United States over the trailing twelve month period ending on such date of determination, as determined on a consolidated basis in accordance with GAAP and otherwise calculated in a manner substantially consistent with the calculations for “revenue” in the Borrower’s financial statements delivered under Sections 6.01(a) and (b).

“Kalydeco Product US and Foreign Revenue” means, with respect to any date of determination, total revenue from sales of the Kalydeco Product derived from customers located in the United States and in other jurisdictions over the trailing twelve month period ending on such date of determination, which revenue, if consisting of currency other than US Dollars, will be calculated using the foreign exchange rates prevailing as of the Closing Date, as determined on a consolidated basis in accordance with GAAP and calculated in a manner substantially consistent with the calculations for “revenue” in the Borrower’s financial statements delivered under Sections 6.01 (a) and (b).

“Knowledge” means, (a) with respect to any natural Person’s knowledge of a matter in question, knowledge after due inquiry of such Person and (ii) with respect to any Loan Party or any Subsidiary’s knowledge of a matter in question, knowledge after due inquiry of such Person’s Responsible Officers.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, common law, 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.

“Lender” has the meaning specified in the introductory paragraph hereto.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, easement, right-of-way or other encumbrance on title to real property, 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, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means an extension of credit by a Lender to the Borrower under Article II.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) each Guaranty, (d) the Collateral Documents and (e) each fee letter entered into with the Borrower and Administrative Agent or any Lender.

“Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, which shall be substantially in the form of Exhibit A or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Make Whole Premium” means, on any date of prepayment of any Loan prior to the second anniversary of the Closing Date, the present value of all required interest payments due on the amount of such Loan prepaid from the date of prepayment through and including the second anniversary of the Closing Date (excluding accrued interest) (assuming that all amortization payments would have been made on a timely basis discounted to the date of prepayment on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 50 basis points.

“Market Withdrawal” means a Person’s removal or correction of a distributed product which involves a minor violation that would not be subject to legal action by the FDA or which involves no violation, e.g., normal stock rotation practices, routine equipment adjustments and repairs, etc., as that term is defined in 21 C.F.R. 7.3(j).

“Massachusetts Security Corporation” means a Person that qualifies as a Massachusetts security corporation under Mass. Gen. L. c. 63, §38B, but only to the extent, and during the time period, it so qualifies.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent) or financial condition of the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under the Loan Documents, or of the ability of the Loan Parties to perform their obligations under the Loan Documents; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Loan Parties of the Loan Documents to which it is a party.

“Material Contract” means, with respect to any Person, each contract to which such Person is a party involving aggregate consideration payable to or by such Person of \$15,000,000 or more or otherwise material to the business, condition (financial or otherwise), operations or properties of the Borrower and its Subsidiaries, taken as a whole.

“Material IP Rights” means, as of any date of determination, IP Rights that as of such date are considered to have a material financial value to the operation or business of the Borrower or its Subsidiaries, taken as a whole; provided, however, that any IP Rights that would otherwise be considered Material IP Rights, which are developed or acquired by the Company or its Subsidiaries after the Closing Date, shall be considered to be Material IP Rights as of the date of determination described above.

“Maturity Date” means July 9, 2017; provided, however, that if such date is not a Business Day, the Maturity Date shall be the next Business Day.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage” means deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages and leasehold deeds of trust, together with the fixture filings and assignments of leases and rents referred to therein, duly executed by the appropriate Loan Party.

“Mortgage Policy” fully paid American Land Title Association Lender’s Extended Coverage title insurance policies, with endorsements and in amounts reasonably acceptable to the Administrative Agent, issued, coinsured and reinsured by title insurers reasonably acceptable to the Administrative Agent, insuring the Mortgages to be valid first and subsisting Liens on the property described therein, free and clear of all defects (including, but not limited to, mechanics’ and materialmen’s Liens) and encumbrances, excepting only Permitted Encumbrances, and providing for such other affirmative insurance and such coinsurance and direct access reinsurance as the Administrative Agent may reasonably deem necessary or desirable.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower 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 Borrower 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.

“Net Cash Proceeds” means (a) with respect to any Disposition by the Borrower or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by the Borrower or such Subsidiary in connection with such transaction and (C) taxes reasonably estimated to be actually payable in connection therewith (including Taxes imposed on the distribution or repatriation of any such Net Cash Proceeds); provided that, if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds and (b) with respect to any Casualty Event, the cash insurance proceeds, condemnation awards and other compensation received by the Borrower or any of its Subsidiaries in respect thereof, net of all reasonable costs and expenses incurred in connection with the collection of such proceeds, awards or other compensation in respect of such Casualty Event.

“New Drug Application” means a new drug application as defined in the Act, and the regulations promulgated thereunder, or any corresponding application for Regulatory Approval in a country or jurisdiction other than the United States.

“Note” means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit B.

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

“Other Intellectual Property” means all worldwide intellectual property rights, industrial property rights, proprietary rights and common-law rights, whether registered or unregistered, which are not otherwise included in Confidential Information, Copyrights, Copyright Licenses, Domain Names, Governmental Licenses, Other IP Agreements, Patents, Patent Licenses, Trademarks and Trademark Licenses, Proprietary Databases, Proprietary Software, Websites, Website Agreements and Trade Secrets, including, without limitation, all rights to and under all new and useful algorithms, concepts, data (including all clinical data relating to a Product), databases, designs, discoveries, inventions, know-how, methods, processes, protocols, show-how, software (other than commercially available, off-the-shelf software that is not assignable in connection with a Change of Control), specifications for Products, techniques, technology, trade dress and all improvements thereof and thereto, which is owned by the Borrower or any Subsidiary or which the Borrower or any Subsidiary is licensed, authorized or otherwise granted rights under or to, and which is used by the Borrower or any other Person to advertise, manufacture, import, market, promote, offer for sale, sell, use and/or otherwise distribute a Product.

“Other IP Agreements” means any agreement, whether written or oral, providing for the grant of any right under any Confidential Information, Governmental Licenses, Proprietary Database, Proprietary Software, Trade Secret and/or any other IP Rights, to the extent that the grant of any such right is not otherwise the subject of a Copyright License, Trademark License, Patent License or Website Agreement.

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are imposed with respect to an assignment, grant of participation, designation of new office for receiving payments by or on account of the Borrower or other transfer (other than an assignment or designation of a new office made pursuant to Section 3.06).

“Outstanding Amount” means, on any date, the aggregate outstanding principal amount of Loans after giving effect to any borrowings and prepayments or repayments thereof occurring on such date.

“Participant” has the meaning specified in Section 11.06(d).

“Participant Register” has the meaning specified in Section 11.06(d).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Perfection Certificate” shall mean a certificate in the form of Exhibit G or any other form approved by the Administrative Agent, as the same shall be supplemented from time to time by an additional Perfection Certificate, supplement or otherwise.

“Permits” means licenses, certificates, accreditations, product clearances or approvals, provider numbers or provider authorizations, marketing authorizations, other authorizations, registrations, permits, consents and approvals required in connection with the conduct of Borrower’s or any Subsidiary’s business or to comply with any applicable Laws, including drug listings and drug establishment registrations under 21 U.S.C. Section 510, registrations issued by DEA under 21 U.S.C. Section 823 (if applicable to any Product), Permits issued by Governmental Authorities outside of the United States or those issued by Federal, state or local government for the conduct of Borrower’s or any Subsidiary’s business.

“Permitted Acquisition” means the purchase or other acquisition, by merger or otherwise, by the Borrower or any of its Subsidiaries of all or at least a majority of the Equity Interests in, or all or substantially all the assets of (or all or substantially all the assets constituting a business unit, division, product line or line of business of) any Person; provided that (a) in the case of any purchase or other acquisition of Equity Interests in a Person, such Person, upon the consummation of such acquisition, will become a Guarantor to the extent required by Section 6.12 (including as a result of a merger, amalgamation or consolidation between any Subsidiary and such Person), (b) all transactions related thereto are consummated in accordance in all material respects with requirements of all Laws and, in the case of any acquisition of a Person, the board of directors or equivalent governing body of such acquired Person or its selling equityholders shall have approved



such purchase or other acquisition, (c) the business of such Person, or such assets, as the case may be, constitute a business permitted by Section 7.07, (d) with respect to each such purchase or other acquisition, all actions required to be taken with respect to such newly created or acquired Subsidiary (including each subsidiary thereof) or assets in order to satisfy the requirements set forth in Section 6.12 to the extent applicable shall have been taken (or arrangements for the taking of such actions within the applicable times set forth in Section 6.12 (or by such later date reasonably satisfactory to the Administrative Agent) shall have been made), (e) both immediately before and after giving effect to any such purchase or other acquisition, no Event of Default shall have occurred and be continuing, (f) the total cash consideration (including all deferred contingent and non-contingent payment obligations to the sellers thereof and all assumptions of debt and similar liabilities in connection therewith) paid by or on behalf of the Borrower and its Subsidiaries for any such purchase or other acquisition, when aggregated with the total cash consideration paid by or on behalf of the Borrower and its Subsidiaries for all other purchases and other Investments made by the Borrower and its Subsidiaries pursuant to Sections 7.02(h) and 7.02(i) shall not exceed \$100,000,000 per year, subject to the further provisions of Section 7.02, and (g) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer certifying that all the requirements set forth in this definition have been satisfied with respect to such purchase or other acquisition.

“Permitted Encumbrances” shall mean Liens of the type described in clauses (a), (c), (d) and (g) of Section 7.01 and such Liens as identified on the Mortgage Policy applicable to such property and acceptable to the Administrative Agent.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

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

“Platform” has the meaning specified in Section 6.02.

“Product” means any product advertised, developed, imported, manufactured, marketed, offered for sale, promoted, sold, tested, used or otherwise distributed by the Borrower or any Subsidiary in connection with or that embody, in whole or in part, the IP Rights, including without limitation those products set forth on Schedule 1.01 (as updated from time to time in accordance with the terms of this Agreement), provided that, (i) if Borrower shall fail to comply with its obligations under this Agreement to give notice to Administrative Agent and update Schedule 1.01 prior to selling or marketing any new Product, any such improperly undisclosed Product shall be deemed to be included in this definition and (ii) “Product” shall not include Incivek or Lexiva.

“Proprietary Databases” means any material non-public proprietary database that is owned by the Borrower or any Subsidiary or that the Borrower or any Subsidiary is licensed, authorized or otherwise granted rights under or to.

“Proprietary Software” means any proprietary software owned, licensed or otherwise used, other than any software that is generally commercially available, off-the-shelf and/or open source including, without limitation, the object code and source code forms of such software and all associated documentation, which is owned by the Borrower or any Subsidiary or which the Borrower or any Subsidiary is licensed, authorized or otherwise granted rights under or to.

“Public Lender” has the meaning specified in Section 6.02.

“Recall” means a Person’s removal or correction of a marketed product that the FDA considers to be in violation of the laws it administers and against which the FDA would initiate legal action, e.g., seizure, as that term is defined in 21 C.F.R. 7.3(g).

“Recipient” means the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Register” has the meaning specified in Section 11.06(c).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates. “Release” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment, or into, within, from or through any building, structure or facility.

“Relevant Foreign Jurisdictions” means Australia, Canada, Ireland, United Kingdom, France and Germany.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Required Cash” has the meaning specified in the proviso following Section 7.02.

“Required Lenders” means, at any time, Lenders having Total Outstandings representing more than 50% of the Total Outstandings of all Lenders.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, and solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Required Permit” means a Permit issued or required under Laws applicable to the business of the Borrower or any Subsidiary or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under Laws applicable to the business of the Borrower or any Subsidiary or any Drug Application (including without limitation, at any point in time, all licenses,

approvals and permits issued by the FDA or any other applicable Governmental Authority within or outside of the United States necessary for the testing, manufacture, marketing or sale of any Product by the Borrower or any Subsidiary as such activities are being conducted by the Borrower or such Subsidiary with respect to such Product at such time).

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person’s stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

“Safety Notice” means any “dear doctor” letter, safety alert, “serious adverse event” report or other notice of action relating to an alleged lack of safety or regulatory compliance of any Product issued by the Borrower or any Subsidiary, and/or other any Governmental Authority, to the extent that the events or circumstances underlying such letter, alert, report or notice could reasonably be expected to result in a liability in excess of the Threshold Amount.

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

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

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

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

“Security Agreement” has the meaning specified in Section 4.01(a)(iii).

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) 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, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business.

The amount of contingent liabilities at any time shall be computed as the amount that, in the 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 Loan Party” means any Loan Party that is not an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 10.10).

“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 securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are 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 Borrower.

“Subordinated Indebtedness” shall mean Indebtedness of any Company that is by its terms subordinated in right of payment to all or any portion of the 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 Obligations” means with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“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 Lender or any Affiliate of a Lender).

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of “Indebtedness” or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

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

“Threshold Amount” means \$15,000,000.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans.

“Trademark License” has the meaning specified in the Security Agreement.

“Trademarks” has the meaning specified in the Security Agreement.

“Trade Secrets” has the meaning specified in the Security Agreement.

“Treasury Rate” means, on any date of prepayment of any Loan, the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) which has become publicly available at least two Business Days prior to the prepayment date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to second anniversary of the Closing Date; provided, however, that if such period is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Administrative Agent shall obtain the Treasury Rate by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given.

“Type” means, with respect to a Loan, its character as a Fixed Rate Loan, Base Rate Loan or a Eurodollar Rate Loan.

“UCC” 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, “UCC” means the Uniform Commercial Code as in effect from time

to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“United States” and “U.S.” mean the United States of America.

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

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(III).

“Websites” means all websites that the Borrower or any Subsidiary shall operate, manage or control through a Domain Name, whether on an exclusive basis or a nonexclusive basis, including, without limitations, all content, elements, data, information, materials, hypertext markup language (HTML), software and code, works of authorship, textual works, visual works, aural works, audiovisual works and functionality embodied in, published or available through each such website and all IP Rights in each of the foregoing.

“Website Agreements” means all agreements between the Borrower and/or any Subsidiary and any other Person pursuant to which such Person provides any services relating to the hosting, design, operation, management or maintenance of any Website, including without limitation, all agreements with any Person providing website hosting, database management or maintenance or disaster recovery services to the Borrower and/or any Subsidiary and all agreements with any domain name registrar, as all such agreements may be amended, supplemented or otherwise modified from time to time.

