

---

---

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

---

**FORM 8-K**

---

**CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(D)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of earliest event reported): May 7, 2018**

---

**IMPAX LABORATORIES, LLC**

(Exact name of registrant as specified in its charter)

---

**Delaware**  
(State  
of Incorporation)

**001-34263**  
(Commission  
File Number)

**65-0403311**  
(IRS Employer  
Identification No.)

**30831 Huntwood Avenue, Hayward, CA**  
(Address of principal executive offices)

**94544**  
(Zip Code)

**(510) 240-6000**  
Registrant's telephone number, including area code

**Impax Laboratories, Inc.**  
(Former name or former address, if changed since last report)

---

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions ( see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230-425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

---

---

## Introductory Note

On May 4, 2018, pursuant to the Business Combination Agreement (the “Business Combination Agreement”), dated as of October 17, 2017, by and among Impax Laboratories, Inc., a Delaware corporation (“Impax”), K2 Merger Sub Corporation, a Delaware corporation (“Merger Sub”), Amneal Pharmaceuticals LLC, a Delaware limited liability company (“Amneal”), and Atlas Holdings, Inc., a Delaware corporation (“New Amneal”), as amended on November 21, 2017 and December 16, 2017, (i) Merger Sub has merged with and into Impax (the “Impax Merger”), with Impax surviving the Impax Merger as a direct wholly-owned subsidiary of New Amneal, (ii) each share of Impax’s common stock, par value \$0.01 per share (“Impax Common Stock”), issued and outstanding immediately prior to the Impax Merger, other than Impax Common Stock held by Impax in treasury, by Amneal or by any of their respective subsidiaries, was converted into the right to receive one fully paid and nonassessable share of Class A common stock of New Amneal, par value \$0.01 per share (“Class A Common Stock”), (iii) Impax was converted to a limited liability company pursuant to the General Corporation Law of the State of Delaware and the Delaware Limited Liability Company Act (the “Impax Conversion”) and renamed Impax Laboratories, LLC (“Impax LLC”), (iv) New Amneal has contributed to Amneal all of New Amneal’s equity interests in Impax, in exchange for common units of Amneal (the “Contribution”), (v) New Amneal has issued an aggregate number of shares of Class B common stock of New Amneal, par value \$0.01 per share (“Class B Common Stock”), and together with Class A Common Stock and Class B-1 common stock of New Amneal, par value \$0.01 per share (“Class B-1 Common Stock”), “New Amneal Common Stock”) to Amneal Pharmaceuticals Holding Company, LLC (“Holdings”) (the “Issuance” and, together with the Impax Merger, the Impax Conversion and the Contribution, the “Transactions”), and (vi) New Amneal has become the managing member of Amneal. In connection with the consummation of the Transactions (the “Closing”), New Amneal changed its name from Atlas Holdings, Inc. to Amneal Pharmaceuticals, Inc.

Pursuant to the Impax Conversion, all of the obligations of Impax will continue as obligations of Impax LLC. As such, Impax LLC is subject to the informational requirements of the Securities Exchange Act of 1934 (the “Exchange Act”), and the rules and regulations promulgated thereunder. Impax LLC hereby reports this succession in accordance with Rule 12g-3(f) under the Exchange Act. Impax LLC is deemed to be the successor issuer to Impax for purposes of registration under Section 12(b) of the Exchange Act with respect to the Impax Common Stock.

This Current Report on Form 8-K should be read in conjunction with the Current Report on Form 8-K filed by New Amneal on May 7, 2018.

### Item 1.01 Entry into a Material Definitive Agreement.

#### *Amneal Credit Agreement*

Amneal, and certain of Amneal’s subsidiaries from time to time party thereto including Impax LLC (such subsidiaries together with Amneal, the “Loan Parties”), have entered into that certain (i) Term Loan Credit Agreement, dated as of May 4, 2018 (the “Term Agreement”), among Amneal, as the borrower, JPMorgan Chase Bank, N.A. (“JPM”), as administrative agent and collateral agent (in such capacity and together with its successors and assigns in such capacity, the “Term Agent”), and the lenders and other parties party thereto, including Impax LLC, pursuant to which the lenders have extended, on the terms and subject to the conditions set forth therein, a term loan facility to Amneal, as the borrower, in an initial aggregate principal amount of up to \$2,700.0 million (the “Term Loan”), (ii) Revolving Credit Agreement, dated as of May 4, 2018 (“ABL Agreement” and together with the Term Agreement, the “Amneal Credit Agreements”), among Amneal, as the borrower, the other Loan Parties from time to time party thereto, JPM, as administrative agent and collateral agent (in such capacity and together with its successors and assigns in such capacity, the “ABL Agent” and together with the Term Agent, the “Agent”) and the lenders and other parties party thereto, pursuant to which the lenders have extended, on the terms and subject to the conditions set forth therein, an asset based revolving credit facility (the “ABL Facility” and together with the Term Loan, the “Senior Secured Credit Facilities”) for loans and letters of credit to such Loan Parties in an initial aggregate principal amount of up to \$500.0 million, (iii) Term Loan Guarantee and Collateral Agreement, dated as of May 4, 2018 (the “Term GCA”), among the Loan Parties from time to time party thereto and the Term Agent, pursuant to which the Loan Parties have guaranteed obligations under the Term Agreement and certain other documents as set forth therein and grant a security interest in their respective right, title and interest in and to the Collateral (as defined in the Term GCA), and (iv) Revolving Loan Guarantee and Collateral Agreement, dated as of May 4, 2018 (the “ABL GCA” and together with the Term GCA, the “GCAs”) and the GCAs, together with the Amneal Credit Agreements, the “Loan Documents”), among the Loan Parties from time to time party thereto and the ABL Agent, pursuant to which the Loan Parties have guaranteed obligations under the ABL Agreement and certain other documents as set forth therein and grant a security interest in their respective right, title and interest in and to the Collateral (as defined in the ABL GCA). The net proceeds from the Term Loan were used to finance in part the Transactions, to pay off the certain existing indebtedness of Amneal and Impax, and to pay fees and expenses related to the foregoing. Up to \$25 million of the ABL Facility is available for issuances of letters of credit. The Term Loan will mature on May 4, 2025 and the ABL Facility will mature on May 4, 2023.

---

### Amortization, Interest Rate and Fees

The Term Loan amortizes in equal quarterly installments in an amount equal to 1.00% per annum of the stated principal amount thereof, with the remaining balance due at final maturity.

Interest is payable on the Senior Secured Credit Facilities at a rate equal to the eurodollar (LIBOR) rate or the base rate, plus an applicable margin, in each case, subject to a eurodollar (LIBOR) rate floor of 0.00% or a base rate floor of 1.00%, as applicable

The applicable margin for the ABL Facility is initially 1.50% per annum for eurodollar (LIBOR) rate loans and 0.50% per annum for base rate loans. The applicable margin for the Term Loan is initially 3.50% per annum for eurodollar (LIBOR) loans and 2.50% per annum for base rate loans.

The applicable margin on borrowings under the revolving credit facility may be reduced or increased by 0.25% based on step-downs and step-ups determined by the average historical excess availability. The applicable margin on borrowings under the Term Loan may be reduced by 0.25% based on step-downs determined by the first lien net leverage ratio.

The Loan Parties are required to pay commitment fees to the ABL Facility lenders on the actual daily unused portion of the ABL Facility commitments at a rate of 0.375% per annum, subject to a step-down to 0.25% determined by the average historical excess availability.

### Guarantees and Security

The Senior Secured Credit Facilities are guaranteed by each of Amneal's current and future direct and direct wholly owned material U.S. subsidiaries, subject to certain exceptions set forth in the Amneal Credit Agreements.

The Term Loan is secured by a first priority security interest (subject to permitted liens and certain other exceptions) on the Loan Parties' fixed assets, subject to certain exceptions set forth in the Term Agreement and related documentation. The Term Loan also has a second priority lien (second in priority to the liens securing the ABL Facility and subject to permitted liens and certain other exceptions) on the Loan Parties' current assets, subject to certain exceptions set forth in the Term Agreement and related documentation. The ABL Facility is secured by a first priority security interest (subject to permitted liens and certain other exceptions) on the Loan Parties' current assets, subject to certain exceptions set forth in the ABL Agreement and related documentation. The ABL Facility also has a second priority lien (second in priority to the liens securing the ABL Facility and subject to permitted liens and certain other exceptions), on the Loan Parties' fixed assets, subject to certain exceptions set forth in the ABL Agreement and related documentation.

### Prepayments

Amneal may voluntarily prepay all or any portion of outstanding amounts under the Senior Secured Credit Facilities at any time, in whole or in part, without premium or penalty, subject to (i) redeployment costs in the case of a prepayment of eurocurrency (LIBOR) loans other than on the last day of the relevant interest period and (ii) a 1.00% prepayment premium on any Term Loans prepaid in the first year after the closing date of the Senior Secured Credit Facilities in connection with a repricing transaction.

The Senior Secured Credit Facilities contain customary mandatory prepayment provisions, subject to certain exceptions and reinvestment rights.

### Certain Covenants and Events of Default

The Senior Secured Credit Facilities contain certain negative covenants (subject to exceptions, materiality thresholds and baskets) that, among other things and subject to certain exceptions, restrict Amneal's and its restricted subsidiaries' ability to incur additional debt or guarantees, grant liens, make loans, acquisitions or other investments, dispose of assets (including sale and leaseback transactions), merge, dissolve, liquidate or consolidate, pay dividends or other payments on capital stock, make optional payments or modify certain debt instruments, modify certain organizational documents, enter into arrangements that restrict the ability to pay dividends or grant liens, or enter into or consummate transactions with affiliates.

The ABL Facility also includes a financial maintenance covenant whereby Amneal must maintain a minimum fixed charge coverage ratio of 1.0:1.0, tested only if availability under the ABL Facility (plus the amount by which the borrowing base at such time exceeds the commitments under the ABL Facility (subject to a cap of 2.5% of the ABL Facility commitments)) is less than either (a) the greater of (i) \$25 million and (ii) 10% of the lesser of the commitments and the borrowing base under the ABL Facility, in either case

for two consecutive business days, or (b) the greater of (i) \$18.75 million and (ii) 7.5% of the lesser of the commitments and the borrowing base under the ABL Facility.

The Senior Secured Credit Facilities contain customary events of default (subject to customary grace periods and materiality thresholds). Upon the occurrence of certain events of default, the obligations under the Senior Secured Credit Facilities may be accelerated and the commitments may be terminated.

The foregoing summary of the Loan Documents does not purport to be complete and is qualified in its entirety by reference to the complete terms of (i) the Term Agreement, a copy of which is attached hereto as Exhibit 10.1 hereto and incorporated herein by reference, (ii) the ABL Agreement, a copy of which is attached hereto as Exhibit 10.2 hereto and incorporated herein by reference, (iii) the Term GCA, a copy of which is attached hereto as Exhibit 10.3 and incorporated herein by reference and (iv) the ABL GCA, a copy of which is attached hereto as Exhibit 10.4 and incorporated herein by reference.

### ***Second Supplemental Indenture***

On May 4, 2018, in connection with the Closing, Impax LLC, New Amneal, and Wilmington Trust, National Association, as trustee (the “Trustee”), entered into the Second Supplemental Indenture (the “Second Supplemental Indenture”) with respect to the Indenture dated as of June 30, 2015 (the “Indenture”), as amended by the First Supplemental Indenture dated as of November 6, 2017, governing the Impax 2.00% Convertible Senior Notes due 2022 (the “Notes”). The Second Supplemental Indenture (x) made New Amneal a party to the Indenture and (y) changed the right to convert each \$1,000 principal amount of the Notes into a right to convert such principal amount of Notes into shares of Class A Common Stock, cash or a combination of cash and shares of Class A Common Stock, at Impax LLC’s election, in each case reflecting a conversion rate of 15.7853 shares of Class A Common Stock per \$1,000 principal amount of Notes surrendered for conversion.

The foregoing description of the Indenture and the Second Supplemental Indenture is not complete and is qualified in its entirety by reference to the Indenture filed as Exhibit 4.1 to the Current Report on Form 8-K filed by Impax on June 30, 2015, the First Supplemental Indenture dated November 6, 2017, filed as Exhibit 4.1 to the Current Report on Form 8-K filed by Impax on November 7, 2017, and the Second Supplemental Indenture, which is filed herewith as Exhibit 4.1, each of which is incorporated by reference herein.

### ***Termination of Convertible Note Hedge Transactions and Warrant Transactions***

In connection with the offering of the Notes, Impax entered into convertible note hedge transactions (the “Convertible Note Hedge Transactions”) with respect to shares of Impax Common Stock with Royal Bank of Canada (the “Counterparty”). The Convertible Note Hedge Transactions cover, subject to anti-dilution adjustments substantially similar to those applicable to the Notes, approximately 9.47 million shares of Impax Common Stock at a strike price of \$63.35 per share. Impax paid \$147 million for the Convertible Note Hedge Transactions. Separately, and concurrently with entering into the Convertible Note Hedge Transactions, Impax also entered into warrant transactions (the “Warrant Transactions”) whereby Impax sold to the Counterparty warrants to acquire, subject to customary anti-dilution adjustments, up to approximately 9.47 million shares of Impax Common Stock at an initial strike price of \$81.2770 per share. Impax received approximately \$88.3 million for the Warrant Transactions.

In connection with the Convertible Note Hedge Transactions and the Warrant Transactions, on June 25, 2015 and June 26, 2015, Impax and the Counterparty entered into certain confirmation letters (collectively, the “Confirmations”). In connection with the Special Offer Repurchase Right, on May 7, 2018 Impax and the Counterparty entered into a termination agreement terminating in full the Convertible Note Hedge Transactions and the Warrant Transactions (the “Termination Agreement”), attached hereto as Exhibit 10.5. In connection with the termination of Convertible Note Hedge Transactions and the related unwinding of the existing hedge position of Counterparty with respect to such transactions, the Counterparty and/or its respective affiliates may sell shares of New Amneal Class A Common Stock in secondary market transactions, and/or enter into or unwind various derivative transactions with respect to New Amneal Class A Common Stock. This activity could decrease (or reduce the size of any increase in) the market price of New Amneal Class A Common Stock at that time and it could decrease (or reduce the size of any increase in) the market value of the Notes. In connection with the Termination Agreement, we will not make or receive any payments or any deliveries of shares of New Amneal Class A Common Stock.

The foregoing summary description is qualified in its entirety by reference to each of the following Confirmations and Termination Agreement themselves, each of which is incorporated by reference herein: (i) the Confirmation regarding the base call option transaction, dated June 25, 2015, between Impax Laboratories, Inc. and Royal Bank of Canada, filed as Exhibit 10.2 to the Current Report on Form 8-K filed by Impax on June 25, 2015, (ii) the Confirmation regarding the additional call option transaction, dated June 26, 2015, between Impax Laboratories, Inc. and Royal Bank of Canada, filed as Exhibit 10.4 to the Current Report on Form 8-K filed by Impax on June 25, 2015, (iii) the Confirmation regarding the base warrant transaction, dated June 25, 2015,

between Impax Laboratories, Inc. and Royal Bank of Canada, filed as Exhibit 10.1 to the Current Report on Form 8-K filed by Impax on June 25, 2015, (iv) the Confirmation regarding the additional warrant transaction, dated June 26, 2015, between Impax Laboratories, Inc. and Royal Bank of Canada, filed as Exhibit 10.3 to the Current Report on Form 8-K filed by Impax on June 25, 2015, and (v) the Termination Agreement, which is filed herewith as Exhibit 10.5.

**Item 1.02 Termination of a Material Definitive Agreement**

In connection with the consummation of the Transactions, on May 4, 2018, Impax repaid in full all outstanding amounts under its Credit Agreement, dated as of August 4, 2015, as amended and restated as of August 3, 2016 and as amended on March 27, 2017, with a syndicate of banks and Royal Bank of Canada, as administrative agent (the “Credit Agreement”), and terminated the Credit Agreement and all commitments by the lenders to extend further credit thereunder.

The Credit Agreement is more fully described in Impax’s Current Reports on Form 8-K filed with the U.S. Securities and Exchange Commission (the “SEC”) on August 4, 2015, August 3, 2016 and March 27, 2017, which descriptions are incorporated herein by reference. The descriptions of the Credit Agreement incorporated by reference are not complete and are subject to and entirely qualified by reference to the full text of the Credit Agreement.

**Item 2.01 Completion of Acquisition or Disposition of Assets.**

The disclosures under the Introductory Note are incorporated herein by reference.

Upon the Closing, Amneal became a direct subsidiary of New Amneal and Impax LLC became an indirect subsidiary of New Amneal. Immediately following the Closing and the PIPE Investment (as defined in the Registration Statement described below), (i) AH PPU Management, LLC was dissolved and each of AP Class D Member, LLC and AP Class E Member, LLC assigned and transferred to Amneal Holdings, LLC all membership units of Amneal (“Common Units”) held by them such that Amneal Holdings, LLC holds 100% of the Class B Common Stock, which, together with the Common Units held by Amneal Holdings, LLC, represents approximately 60% of the voting power and no economic interest in New Amneal, (ii) Impax’s stockholders immediately prior to the Closing hold approximately 25% of the voting power and 62.5% of the economic interest in New Amneal and (iii) select institutional investors, including TPG Improv Holdings, L.P. (“TPG”) and Fidelity Management & Research Company (“Fidelity”), and funds affiliated with TPG and Fidelity, hold approximately 15% of the voting power and 37.5% of the economic interest in New Amneal (assuming the conversion of all shares of Class B-1 Common Stock of New Amneal into shares of Class A Common Stock).

The issuance of Class A Common Stock in connection with the Transactions was registered under the Securities Act of 1933, as amended (the “Securities Act”), pursuant to a registration statement on Form S-4 (File No. 333-221707) (as amended, the “Registration Statement”) filed by New Amneal with the SEC and declared effective on February 9, 2018. The definitive proxy statement of Impax, dated February 12, 2018, that forms a part of the Registration Statement (the “Proxy Statement”) contains additional information about the Transactions and the other transactions contemplated by the Business Combination Agreement, including a description of the treatment of equity awards and information concerning the interests of directors, executive officers and affiliates of Amneal and Impax in the Transactions.