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

**1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan 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 any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan 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 Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles

and Sections of, and Exhibits and Schedules to, the Loan 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 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 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 Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

### **1.03 Accounting Terms.**

(a) Generally. 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. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 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.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

**1.04 Rounding**. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed

herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**1.05 Times of Day; Rates.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Eurodollar Rate" or with respect to any comparable or successor rate thereto.

## **ARTICLE II. THE COMMITMENTS AND CREDIT EXTENSIONS**

**2.01 The Loans.** Subject to the terms and conditions set forth herein, each Lender severally agrees to make Loans on the Closing Date not to exceed such Lender's Commitment. The Borrowing shall consist of Loans made simultaneously by the Lenders in accordance with their respective Commitments. Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed. Loans may be Fixed Rate Loans, Base Rate Loans or Eurodollar Rate Loans as further provided herein, but the initial Loans borrowed hereunder will be borrowed as Fixed Rate Loans.

### **2.02 Borrowings, Conversions and Continuations of Loans.**

(c) Each Borrowing, each conversion of Loans from one Type to the other (other than a Fixed Rate Loan), and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable written notice to the Administrative Agent, in the form of a Loan Notice in the form attached hereto as Exhibit A. Each such Loan Notice must be received by the Administrative Agent not later than 11:00 a.m. one Business Day before the Closing Date or three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans. Each Loan Notice for a Borrowing (whether telephonic or written) shall specify (i) the requested date of the Borrowing (which shall be a Business Day), (ii) the principal amount of Loans to be borrowed, (iii) wire instructions for the Borrower, and (iv) for a Borrowing of Eurodollar Rate Loans, the duration of the Interest Period with respect thereto. Each conversion to or continuation of Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Each Loan Notice for such conversion or continuation of Loans shall specify (i) whether the Borrower is requesting a conversion of Loans from one Type to the other (other than Fixed Rate Loans), or a continuation of Eurodollar Rate Loans, (ii) the requested date of the conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be converted or continued, (iv) to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be continued as the same Type of Loan (other than as set forth in the definition of Interest Rate). If the Borrower requests a conversion to, or continuation of Eurodollar Rate Loans in any such Loan Notice, but fails to specify an Interest Period,



it will be deemed to have specified an Interest Period of one month. Fixed Rates Loans shall automatically be converted to Eurodollar Rate Loans as described in the definition of Interest Rate.

(d) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic continuation of Loans described in Section 2.02(a). In the case of a Borrowing, each Lender shall make the amount of its Loan 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 Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.01, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(e) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Administrative Agent.

(f) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Base Rate promptly following the public announcement of such change.

(g) After giving effect to all Borrowings, all conversions of Loans from one Type to the other (other than Fixed Rate Loans), and all continuations of Loans as the same Type, there shall not be more than six (6) Interest Periods in effect.

### **2.03 Prepayments.**

(a) Optional. Subject to the payment of any required prepayment premium, the Borrower may, upon prior written notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part; provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (A) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (B) one Business Day prior to the date of prepayment of any other Loans; and (ii) any prepayment of Loans shall be in a principal amount of \$1,000,000 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 and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice,

and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Loan shall be accompanied by all accrued interest on the amount prepaid, together with any premiums required under clause (c) below and additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Loans pursuant to this Section 2.03(a) shall be applied to the principal repayment installments thereof on a pro-rata basis, and each prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) Mandatory.

(i) If the Borrower or any of its Subsidiaries Disposes of any property permitted by Section 7.05(g) and 7.05(k), which results in the realization by such Person of Net Cash Proceeds in excess of \$1,000,000 in any fiscal year or realizes any Net Cash Proceeds in excess of \$1,000,000 in any fiscal year in connection with a Casualty Event, the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of such Net Cash Proceeds within one Business Day after receipt thereof by such Person (such prepayments to be applied as set forth in clause (iii) below), unless no Event of Default has occurred and is continuing and such Person receives such Net Cash Proceeds during a fiscal quarter in which (i) sales from the Kalydeco Product for the most recently ended fiscal quarter equal or exceed \$100,000,000 and (ii) the Borrower is in compliance with Section 7.12; provided, however, that, with respect to any Net Cash Proceeds realized under a Disposition or Casualty Event described in this Section 2.03(b)(i), at the election of the Borrower (as notified by the Borrower to the Administrative Agent on or prior to the date of such Disposition or on or prior to the date Net Cash Proceeds are realized in connection with a Casualty Event, as the case may be), and so long as no Event of Default shall have occurred and be continuing, the Borrower or such Subsidiary may reinvest all or any portion of such Net Cash Proceeds in operating assets so long as within 365 days after the receipt of such Net Cash Proceeds, such purchase shall have been consummated (as certified by the Borrower in writing to the Administrative Agent); and provided further, however, that an amount equal to any Net Cash Proceeds not subject to such definitive agreement or so reinvested shall be immediately applied to the prepayment of the Loans as set forth in this Section 2.03(b)(i).

(ii) Upon the incurrence or issuance by the Borrower or any of its Subsidiaries of any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 7.03), the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom within one Business Day after receipt thereof by the Borrower or such Subsidiary (such prepayments to be applied as set forth in clause (iii) below).

(iii) Each prepayment of Loans pursuant to this Section 2.03(b) shall be (A) accompanied by prior written notice to the Administrative Agent of the same, provided by 11 a.m. one Business Day prior to the date of prepayment, and (B) applied to the principal

repayment installments thereof on a pro-rata basis, and each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.

(c) **Prepayment Premium.** If all or any portion of the Loans are prepaid, or required to be prepaid due to acceleration or otherwise, pursuant to this Section 2.03, Article VIII or otherwise (other than in accordance with Section 2.04) prior to the second anniversary of the Closing Date, then, in all cases, the Borrower shall pay to the Lenders, for their respective ratable accounts, on the date on which such prepayment is paid or required to be paid, in addition to the other Obligations so prepaid or required to be prepaid, the Make Whole Premium.

#### **2.04 Repayment of Loans.**

The Borrower shall repay to the Lenders the aggregate principal amount of all Loans outstanding on the following dates in the respective amounts set forth opposite such dates (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):

<b>Date</b>	<b>Amount</b>
Closing Date to September 30, 2015	\$0.00
October 1, 2015	\$15,000,000
January 1, 2016	\$15,000,000
April 1, 2016	\$15,000,000
July 1, 2016	\$15,000,000
October 1, 2016	\$60,000,000
January 1, 2017	\$60,000,000
April 1, 2017	\$60,000,000
Maturity Date	\$60,000,000

provided, however, that the final principal repayment installment of the Loans shall be repaid on the Maturity Date and in any event shall be in an amount equal to the aggregate principal amount of all Loans outstanding on such date. Additionally, to the extent any of the foregoing payments falls on a non-Business Day, it shall be paid on the next Business Day. Any Incremental Loans made in accordance with Section 2.10 will amortize in the manner set forth in the relevant Increase Joinder.

#### **2.05 Interest.**

(a) Subject to the provisions of subsection (b) below, the Loans shall bear interest at the rate per annum equal to the Interest Rate.

(b) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(c) Upon the request of the Required Lenders, while any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(d) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(e) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto 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.

**2.06 Fees.** The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Unless expressly provided for in such writing, such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

**2.07 Computation of Interest and Fees.** All computations of interest for Fixed Rate Loans Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.09(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

#### **2.08 Evidence of Debt.**

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. Subject to Section 11.06(c), the accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower 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 Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Subject to Section 11.06(c), upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which

shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

## **2.09 Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. may 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 Borrower 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 or fees, as the case may be.

(b) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

**2.10 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, 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 shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement, (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing

arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation. Each Lender shall keep records in a Participant Register, as defined in Section 11.06(d) (which shall be conclusive and binding in absence of manifest error), of participations purchased pursuant to this Section 2.10.

## **2.11 Incremental Facility.**

(a) On and after the period ending six months following the Closing Date, the Borrower may by written notice to the Administrative Agent elect to request that Macquarie CAF LLC establish not more than one new term loan commitments (each, an “Incremental Commitment”), by an aggregate amount not in excess of \$200,000,000. Such notice shall specify the date (the “Increase Effective Date”) on which the Borrower proposes that the Incremental Commitments shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to the Administrative Agent. Notwithstanding anything contained herein to the contrary, the establishment of the Incremental Commitment shall be made in the sole discretion of the Administrative Agent.

(b) Conditions. The Incremental Commitments shall become effective as of the Increase Effective Date; provided that:

(i) no Default shall have occurred and be continuing or would result from the borrowings to be made on the Increase Effective Date;

(ii) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall have been true and correct in all material respects as of such earlier date, and except that for purposes of this Section 2.11(b), the representations and warranties contained in Section 5.05(a) and Section 5.05(b) shall be deemed to refer to the most recent financial statements furnished pursuant to subsections (a) and (b), respectively, of Section 6.01.

(iii) either (A) both of the ongoing Phase III studies (called TRAFFIC and TRANSPORT) of Kalydeco in combination with lumacaftor (VX-809) meet or exceed the respective study’s primary endpoint or (B) FDA approval of a Product with a label claim for treating patients twelve years and older who are homozygous for the F508del mutation in their CFTR gene in the United States;

(iv) Macquarie CAF LLC has decided in its sole discretion to establish the Incremental Commitment and make the Incremental Loans; and

(v) the Borrower shall deliver or cause to be delivered officer’s certificates and legal opinions of the type delivered on the Closing Date to the extent reasonably requested by, and in form and substance reasonably satisfactory to, the Administrative Agent.

(c) Terms of New Loans. The terms and provisions of Loans made pursuant to Incremental Commitments shall be as follows:

(i) terms and provisions of Incremental Loans shall be, except as otherwise set forth herein or in the Increase Joinder, identical to the Loans (it being understood that Incremental Loans may be a part of the Loans) and to the extent that the terms and provisions of Incremental Loans are not identical to the Loans (except to the extent permitted by clause (iii) or (iv) below) they shall be reasonably satisfactory to the Administrative Agent; provided that in any event the Incremental Loans must comply with clauses (iii) and (iv) below;

(ii) the weighted average life to maturity of any Incremental Loans shall be no shorter than the remaining weighted average life to maturity of the then existing Loans;

(iii) the maturity date of Incremental Loans (the "Incremental Loan Maturity Date") shall not be earlier than the Maturity Date; and

(iv) the Interest Rate for Incremental Loans shall be determined by the Borrower and the Lenders of the Incremental Loans; provided that in the event that the Interest Rate for any Incremental Loan is greater than the Interest Rate for the Loans by more than 50 basis points, then the Interest Rate for the Loans shall be increased to the extent necessary so that the Interest Rate for the Incremental Loans is 50 basis points higher than the Interest Rate for the Loans; provided, further, that in determining the Interest Rate applicable to the Loans and the Incremental Loans, (x) original issue discount ("OID") or upfront fees (which shall be deemed to constitute like amounts of OID) payable by the Borrower to the Lenders of the Loans or the Incremental Loans in the primary syndication thereof shall be included (with OID being equated to interest based on an assumed four-year life to maturity), (y) customary arrangement or commitment fees payable to the Administrative Agent (or its respective affiliates) in connection with the Loans or to one or more arrangers (or their affiliates) of the Incremental Loans shall be excluded; and (z) if the LIBOR or Base Rate "floor" for the Incremental Loans is greater than the LIBOR or Base Rate "floor", respectively, for the existing Loans, the difference between such floor for the Incremental Loans and the Loans shall be equated to an increase in the Interest Rate for purposes of this clause (iv).

The Incremental Commitments shall be effected by a joinder agreement (the "Increase Joinder"), executed by the Borrower, the Administrative Agent and each Lender making such Incremental Commitment, in form and substance reasonably satisfactory to each of them. Notwithstanding the provisions of Section 10.01, the Increase Joinder may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.11. In addition, unless otherwise specifically provided herein, all references in Loan Documents to Loans shall be deemed, unless the context otherwise requires, to include references to Incremental Loans made pursuant to this Agreement. This Section 2.11 shall supersede any provisions in Section 10.01 to the contrary.



(d) Making of New Term Loans. On any Increase Effective Date on which new Incremental Commitments are effective, subject to the satisfaction of the foregoing terms and conditions, each Lender of such new Incremental Commitment shall make an Incremental Loan to the Borrower in an amount equal to its new Incremental Commitment.

(e) Equal and Ratable Benefit. The Loans and Commitments established pursuant to this Section shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Collateral Documents, except that the new Loans may be subordinated in right of payment or the Liens securing the new Loans may be subordinated, in each case, to the extent set forth in the Increase Joinder. The Loan Parties shall take any actions reasonably required by the Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Collateral Documents continue to be perfected under the UCC or otherwise after giving effect to the establishment of any such class of Term Loans or any such new Commitments.

### ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY

#### 3.01 Taxes.

(h) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the applicable withholding agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Loan Party or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(i) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above and without duplication of other amounts payable by the Borrower under this Section, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(j) Tax Indemnifications. (1) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the basis and the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. .

(i) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation the Loan Parties to do so), (y) the Administrative Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the

Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(k) Evidence of Payments. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(l) Status of Recipients; Tax Documentation.

(v) Any Recipient that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Recipient, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Recipient is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Recipient's reasonable judgment such completion, execution or submission would subject such Recipient to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Recipient.

(vi) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Recipient that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Recipient becomes a Recipient under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two (2) accurate, complete, executed originals of IRS Form W-9 certifying that such Recipient is exempt from U.S. federal backup withholding tax;

(B) any Foreign Recipient shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient, but not less than two (2)) on or prior to the date on

which such Foreign Recipient becomes a Recipient under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

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

(II) accurate, complete, executed originals of IRS Form W-8ECI (or successor forms);

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

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

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

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

(vii) Each Recipient 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 update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(m) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(n) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

**3.02 Illegality.** If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

**3.03 Inability to Determine Rates.** If in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof, (a) the Administrative Agent determines that (i) Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or (ii) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan (in each case with respect to clause (a)(i) above, "Impacted Loans"), or (b) the Administrative Agent or the Required Lenders determine that for any reason the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the

obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent upon the instruction of the Required Lenders revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (a)(i) of this section, the Administrative Agent, in consultation with the Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (a) of the first sentence of this section, (2) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

### **3.04 Increased Costs; Reserves on Eurodollar Rate Loans.**

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

(iii) 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 Lender (except any reserve requirement contemplated by Section 3.04(e);

(iv) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (c) through (f) of the definition of Excluded Taxes, and (C) Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(v) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the Eurodollar Rate, or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(g) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

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

(i) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender'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).