The Class A Common Stock was approved for listing on the New York Stock Exchange and will trade under the symbol “AMRX.”

The foregoing description of the Business Combination Agreement and the Transactions does not purport to be complete and is qualified in its entirety by reference to the full text of the Business Combination Agreement filed as Exhibit 2.1 hereto and incorporated herein by reference.

---

**Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.**

On April 30, 2018, Impax notified the NASDAQ Global Select Market (the “NASDAQ”) that, effective upon the Closing, each outstanding share of Impax Common Stock was converted into the right to receive one fully paid and nonassessable share of Class A Common Stock in accordance with the terms of the Business Combination Agreement. On May 4, 2018, the NASDAQ filed a notification on Form 25 with the SEC with respect to the Impax Common Stock to request removal of Impax Common Stock from listing on the NASDAQ and from registration under Section 12(b) of the Exchange Act. Impax intends to file as promptly as practicable with the SEC a certification on Form 15 under the Exchange Act requesting the termination of the registration of Impax Common Stock under Section 12(g) of the Exchange Act and the suspension of Impax’s reporting obligations under Sections 13 and 15(d) of the Exchange Act.

**Item 3.03 Material Modification to Rights of Security Holders.**

In connection with the Closing, on May 4, 2018, each share of Impax Common Stock was cancelled and automatically converted into the right to receive one fully paid and nonassessable share of Class A Common Stock in accordance with the terms of the Business Combination Agreement.

In connection with the Closing, on May 4, 2018, each outstanding stock option issued under Impax’s 2002 Equity Incentive Plan or as inducement grants (each an “Impax Option”) outstanding immediately prior to the Closing became fully vested and exchanged into for an option to acquire a number of shares of Class A Common Stock equal to the number of shares of Impax Common Stock subject to such Impax Option immediately prior to the Closing at a price per share equal to the exercise price per share of Impax Common Stock otherwise purchasable pursuant to such Impax Option.

In connection with the Closing, on May 4, 2018, each share of Impax Common Stock issued with respect to restricted stock awards issued under Impax’s 2002 Equity Incentive Plan (each an “Impax Restricted Share”) that was outstanding immediately prior to the Closing became fully vested and was exchanged for one share of Class A Common Stock.

**Item 5.01 Changes in Control of Registrant.**

The information set forth in the Introductory Note and Item 2.01 of this Current Report on Form 8-K is incorporated by reference into this Item 5.01.

**Item 5.02. Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.*****Departure of Certain Directors/Officers of Impax***

In accordance with the Business Combination Agreement, on May 4, 2018, immediately prior to and effective upon the Closing, the following individuals resigned from Impax’s board of directors and any respective committees of Impax’s board of directors to which they belonged, which resignations were not the result of any disagreements with Impax relating to Impax’s operations, policies or practices: Leslie Z. Benet, Paul M. Bisaro, J. Kevin Buchi, Robert L. Burr, Allen Chao, Mary K. Pendergast, Peter R. Terreri and Janet S. Vergis.

Also on May 4, 2018, immediately prior to and effective upon the Closing, (i) Paul M. Bisaro, Impax’s President and Chief Executive Officer, resigned from his position as an officer of Impax, (ii) Mark A. Schlossberg, Impax’s Senior Vice President, General Counsel and Corporate Secretary, resigned from his position as an officer of Impax, (iii) Douglas S. Boothe, the President of Impax Generics, resigned from his position as an officer of Impax, and (iv) Michael J. Nestor, the President of Impax, Specialty Pharma, resigned from his position as an officer of Impax.

In addition, on May 4, 2018, effective upon the Closing, each of (i) Mark A. Schlossberg, (ii) Douglas S. Boothe and (iii) Michael J. Nestor separated from their respective positions at Impax. Each of these separations constituted a termination of employment by Impax without cause following a change of control for purposes of the executives’ respective employment agreements (and, solely with respect to Mr. Nestor, for purposes of his separation agreement with Impax, which was filed as an exhibit to the Current Report on Form 8-K filed by Impax on January 9, 2018).

**Item 5.03 Amendments to Articles of Incorporation or Bylaws.**

Effective upon the effective time of the Impax Merger (the “Impax Merger Effective Time”), (i) the certificate of incorporation of Impax that was in effect immediately prior to the Impax Merger Effective Time was amended and restated to be in the form attached hereto as Exhibit 3.1 and (ii) the bylaws of Impax that were in effect immediately prior to the Impax Merger Effective Time were amended and restated to be in the form attached hereto as Exhibit 3.2. In connection with the Impax Conversion, on May 4, 2018, Impax filed with the Secretary of State of State of Delaware a Certificate of Conversion and a Certificate of Formation, adopted a Limited Liability Company Agreement as contemplated by the Business Combination Agreement and changed its name from “Impax Laboratories, Inc.” to “Impax Laboratories, LLC”. A copy of the Limited Liability Company Agreement of Impax LLC is attached hereto as Exhibit 3.3 and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

<b>Exhibit No.</b>	<b>Description</b>
2.1	<a href="#"><u>Business Combination Agreement, dated as of October 17, 2017, by and among Amneal Pharmaceuticals LLC, Impax Laboratories Inc., Atlas Holdings, Inc. and K2 Merger Sub Corporation (attached as Annex A to the combined proxy statement/prospectus which forms part of the Registration Statement)** ±, as amended by Amendment No. 1, dated as of November 21, 2017 (attached as Annex I to the combined proxy statement/prospectus which forms part of the Registration Statement)** and Amendment No. 2, dated as of December 16, 2017 (attached as Annex K to the combined proxy statement/prospectus which forms part of the Registration Statement)**.</u></a>
3.1	<a href="#"><u>Form of Amended and Restated Certificate of Incorporation of Impax Laboratories, Inc.</u></a>
3.2	<a href="#"><u>Form of Amended and Restated Bylaws of Impax Laboratories, Inc.</u></a>
3.3	<a href="#"><u>Limited Liability Company Agreement of Impax Laboratories, LLC.</u></a>
4.1	<a href="#"><u>Second Supplemental Indenture.</u></a>
10.1	<a href="#"><u>Term Loan Credit Agreement, dated as of May 4, 2018, by and among Amneal Pharmaceuticals LLC, as the borrower, JPMorgan Chase Bank, N.A., as administrative agent and collateral agent, and the lenders and other parties party thereto.</u></a>
10.2	<a href="#"><u>Revolving Credit Agreement, dated as of May 4, 2018, by and among Amneal Pharmaceuticals LLC, as the borrower, the other loan parties from time to time party thereto, JPMorgan Chase Bank, N.A., as administrative agent and collateral agent and the lenders and other parties party thereto.</u></a>
10.3	<a href="#"><u>Term Loan Guarantee and Collateral Agreement, dated as of May 4, 2018, by and among the loan parties from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.</u></a>
10.4	<a href="#"><u>Revolving Loan Guarantee and Collateral Agreement, dated as of May 4, 2018, by and among the loan parties from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.</u></a>
10.5	<a href="#"><u>Termination Agreement, dated as of May 7, 2018, between Impax Laboratories, LLC (f/k/a Impax Laboratories, Inc.) and Royal Bank of Canada.</u></a>

\*\* Previously filed

± Pursuant to Item 601(b)(2) of Regulation S-K, Impax LLC agrees to furnish a supplemental copy of any omitted schedule or exhibit to the Business Combination Agreement to the SEC upon request.

---

**SIGNATURE**

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, hereunto duly authorized.

Date: May 7, 2018

**Impax Laboratories, LLC**

By: /s/ Bryan M. Reasons

Name: Bryan M. Reasons

Title: Chief Financial Officer

**IMPAX LABORATORIES, INC.**  
**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

Impax Laboratories, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, hereby certifies as follows:

FIRST: The name of this corporation is Impax Laboratories, Inc. and the original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on March 23, 1995, under the name of: Global Pharmaceutical Corporation.

SECOND: The Amended and Restated Certificate of Incorporation in the form of Exhibit A attached hereto has been duly adopted in accordance with the provisions of Sections 242, 245 and 228 of the General Corporation Law of the State of Delaware.

The text of the Amended and Restated Certificate of Incorporation as heretofore amended or supplemented is hereby restated and further amended to read in its entirety as set forth in Exhibit A attached hereto.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been signed this [•] day of May, 2018.

**IMPAX LABORATORIES, INC.**

By: \_\_\_\_\_  
[•]  
[•]

---

**EXHIBIT A**  
**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**IMPAX LABORATORIES, INC.**

**ARTICLE I**

The name of the corporation (the “ *Corporation* ”) is Impax Laboratories, Inc.

**ARTICLE II**

The registered address of the Corporation in the State of Delaware is c/o the Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware, County of New Castle, 19808. The name of the Corporation’s registered agent at that address is the Corporation Service Company.

**ARTICLE III**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended (“ *DGCL* ”) or any successor statute.

**ARTICLE IV**

The total number of shares of all classes of stock that the Corporation shall have authority to issue is One Thousand (1,000) shares, all of which are Common Stock with a par value of \$0.01.