(j) Reserves on Eurodollar Rate Loans. The Borrower shall pay to each Lender, as long as such Lender 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 Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender



fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

**3.05 Compensation for Losses.** Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

### **3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. Each Lender may make any Credit Extension to the Borrower through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrower to repay the Credit Extension in accordance with the terms of this Agreement. If any Recipient requests compensation under Section 3.04, or requires the Borrower or any Loan Party to pay any Indemnified Taxes or additional amounts to any Recipient or any Governmental Authority for the account of any Recipient pursuant to Section 3.01, or if any Recipient gives a notice pursuant to Section 3.02, then at the request of the Borrower such Lender shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Recipient, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Recipient to any unreimbursed cost or expense

and would not otherwise be disadvantageous to such Recipient. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Recipient in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Recipient requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Recipient or any Governmental Authority for the account of any Recipient pursuant to Section 3.01 and, in each case, such Recipient has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrower may replace such Recipient in accordance with Section 11.13.

**3.07 Survival.** All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

#### **ARTICLE IV. CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

**4.01 Conditions.** The obligation of each Lender to make its Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(d) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) a security agreement, in substantially the form of Exhibit E (together with each other security agreement and security agreement supplement delivered pursuant to Section 6.12, in each case as amended, the "Security Agreement"), duly executed by each Loan Party, together with:

(A) certificates and instruments representing the Pledged Collateral referred to therein accompanied by undated stock powers or instruments of transfer executed in blank,

(B) properly completed financing statements in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may reasonably deem necessary or desirable in order to perfect the Liens created under the Security Agreement, covering the Collateral described in the Security Agreement,

(C) a list of UCC, United States Patent granted patents and pending patent application, Trademark Office registrations and pending registration applications and United States Copyright Office registrations and pending registration applications together with their equivalents in foreign jurisdictions, tax and judgment lien searches, or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents (together with copies of such financing statements and documents) that name any Loan Party as debtor and that are filed in those state and county jurisdictions in which any Loan Party is organized or maintains its principal place of business and such other searches that are required by the Perfection Certificate or that the Administrative Agent reasonably deems necessary or appropriate, none of which encumber the Collateral covered or intended to be covered by the Collateral Documents (other than Permitted Liens),

(D) a Perfection Certificate, in substantially the form of Exhibit H, duly executed by each of the Loan Parties, and

(E) evidence that all other actions, recordings and filings that the Administrative Agent may deem reasonably necessary in order to perfect the Liens created under the Security Agreement has been taken (including receipt of duly executed payoff letters and UCC-3 termination statements, to the extent applicable);

(iv) a copyright security agreement, patent security agreement and trademark security agreement (together with each other intellectual property security agreement delivered pursuant to Section 6.12, in each case as amended, the “Intellectual Property Security Agreement”), duly executed by each applicable Loan Party, together with evidence that all action that the Administrative Agent may reasonably deem necessary or desirable in order to perfect the Liens created under the Intellectual Property Security Agreement has been taken;

(v) a certificate of the secretary or assistant secretary of each Loan Party dated the Closing Date, certifying (A) that attached thereto is a true and complete copy of each Organizational Document of such Loan Party certified (to the extent applicable) as of a recent date by the Secretary of State of the state of its organization, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such person is a party and, in the case of Borrower, the Credit Extensions hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect and (C) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party (together with a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate required by this clause (v));

(vi) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each of the Borrower and the Guarantors is validly existing, in good standing (in so-called

“long-form” if available) and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(vii) a favorable opinion of Ropes & Gray LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, as to the matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request;

(viii) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of any and all material consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(ix) a certificate attesting to the Solvency of each Loan Party before and after giving effect to the Borrowing, from the chief financial officer of the Borrower, substantially in the form of Exhibit E;

(x) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, together with endorsements naming the Administrative Agent, on behalf of the Secured Parties, as an additional insured or loss payee, as the case may be;

(xi) a certificate signed by a Responsible Officer of the Borrower certifying (A) that, assuming those conditions specified in this Section 4.01 required to be satisfied, delivered or provided for in a manner reasonably satisfactory to the Administrative Agent have been satisfied, delivered or provided for in a manner reasonably satisfactory to the Administrative Agent, the conditions specified in this Section 4.01 have been satisfied, (B) since December 31, 2013, there has not been any change, development or event that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect and (C) with respect to certain matters referred to in Section 5.18(b);

(xii) an amendment or termination to the letter of credit facility with Bank of America, N.A., in form and substance reasonably satisfactory to the Administrative Agent, allowing for the creation of a security interest in the Collateral (as defined in the Security Agreement) by the Administrative Agent for the benefit of the Secured Parties, or any consent by Bank of America, N.A. to the creation of such security interest;

(xiii) any and all amendments relating to any and all license agreements or similar arrangements between or among the Loan Parties and any of their respective Subsidiaries relating to the Cystic Fibrosis Drug Franchise Assets, in form and substance reasonably satisfactory to the Administrative Agent, allowing for the creation and performance of a security interest in such license agreements by the Administrative Agent

for the benefit of the Secured Parties under the Loan Documents and the termination at will by the licensor or similar Person; and

(xiv) such other assurances, certificates, documents, consents or opinions as the Administrative Agent or the Required Lenders reasonably may require.

(e) The Administrative Agent shall be reasonably satisfied that all requisite Governmental Authorities, equityholders and third parties shall have approved, authorized or consented to the Transactions, and there shall be no governmental or judicial action, actual or threatened, that has or would have, individually or in the aggregate, a reasonable likelihood of restraining, preventing or imposing burdensome conditions on the transactions contemplated hereby.

(f) There shall not exist any claim, action, suit, investigation, litigation or proceeding pending or threatened by or before any court, or any governmental, administrative or regulatory agency or authority, domestic or foreign, that, in the reasonable opinion of the Administrative Agent (a) has had, or could reasonably be expected to result in liabilities in excess of the Threshold Amount, or (b) the ability of any Company to perform its obligations under the Loan Documents, or the ability of the parties to consummate the financings contemplated hereby.

(g) The Administrative Agent shall have received, at least five business days prior to the Closing Date, all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act; including, in particular, a duly executed valid form W-9 from the Borrower, or other applicable tax form.

(h) Unless waived by the Administrative Agent, the Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on 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 Borrower and the Administrative Agent).

(i) The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the Closing Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date.

(j) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(k) The Administrative Agent shall have received a Loan Notice in accordance with the requirements hereof.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender 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 Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

## ARTICLE V. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

**5.01 Existence, Qualification and Power.** Each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, 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 Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, 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.

**5.02 Authorization; No Contravention.** The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will 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 Material Contract 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 any applicable Law.

**5.03 Governmental Authorization; Other Consents.** Other than filings to perfect the security interests granted under the Collateral Documents and any filings with the SEC, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person (provided if such action is required with respect to a Contractual Obligation this Section 5.03 shall only apply to Material Contracts) is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents.

**5.04 Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to bankruptcy, insolvency, moratorium and other laws affecting creditors and secured parties generally and general principles of equity.

**5.05 Financial Statements; No Material Adverse Effect.**

(b) 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 Borrower and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in shareholders' equity 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 Borrower and its Subsidiaries as of the date thereof, including liabilities for Taxes, material commitments and Indebtedness.

(c) The unaudited consolidated balance sheets of the Borrower and its Subsidiaries dated March 31, 2014, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in shareholders' equity 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. Schedule 5.05 sets forth all material indebtedness and other liabilities, direct or contingent, of the Borrower and its consolidated Subsidiaries as of the date of such financial statements, including liabilities for Taxes, material commitments and Indebtedness.

(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.

(e) The consolidated forecasted balance sheet and statements of income and cash flows of the Borrower and its Subsidiaries delivered pursuant to Section 6.01(c) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Borrower's best estimate of its future financial condition and performance.

**5.06 Litigation.** There are no actions, suits, proceedings, claims or disputes pending or, to the Knowledge of the Borrower after due and diligent investigation, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower 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 Loan Document, or any of the transactions contemplated hereby or (b) could reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect.

**5.07 No Default.** Neither any Loan Party nor any Subsidiary thereof is in default under or with respect, or party to, to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

**5.08 Ownership of Property; Liens.** (1) Each Loan Party and each of 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.

(f) Schedule 5.08(b) sets forth a complete and accurate list of all Liens on the property or assets of each Loan Party and each of its Subsidiaries as of the Closing Date, showing as of the date hereof the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto. The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Liens set forth on Schedule 5.08(b), and as otherwise permitted by Section 7.01.

(g) Schedule 5.08(c) sets forth a complete and accurate list of all real property owned by each Loan Party and each of its Subsidiaries, showing as of the date hereof the street address, county or other relevant jurisdiction, state, record owner and book and fair value thereof. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the real property owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Liens created or permitted by the Loan Documents.

(h) (1) Schedule 5.08(d)(i) sets forth a complete and accurate list of all leases of real property under which any Loan Party or any Subsidiary of a Loan Party is the lessee, showing as of the date hereof the street address, county or other relevant jurisdiction, state, lessor, lessee, expiration date and annual rental cost thereof. Each such lease is the legal, valid and binding obligation of the lessor thereof, enforceable in accordance with its terms.

(i) Schedule 5.08(d)(ii) sets forth a complete and accurate list of all leases of real property under which any Loan Party or any Subsidiary of a Loan Party is the lessor, showing as of the date hereof the street address, county or other relevant jurisdiction, state, lessor, lessee, expiration date and annual rental cost thereof. Each such lease is the legal, valid and binding obligation of the lessee thereof, enforceable in accordance with its terms.

(i) Schedule 5.08(e) sets forth a complete and accurate list of all Investments held by any Loan Party or any Subsidiary of a Loan Party on the date hereof, showing as of the date hereof the amount, obligor or issuer and maturity, if any, thereof.



(j) Any Mortgages executed and delivered after the Closing Date will be effective to create in favor of the Administrative Agent (for the benefit of the Secured Parties) a legal, valid and enforceable first priority Lien on all of the applicable Loan Parties' right, title and interest in and to the Mortgaged Property (as such term is defined in the applicable Mortgage) thereunder and the proceeds thereof, and when such Mortgages are filed or recorded in the proper real estate filing or recording offices, and all relevant mortgage taxes and recording charges are duly paid, the Administrative Agent (for the benefit of the Secured Parties) shall have a perfected first priority Lien on, and security interest in, all right, title, and interest of the applicable Loan Parties in such Mortgaged Property and, to the extent applicable, subject to Section 9-315 of the Uniform Commercial Code, the proceeds thereof, in each case prior and superior in right to the Lien of any other person, except for Permitted Encumbrances.

#### **5.09 Environmental Compliance.**

(a) The Loan Parties and their respective Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility pursuant to any Environmental Law on their respective businesses, operations and properties or any other Environmental Liability, and as a result thereof the Borrower has reasonably concluded that such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) None of the properties currently or formerly owned, operated, leased, or otherwise occupied by any Loan Party or any of its Subsidiaries, and no property to which any of the Loan Parties or their respective Subsidiaries have transported or arranged for the transportation, treatment or disposal of any Hazardous Materials, is listed or formally proposed for listing on the National Priorities List promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") or on the CERCLIS (as defined by CERCLA) or any analogous foreign, state or local list or is adjacent to any such property; there are no and to the best knowledge of the Loan Parties and their Subsidiaries never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps, lagoons or other features in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned, operated, leased, or otherwise occupied by any Loan Party or any of its Subsidiaries or, to the best of the knowledge of the Loan Parties, on any property formerly owned, operated, leased, or otherwise occupied by any Loan Party or any of its Subsidiaries; there is no asbestos or asbestos-containing material on, at or in any property currently owned, operated, leased, or otherwise occupied by any Loan Party or any of its Subsidiaries; and Hazardous Materials have not been Released on, at, under or from any property currently or formerly owned, operated, leased, or otherwise occupied by any Loan Party or any of its Subsidiaries in a manner, form or amount which could reasonably be expected to result in material liability of any Loan Party or any Subsidiary.

(c) Neither any Loan Party nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened Release of Hazardous Materials at, on, under, or from any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned, operated, leased, or otherwise occupied by any Loan Party or any of its Subsidiaries have been managed and disposed of in a manner which could not reasonably be expected to result in material liability to any Loan Party or any of its Subsidiaries.

(d) The Loan Parties and their respective Subsidiaries: (i) are in compliance with all applicable Environmental Laws; (ii) hold all Permits (each of which is in full force and effect) required under Environmental Laws for any of their current or intended operations or for any property owned, leased, operated or otherwise occupied by any of the Loan Parties or their respective Subsidiaries ("Environmental Permits"); (iii) are and have been in compliance with all of their Environmental Permits; and (iv) to the extent within the control of the Loan Parties and their respective Subsidiaries, each of their Environmental Permits will be timely renewed and complied with, and any additional Environmental Permits that may be required of any of them or that is or is expected to become applicable to any of them will be timely obtained and complied with, without material expense, and in compliance with any Environmental Law, in the case of clauses (i), (ii), (iii) and (iv) above, except where non-compliance or the failure to hold or renew such Environmental Permits could not reasonably be expected to result in a liability above the Threshold Amount.

**5.10 Insurance.** The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, 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 Borrower or the applicable Subsidiary operates.

**5.11 Taxes.** The Borrower and each of its Subsidiaries have timely filed all federal and state income and other material tax returns and reports required to be filed, and have timely paid all federal and state income and other material Taxes (whether or not shown on a tax return), including in its capacity as a withholding agent, levied or imposed upon it or its 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 material tax assessment or other material claim against, and no material tax audit with respect to, the Borrower or any Subsidiary.

**5.12 ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the 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 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 Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Borrower, 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 Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan 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 neither the Borrower nor any ERISA Affiliate is 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 or Multiemployer Plan; (ii) 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 Code) is 60% or higher and neither the Borrower 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 60% as of the most recent valuation date; (iii) neither the Borrower 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; (iv) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (v) 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. Neither the Borrower nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan or retiree group medical plan.

**5.13 Subsidiaries; Equity Interests.** The Borrower has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned directly or indirectly by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except those created under the Collateral Documents. The Borrower has no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity Interests in the Borrower have been validly issued, are fully paid and non-assessable. Set forth on Part (c) of Schedule 5.13 is a complete and accurate list of all Loan Parties, showing as of the Closing Date (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number, if any, or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation, if any. The copy of the charter of each Loan Party and each amendment thereto

provided pursuant to Section 4.01(a)(v) is a true and correct copy of each such document, each of which is valid and in full force and effect.

**5.14 Margin Regulations; Investment Company Act.** The Borrower 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. None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

**5.15 Disclosure.** The Borrower has disclosed to the Administrative Agent and the Lenders 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, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished), when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

**5.16 Compliance with Laws.** Each Loan Party and each Subsidiary thereof is and has been in compliance in all material respects 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, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**5.17 Taxpayer Identification Number.** The Borrower’s true and correct U.S. taxpayer identification number is set forth on Schedule 11.02.

**5.18 Intellectual Property; Licenses, Etc.** (a) Schedule 5.18 sets forth a complete and accurate list of the following: (i) all Copyrights and all Trademarks of any Loan Party, that are registered, or in respect of which an application for registration has been filed or recorded, with the United States Patent and Trademark Office or the United States Copyright Office or with any other Governmental Authority (or comparable organization or office established pursuant to an international treaty or similar international agreement for the filing, recordation or registration of interests in intellectual property), together with relevant identifying information with respect to such Copyrights and Trademarks, (ii) all Patents of any Loan Party that are granted, or in respect of which an application for patent has been submitted to and is pending with the United States Patent and Trademark Office or with any other Governmental Authority (or comparable organization or office established pursuant to an international treaty or similar international agreement for the filing, recordation or registration of interests in intellectual property), together with relevant identifying information with respect to such Patents, (iii) all Domain Names of the Borrower or any Guarantor,

their respective properties or the conduct or operation of their respective businesses (including the generation of future revenues), together with relevant identifying information with respect to such Domain Names and (iv) each Copyright License, Patent License and Trademark License included in the Material IP Rights.

(a) The Material IP Rights are, in all material respects, subsisting, valid, unexpired and enforceable. Other than as disclosed to the Agent prior to the Closing Date, no written claim known to the Borrower or any Subsidiary has been made that the use or other exploitation by the Borrower, any Subsidiary or any of their licensees of any of the Material IP Rights or material intellectual property rights of another Person, including, without limitation, to advertise, display, import, manufacture, have manufactured, market, offer for sale, perform, prepare derivative works based upon, promote, reproduce, sell, use and/or otherwise distribute a Product, does or may infringe, violate or misappropriate the rights of any Person in any material respect. No holding, decision or judgment has been rendered by any Governmental Authority that would limit, invalidate, render unenforceable, cancel or create a material cloud over the validity of any Material IP Right. No action or proceeding is pending seeking to limit the scope of protection provided by, invalidate, render unenforceable, cancel or create a material cloud over the validity of any IP Right. The Borrower and its Subsidiaries have, since taking title to the Material IP Rights, performed all acts and have paid all annuities, fees, costs, expenses and taxes required to maintain the Material IP Rights in full force and effect throughout the world, as applicable. The Borrower and its Subsidiaries have filed all applications for registration and patents pertaining to the Material IP Rights of the Borrower and the Guarantors that in the good faith opinion of the Borrower are commercially reasonable and consistent with sound business practice. The Borrower and its Subsidiaries own, or are entitled to use by license or otherwise, all the Material IP Rights. To the extent any of the Material IP Rights were authored, developed, conceived or created, in whole or in part, for or on behalf of the Borrower or any Subsidiary by any other Person, then the Borrower or such Subsidiary has entered into a written agreement with such Person in which, such Person has assigned or licensed all right, title and interest in and to such Material IP Rights to the Borrower or such Subsidiary. To the Borrower's Knowledge, no slogan or other advertising material, device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Borrower or any Subsidiary or any licensee of the Borrower or any Subsidiary in the manufacture, use and sale of products under the Material IP Rights violates, infringes or misappropriates any rights held by any other Person and (ii) no claim or litigation regarding any of the Material IP Rights is pending or has been threatened in writing and remains unresolved as of the Closing Date. None of the Material IP Rights is subject to any license grant by the Borrower or any Subsidiary or similar arrangement authorizing a third party to practice any of the Material IP Rights, except for (x) license grants among the Loan Parties and (y) those license grants disclosed on Schedule 5.18.

**5.19 OFAC.** Neither the Borrower, nor any of its Subsidiaries, nor, to the Knowledge of the Borrower and its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity currently the subject of any Sanctions, nor is the Borrower or any Subsidiary located, organized or resident in a Designated Jurisdiction.

## 5.20 Compliance of Products.

(a) The Borrower and its Subsidiaries:

(i) have obtained all Required Permits, or have contracted with third parties holding Required Permits, necessary for compliance in all material respects with all Laws with respect to sourcing, manufacturing, development, testing, production, sale and distribution of Products, and all such Required Permits are in full force and effect;

(ii) have not received any adverse written communication from any Governmental Authority regarding, and there are no facts or circumstances that are likely to give rise to (A) any material adverse change in, any Required Permit, or any failure to materially comply with any Laws or any term or requirement of any Required Permit or (B) any revocation, withdrawal, suspension, cancellation, material limitation, termination or material modification of any Required Permit;

(iii) have not used the services of any Person debarred or disqualified under the provisions of the Generic Drug Enforcement Act of 1992, 21 U.S.C. Section 335a;

(iv) warrant and represent that none of their officers, directors, nor, to the Borrower's Knowledge, any of their employees, agents, Affiliates or any consultant involved in any Drug Application, has been convicted of any felony for which debarment or disqualification is authorized by 21 U.S.C. Section 335a or engaged in any other action for which debarment or disqualification is authorized by 21 U.S.C. Section 335a;

(v) warrant and represent that, none of their officers, directors, nor, to the Borrower's Knowledge, any of their employees, agents, Affiliates or any consultant has made on behalf of the Borrower an untrue statement of material fact or fraudulent statement to the FDA or failed to disclose a material fact required to be disclosed to the FDA;

(vi) warrant and represent that 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 Required Permit from the FDA or other Governmental Authority relating to the Borrower or any Subsidiary, their business operations and Products, when submitted to the FDA or other Governmental Authority were true, complete and correct in all material respects as of the date of submission or any necessary or required updates, changes, corrections or modifications to such applications, submissions, information and data have been submitted to the FDA or other Governmental Authority;

(vii) warrant and represent that all preclinical and clinical trials in respect of the activities of the Borrower and its Subsidiaries being conducted by or on behalf of the Borrower and its Subsidiaries producing data submitted to any Governmental Authority, including the FDA and its counterparts worldwide, in connection with any Required Permit, are being or have been conducted in compliance in all material respects with the required experimental protocols, procedures and controls pursuant to applicable Laws;

(viii) have not received any written notice that any Governmental Authority, including without limitation the FDA, the DEA, the Office of the Inspector General of HHS or the United States Department of Justice, has commenced or threatened to initiate any enforcement action against the Borrower or a Subsidiary, any action to enjoin the Borrower or a 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 that could reasonably be expected to have a Material Adverse Effect;

(ix) neither the Borrower nor any Subsidiary has received from the FDA or the DEA, a Warning Letter, Form FDA-483, "Untitled Letter", other correspondence or notice setting forth allegedly objectionable observations for correction (except with respect to observations and violations which could not reasonably be expected to have a Material Adverse Effect) or alleged violations of laws and regulations enforced by the FDA or the DEA, or any comparable correspondence from any state or local authority responsible for regulating drug products and establishments, or any comparable correspondence from any foreign counterpart of the FDA with regard to any Product or the manufacture, processing, packing, or holding thereof; and

(x) neither the Borrower nor any Subsidiary has (A) instituted any Recalls or Market Withdrawals, (B) issued or received any Safety Notices, (C) Knowledge of any material product complaints with respect to the Products, to the extent that any such matter could reasonably be expected to have a Material Adverse Effect.

(b) With respect to Products:

(i) All Products are listed on Schedule 1.01; provided, that, if after the Closing Date, the Borrower or any Subsidiary wishes to sell or market any new Product, the Borrower shall update Schedule 1.01 to include such Product;

(ii) Each Product is not adulterated or misbranded within the meaning of the FDCA;

(iii) Each Product is not an article prohibited from introduction into interstate commerce under the provisions of Sections 404, 505 or 512 of the FDCA;

(iv) Each Product has been manufactured, imported, possessed, owned, warehoused, marketed, promoted, sold, labeled, furnished, distributed and marketed in accordance with all applicable Permits and Laws, except where a failure to do so could not reasonably be expected to have a Material Adverse Effect; and

(v) Each Product has been and shall be manufactured in accordance with good manufacturing practices, except where a failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.21 Anti-Corruption Laws.** The Borrower and its Subsidiaries have conducted their businesses in material compliance with applicable anti-corruption laws and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

**5.22 Solvency.** Each Loan Party is, on a consolidated basis, Solvent.

**5.23 Casualty, Etc.** Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance), condemnation or eminent domain proceeding that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.24 Labor Matters.** The Borrower and its Subsidiaries are in compliance in all material respects with all Laws relating to the employment of labor (including those relating to wages and hours, vacation and leaves of absence, worker classification, occupational health and safety, insurance, equal employment opportunity, and collective bargaining.) There are no collective bargaining agreements or Multiemployer Plans covering the employees of the Borrower or any of its Subsidiaries as of the Closing Date and neither the Borrower nor any Subsidiary has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years. There are no pending unfair labor practice charges filed, or threatened to be filed, with the National Labor Relations Board or similar Governmental Authority.

**5.25 Senior Debt.** The Obligations are designated in a writing addressed to the holders of the Obligations executed by, or on behalf of, the holders of the Subordinated Indebtedness as “Senior Debt”, “Designated Senior Debt” or the equivalent thereof for all purposes of all Subordinated Indebtedness.

## ARTICLE VI. AFFIRMATIVE COVENANTS

So long as any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Subsidiary to:

**6.01 Financial Statements.** Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Borrower (or, if earlier, 15 days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, and consolidated statements of 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 reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance



with generally accepted auditing standards and shall not be subject to “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (or, if earlier, 5 days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)) a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, the related consolidated statements of income or operations for such fiscal quarter and for the portion of the Borrower’s fiscal year then ended, and the related consolidated statements of changes in shareholders’ equity and cash flows for such fiscal quarter and for the portion of the Borrower’s fiscal year then ended, in each case setting forth in comparative form, as applicable, 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, such consolidated statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders’ equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) as soon as available, but in any event within 45 days after the end of each fiscal year of the Borrower, an annual business plan and budget of the Borrower and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the Borrower, in form reasonably satisfactory to the Administrative Agent and the Required Lenders, of consolidated balance sheets and statements of income or operations and cash flows of the Borrower and its Subsidiaries on a quarterly basis for the immediately following fiscal year (including the fiscal year in which the Maturity Date occurs).

As to any information contained in materials furnished pursuant to Section 6.02(d), the Borrower shall not be separately required to furnish such information under subsection (a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in subsections (a) and (b) above at the times specified therein.

**6.02 Certificates; Other Information.** Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) a report of Kalydeco Product US and Foreign Revenue detailing (i) revenue from sales of the Kalydeco Product derived from customers located in the United States over the trailing twelve month period ending on such date of determination and (ii) revenue from sales of the Kalydeco Product derived from customers located outside of the United States over the trailing twelve month period ending on such date of determination, which revenue, if consisting of currency other than US Dollars, will be calculated using the foreign exchange rates prevailing as of the Closing Date and as at the date of determination, (iii) the relevant foreign exchange rates used in the calculation described in clause (ii) above

and the sources of such rates, which rates and sources shall be reasonable satisfactory to the Administrative Agent and (iv) such other detail reasonably requested by the Administrative Agent, duly completed and signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower (which delivery may, unless the Administrative Agent, or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes);

(b) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Borrower by independent accountants in connection with the accounts or books of the Borrower or any Subsidiary, or any audit of any of them;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower 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) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or any Subsidiary thereof in an aggregate principal amount in excess of the Threshold Amount pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(e) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation regarding financial or other operational results of any Loan Party or any Subsidiary thereof and copies of any written communication from the FDA or any other regulatory body, in each case, that is reasonably expected to result in (i) a material negative effect on the Borrower's ability to obtain approval for ivacaftor in combination with lumacaftor, (ii) a material adverse change to the label (package insert) for, or recall of, KALYDECO or, (iii) post-approval, if any, a material adverse change to the label (package insert), or recall of, ivacaftor in combination with lumacaftor or another CFTR corrector active ingredient;

(f) as soon as available, but in any event within 60 days after the end of each fiscal year of the Borrower, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for each Loan Party and its Subsidiaries and containing such additional information as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably specify;

(g) promptly, such additional information regarding the business, financial or corporate affairs of the Borrower or any Subsidiary, or compliance with the terms of the

Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request;

(h) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any property described in the Mortgages to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law; and

(i) as soon as available, but in any event within 60 days after the end of each fiscal year of the Borrower, a report supplementing the Schedules to this Agreement to the extent there have been any changes thereto, each such report to be signed by a Responsible Officer of the Borrower and to be in a form reasonably satisfactory to the Administrative Agent.

Information required to be delivered pursuant to Section 6.01 or Section 6.02(c) shall be deemed to have been delivered if such information, or one or more annual or quarterly reports containing such information, shall have been posted by the Administrative Agent on the Platform or shall be available on the website of the SEC at <http://www.sec.gov> or on the website of the Borrower (provided, in each case, that the Borrower has notified the Administrative Agent (including by email) that such information is available on such website and, if requested by the Administrative Agent, shall have provided hard copies to the Administrative Agent). Information required to be delivered pursuant to Section 6.01 and this Section 6.02 may also be delivered by electronic communications pursuant to procedures approved by the Administrative Agent. Each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower 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 Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC", the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in

Section 11.07); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information”.

**6.03 Notices.** Promptly notify the Administrative Agent and each Lender:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws;

(c) of the occurrence of any ERISA Event;

(d) of any Recall and of any Market Withdrawal affecting the Kalydeco Product or any other Product the Borrower begins marketing after the Closing Date, in each case providing reasonable detail; and

(e) of any material change in accounting policies or financial reporting practices by the Borrower or any Subsidiary; and

(f) of the (i) occurrence of any Disposition or Casualty Event with respect to property or assets for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.05(b)(i), and (ii) incurrence or issuance of any Indebtedness for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.05(b)(ii).