**ARTICLE V**

In furtherance of and not in limitation of powers conferred by statute, it is further provided:

1. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.
2. The Board of Directors is expressly authorized to adopt, amend, alter or repeal the bylaws of the Corporation.

**ARTICLE VI**

Election of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

---

## ARTICLE VII

A director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that exculpation from liability is not permitted under DGCL as in effect at the time such liability is determined. No amendment or repeal of this Article VII shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

## ARTICLE VIII

Subject to such limitations as may be from time to time imposed by other provisions of this Restated Certificate, by the bylaws of the Corporation, by the DGCL or other applicable law, or by any contract or agreement to which the Corporation is or may become a party, the Corporation reserves the right to amend or repeal any provision contained in this Restated Certificate, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this express reservation.

**BYLAWS**  
**OF**  
**IMPAX LABORATORIES, INC.**  
**(a Delaware corporation)**  
**Adopted as of [•], 20[•]**

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE I. IDENTIFICATION; OFFICES	1
SECTION 1. NAME	1
SECTION 2. PRINCIPAL AND BUSINESS OFFICES	1
SECTION 3. REGISTERED AGENT AND OFFICE	1
SECTION 4. PLACE OF KEEPING CORPORATE RECORDS	1
ARTICLE II. STOCKHOLDERS	1
SECTION 1. ANNUAL MEETING	1
SECTION 2. SPECIAL MEETING	1
SECTION 3. PLACE OF STOCKHOLDER MEETINGS	1
SECTION 4. NOTICE OF MEETINGS	2
SECTION 5. QUORUM	2
SECTION 6. ADJOURNED MEETINGS	2
SECTION 7. FIXING OF RECORD DATE	3
SECTION 8. VOTING LIST	4
SECTION 9. VOTING	4
SECTION 10. PROXIES	4
SECTION 11. RATIFICATION OF ACTS OF DIRECTORS AND OFFICERS	4
SECTION 12. CONDUCT OF MEETINGS	5
SECTION 13. ACTION WITHOUT MEETING	5
ARTICLE III. DIRECTORS	6
SECTION 1. GENERAL POWERS	6
SECTION 2. NUMBER AND TENURE OF DIRECTORS	6
SECTION 3. ELECTION OF DIRECTORS	6
SECTION 4. CHAIRMAN OF THE BOARD; VICE CHAIRMAN OF THE BOARD	6
SECTION 5. QUORUM	7
SECTION 6. VOTING	7
SECTION 7. VACANCIES	7
SECTION 8. REMOVAL OF DIRECTORS	7
SECTION 9. RESIGNATION	7
SECTION 10. REGULAR MEETINGS	7
SECTION 11. SPECIAL MEETINGS	7
SECTION 12. NOTICE OF SPECIAL MEETINGS OF THE BOARD OF DIRECTORS	7
SECTION 13. WRITTEN ACTION BY DIRECTORS	8
SECTION 14. PARTICIPATION BY CONFERENCE TELEPHONE	8
SECTION 15. COMMITTEES	8
SECTION 16. COMPENSATION OF DIRECTORS	9
ARTICLE IV. OFFICERS	9
SECTION 1. GENERAL PROVISIONS	9
SECTION 2. ELECTION AND TERM OF OFFICE	9
SECTION 3. RESIGNATION AND REMOVAL OF OFFICERS	9

SECTION 4.	VACANCIES	10
SECTION 5.	THE CHIEF EXECUTIVE OFFICER	10
SECTION 6.	THE PRESIDENT	10
SECTION 7.	THE VICE PRESIDENT	10
SECTION 8.	THE SECRETARY	11
SECTION 9.	THE ASSISTANT SECRETARY	11
SECTION 10.	THE TREASURER	11
SECTION 11.	THE ASSISTANT TREASURER	12
SECTION 12.	OTHER OFFICERS, ASSISTANT OFFICERS AND AGENTS	12
SECTION 13.	ABSENCE OF OFFICERS	12
SECTION 14.	COMPENSATION	12
ARTICLE V. CAPITAL STOCK		12
SECTION 1.	ISSUANCE OF STOCK	12
SECTION 2.	CERTIFICATES OF SHARES; UNCERTIFICATED SHARES	12
SECTION 3.	SIGNATURES OF FORMER OFFICER, TRANSFER AGENT OR REGISTRAR	13
SECTION 4.	TRANSFER OF SHARES	13
SECTION 5.	LOST, DESTROYED OR STOLEN CERTIFICATES	13
SECTION 6.	REGULATIONS	14
ARTICLE VI. INDEMNIFICATION		14
SECTION 1.	RIGHT TO INDEMNIFICATION OF DIRECTORS AND OFFICERS	14
SECTION 2.	PREPAYMENT OF EXPENSES OF DIRECTORS AND OFFICERS	14
SECTION 3.	CLAIMS BY DIRECTORS AND OFFICERS	14
SECTION 4.	INDEMNIFICATION OF EMPLOYEES AND AGENTS	15
SECTION 5.	ADVANCEMENT OF EXPENSES OF EMPLOYEES AND AGENTS	15
SECTION 6.	NON-EXCLUSIVITY OF RIGHTS	15
SECTION 7.	OTHER INDEMNIFICATION	15
SECTION 8.	INSURANCE	15
SECTION 9.	AMENDMENT OR REPEAL	15
ARTICLE VII. DIVIDENDS		16
SECTION 1.	DECLARATIONS OF DIVIDENDS	16
SECTION 2.	SPECIAL PURPOSES RESERVES	16
ARTICLE VIII. NOTICE BY ELECTRONIC TRANSMISSION		16
SECTION 1.	NOTICE BY ELECTRONIC TRANSMISSION	16
SECTION 2.	DEFINITION OF ELECTRONIC TRANSMISSION	17
SECTION 3.	INAPPLICABILITY	17
ARTICLE IX. GENERAL PROVISIONS		17
SECTION 1.	FISCAL YEAR	17
SECTION 2.	SEAL	17
SECTION 3.	WRITTEN WAIVER OF NOTICE	17
SECTION 4.	ATTENDANCE AS WAIVER OF NOTICE	17
SECTION 5.	CONTRACTS	17

---

SECTION 6.	LOANS	17
SECTION 7.	CHECKS, DRAFTS, ETC.	18
SECTION 8.	DEPOSITS	18
SECTION 9.	ANNUAL STATEMENT	18
SECTION 10.	VOTING OF SECURITIES	18
SECTION 11.	EVIDENCE OF AUTHORITY	18
SECTION 12.	CERTIFICATE OF INCORPORATION	18
SECTION 13.	SEVERABILITY	18
SECTION 14.	PRONOUNS	18
ARTICLE X. AMENDMENTS		18
SECTION 1.	BY THE BOARD OF DIRECTORS	18
SECTION 2.	BY THE STOCKHOLDERS	18

---

**ARTICLE I.**  
**IDENTIFICATION; OFFICES**

SECTION 1. NAME. The name of the corporation is Impax Laboratories, Inc. (the “Corporation”).

SECTION 2. PRINCIPAL AND BUSINESS OFFICES. The Corporation may have such principal and other business offices, either within or outside of the state of Delaware, as the Board of Directors may designate or as the Corporation’s business may require from time to time.

SECTION 3. REGISTERED AGENT AND OFFICE. The address of the Corporation’s registered office in the State of Delaware is 251 Little Falls Drive, Wilmington, Delaware, County of New Castle, 19808. The name of its registered agent at that address is Corporation Service Company.

SECTION 4. PLACE OF KEEPING CORPORATE RECORDS. The records and documents required by law to be kept by the Corporation permanently shall be kept at the Corporation’s principal office or as the Board of Directors may designate.

**ARTICLE II.**  
**STOCKHOLDERS**

SECTION 1. ANNUAL MEETING. An annual meeting of the stockholders shall be held on such date and time as may be designated by the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President. At each annual meeting, the stockholders shall elect directors to hold office for the term provided in Section 2 of Article III of these Bylaws and transact such other business as may properly be brought before the meeting. The Board of Directors may postpone, cancel or reschedule any previously scheduled annual meeting of stockholders.

SECTION 2. SPECIAL MEETING. A special meeting of the stockholders for any purpose or purposes may be called at any time only by the President, the Board of Directors, the Chairman of the Board, the Chief Executive Officer or any other person designated by the Board of Directors. The Board of Directors may postpone, cancel or reschedule any previously scheduled special meeting of stockholders. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

SECTION 3. PLACE OF STOCKHOLDER MEETINGS. The Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting or for any special meeting. If no such place is designated by the Board of Directors, the place of meeting will be the principal business office of the Corporation or the Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but will instead be held solely by means of remote communication as provided under Section 211 of the Delaware General Corporation Law.

---

SECTION 4. NOTICE OF MEETINGS. Except as otherwise provided by law or waived as herein provided, whenever stockholders are required or permitted to take any action at a meeting, whether annual or special, written notice of the meeting shall be given stating the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders may be deemed to be present in person and vote at such meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, such written notice shall be given not less than 10 days nor more than 60 days before the date of the meeting to each stockholder entitled to vote at the meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at the stockholder's address as it appears on the records of the Corporation. If electronically transmitted (in a manner consistent with Section 232 of the Delaware General Corporation Law), then notice is deemed given when transmitted and directed to a facsimile number or electronic mail address at which the stockholder has consented to receive notice. An affidavit of the secretary or of the transfer agent or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

When a meeting is adjourned to reconvene at the same or another place, if any, or by means of remote communications, if any, in accordance with Section 6 of Article II of these Bylaws, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken.

SECTION 5. QUORUM. Unless otherwise provided by law, the Corporation's Certificate of Incorporation or these Bylaws, the holders of a majority in voting power of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at the meeting, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum for the transaction of business; provided, however, that where a separate vote by a class or classes or series of capital stock is required by law or the Certificate of Incorporation, the holders of a majority in voting power of the shares of such class or classes or series of the capital stock of the Corporation issued and outstanding and entitled to vote on such matter, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on such matter. If a quorum is present in person or represented by proxy at such meeting, such stockholders may continue to transact business until adjournment, notwithstanding the withdrawal of such number of stockholders as may leave less than a quorum.

SECTION 6. ADJOURNED MEETINGS. Any meeting of stockholders may be adjourned from time to time to any other time and date and to any other place (or by means of remote communications, if any) at which a meeting of stockholders may be held under these Bylaws by the chairman of the meeting or by a majority of the stockholders present or represented at the meeting and entitled to vote, although less than a quorum. It shall not be necessary to notify any stockholder of any adjournment of less than 30 days if the time and place, if any, of the adjourned meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for the adjourned meeting. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting.

---

SECTION 7. FIXING OF RECORD DATE.

(a) The Board of Directors may fix in advance a date as a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof. Such record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 days nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) For the purpose of determining stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is established by the Board of Directors, and which date shall not be more than 10 days after the date on which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal office, or an officer or agent of the Corporation having custody of the book in which the proceedings of meetings of stockholders are recorded. Delivery to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders' consent to corporate action in writing without a meeting shall be the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) For the purpose of determining the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect to any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix the record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining the stockholders for any such purpose shall be the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

SECTION 8. VOTING LIST. Corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least 10 days prior to the meeting, (i) by a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to the stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, such list shall be the only evidence as to the identity of stockholders entitled to examine the list of stockholders required by this Section 8 or to vote in person or by proxy at any meeting of the stockholders. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list.

SECTION 9. VOTING. Unless otherwise provided by the Certificate of Incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by each stockholder. When a quorum is present at any meeting, in all matters other than the election of directors, the affirmative vote of the majority in voting power of the outstanding shares of stock present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, except when a different vote is required by law, the Certificate of Incorporation or these Bylaws. When a quorum is present at any meeting, directors shall be elected by plurality of the votes of the shares present in person or represented by a proxy at the meeting entitled to vote on the election of directors.

SECTION 10. PROXIES. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting (including by means of remote communications, if any, by which stockholders may be deemed to be present in person and vote at such meeting) may authorize another person or persons to act for him by proxy (executed or transmitted in a manner permitted by the Delaware General Corporation Law), but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may remain irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally.

SECTION 11. RATIFICATION OF ACTS OF DIRECTORS AND OFFICERS. Except as otherwise provided by law or by the Certificate of Incorporation of the Corporation, any transaction or contract or act of the Corporation or of the directors or the officers of the Corporation may be ratified by the affirmative vote of the holders of the number of shares which would have been necessary to approve such transaction, contract or act at a meeting of stockholders, or by the written consent of stockholders in lieu of a meeting.

---

## SECTION 12. CONDUCT OF MEETINGS.

(a) Chairman of Meeting. Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in the Chairman's absence by the Vice Chairman of the Board, if any, or in the Vice Chairman's absence by the Chief Executive Officer, or in the Chief Executive Officer's absence, by the President, or in the President's absence by a Vice President, or in the absence of all of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen by vote of the stockholders at the meeting. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

(b) Rules, Regulations and Procedures. The Board of Directors may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the Corporation as it shall deem appropriate including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting and to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

## SECTION 13. ACTION WITHOUT MEETING.

(a) Any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be delivered to the Corporation signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

(b) Prompt notice of the taking of the corporate action without a meeting by less than unanimous consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation.

(c) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxy holder, or by a person or persons authorized to act for a stockholder or proxy holder, shall be deemed to be written and signed for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the Corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxy holder or by a person or persons authorized to act for the stockholder or proxy holder and (ii) the date on which such stockholder or proxy holder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or to an officer or agent of the Corporation having custody of the book in which the proceedings of meetings of stockholders are recorded. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

### **ARTICLE III. DIRECTORS**

SECTION 1. GENERAL POWERS. The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the Corporation except as otherwise provided by law or the Certificate of Incorporation.

SECTION 2. NUMBER AND TENURE OF DIRECTORS. The number of directors of the Corporation shall be determined from time to time by the stockholders or the Board of Directors in a resolution adopted by the Board of Directors. Each director shall hold office until the next annual meeting of stockholders and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal.

SECTION 3. ELECTION OF DIRECTORS. Except as otherwise provided in these Bylaws, directors shall be elected at the annual meeting of stockholders by such stockholders as have the right to vote on such election. Directors need not be residents of the State of Delaware. Directors need not be stockholders of the Corporation. Elections of directors need not be by written ballot.

SECTION 4. CHAIRMAN OF THE BOARD; VICE CHAIRMAN OF THE BOARD. The Board of Directors may appoint from its members a Chairman of the Board and a Vice Chairman of the Board, neither of whom need be an employee or officer of the Corporation. If the Board of Directors appoints a Chairman of the Board, such Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors. If the Board of Directors appoints a Vice Chairman of the Board, such Vice Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors. Unless otherwise provided by the Board of Directors, the Chairman of the Board or, in the Chairman's absence, the Vice Chairman of the Board, if any, shall preside at all meetings of the Board of Directors.

---

SECTION 5. QUORUM. The greater of (a) a majority of the directors at any time in office and (b) one-third of the number of directors fixed pursuant to Section 2 of Article III of these Bylaws shall constitute a quorum of the Board of Directors. If less than a quorum are present at a meeting of the Board of Directors, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until such quorum shall be present.

SECTION 6. VOTING. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the Delaware General Corporation Law or the Certificate of Incorporation requires a vote of a greater number.

SECTION 7. VACANCIES. Any vacancy or newly-created directorship on the Board of Directors, however occurring, may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of such director's predecessor in office, and a director chosen to fill a position resulting from a newly-created directorship shall hold office until the next annual meeting of stockholders and until a successor is elected and qualified, or until such director's earlier death, resignation or removal.

SECTION 8. REMOVAL OF DIRECTORS. Except as otherwise provided by the General Corporation Law of the State of Delaware, a director, or the entire Board of Directors, may be removed, with or without cause, by the holders of a majority in voting power of the outstanding shares of stock then entitled to vote at an election of directors.

SECTION 9. RESIGNATION. Any director may resign by delivering a resignation in writing or by electronic transmission to the Corporation at its principal office or to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. Such resignation shall be effective upon delivery unless it is specified to be effective at some later time or upon the happening of some later event.

SECTION 10. REGULAR MEETINGS. Regular meetings of the Board of Directors may be held without notice at such date, time, place and manner as shall be determined from time to time by the Board of Directors; provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

SECTION 11. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by or at the request of the Chairman of the Board, the Chief Executive Officer, the President, two or more directors or by one director in the event that there is only a single director in office. The person or persons authorized to call special meetings of the Board of Directors may fix any time, date or place, either within or without the State of Delaware, for holding any special meeting of the Board of Directors called by them.

SECTION 12. NOTICE OF SPECIAL MEETINGS OF THE BOARD OF DIRECTORS. Notice of the date, place, if any, and time of any special meeting of the Board of Directors shall be given to each director by the Secretary or by the officer or one of the directors calling the

---

meeting. Notice shall be duly given to each director (a) in person, by telephone, fax or by electronic transmission at least 24 hours in advance of the meeting, (b) by sending written notice by reputable overnight courier or delivering written notice by hand, to such director's last known business, home or facsimile address at least 48 hours in advance of the meeting, or (c) by sending written notice by first-class mail to such director's last known business or home address at least 72 hours in advance of the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

SECTION 13. WRITTEN ACTION BY DIRECTORS. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

SECTION 14. PARTICIPATION BY CONFERENCE TELEPHONE. Members of the Board of Directors, or any committee designated by such board, may participate in a meeting of the Board of Directors, or committee thereof, by means of conference telephone other communications equipment as long as all persons participating in the meeting can speak with and hear each other, and participation by a director pursuant to this section shall constitute presence in person at such meeting.

SECTION 15. COMMITTEES. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation with such lawfully delegable powers and duties as the Board of Directors thereby confers, to serve at the pleasure of the Board of Directors. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member at any meeting of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and to the extent permitted by law, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it, but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by law to be submitted to stockholders for approval or (ii) adopting, amending or repealing any bylaw of the Corporation. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these Bylaws for the Board of Directors. Except as otherwise provided in the Certificate of Incorporation, these Bylaws, or the resolution of the Board of Directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

---

SECTION 16. COMPENSATION OF DIRECTORS. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefore. Members of special or standing committees may be allowed like compensation for attending committee meetings.