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04 Payment of Obligations.** Except where failure to pay and discharge its obligations and liabilities could not reasonably be expected to result in liability equal to or greater than the Threshold Amount, pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (i) 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 (which proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien) and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary; (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (iii) all Indebtedness, as and when due

and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness; and (b) timely file all material tax returns required to be filed.

**6.05 Preservation of Existence, Etc.** (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; (b) 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 failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect; and (d) preserve or renew all of its registered Material IP Rights or Material IP Rights in respect of which an application for registration has been filed or recorded with the United States Copyright office or the United States Patent and Trademark Office, except with the consent of the Required Lenders, which consent may not be unreasonably withheld or delayed.

**6.06 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; and (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

**6.07 Maintenance of Insurance.** (a) Maintain with financially sound and reputable insurance companies that are not Affiliates of the Borrower, 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 and all such insurance shall (i) provide for not less than 30 days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance, (ii) name the Administrative Agent as mortgagee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable, (iii) if reasonably requested by the Administrative Agent, include a breach of warranty clause and (iv) be reasonably satisfactory in all other respects to the Administrative Agent.

**6.08 Compliance with Laws.** Comply in all material respects 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.

**6.09 Books and Records.** Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be.

**6.10 Inspection Rights; Annual Lender Meetings.**

(a) Permit representatives and independent contractors of the Administrative Agent and each Lender 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 Borrower (limited to reasonable out-of-pocket costs of the Administrative Agent) and at such reasonable times during normal business hours and up to once per year, upon reasonable advance notice to the Borrower; provided, however, that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing all at the expense of the Borrower at any time during normal business hours and without advance notice.

(b) The Borrower shall meet on an annual basis with the Lenders (including telephonic meetings at the discretion of the Required Lenders) in which the operations, business, properties, liabilities, condition and prospects may be discussed (at the discretion of the Lenders in attendance). The Borrower shall reimburse the Lenders for all reasonable out-of-pocket costs and expenses incurred in connection with traveling to and from and attending such meeting.

**6.11 Use of Proceeds.** Use the proceeds of the Credit Extensions for Permitted Acquisitions, Investments permitted hereunder and general corporate purposes not in contravention of any Law or of any Loan Document.

**6.12 Covenant to Guarantee Obligations and Give Security.**

(a) Upon the formation or acquisition of any new direct Subsidiary (other than an Immaterial Subsidiary) by any Loan Party, then the Borrower shall, at the Borrower's expense:

(i) within 15 days after such formation or acquisition, cause such Domestic Subsidiary, and cause each direct and indirect parent of such Subsidiary (if it has not already done so) that is a Domestic Subsidiary, to duly execute and deliver to the Administrative Agent a guaranty or guaranty supplement, in form and substance reasonably satisfactory to the Administrative Agent, guaranteeing the other Loan Parties' obligations under the Loan Documents (other than Affected Subsidiaries, Immaterial Subsidiaries or Subsidiaries that are prohibited from doing so because of law or regulation, but only to the extent such law or regulation is effective with respect to such prohibition),

(ii) within 15 days after such formation or acquisition, furnish to the Administrative Agent a description of the real and personal properties of such Domestic Subsidiary, in detail reasonably satisfactory to the Administrative Agent,

(iii) within 30 days after such formation or acquisition, cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to duly execute and deliver to the Administrative Agent deeds of trust, trust deeds, deeds to secure debt, mortgages, security agreement supplements, Perfection Certificate, IP

Security Agreements and other security and pledge agreements, as specified by and in form and substance reasonably satisfactory to the Administrative Agent (including delivery of all certificates, if any, representing the Equity Interests in and of such Subsidiary, and other instruments of the type specified in Section 4.01(a)(iii)), securing payment of all the Obligations of such Subsidiary or such parent, as the case may be, under the Loan Documents and constituting Liens on all such real and personal properties (other than Affected Foreign Subsidiaries, Immaterial Subsidiaries or Subsidiaries that are prohibited from doing so because of law or regulation, but only to the extent such law or regulation is effective with respect to such prohibition),

(iv) within 30 days after such formation or acquisition, cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to take whatever action (including the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the deeds of trust, trust deeds, deeds to secure debt, mortgages, security agreement supplements, IP Security Agreements and security and pledge agreements delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms (other than Affected Subsidiaries, Immaterial Subsidiaries or Subsidiaries that are prohibited from doing so because of law or regulation, but only to the extent such law or regulation is effective with respect to such prohibition),

(v) within 60 days after such formation or acquisition, deliver to the Administrative Agent, upon the request of the Administrative Agent in its reasonable discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (i), (iii) and (iv) above, and as to such other matters as the Administrative Agent may reasonably request, and

(vi) as promptly as practicable after such formation or acquisition, deliver, upon the request of the Administrative Agent in its reasonable discretion, to the Administrative Agent with respect to each parcel of real property owned by the Domestic Subsidiary that is the subject of such formation or acquisition title policies, surveys and engineering, soils and other reports, and environmental assessment reports, each in scope, form and substance reasonably satisfactory to the Administrative Agent, provided, however, that to the extent that any Loan Party or any of its Subsidiaries shall have otherwise received any of the foregoing items with respect to such real property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent.

Notwithstanding anything to the contrary in this Section 6.12(a), no Subsidiary or direct or indirect parent of such Subsidiary shall pledge more than 65% of the Equity Interests of any Affected Subsidiary; provided that if an entity that is an Affected Subsidiary ceases

to be an Affected Subsidiary, the provisions of this Section 6.12(a) shall apply as if such Subsidiary is acquired or formed as of the time it ceases to be an Affected Subsidiary.

(b) Upon the acquisition of any property by any Loan Party, if such property, in the reasonable judgment of the Administrative Agent, shall not already be subject to a perfected first priority security interest in favor of the Administrative Agent for the benefit of the Secured Parties, then the Borrower shall, at the Borrower's expense:

(i) within 15 days after such acquisition, furnish to the Administrative Agent a description of the property so acquired in detail reasonably satisfactory to the Administrative Agent,

(ii) within 30 days after such acquisition, cause the applicable Loan Party to duly execute and deliver to the Administrative Agent Mortgages, as specified by and in form and substance reasonably satisfactory to the Administrative Agent, securing payment of all the Obligations of the applicable Loan Party under the Loan Documents and constituting Liens on all such properties,

(iii) within 30 days after such acquisition, cause the applicable Loan Party to take whatever action (including the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on such property, enforceable against all third parties,

(iv) within 60 days after such acquisition, deliver to the Administrative Agent, upon the request of the Administrative Agent in its reasonable discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (ii) and (iii) above and as to such other matters as the Administrative Agent may reasonably request,

(v) as promptly as practicable after any acquisition of a real property, deliver, upon the request of the Administrative Agent in its reasonable discretion, to the Administrative Agent with respect to such real property title reports, surveys and engineering, soils and other reports, and environmental assessment reports, each in scope, form and substance reasonably satisfactory to the Administrative Agent, provided, however, that to the extent that any Loan Party or any of its Subsidiaries shall have otherwise received any of the foregoing items with respect to such real property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent, and



(vi) promptly provide evidence that all other action that the Administrative Agent may deem reasonably necessary or desirable in order to create valid first and subsisting Liens on the property described in the Mortgages has been taken.

Notwithstanding anything to the contrary in this Section 6.12(b), no Subsidiary or direct or indirect parent of such Subsidiary shall pledge more than 65% of the Equity Interests of any Affected Subsidiary; provided that if an entity that is an Affected Subsidiary ceases to be an Affected Subsidiary, the provisions of this Section 6.12(b) shall apply as if the Equity Interests of such Subsidiary are acquired as of the time it ceases to be an Affected Subsidiary.

(c) Upon the request of the Administrative Agent following the occurrence and during the continuance of an Event of Default, the Borrower shall, at the Borrower's expense:

(ii) within 10 days after such request, furnish to the Administrative Agent a description of the real and personal properties of the Loan Parties and their respective Subsidiaries in detail reasonably satisfactory to the Administrative Agent,

(iii) within 15 days after such request, duly execute and deliver, and cause each Loan Party (other than an Affected Subsidiary) (if it has not already done so) to duly execute and deliver to the Administrative Agent Mortgages, security agreement supplements, IP Security Agreements and other security and pledge agreements, as specified by and in form and substance reasonably satisfactory to the Administrative Agent (including delivery of all certificates, if any, representing the Equity Interests in and of such Subsidiary, and other instruments of the type specified in Section 4.01(a)(iii)), securing payment of all the Obligations of the applicable Loan Party under the Loan Documents and constituting Liens on all such properties,

(iv) within 30 days after such request, take, and cause each Loan Party (other than an Affected Subsidiary) to take, whatever action (including the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the deeds of trust, trust deeds, deeds to secure debt, mortgages, security agreement supplements, IP Security Agreements and security and pledge agreements delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms,

(v) within 60 days after such request, deliver to the Administrative Agent, upon the request of the Administrative Agent in its reasonable discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (ii) and (iii) above, and as to such other matters as the Administrative Agent may reasonably request, and

(vi) as promptly as practicable after such request, deliver, upon the request of the Administrative Agent in its sole discretion, to the Administrative Agent with respect to each parcel of real property owned by the Borrower and its Subsidiaries, title policies, surveys and engineering, soils and other reports, and environmental assessment reports, each in scope, form and substance reasonably satisfactory to the Administrative Agent, provided, however, that to the extent that any Loan Party or any of its Subsidiaries shall have otherwise received any of the foregoing items with respect to such real property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent.

Notwithstanding anything to the contrary in this Section 6.12(c), no Loan Party shall pledge more than of 65% of the Equity Interests of any Affected Subsidiary; provided that if an entity that is an Affected Subsidiary ceases to be an Affected Subsidiary, the provisions of this Section 6.12(c) shall apply to such Subsidiary as of the time it ceases to be an Affected Subsidiary.

(d) At any time upon reasonable request of the Administrative Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem reasonably necessary or desirable in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such guaranties, deeds of trust, trust deeds, deeds to secure debt, mortgages, security agreement supplements, IP Security Agreements and other security and pledge agreements.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document,

(i) provided that the Massachusetts Security Corporation complies with the requirements necessary to qualify as a Massachusetts "Security Corporation" pursuant to regulation 830 CMR63.38B.1 issued pursuant to Massachusetts General Law c. 63, §38B, the Massachusetts Security Corporation shall not be required to (i) become a Loan Party, (ii) guarantee the Obligations of Borrower, or (iii) grant any pledge and security interest in and to the assets of the Massachusetts Security Corporation; and

(ii) the provisions of this Section 6.12 shall be applicable to the Patents and Trademarks of any and all Loan Parties that are registered under the laws of any Relevant Foreign Jurisdictions.

**6.13 Compliance with Environmental Laws.** Comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and conduct any investigation, study, sampling and testing, and undertake any cleanup, response or other corrective action necessary to address all Hazardous Materials at, on, under or emanating from any of properties owned, leased or operated by it in accordance with the requirements of all Environmental Laws; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith

and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

**6.14 Further Assurances.** Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

#### **6.15 Products and Required Permits.**

(a) Without limiting the generality of Section 6.08, in connection with the development, testing, manufacture, marketing or sale of each and any Product by the Borrower or any Subsidiary (other than Products abandoned in the ordinary course of the Borrower's business), the Borrower or such Subsidiary shall comply in all material respects with all Required Permits at all times issued by any Government Authority, specifically including the FDA, with respect to such development, testing, manufacture, marketing or sales of such Product by the Borrower or such Subsidiary.

(b) Without limiting the generality of clause (a) above, Borrower shall immediately and in any case within five (5) Business Days give written notice to Administrative Agent upon a Responsible Officer of the Borrower becoming aware that any of the representations and warranties set forth in Section 5.20 with respect to any Product have become incorrect in any material respect (provided that, for the avoidance of doubt, the giving of such notice shall not cure or result in the automatic waiver of any Default or Event of Default that may have resulted from such breach of such representation or warranty).

#### **6.16 [Intentionally Omitted]**

#### **6.17 Information Regarding Collateral**

(b) Not effect any change (i) in any Loan Party's legal name, (ii) in the location of any Loan Party's chief executive office, (iii) in any Loan Party's identity or organizational structure, (iv) in any Loan Party's Federal Taxpayer Identification Number or organizational identification number, if any, or (v) in any Loan Party's jurisdiction of organization (in each

case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), until (A) it shall have given the Administrative Agent not less than 15 days' prior written notice (in the form of certificate signed by a Responsible Officer), or such lesser notice period agreed to by the Administrative Agent, of its intention so to do, clearly describing such change and providing such other information in connection therewith as the Administrative Agent may reasonably request and (B) it shall have taken all action reasonably satisfactory to the Administrative Agent to maintain the perfection and priority of the security interest of the Administrative Agent for the benefit of the Secured Parties in the Collateral, if applicable. Each Loan Party agrees to promptly provide the Administrative Agent with certified Organization Documents reflecting any of the changes described in the preceding sentence.

(c) Concurrently with the delivery of financial statements pursuant to Section 6.01(a), deliver to the Administrative Agent a Perfection Certificate and a certificate of a Responsible Officer of the Borrower.

**6.18 Material Contracts.** Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time reasonably requested by the Administrative Agent and, upon request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**6.19 Designation as Senior Debt.** Designate all Obligations as "Designated Senior Debt" under, and defined in, Subordinated Indebtedness.

**6.20 Anti-Corruption Laws.** Conduct its businesses in compliance in all material respects with applicable anti-corruption laws and maintain policies and procedures designed to promote and achieve compliance with such laws.

**6.21 Post-Closing Covenants.** On or before the applicable date set forth below for each action described below, or such later date agreed to in writing by Administrative Agent in its sole discretion, Borrower shall take, or cause to be taken, the action specified and deliver the required agreements, as applicable. The failure to have taken such actions or deliver such agreements shall not constitute a Default or an Event of Default or a breach of any representation and warranty until the date specified below (as such date may be extended as provided above in this Section 6.21); provided that failure to have taken such action or make such required delivery by the date required by this Section 6.21 shall be an immediate Event of Default.