#### **ARTICLE IV. OFFICERS**

SECTION 1. GENERAL PROVISIONS. The officers of the Corporation shall consist of a Chief Executive Officer, a President, a Secretary, a Treasurer and such other officers with such other titles as the Board of Directors shall determine, including one or more Vice Presidents, Assistant Treasurers and Assistant Secretaries. The Board of Directors may appoint such other officers as it may deem appropriate. No officer need be a stockholder. Any two or more offices may be held by the same person. The officers elected by the Board of Directors shall have such duties as are hereafter described and such additional duties as the Board of Directors may from time to time prescribe.

SECTION 2. ELECTION AND TERM OF OFFICE. The Chief Executive Officer, President, Treasurer and Secretary shall be elected annually by the Board of Directors at the regular meeting of the Board of Directors held after each annual meeting of the stockholders. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as may be convenient. Other officers may be appointed at any time by the Board of Directors. Except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws, each officer shall hold office until his successor has been duly elected and qualified, unless a different term is specified in the resolution electing or appointing such officer, or until his earlier death, resignation or removal. Election or appointment of an officer or agent shall not of itself create contract rights.

SECTION 3. RESIGNATION AND REMOVAL OF OFFICERS. Any officer may resign by delivering a written resignation to the Corporation at its principal office or to the Chief Executive Officer, the President or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event. Any officer may be removed at any time, with or without cause, by vote of a majority of the directors then in office. Except as the Board of Directors may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following such officer's resignation or removal, or any right to damages on account of such removal, whether such officer's compensation be by the month or by the year or otherwise, unless such compensation is expressly provided for in a duly authorized written agreement with the Corporation.

---

SECTION 4. VACANCIES. The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices other than those of Chief Executive Officer, President, Treasurer and Secretary. Each such successor shall hold office for the unexpired term of such officer's predecessor and until a successor is elected and qualified, or until such officer's earlier death, resignation or removal.

SECTION 5. THE CHIEF EXECUTIVE OFFICER. Unless the Board of Directors has designated another person as the Corporation's Chief Executive Officer, the President shall be the Chief Executive Officer of the Corporation. The Chief Executive Officer shall have general charge and supervision of the business and affairs of the Corporation subject to the direction of the Board of Directors, and shall perform all duties and have all powers that are commonly incident to the office of chief executive or that are delegated to such officer by the Board of Directors. The Chief Executive Officer shall see that orders and resolutions of the Board of Directors are carried into effect. The Chief Executive Officer may sign bonds, mortgages, certificates for shares and all other contracts and documents whether or not under the seal of the Corporation except in cases where the signing and execution thereof shall be expressly delegated by law, by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation. The Chief Executive Officer shall have general powers of supervision and shall be the final arbiter of all differences between officers of the Corporation and his decision as to any matter affecting the Corporation shall be final and binding as between the officers of the Corporation subject only to the Board of Directors.

SECTION 6. THE PRESIDENT. In the absence of the Chief Executive Officer or in the event of his inability or refusal to act, the President shall perform the duties of the Chief Executive Officer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer. At all other times the President shall have the active management of the business of the Corporation under the general supervision of the Chief Executive Officer or the Board of Directors. The President shall have concurrent power with the Chief Executive Officer to sign bonds, mortgages, certificates for shares and other contracts and documents, whether or not under the seal of the Corporation except in cases where the signing and execution thereof shall be expressly delegated by law, by the Board of Directors, or by these Bylaws to some other officer or agent of the Corporation. In general, the President shall perform all duties incident to the office of president and such other duties as the Chief Executive Officer (if the President is not the Chief Executive Officer) or the Board of Directors may from time to time prescribe.

SECTION 7. THE VICE PRESIDENT. In the absence of the President or in the event of his inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Executive Vice President and then the other Vice President or Vice Presidents in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents shall perform such other duties and have such other powers as the Chief Executive Officer or the Board of Directors may from time to time prescribe.

---

SECTION 8. THE SECRETARY. The Secretary shall perform such duties and shall have such powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. The Secretary shall perform such duties and have such powers as are incident to the office of the secretary, including without limitation the duty and power to attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required and to maintain a stock ledger and prepare lists of stockholders and their addresses as required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer, under whose supervision he shall be. The Secretary shall have custody of the corporate records and the corporate seal of the Corporation and the Secretary, or an Assistant Secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature.

SECTION 9. THE ASSISTANT SECRETARY. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the Secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Chief Executive Officer, the Board of Directors or the Secretary may from time to time prescribe. In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the chairman of the meeting shall designate a temporary secretary to keep a record of the meeting.

SECTION 10. THE TREASURER. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned by the Board of Directors or the Chief Executive Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation, the duty and power to have the custody of the corporate funds and securities and to keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, as required by the Board of Directors, an account of all his transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

SECTION 11. THE ASSISTANT TREASURER. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Chief Executive Officer, the Board of Directors or the Treasurer may from time to time prescribe.

SECTION 12. OTHER OFFICERS, ASSISTANT OFFICERS AND AGENTS. Officers, Assistant Officers and Agents, if any, other than those whose duties are provided for in these Bylaws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the Board of Directors.

SECTION 13. ABSENCE OF OFFICERS, DELEGATION OF AUTHORITY. In the absence of any officer of the Corporation, or for any other reason the Board of Directors may deem sufficient, the Board of Directors may from time to time delegate the powers or duties, or any of such powers or duties, of any officers or officer to any other officer or to any director.

SECTION 14. COMPENSATION. The Board of Directors shall have the authority to establish reasonable salaries, compensation or reimbursement of all officers for services to the Corporation.

## **ARTICLE V. CAPITAL STOCK**

SECTION 1. ISSUANCE OF STOCK. Subject to the provisions of the Certificate of Incorporation and applicable law, the whole or any part of any unissued balance of the authorized capital stock of the Corporation or the whole or any part of any shares of the authorized capital stock of the Corporation held in the Corporation's treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such lawful consideration and on such terms as the Board of Directors may determine.

### SECTION 2. CERTIFICATES OF SHARES; UNCERTIFICATED SHARES.

(a) The shares of the Corporation shall be represented by certificates, provided that the Board of Directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, signed in a manner that complies with Section 158 of the Delaware General Corporation Law, representing the number of shares held by such holder registered in certificate form. Any or all the signatures on the certificate may be a facsimile or pdf.

(b) Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, these Bylaws, applicable securities laws or any agreement among any number of stockholders or among such holders and the Corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

---

(c) If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of each certificate representing shares of such class or series of stock, provided that in lieu of the foregoing requirements there may be set forth on the face or back of each certificate representing shares of such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests a copy of the full text of the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

(d) Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to Sections 151, 156, 202(a) or 218(a) of the General Corporation Law of the State of Delaware or, with respect to Section 151 of the General Corporation Law of the State of Delaware, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

SECTION 3. SIGNATURES OF FORMER OFFICER, TRANSFER AGENT OR REGISTRAR. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person or entity were such officer, transfer agent or registrar at the date of issue.

SECTION 4. TRANSFER OF SHARES. Transfers of shares of the Corporation shall be made only on the books of the Corporation, or by transfer agents designated to transfer shares of the Corporation. Subject to applicable law, shares of stock represented by certificates shall be transferred only on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the Corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these Bylaws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the Corporation in accordance with the requirements of these Bylaws.

SECTION 5. LOST, DESTROYED OR STOLEN CERTIFICATES. Whenever a certificate representing shares of the Corporation has been lost, destroyed or stolen, the holder thereof may file in the office of the Corporation an affidavit setting forth, to the best of his knowledge and belief, the time, place, and circumstance of such loss, destruction or theft together with a statement of indemnity and posting of such bond sufficient in the opinion of the Board of Directors to indemnify the Corporation against any claim that may be made against it

on account of the alleged loss of any such certificate. Thereupon the Board may cause to be issued to such person or such person's legal representative a new certificate or a duplicate of the certificate alleged to have been lost, destroyed or stolen. In the exercise of its discretion, the Board of Directors may waive the indemnification and bond requirements provided herein.

SECTION 6. REGULATIONS. The issue, transfer, conversion and registration of shares of stock of the Corporation shall be governed by such other regulations as the Board of Directors may establish.

## **ARTICLE VI. INDEMNIFICATION**

SECTION 1. RIGHT TO INDEMNIFICATION OF DIRECTORS AND OFFICERS. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an "Indemnified Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that such person, or a person for whom such person is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Indemnified Person in such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section 3 of this Article VI, the Corporation shall be required to indemnify an Indemnified Person in connection with a Proceeding (or part thereof) commenced by such Indemnified Person only if the commencement of such Proceeding (or part thereof) by the Indemnified Person was authorized in advance by the Board of Directors.

SECTION 2. PREPAYMENT OF EXPENSES OF DIRECTORS AND OFFICERS. The Corporation shall pay the expenses (including attorneys' fees) incurred by an Indemnified Person in defending any Proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnified Person to repay all amounts advanced if it should be ultimately determined that the Indemnified Person is not entitled to be indemnified under this Article VI or otherwise.

SECTION 3. CLAIMS BY DIRECTORS AND OFFICERS. If a claim for indemnification or advancement of expenses under this Article VII is not paid in full within 30 days after a written claim therefor by the Indemnified Person has been received by the Corporation, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

SECTION 4. INDEMNIFICATION OF EMPLOYEES AND AGENTS. The Corporation may indemnify and advance expenses to any person who was or is made or is threatened to be made or is otherwise involved in any Proceeding by reason of the fact that such person, or a person for whom such person is the legal representative, is or was an employee or agent of the Corporation or, while an employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such person in connection with such Proceeding. The ultimate determination of entitlement to indemnification of persons who are non-director or officer employees or agents shall be made in such manner as is determined by the Board of Directors in its sole discretion. Notwithstanding the foregoing sentence, the Corporation shall not be required to indemnify a person in connection with a Proceeding initiated by such person if the Proceeding was not authorized in advance by the Board of Directors.

SECTION 5. ADVANCEMENT OF EXPENSES OF EMPLOYEES AND AGENTS. The Corporation may pay the expenses (including attorneys' fees) incurred by an employee or agent in defending any Proceeding in advance of its final disposition on such terms and conditions as may be determined by the Board of Directors.

SECTION 6. NON-EXCLUSIVITY OF RIGHTS. The rights conferred on any person by this Article VI shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

SECTION 7. OTHER INDEMNIFICATION. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer or employee of another corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise.

SECTION 8. INSURANCE. The Board of Directors may, to the full extent permitted by applicable law as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer or officers to purchase and maintain at the Corporation's expense insurance: (a) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors, officers and employees under the provisions of this Article VII; and (b) to indemnify or insure directors, officers and employees against liability in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article VII.

SECTION 9. AMENDMENT OR REPEAL. Any repeal or modification of the foregoing provisions of this Article VII shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification. The rights provided hereunder shall inure to the benefit of any Indemnified Person and such person's heirs, executors and administrators.

**ARTICLE VII.  
DIVIDENDS**

SECTION 1. DECLARATIONS OF DIVIDENDS. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

SECTION 2. SPECIAL PURPOSES RESERVES. The Board of Directors may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

**ARTICLE VIII.  
NOTICE BY ELECTRONIC TRANSMISSION**

SECTION 1. NOTICE BY ELECTRONIC TRANSMISSION. Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws, any notice to stockholders given by the Corporation under any provision of the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if:

(a) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent; and

(b) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(c) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(d) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

(e) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(f) if by any other form of electronic transmission, when directed to the stockholder.

---

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

SECTION 2. DEFINITION OF ELECTRONIC TRANSMISSION. An “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

SECTION 3. INAPPLICABILITY. Notice by a form of electronic transmission shall not apply to Sections 164, 296, 311, 312 or 324 of the Delaware General Corporation Law.

## **ARTICLE IX. GENERAL PROVISIONS**

SECTION 1. FISCAL YEAR. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

SECTION 2. SEAL. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words “Corporate Seal, Delaware” or such other form as shall be approved by the Board of Directors. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

SECTION 3. WRITTEN WAIVER OF NOTICE. A written waiver of any notice required to be given by law, the Certificate of Incorporation or by these Bylaws, signed by or electronically transmitted by the person entitled to notice, whether before, at or after the time of the event for which notice is to be given, shall be deemed equivalent to notice required to be given to such person. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of stockholders, directors or members of a committee of directors need be specified in any written waiver of notice.

SECTION 4. ATTENDANCE AS WAIVER OF NOTICE. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, and objects, to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 5. CONTRACTS. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

SECTION 6. LOANS. No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

SECTION 7. CHECKS, DRAFTS, ETC. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by one or more officers or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

SECTION 8. DEPOSITS. The funds of the Corporation may be deposited or invested in such bank account, in such investments or with such other depositories as determined by the Board of Directors.

SECTION 9. ANNUAL STATEMENT. The Board of Directors shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the Corporation.

SECTION 10. VOTING OF SECURITIES. Except as the Board of Directors may otherwise designate, the Chief Executive Officer, the President or the Treasurer may waive notice of, vote, or appoint any person or persons to vote, on behalf of the Corporation at, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for this Corporation (with or without power of substitution) at, any meeting of stockholders or securityholders of any other entity, the securities of which may be held by this Corporation.

SECTION 11. EVIDENCE OF AUTHORITY. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

SECTION 12. CERTIFICATE OF INCORPORATION. All references in these Bylaws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the Corporation, as amended and in effect from time to time.

SECTION 13. SEVERABILITY. Any determination that any provision of these Bylaws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these Bylaws.

SECTION 14. PRONOUNS. All pronouns used in these Bylaws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

## **ARTICLE X. AMENDMENTS**

SECTION 1. BY THE BOARD OF DIRECTORS. These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted by the Board of Directors, when such power is conferred upon the Board of Directors by the Certificate of Incorporation.

SECTION 2. BY THE STOCKHOLDERS. These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted, by the affirmative vote of the holders of a majority in voting power of the outstanding shares of the capital stock of the Corporation issued and outstanding and entitled to vote. If the power to adopt, amend or repeal Bylaws is conferred upon the Board of Directors by the Certificate of Incorporation it shall not divest or limit the power of the stockholders to adopt, amend or repeal Bylaws.

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
IMPAX LABORATORIES, LLC**

This LIMITED LIABILITY COMPANY AGREEMENT (this “Agreement”) of Impax Laboratories, LLC (the “Company”), effective as of the Conversion Effective Time (as defined below), is entered into by Atlas Holdings, Inc., as the sole member of the Company.

**WHEREAS**, on the date hereof, Impax Laboratories, Inc., a Delaware corporation (the “Corporation”), was converted to a limited liability company (the “LLC Conversion”) pursuant to Section 18-214 of the Delaware Limited Liability Company Act (as amended from time to time, the “Act”), and Section 266 of the General Corporation Law of the State of Delaware (as amended from time to time, the “DGCL”), by causing the filing with the Secretary of State of the State of Delaware of a certificate of conversion to limited liability company (the “Certificate of Conversion”) and a certificate of formation of the Company (the “Certificate of Formation”); and

**WHEREAS**, the LLC Conversion became effective at such time as the Certificate of Conversion and Certificate of Formation were filed with the Secretary of State of the State of Delaware or at such other later time as was specified in the Certificate of Conversion and Certificate of Formation in accordance with the relevant provisions of the DGCL and the Act (such date and time is referred to herein as the “Conversion Effective Time”).

**NOW, THEREFORE**, the Member hereby agrees as follows:

1. Formation of Limited Liability Company. Atlas Holdings, Inc. (the “Member”), hereby continues the Company as a limited liability company pursuant to the provisions of the Act. The rights and obligations of the Member and the administration and termination of the Company shall be governed by this Agreement and the Act. This Agreement shall be considered the “Limited Liability Company Agreement” of the Company within the meaning of the Act. To the extent this Agreement is inconsistent in any respect with the Act, to the extent permitted by law, this Agreement shall control. At the Conversion Effective Time, (i) the amended and restated certificate of incorporation and the by-laws of the Corporation, each in effect at the Conversion Effective Time, were replaced and superseded in their entirety by the Certificate of Formation and this Agreement, (ii) Atlas Holdings, Inc., as the sole stockholder of the Corporation, executed this Agreement and was admitted to the Company as the sole member of the Company, and (iii) all of the shares of stock of the Corporation issued and outstanding immediately prior to the LLC Conversion were converted to all of the limited liability company interests in the Company.

2. Member. The Member is the sole and managing member of the Company.

3. Purpose. The purpose of the Company is to engage in any and all other lawful businesses or activities in which a limited liability company may be engaged under applicable law (including, without limitation, the Act).

4. Name. The name of the Company shall be “Impax Laboratories, LLC”.

5. Registered Agent and Principal Office. The address of the Company's registered office in the State of Delaware is 251 Little Falls Drive, Wilmington, Delaware, County of New Castle, 19808. The name of its registered agent at that address is Corporation Service Company. The Company may have such other offices as the Member may designate from time to time. The mailing address of the Company shall be as the Member may designate from time to time. The initial mailing address of the Company is 30831 Huntwood Avenue, Hayward, CA 94544.

6. Term of Company. The term of the Company shall continue in perpetuity until the dissolution of the Company in accordance with this Agreement and the Act. The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

7. Authorized Person. Paul M. Bisaro was designated as an authorized person within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company (which filing is hereby ratified and approved) with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation his powers as authorized person shall cease, and the Member thereupon shall become the designated authorized person and shall continue as the designated authorized person within the meaning of the Act. The execution, delivery and filing of the Certificate of Conversion and the LLC Conversion are hereby ratified and approved.

8. Management of Company. All decisions relating to the business, affairs and properties of the Company shall be made by the Member in its capacity as the managing member. Notwithstanding any other provisions of this Agreement, the Member, acting alone, is authorized to execute and deliver any document on behalf of the Company without any vote or consent of any other person.