(a) Loan Parties shall obtain and deliver to Agent within 60 days after the Closing Date fully executed Control Agreements (as defined in the Security Agreement) for all deposit accounts, securities accounts and commodities accounts of the Loan Parties (other than Excluded Accounts (as defined in the Security Agreement)).

(b) Loan Parties shall within 60 days of the Closing Date deliver a pledge, pursuant to documentation reasonably acceptable to Administrative Agent and effective under the laws of the Relevant Foreign Jurisdictions, of all Patents and Trademarks registered under such laws, together with opinions of counsel in form and substance reasonably satisfactory to the Administrative Agent, and thereafter, within 60 days of notice from the Administrative Agent, deliver a pledge, pursuant to documentation reasonably acceptable to the Administrative Agent and effective under the laws of such additional jurisdiction as the Administrative Agent shall reasonably request, all Patents and Trademarks registered under such laws, together with opinions of counsel in form and substance reasonably satisfactory to the Administrative Agent.

(c) Loan Parties shall within 30 days of the Closing Date deliver to the Administrative Agent all certificates and instruments evidencing the Equity Interests of the direct Foreign Subsidiaries of the Loan Parties that constitute Pledged Collateral (as defined in the Security Agreement), accompanied by undated stock powers or instruments of transfer executed in blank.

(d) Loan Parties shall within 14 days of the Closing Date deliver to the Administrative Agent all Pledged Debt Securities (as defined in the Security Agreement), to the extent not already delivered on the Closing Date.

## ARTICLE VII. NEGATIVE COVENANTS

So long as any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

**7.01 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, or sign or file or suffer to exist under the Uniform Commercial Code of any jurisdiction a financing statement that names the Borrower or any of its Subsidiaries as debtor, or assign any accounts or other right to receive income, other than the following:

(j) Liens pursuant to any Loan Document;

(k) Liens existing on the date hereof and listed on Schedule 5.08(b) 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 7.03(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 7.03(b);

(l) Liens for taxes 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;

(m) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted (which proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien), if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(n) 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;

(o) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(p) 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;

(q) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);

(r) Liens securing Indebtedness permitted under Section 7.03(e) and 7.03(v); provided that (A) such Liens attach concurrently with or within 270 days after the acquisition, repair, replacement, construction or improvement (as applicable) of the property subject to such Liens, (B) such Liens do not at any time encumber any property other than the property financed by such Indebtedness except for accessions to such property and the proceeds and the products thereof and (C) with respect to Capitalized Lease Obligations, such Liens do not at any time extend to or cover any assets (except for accessions to or proceeds of such assets) other than the assets subject to such Capitalized Lease Obligations; provided further that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(s) Liens on the assets of Foreign Subsidiaries securing Indebtedness permitted under Section 7.03(j);

(t) Liens (other than on Cystic Fibrosis Drug Franchise Assets) securing Indebtedness permitted by 7.03(g) in an aggregate amount not to exceed the Threshold Amount at any time outstanding;

(u) leases, licenses, subleases or sublicenses to the extent permitted under 7.05(f) and 7.05(j);

(v) Liens (A) in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the

ordinary course of business or (B) on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit permitted under Section 7.03 and issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(w) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection;

(x) Liens (A) on cash advances or escrow deposits in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 7.02 to be applied against the purchase price for such Investment or otherwise in connection with any escrow arrangements with respect to any such Investment or any Disposition permitted under Section 7.05 (including any letter of intent or purchase agreement with respect to such Investment or Disposition), or (B) consisting of an agreement to dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(y) Liens granted by a Subsidiary that is not a Loan Party in favor of any Loan Party;

(z) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Subsidiary, in each case after the date hereof (other than Liens on the Equity Interests of any Person that becomes a Subsidiary); provided that (A) such Lien was not created in contemplation of such acquisition or such Person becoming a Subsidiary, (B) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subject to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require or include, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), and (C) the Indebtedness secured thereby is permitted under Section 7.03(n);

(aa) Liens deemed to exist in connection with Investments in repurchase agreements related to Cash Equivalents;

(bb) Liens that are contractual rights of setoff (A) relating to the establishment of depository relations with banks not given in connection with the incurrence of Indebtedness for borrowed money or (B) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Subsidiaries in the ordinary course of business;

(cc) Liens on cash pledged to secure Indebtedness permitted by Section 7.03(h);

(dd) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto and deposits made in the ordinary course of business to secure liability to insurance carriers; and

(ee) (A) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (B) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries.

**7.02 Investments.** Make any Investments, except:

(g) Investments held by the Borrower or such Subsidiary in the form of Cash Equivalents;

(h) Loans or advances to officers, directors and employees of the Borrower and Subsidiaries (i) in an aggregate amount not to exceed \$5,000,000 at any time outstanding, for relocation (ii) to purchase stock in the Borrower, provided that such Investments shall be non-cash, and (iii) for entertainment, travel and similar ordinary business purposes;

(i) (i) Investments by the Borrower and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by the Borrower and its Subsidiaries in Loan Parties (other than Holdings), (iii) additional Investments by Subsidiaries of the Borrower that are not Loan Parties in other Subsidiaries that are not Loan Parties and (iv) so long as no Event of Default has occurred and is continuing or would result from such Investment, additional Investments by the Loan Parties in Subsidiaries that are not Loan Parties in an aggregate amount invested from the date hereof not to exceed, in the aggregate with any Guarantees provided under Section 7.03(k), \$20,000,000 in cash Investments over the term of this Agreement (provided that Cystic Fibrosis Drug Franchise Assets may not be invested in non-Loan Party Subsidiaries under this Section 7.02(c));

(j) 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;

(k) Guarantees permitted by Section 7.03;

(l) Investments existing on the date hereof (other than those referred to in Section 7.02(c)(i)) and set forth on Schedule 5.08(e);

(m) other Investments not exceeding \$15,000,000 in the aggregate in any fiscal year of the Borrower;



(n) acquisitions of, investments in, and loans and advances to, joint ventures and other Persons by the Borrower and its Subsidiaries, so long as the aggregate amount invested, loaned or advanced (determined without regard to any write-downs or write-offs of such investments, loans or advances) does not exceed, when aggregated with all other Investments made by the Borrower and its Subsidiaries pursuant to this Section 7.02(h) and Section 7.02(i), \$100,000,000 per year, subject to the further provisions of this Section 7.02;

(o) Permitted Acquisitions;

(p) [intentionally omitted];

(q) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.05;

(r) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(s) advances of payroll payments to employees in the ordinary course of business;

(t) Investments of a Subsidiary acquired after the Closing Date or of a Person merged, amalgamated or consolidated with any Subsidiary in accordance with this Section and Section 7.04 after the Closing Date (other than existing Investments in Subsidiaries of such Subsidiary or Person) to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(u) the licensing, sublicensing, or contribution of rights in any IP Rights pursuant to licensing, joint marketing, distribution, or development arrangements in the ordinary course of business and permitted under Section 7.05(f);

(v) Investments to the extent that payment for such Investments is made solely by the issuance of Equity Interests of the Borrower (or any direct or indirect parent of the Borrower) to the seller of such Investments;

(w) Subsidiaries of Borrower may be established or created if the Borrower and such Subsidiary comply with the requirements of Section 6.12, if applicable; provided that, in each case, to the extent such new Subsidiary is created solely for the purpose of consummating an acquisition permitted by this Section 7.02, and such new Subsidiary at no time holds any assets or liabilities other than any merger consideration contributed to it contemporaneously with the closing of such transactions, such new Subsidiary shall not be required to take the actions set forth in Section 6.12, as applicable, until the respective acquisition is consummated (at which time the surviving entity of the respective transaction shall be required to so comply in accordance with the provisions thereof);

(x) Investments in Swap Contracts permitted hereunder; and

(y) Investments by the Borrower in the Massachusetts Security Corporation;

provided that the baskets in sections 7.02(h) and 7.02(i) above shall be unlimited:

(x) if during the Borrower's most recently ended fiscal quarter the Borrower's net product revenue (as calculated in accordance with GAAP consistent with past practice) exceeded \$400,000,000; or

(y) if the requirements of clause (x) above have not been satisfied for such fiscal quarter, to the extent that the Borrower and its Subsidiaries maintain in the aggregate at least \$450,000,000 in cash and/or Cash Equivalents (the "Required Cash") (which value will be determined on a daily basis) immediately after giving effect to the applicable Investment; provided that Required Cash as used in this Section shall be increased by the amount of any advance of Incremental Loans and shall be reduced by any payments made under Section 2.03(a) or Section 2.04.

Notwithstanding anything in this Agreement to the contrary, without consent of the Administrative Agent, cash payments for contingent or other obligations shall not be permitted with respect to any Investment otherwise permitted under Section 7.02(h) or 7.02(i) unless and only to the extent the Borrower and its Subsidiaries are permitted to make an Investment in such amount under Section 7.02(h) or 7.02(i) (as modified by these further provisions to Section 7.02) on the date of such cash payment.

**7.03 Indebtedness.** Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.03 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 and 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 and (ii) the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate;

(c) Guarantees of the Borrower or any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any Guarantor;

(d) obligations (contingent or otherwise) of the Borrower or any Subsidiary existing or arising under any Swap Contract, provided that 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”;

(e) Indebtedness in respect of capital leases (other than capitalized real estate leases), Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(i); provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed (i) \$35,000,000 per year for fiscal year 2014 and (ii) \$30,000,000 per year for each fiscal year thereafter;

(f) Indebtedness under the Master Lease Agreement No. 1, dated as of June 26, 2013, among the Borrower and Macquarie Corporate and Asset Funding Inc., and related documents and all refinancings thereof;

(g) Indebtedness in an aggregate principal amount not to exceed \$15,000,000 at any time outstanding;

(h) Indebtedness in respect of a letter of credit facility with Bank of America, N.A. (or one of its affiliates or any other letter of credit issuer) in an aggregate amount not to exceed \$35,000,000;

(i) Subordinated Indebtedness consisting of convertible subordinated debt instruments so long as (i) such convertible subordinated debt matures at least 12 months after the Maturity Date, (ii) such convertible subordinated debt does not amortize or make any other cash principal payments other than as agreed to by the Required Lenders, (iii) interest and fees with respect to such convertible subordinated debt are on prevailing market terms and (iv) such convertible subordinated debt is subordinated to the Obligations on customary terms reasonably acceptable to the Required Lenders;

(j) Indebtedness of Foreign Subsidiaries in an aggregate amount not to exceed \$20,000,000 at any time outstanding;

(k) Unsecured Guarantees by the Borrower or any of its Subsidiaries of Indebtedness of Foreign Subsidiaries pursuant to Section 7.03(j);

(l) Indebtedness permitted pursuant to Section 7.02(c);

(m) Indebtedness of any Subsidiary that is not a Loan Party owing to any other Subsidiary that is not a Loan Party;

(n) Indebtedness of any Person that becomes a Subsidiary of the Borrower (or of any Person not previously a Guarantor that is merged, amalgamated or consolidated with or into the Borrower or a Guarantor) after the Closing Date as a result of a Permitted Acquisition, or Indebtedness of any Person that is assumed by the Borrower or any of its Subsidiaries in connection with an acquisition of assets by the Borrower or such Subsidiary in a Permitted Acquisition, and all refinancings thereof; provided that (A) such Indebtedness is not incurred in contemplation of such Permitted Acquisition, (B) provided further that the aggregate principal amount of Indebtedness that is outstanding in reliance on this clause (vii) shall not, at any time outstanding, exceed \$25,000,000;

(o) Indebtedness representing deferred compensation or stock-based compensation to employees of the Borrower and its Subsidiaries incurred in the ordinary course of business;

(p) Indebtedness constituting indemnification obligations or obligations in respect of purchase price or other similar adjustments incurred in a Permitted Acquisition, any other Investment or any Disposition, in each case permitted under this Agreement;

(q) Indebtedness consisting of obligations under deferred consideration (earn-outs, indemnifications, incentive non-competes, milestone payments and other contingent obligations) or other similar arrangements incurred in connection with any Permitted Acquisition or other Investment permitted hereunder;

(r) obligations of the Borrower or any of its Subsidiaries in respect of any overdraft and related liabilities arising from treasury, depository, credit card, purchasing card and cash management services or any automated clearing house transfers of funds and other Indebtedness in respect of netting services, overdraft protections, cash pooling, employee credit cards and similar arrangements, in each case, in connection with deposit accounts in the ordinary course of business;

(s) Indebtedness incurred by the Borrower or any of its Subsidiaries in respect of bankers' acceptances or similar instruments (other than letters of credit) issued or created in the ordinary course of business in an aggregate amount not to exceed \$5,000,000, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other reimbursement-type obligations (other than obligations in respect of letters of credit) regarding workers compensation claims; provided that the reimbursement obligations in respect thereof are reimbursed within 60 days following the date thereof;

(t) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Subsidiaries, in each case in the ordinary course of business or consistent with past practice and in an aggregate amount not to exceed \$5,000,000;

(u) Indebtedness consisting of insurance premium financing and take or pay obligations contained in supply agreements in the ordinary course of business; and

(v) Indebtedness in respect of capitalized real estate leases.

**7.04 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, except that, so long as no Event of Default exists or would result therefrom:

(a) any Subsidiary may merge with or liquidate into (i) the Borrower, provided that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when any Guarantor is merging with or liquidating into another Subsidiary, the Guarantor shall be the continuing or surviving Person;

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Subsidiary; provided that if the transferor in such a transaction is a Guarantor, then the transferee must either be the Borrower or Guarantor;

(c) the Borrower may merge, amalgamate or consolidate with any other Person; provided that (A) the Borrower shall be the continuing or surviving Person, (B) any Investment in connection therewith is permitted under Section 7.02, (C) no Event of Default shall have occurred and be continuing and (D) that such merger, consolidation or amalgamation shall not include or result in any contingent liabilities that could reasonably be expected to be materially adverse to the business, financial condition, or operations of the Borrower and its Subsidiaries, taken as a whole (as determined in good faith by the board of directors (or persons performing similar functions) of the Borrower or such Subsidiary if the board of directors is otherwise approving such transaction and, in each other case, by a Responsible Officer);

(d) any Subsidiary of the Borrower may merge, consolidate or amalgamate with any other Person in order to effect an Investment permitted pursuant to Permitted Acquisitions under Section 7.02; provided that the continuing or surviving Person shall be a Subsidiary of the Borrower (or if any of the Subsidiaries is a Loan Party then the surviving Person shall be a Loan Party), which together with each of its Subsidiaries, shall have complied with the requirements of Section 6.12 (or arrangements for the compliance with such requirements within the applicable times set forth in Section 6.12 shall have been made) and if the other party to such transaction is not a Loan Party, no Event of Default exists after giving effect to such transaction; and

(e) any Subsidiary of the Borrower may effect a merger, dissolution, liquidation consolidation or amalgamation to effect a Disposition permitted pursuant to Section 7.05; provided that if the other party to such transaction is not a Loan Party, no Event of Default exists after giving effect to such transaction.

**7.05 Dispositions.** Make any Disposition or enter into any agreement to make any Disposition, except:

- (a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;
- (b) Dispositions of inventory in the ordinary course of business;
- (c) Dispositions of equipment to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;
- (d) Dispositions of property by the Borrower or any Subsidiary to the Borrower or to a wholly-owned Subsidiary; provided that, if the transferor of such property is the Borrower or a Guarantor, the transferee thereof must either be the Borrower or a Guarantor;
- (e) transactions permitted by Section 7.04, Investments permitted by Section 7.02, Restricted Payments permitted by Section 7.06 and Liens permitted by Section 7.01, to the extent they can also be deemed to be Dispositions;
- (f) the licensing, sublicensing or contribution of rights in any IP Rights pursuant to licensing, joint marketing, distribution, or development arrangements in the ordinary course of business in the life science industry and substantially consistent with past practice (provided if any one or more of the foregoing could reasonably be expected to result in a Material Adverse Effect, the prior written consent of the Required Lenders shall be required, which consent may not be unreasonably withheld or delayed);
- (g) Dispositions by the Borrower and its Subsidiaries of Products and business lines not otherwise permitted under this Section 7.05; provided that at the time of such Disposition, no Event of Default shall exist or would result from such Disposition;
- (h) Dispositions of Cash Equivalents in the ordinary course of business and consistent with past practices;
- (i) Dispositions of accounts receivable in connection with the collection or compromise thereof (other than in connection with financing transactions);
- (j) leases, subleases of real property or equipment, licenses or sublicenses, in each case in the ordinary course of business in the life science industry and that do not materially interfere with the business of the Borrower and its Subsidiaries, taken as a whole;
- (k) transfers of property subject to Casualty Events upon receipt of the Net Proceeds of such Casualty Event;
- (l) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(m) the lapse or abandonment of any IP Rights (other than Material IP Rights) or registrations (or applications for registration) with respect thereto which in the good faith judgment of the Borrower are no longer used or useful in its business, to the extent permitted under the Security Agreement;

(n) the unwinding of Swap Contracts permitted hereunder pursuant to their terms; and

(o) Dispositions of IP Rights (other than an assignment of Patents and Trademarks that are Cystic Fibrosis Drug Franchise Assets) owned by a Loan Party to a Foreign Subsidiary of the Borrower; provided that (i) the Foreign Subsidiary receiving such IP Rights shall covenant and agree not to pledge any interest in such IP Rights to any Person, (ii) any such transferred IP Rights shall be subject to an exclusive license in favor of the Loan Parties for use in the United States in form and substance reasonably satisfactory to the Administrative Agent, and which license shall not be subject to any anti-assignment or change of control provisions (in each case limiting the Loan Party), shall expressly permit the creation, continuation and performance of the Security Interests (as defined in the Security Agreement), shall be terminable at will and subject to a first lien security interest in favor of the Administrative Agent, and (iii) any Foreign Subsidiary receiving such IP Rights shall not conduct any other material business other than (1) holding such IP Rights, (2) entering into license agreements in the ordinary course of business with Foreign Subsidiaries for use of such IP Rights in foreign jurisdictions and (3) entering into license agreements with third parties for use in foreign jurisdictions in the ordinary course of business in the life sciences industry; provided that the license agreement referred to in clause (ii) shall, at a minimum, (1) be perpetual, (2) provide the Administrative Agent and its successors and assigns the rights and remedies upon an Event of Default provided for other permitted IP Rights licenses and arrangements under the Security Agreement, (3) require the Administrative Agent's consent for any amendment of the license agreement that alters the terms and conditions of the license agreement in any manner adverse to the interests of a Loan Party or the Lenders, (4) specify that it may not be terminated in connection with a Loan Party's bankruptcy, (5) include the right of any Loan Party that is a party thereto to assume and assign the license in the event of its bankruptcy or insolvency, and (6) include a covenant by the Foreign Subsidiary not to move for, or consent to, the termination of or rejection of the license in a bankruptcy or insolvency of the Foreign Subsidiary;

provided, however, that (x) any Disposition pursuant to subsections (a) through (l) shall be for fair market value, other than any Disposition of the type referenced in the proviso to subsections (d), (i) and (k) above and (y) the Dispositions permitted under subsections (e) (other than with respect to 7.02(o)), (g), (l) and (m) above shall not be permitted to the extent relating to Cystic Fibrosis Drug Franchise Assets or the Borrower or Subsidiaries that own or otherwise have rights with respect thereto.

**7.06 Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, so long as no Event

of Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) each Subsidiary may make Restricted Payments to the Borrower, the Guarantors and any other Person that owns an Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) the Borrower and each Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common Equity Interests; and

(d) the Borrower and each of its Subsidiaries may (A) repurchase at the issue price Equity Interests held by former directors, officers, employees and consultants; (B) pay withholding or similar Taxes payable by present or former directors, officers, employees or consultants in respect of their Equity Interests and (C) repurchase Equity Interests deemed to occur upon a cashless exercise of options or warrants, provided, that such payments in clauses (A) and (B) shall not exceed \$5,000,000 in the aggregate;

(e) to the extent constituting Restricted Payments, the Borrower and its Subsidiaries may enter into transactions expressly permitted by Sections 7.02 and 7.04; and

(f) the Borrower or any of its Subsidiaries may (i) pay cash in lieu of fractional shares in connection with any dividend, split or combination thereof or any Permitted Acquisition and (ii) honor any non-cash conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion.

**7.07 Change in Nature of Business.** Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

**7.08 Transactions with Affiliates.** Enter into any transaction of any kind with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, provided that the foregoing restriction shall not apply to transactions between or among the Borrower and any Guarantor or between and among any Guarantors.

**7.09 Burdensome Agreements.** Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make



Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to the Borrower or any Guarantor (other than covenants in debt agreements permitted by Section 7.03(g) (j) or (n) in respect of Foreign Subsidiaries), (ii) of any Domestic Subsidiary to Guarantee the Indebtedness of the Borrower or (iii) of the Borrower or any Domestic Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that this clause (iii) shall not prohibit any negative pledge incurred or provided in favor of (A) any holder of Indebtedness permitted under Section 7.03(e) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness or (B) any party to a Customer Agreement, license or other similar agreement or arrangement permitted by Section 7.10; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

**7.10 Customer Agreements.** Enter into any Customer Agreement, license or other similar agreement or arrangement that restricts security interests or other assignments or that would restrict or otherwise impair the rights of the Administrative Agent and the Lenders in the event of a “change in control” (or like term), unless either (a) the Borrower determines in its good faith business judgment that such a restriction is commercially reasonable under the circumstances (provided that this clause (a) shall not apply to such arrangements among the Borrower and its Subsidiaries) or (b) the Administrative Agent and the Required Lenders shall have given their prior written consent.

**7.11 Use of Proceeds.** Use the proceeds of any Credit Extension, 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; provided that the Borrower and its Subsidiaries may receive and hold margin stock under Customer Agreements, licenses and similar agreements or arrangements with an aggregate value not to exceed 10% of the consolidated assets of the Borrower and its Subsidiaries at any time.

**7.12 Kalydeco Product Revenue.** Borrower shall maintain a minimum trailing twelve months Kalydeco Product US and Foreign Revenue of at least \$400,000,000 tested on a quarterly basis and calculated using the foreign currency exchange rates used in producing the financial statements delivered under clauses (a) and (b) of Section 6.01 and otherwise calculated in a manner consistent with the manner in which revenue is calculated for such financial statements (or, in the event Kalydeco Product US and Foreign Revenue is less than \$400,000,000, but greater than \$300,000,000, the Borrower may use the foreign currency exchange rates for the relevant currencies that were in effect on the Closing Date to the extent as such exchange rates are obtained from the same source as the rates used in producing the most recent financial statements delivered under clauses (a) and (b) of Section 6.01).

**7.13 Capital Expenditures.** Make or become legally obligated to make any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations) at any time when an Event of Default (including non-compliance with Section 7.11) has occurred and is continuing.

**7.14 Amendment of Organization Documents.** Amend any of its Organization Documents in a manner adverse to the Lenders in any material respect.

**7.15 Accounting Changes.** Make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year.

**7.16 Prepayments, Etc. of Indebtedness.** Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Indebtedness, except (a) the prepayment of the Credit Extensions in accordance with the terms of this Agreement and (b) regularly scheduled or required repayments or redemptions of Indebtedness set forth in Schedule 7.03 and refinancings and refundings of such Indebtedness in compliance with Section 7.03(g).

**7.17 Designation of Senior Debt.** Designate any Indebtedness (other than the Indebtedness under the Loan Documents) of the Borrower or any of its Subsidiaries as “Designated Senior Debt” (or any similar term) under, and as defined in, any Subordinated Indebtedness.

**7.18 Amendment, Etc. of Material Contracts and Indebtedness.** (a) Take any action (including modifications and terminations) in connection with any Material Contract (other than as set forth in clauses (b) and (c) below) that would impair the value of the interest or rights of any Loan Party thereunder or that would adversely impair the rights or interests of the Administrative Agent or any Lender in any material respect, except with the written consent of the Required Lenders, which consent may not be unreasonably withheld or delayed or (b) amend, modify or change in any manner any term or condition of any Indebtedness (other than Subordinated Indebtedness) set forth in Schedule 7.03, except for any refinancing, refunding, renewal or extension thereof permitted by Section 7.03(g), that would impair the value of the interest or rights of any Loan Party thereunder or that would adversely impair the rights or interests of the Administrative Agent or any Lender in any material respect, except with the written consent of the Required Lenders, which consent may not be unreasonably withheld or delayed or (c) amend, modify or change in any manner any term or condition of any Subordinated Indebtedness other than pursuant to the subordination provisions thereof.

**7.19 Sanctions.** Directly or indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, 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 individual or entity (including any individual or entity participating in the transaction, whether as Lender, Administrative Agent, or otherwise) of Sanctions.

**7.20 Anti-Corruption Laws.** Directly or indirectly use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, or other similar legislation in other jurisdictions.

**7.21 Pension Plan.** Adopt, sponsor or maintain a Pension Plan or retiree group medical plan.

**7.22 Massachusetts Security Corporation.**

(a) The Borrower shall not permit any Subsidiary that is a Massachusetts Security Corporation to hold cash, Cash Equivalents or other investments or securities with an aggregate value in excess of \$1.00, unless the Loan Parties maintain at least \$300,000,000 in cash and/or Cash Equivalents (which value will be determined on a daily basis) in Deposit Accounts and/or Securities Accounts, which cash, Cash Equivalents, Deposit Accounts and Securities Accounts are subject to the control of the Administrative Agent under Control Agreements (as defined in the Security Agreement). For the avoidance of doubt, the Loan Parties are not required to maintain any minimum balance in cash and/or Cash Equivalents in Deposit Accounts and/or Securities Accounts, which cash, Cash Equivalents, Deposit Accounts and Securities Accounts are subject to the control of the Administrative Agent under Control Agreements.

(b) With regard to the Massachusetts Security Corporation, conduct, transact or otherwise engage in any material operating or business activities other than investment activities that would not reasonably be expected to result in the loss of the Massachusetts Security Corporation's qualification as a Massachusetts security corporation under Mass. Gen. L. c. 63, §38B.

## ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES

**8.01 Events of Default.** Any of the following shall constitute an Event of Default:

(z) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within three Business Days after the same becomes due, any interest on any Loan, or any fee due hereunder, or (iii) within five Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(aa) Specific Covenants. (i) The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.03, 6.05, 6.10, 6.11, 6.12, 6.15, 6.17, 6.19, 6.20, 6.21 or Article VII, (ii) the Borrower fails to perform or observe any term, covenant or agreement contained in Section 6.01 or 6.02 for five (5) Business Days, or (iii) any of the Loan Parties fails to perform or observe any term, covenant or agreement contained in Sections 2.02(a), 2.06(b), 2.06(c), 3.04(f), 3.04(g), 3.05(e) and 3.06 of the Security Agreement; or

(bb) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(cc) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(dd) Cross-Default. (i) 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, the Borrower or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of such Indebtedness or Guarantee, 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 Borrower 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 Borrower or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Borrower or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(ee) Insolvency Proceedings, Etc. Any Loan Party or any of its Subsidiaries (other than Immaterial Subsidiaries) 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 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 60 calendar days, or an order for relief is entered in any such proceeding; or

(ff) Inability to Pay Debts; Attachment. (i) The Borrower or any Subsidiary (other than Immaterial Subsidiaries) 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 30 days after its issue or levy; or

(gg) Judgments. There is entered against the Borrower or any Subsidiary (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to

all such judgments or orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) 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, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(hh) 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 the Borrower 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 Borrower 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

(ii) Invalidity of Loan Documents. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document;

(jj) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.01 or 6.12 shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority Lien (subject to Liens permitted by Section 7.01) on the Collateral purported to be covered thereby; or

(kk) Subordination. (i) The subordination provisions of Subordinated Indebtedness (the "Subordination Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness; or (ii) the Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Administrative Agent and the Lenders or (C) that all payments of principal of or premium and interest on the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions.

(ll) IP Event of Default. There occurs any IP Event of Default; or

(mm) Change of Control. There occurs any Change of Control.

**8.02 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 Lenders, take any or all of the following actions: declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, any Make Whole Premium required under Section 2.03(c) and all other premiums with respect thereto, and all other amounts owing or payable hereunder or under any other Loan 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 Borrower; provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the unpaid principal amount of all outstanding Loans and all interest, any Make Whole Premium required under Section 2.03(c) and all other premiums and other amounts as aforesaid shall automatically become due and payable, without further act of the Administrative Agent or any Lender.

**8.03 Application of Funds.** After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), any amounts received 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 and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective (including fees and time charges for attorneys who may be employees of any Lender 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 the Loans and other Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders 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 Borrower or as otherwise required by Law.

## ARTICLE IX. ADMINISTRATIVE AGENT

**9.01 Appointment and Authority.** (1) Each of the Lenders hereby irrevocably appoints Macquarie US Trading LLC to act on its behalf as the Administrative Agent hereunder and under the other Loan 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 reasonably incidental thereto. The provisions

of this Article are solely for the benefit of the Administrative Agent, the Lenders, and neither the Borrower nor any other Loan 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 Loan 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.

(w) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably 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 9.05 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 IX and Article XI (including Section 11.04(c)), as though such co-agents, and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

**9.02 Rights as a Lender.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” 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 the Borrower 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 Lenders.

**9.03 Exculpatory Provisions.** The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(p) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(q) 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 Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan 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 Loan Document or applicable law or regulation, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law; and

(r) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower 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 Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable 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 Borrower or a Lender.

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 Loan 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 Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value of the sufficiency of any Collateral or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.04 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 making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), 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.



**9.05 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 Loan Document by or through any one or more sub agents appointed by the Administrative Agent; provided, however, than any such sub-agent receiving payments from the Loan Parties shall be a U.S. Person or shall be permitted to and shall agree to accept responsibility for all U.S. federal income tax and information reporting with respect to payments made by or on behalf of any Loan Party under the Loan Documents. The Administrative Agent and any such sub agent meeting the requirements of the previous sentence 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 syndication of the credit facilities 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.

**9.06 Resignation of Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, so long as no Event of Default has occurred and is continuing, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States to which payments made by the Loan Parties hereunder shall be made and shall agree to accept responsibility for all U.S. federal income tax and information reporting with respect to payments made by or on behalf of any Loan Party under the Loan Documents; provided that the Administrative Agent may propose that an Affiliate succeed as Administrative Agent, in which case such Affiliate shall automatically be appointed as successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments,

communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

**9.07 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender and acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender 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 Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender 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 Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Bookrunners listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender or the hereunder.

**9.09 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan 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 Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(f) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans 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 Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under 2.06 and 11.04) allowed in such judicial proceeding; and

(g) 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 Lender 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 Lenders, 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 Sections 2.06 and 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 Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (j) of Section 11.01 of this Agreement, (iii) the Administrative Agent shall be authorized to assign

the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

**9.10 Collateral and Guaranty Matters.** Without limiting the provision of Section 9.10, the of the Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion or as otherwise provided under this Agreement,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations), (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 under any other Loan Document to a Person that is not a Loan Party, (iii) that constitutes "Excluded Property" (as such term is defined in the Security Agreement), or (iv) if approved, authorized or ratified in writing in accordance with Section 11.01;

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(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 Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders 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 9.11. In each case as specified in this Section 9.11, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.11.

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 Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

## **ARTICLE X. CONTINUING GUARANTY**

**10.01 Guaranty.** Each Guarantor hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrower to the Secured Parties, and whether arising hereunder or under any other Loan Document (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof). The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of each Guarantor under this Guaranty, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

**10.02 Rights of Lenders.** Each Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Obligations. Without limiting the generality of the foregoing, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of Holdings under this Guaranty or which, but for this provision, might operate as a discharge of each Guarantor.

**10.03 Certain Waivers.** Each Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrower; (b) any defense based on any claim that each Guarantor's obligations exceed or are more burdensome than those of the Borrower; (c) the benefit of any statute of limitations affecting each Guarantor's liability hereunder; (d) any right to proceed against the Borrower, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of any Secured Party

whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Obligations.

**10.04 Obligations Independent.** The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against each Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

**10.05 Subrogation.** No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full. If any amounts are paid to any Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Obligations, whether matured or unmatured.

**10.06 Termination; Reinstatement.** This Guaranty is a continuing and irrevocable guaranty of all Obligations now or hereafter existing and shall remain in full force and effect until all Obligations and any other amounts payable under this Guaranty are indefeasibly paid in full in cash. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or any Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Obligations 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 any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this paragraph shall survive termination of this Guaranty.

**10.07 Subordination.** Each Guarantor hereby subordinates the payment of all obligations and indebtedness of the Borrower owing to such Guarantor, whether now existing or hereafter arising, including but not limited to any obligation of the Borrower to such Guarantor as subrogee of the Secured Parties or resulting from such Guarantor's performance under this Guaranty, to the indefeasible payment in full in cash of all Obligations. If the Secured Parties so request, any such obligation or indebtedness of the Borrower to any Guarantor shall be enforced and performance received by such Guarantor as trustee for the Secured Parties and the proceeds thereof shall be paid

over to the Secured Parties on account of the Obligations, but without reducing or affecting in any manner the liability of any Guarantor under this Guaranty.

**10.08 Stay of Acceleration.** If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against any Guarantor or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by Holdings immediately upon demand by the Secured Parties.

**10.09 Condition of Borrower.** Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower and any other guarantor such information concerning the financial condition, business and operations of the Borrower and any such other guarantor as each Guarantor requires, and that none of the Secured Parties has any duty, and no Guarantor is relying on the Secured Parties at any time, to disclose to any Guarantor any information relating to the business, operations or financial condition of the Borrower or any other guarantor (Each Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

## ARTICLE XI. MISCELLANEOUS

**11.01 Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan 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, however, that no such amendment, waiver or consent shall:

(s) impose any greater restriction on the ability of any Lender to assign any of its rights or obligations hereunder without the written consent of Lenders having more than 50% of the Total Outstandings then in effect.

(t) waive any condition set forth in Section 4.01(a) without the written consent of each Lender;

(u) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(v) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(w) reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the

Required Lenders shall be necessary to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate;

(x) change Section 2.09 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(y) change any provision of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(z) release all or substantially all of the Collateral in any transaction or series of related transactions without the consent of all the Lenders; or

(aa) release any Guarantor from a Guaranty without the written consent of each Lender, except to the extent the release of any Guarantor is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (ii) any fee letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

#### **11.02 Notices; Effectiveness; Electronic Communication.**

(g) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (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:

(vii) if to the Borrower or any other Loan 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

(viii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

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 subsection (b) below, shall be effective as provided in such subsection (b).

(h) Electronic Communications. Notices and other communications to the Lenders 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 pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower 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.

(i) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic messaging service, or through the Internet.

(j) Change of Address, Etc. Each of the Borrower 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. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender 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 Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(k) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower 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 Borrower shall indemnify the Administrative Agent, each Lender 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 the Borrower. 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 Lender 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 Loan 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 Loan 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 Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan 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 8.02 for the benefit of all the Lenders; 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 Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.09), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan 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 Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.09, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### **11.04 Expenses; Indemnity; Damage Waiver.**

(c) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) (ii) and all reasonable out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the reasonable fees, charges and disbursements of any counsel for the Administrative Agent and one counsel, for all the other Lenders and, if reasonably necessary or advisable, the reasonable fees, charges and disbursements of one local counsel per jurisdiction and one additional counsel for each group of affected persons, taken as a whole, to the extent of any actual or perceived conflict of interest), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(d) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called a "Borrower Indemnatee") against, and hold each Borrower Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Borrower Indemnatee), and shall indemnify and hold harmless each Borrower Indemnatee from all fees and time charges and disbursements for attorneys who may be employees of any Borrower Indemnatee, incurred by any Borrower Indemnatee or asserted against any Indemnatee by any Person (including the Borrower or any other Loan Party) other than such Borrower Indemnatee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder,

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 Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual, threatened, or alleged presence or Release of Hazardous Materials at, on, under, or from any property owned, leased, operated or otherwise occupied by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower 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 Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Borrower Indemnitee or its Related Parties or (y) result from a claim brought by the Borrower or any other Loan Party against a Borrower Indemnitee for material breach of such Borrower Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of Section 3.01(c), this Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(e) Indemnification by Lenders. The Lenders agree to indemnify the Administrative Agent and its officers, directors, employees, affiliates, agents, advisors and controlling persons (each, an "Agent Indemnitee") (to the extent required to be reimbursed but not reimbursed by the Borrower and without limiting the obligation the Borrower to do so), ratably according to their respective Applicable Percentage in effect on the date on which indemnification is sought under this paragraph, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent Indemnitee in any way relating to or arising out of, the Loans, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent Indemnitee under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from any Agent Indemnitee's gross negligence or willful misconduct. The agreements in this paragraph shall survive the termination of this Agreement and the payment of the Loan and all other amounts payable hereunder. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.08(d).

(f) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower and each Indemnitee shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Loan Party or related party of any Loan Party or any Indemnitee, 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 Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(g) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(h) Survival. The agreements in this Section and the indemnity provisions of Section 10.02(e) shall survive the resignation of the Administrative Agent, the replacement of any Lender 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 the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender 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 Lender 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 Lender 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 Lenders 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 shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or

otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) 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, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(vii) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Loans 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 Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the principal outstanding balance of the Loans of the assigning Lender 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 Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(viii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans assigned;

(ix) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (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 Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written

notice to the Administrative Agent within five (5) Business Days after having received notice thereof; and provided, further, that the Borrower's consent shall not be required during the primary syndication of the credit facility provided herein;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender and

(x) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(xi) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Subsidiaries, or (B) to a natural Person.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (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 Lender under this Agreement, and the assigning Lender 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 Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(a) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower (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 Lenders, and principal amounts (and related interest amounts) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). Notwithstanding anything in the contrary herein, the entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender and the owner of the amounts owing to it under the Loan Documents as reflected in the Register for all purposes of the Loan Documents. The Register shall be

available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c), without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.09 as though it were a Lender. Each Lender that sells a participation (including under Section 2.10) shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and related interest amounts) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations or as otherwise required



thereunder. Notwithstanding anything to the contrary herein, the entries in the Participant Register shall be conclusive absent manifest error, and each Person whose name is recorded in the Participant Register shall be treated as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(c) Certain Pledges. Any Lender 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, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

**11.07 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent and the Lenders 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) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan 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 Participant in, or any prospective assignee of or Participant in, 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 the Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided 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 credit facilities provided hereunder, (h) with the consent of the Borrower or (i) 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 Lender, or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section, "Information" means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. 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.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

**11.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, 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 Lender or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or its respective Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower 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 Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender 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 Loan 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 4.01, 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 Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

**11.12 Severability.** If any provision of this Agreement or the other Loan 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 Loan 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.

**11.13 Replacement of Lenders.** If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender 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 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) the Borrower shall pay such Lender any Make Whole that would be applicable to such assignment as if the assigned Loan was repaid by the Borrower; and

(e) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### **11.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. This Agreement and the other Loan Documents 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 Loan Document (except, as to any other Loan 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. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, 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; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE ADMINISTRATIVE AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION 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.

(c) WAIVER OF VENUE. EACH PARTY HERETO 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 LOAN 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 10.02. 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 Jury Trial.** 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 LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY), EXCEPT WITH RESPECT TO ANY PATENT PROCEEDING. 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 LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**11.16 No Advisory or Fiduciary Responsibility.** 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 Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent and the Lenders, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and each Lender 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 Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent, nor any Lender has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent or any Lender with respect

to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**11.17 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.

**11.18 USA PATRIOT Act.** Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower 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 the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

**11.19 Licenses.**

Each party hereto agrees that, as provided for in the Security Agreement, upon any exercise of remedies by the Administrative Agent or the Lenders, any then-existing license agreement or other arrangements relating primarily to IP Rights (other than Cystic Fibrosis Drug Franchise Assets) shall survive in full force and effect and be accepted by the Administrative Agent, and that neither the Administrative Agent nor any Lender (or anyone acting on behalf of any of the foregoing) shall (i) terminate such license or arrangements, or petition a court to do so, (ii) take any steps to oppose such licensee’s exercise of any rights under Section 365(n) of the Bankruptcy Code, or (iii) interfere with the rights of such licensee to such IP Rights as provided in the applicable license agreement or arrangements, or petition a court to do so.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**VERTEX PHARMACEUTICALS INCORPORATED,**  
as Borrower

By: /s/ Jeffrey Leiden  
Name: Jeffrey Leiden  
Title: Chief Executive Officer

By: /s/ Ian Smith  
Name: Ian Smith  
Title: Chief Financial Officer

**MACQUARIE US TRADING LLC,** as Administrative  
Agent

By: /s/ Robert M. Perdock  
Name: Robert M. Perdock  
Title: Managing Director

By: /s/ Anita Chiu  
Name: Anita Chiu  
Title: Associate Director

**MACQUARIE CAF LLC,** as Lender

By: /s/ David Prince  
Name: David Prince  
Title: Authorized Signatory

By: /s/ Althea Henedige  
Name: Althea Henedige  
Title: Authorized Signatory

**VERTEX PHARMACEUTICALS (SAN DIEGO) LLC,**  
as a Guarantor

By: /s/ Ian Smith  
Name: Ian Smith  
Title: Treasurer

**VERTEX PHARMACEUTICALS (DELAWARE) LLC,**  
as a Guarantor

By: /s/ Ian Smith  
Name: Ian Smith  
Title: Treasurer

**VERTEX HOLDINGS, INC.,**  
as a Guarantor

By: /s/ Ian Smith  
Name: Ian Smith  
Title: Treasurer

**VERTEX PHARMACEUTICALS (DISTRIBUTION)  
INCORPORATED,**  
as a Guarantor

By: /s/ Ian Smith  
Name: Ian Smith  
Title: Treasurer



## CERTIFICATION

I, Jeffrey M. Leiden, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Vertex Pharmaceuticals Incorporated;
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.

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Date: July 31, 2014

/s/ Jeffrey M. Leiden

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Jeffrey M. Leiden  
Chief Executive Officer and President

## CERTIFICATION

I, Ian F. Smith, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Vertex Pharmaceuticals Incorporated;
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.

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Date: July 31, 2014

/s/ Ian F. Smith

Ian F. Smith

Executive Vice President and Chief Financial Officer

**SECTION 906 CEO/CFO CERTIFICATION**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) each of the undersigned officers of Vertex Pharmaceuticals Incorporated, a Massachusetts corporation (the "Company"), does hereby certify, to such officer's knowledge, that the Quarterly Report on Form 10-Q for the quarter ended June 30, 2014 (the "Form 10-Q") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 31, 2014

/s/ Jeffrey M. Leiden

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Jeffrey M. Leiden  
Chief Executive Officer and President

Date: July 31, 2014

/s/ Ian F. Smith

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Ian F. Smith  
Executive Vice President and Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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