9. Officers. The Member may, from time to time as it deems necessary and advisable, designate natural persons as officers of the Company to manage the day-to-day business affairs thereof (the "Officers"). The Officers shall serve at the pleasure of the Member and the Member may assign to the Officers such titles as it deems appropriate. To the extent delegated by the Member, the Officers shall have the authority to act on behalf of, bind and execute and deliver documents in the name and on behalf of the Company. No such delegation shall cause the Member to cease to be the sole Member. The initial Officers are set forth on Exhibit A. An Officer may be removed with or without cause at any time by the Member.

10. Distributions. Each distribution of cash or other property by the Company shall be made 100% to the Member. Each item of income, gain, loss, deduction and credit of the Company shall be allocated 100% to the Member.

11. Certificates. Upon the determination of the Member, a certificate, or certificates, may be issued to represent the percentage limited liability company interest of the Member in the Company ("Membership Interest"). Each such certificate shall bear the following legend:

MEMBERSHIP INTERESTS IN IMPAX LABORATORIES, LLC, A DELAWARE LIMITED LIABILITY COMPANY (THE "COMPANY"), HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). IN ADDITION, THE INTERESTS HAVE NOT BEEN QUALIFIED UNDER THE DELAWARE SECURITIES ACT OR THE CALIFORNIA CORPORATE SECURITIES LAW OF 1968, OR ANY OTHER STATE SECURITIES LAW, AS AMENDED FROM TIME TO TIME (COLLECTIVELY, THE "STATE ACTS"). ANY TRANSFER OF SUCH INTERESTS WILL BE INVALID UNLESS A REGISTRATION STATEMENT UNDER THE SECURITIES ACT IS IN EFFECT AS TO SUCH TRANSFER OR IN THE OPINION OF COUNSEL FOR THE COMPANY, SUCH REGISTRATION IS UNNECESSARY IN ORDER FOR SUCH TRANSFER TO COMPLY WITH THE SECURITIES ACT OR SUCH STATE ACTS.

12. Limited Liability. The Member shall not have any liability for the debts, obligations or liabilities of the Company except to the extent provided by the Act.

13. Indemnification. To the fullest extent permitted by applicable law, the Member, representatives or agents of the Member; any employee or agent of the Company or its affiliates; or an officer of the Company that is not an employee (each, a "Covered Person") shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person provided that: (a) any such action was undertaken in good faith on behalf of the Company and in a manner reasonably believed to be in, or not opposed to, the best interests of the Company, (b) any such action was reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, and (c) with respect to any criminal action or proceeding, such Covered Person had no reasonable cause to believe his, her or its action or omission was unlawful, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section shall be provided out of and to the extent of the Company assets only (including the proceeds or any insurance policy obtained pursuant to Section 15 hereof), and no Covered Person shall have any personal liability on account thereof.

14. Expenses. To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in Section 13 hereof.

15. Insurance. The Company shall purchase and maintain insurance, to the extent and in such amounts as the Member shall, in its sole discretion, deem reasonable, on behalf of Covered Persons and such other persons as the Member shall determine, against any liability that may be asserted against or expenses that may be incurred by any such person in connection with the activities of the Company or such indemnities, regardless of whether the Company would have the power to indemnify such person against such liability under the provisions of this Agreement. The Member and the Company may enter into indemnity contracts with Covered Persons and such other persons as the Board shall determine and adopt written procedures pursuant to which arrangements are made for the advancement of expenses and the funding of obligations under Section 14 hereof and containing such other procedures regarding indemnification as are appropriate.

---

16. Attorneys' Fees. All of the indemnities provided in this Agreement shall include reasonable attorneys' fees, including appellate attorneys' fees, and court costs.

17. Survival of Indemnity Provisions. Except as otherwise specifically provided herein, all of the indemnity provisions contained in this Agreement shall survive the Member's ceasing to be a member.

18. Dissolution and Winding Up. The Company shall dissolve and its business and affairs shall be wound up upon the first to occur of the following: (i) a written instrument executed by the Member to dissolve the Company, (ii) at any time there are no members of the Company unless the Company is continued without dissolution in accordance with the Act, or (iii) the entry of a decree of judicial dissolution of the Company under Section 18-802 of the Act. The bankruptcy (as defined at Sections 18-101(1) and 18-304 of the Act) of the Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

19. Amendments. This Agreement may be amended or modified from time to time only by a written instrument executed by the Member.

20. Governing Law. The validity and enforceability of this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law.

21. Severability of Provisions. Each provision of this Agreement shall be considered severable, and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement that are valid, enforceable and legal.

[Signature page follows]

---

IN WITNESS WHEREOF, the Member hereto has duly executed this Agreement as of the date first written above.

**MEMBER**

**ATLAS HOLDINGS, INC.**

By:  /s/ Bryan M. Reasons

Title: Bryan M. Reasons

Name: Chief Financial Officer

[ *Signature Page to Impax Laboratories, LLC Limited Liability Company Agreement* ]

---

**EXHIBIT A**

**Initial Officers of the Company**

**Title**

Robert Stewart

Andrew Boyer

Bryan Reasons

Sheldon Hirt

Nikita Shah

**Name**

---

President and Chief Executive Officer

Executive Vice President

Senior Vice President and Chief Financial Officer

Senior Vice President and General Counsel

Senior Vice President and Chief Human Resources Officer

**SECOND SUPPLEMENTAL INDENTURE**

**SECOND SUPPLEMENTAL INDENTURE**, dated as of May 4, 2018 (this “*Second Supplemental Indenture*”), to the Indenture dated as of June 30, 2015 (the “*Indenture*”), as amended by that certain First Supplemental Indenture dated as of November 6, 2017, each between Impax Laboratories, Inc. (the “*Company*”), a Delaware corporation, and Wilmington Trust, National Association, a national banking association, as Trustee (the “*Trustee*”). Each term used herein which is defined in the Indenture has the meaning assigned to such term in the Indenture unless otherwise specifically defined herein, in which case the definition set forth herein shall govern.

## WITNESSETH

**WHEREAS**, the Company has heretofore executed and delivered the Indenture to provide for the issuance by the Company of a series of securities known as its 2.00% Convertible Senior Notes due 2022 (the “*Notes*”);

**WHEREAS**, the Company entered into a Business Combination Agreement, dated as of October 17, 2017 (the “*Business Combination Agreement*”), as amended by Amendment No. 1 dated November 21, 2017 and Amendment No. 2 dated December 16, 2017, by and among the Company, Atlas Holdings, Inc., a Delaware corporation and a wholly-owned subsidiary of the Company (“*Holdco*”), K2 Merger Sub Corporation, a Delaware corporation and a wholly-owned subsidiary of Holdco (“*Merger Sub*”) and Amneal Pharmaceuticals, LLC (“*Amneal*”), a Delaware limited liability company;

**WHEREAS**, pursuant to the Business Combination Agreement and subject to the terms and conditions therein, Merger Sub will merge with and into the Company, the Company will convert to Impax Laboratories, LLC, a limited liability company pursuant to the General Corporation Law of the State of Delaware and the Delaware Limited Liability Company Act, and become a wholly-owned subsidiary of Holdco (the “*Combination*”), which will be renamed Amneal Pharmaceuticals, Inc. (“*New Amneal*”);

**WHEREAS**, pursuant to the Business Combination Agreement and subject to the terms and conditions therein, at the effective time of the Combination, each share of the Common Stock, par value \$0.01 per share, of the Company (the “*Impax Common Stock*”) issued and outstanding immediately prior to the effective time of the Combination (other than the shares of Impax Common Stock held by the Company, Holdco, Amneal, or any direct or indirect wholly owned subsidiary of Amneal or the Company) will be converted into the right to receive one share of Class A Common Stock, par value \$0.01 per share, of New Amneal (“*New Amneal Class A Common Stock*”);

**WHEREAS**, Article 14.07(a) of the Indenture provides that upon the occurrence of any Merger Event, then, at and after the effective time of the transaction, the right to exchange each \$1,000 principal face amount of Notes will be changed into a right to exchange such principal face amount of Notes into, in lieu of Impax Common Stock, the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Impax Common Stock equal to the Exchange Rate immediately prior to such transaction would have owned or been entitled to receive (the “*Reference Property*”) upon such transaction;

**WHEREAS**, in connection with the execution and delivery of this Second Supplemental Indenture, the Trustee has received an Officer’s Certificate and an Opinion of Counsel as contemplated by Sections 10.05 and 14.07(b) of the Indenture; and

**WHEREAS**, the Company and New Amneal have requested that the Trustee execute and deliver this Second Supplemental Indenture and have satisfied all requirements necessary to make this Second Supplemental Indenture a valid instrument in accordance with its terms.

**NOW, THEREFORE**, for and in consideration of the premises contained herein and intending to be legally bound, each party agrees for the benefit of each other party and for the equal and ratable benefit of the Holders, as follows:

ARTICLE I  
EFFECT OF MERGER ON CONVERSION RIGHT

Section 1.1 Conversion Right. The Company and New Amneal hereby acknowledge and agree that, in accordance with Article 14.07(a) of the Indenture, at and after the effective time of the Combination, the Holder of each Note that was outstanding as of the effective time of the Combination shall have the right to convert, subject to the provisions of Article 14 of the Indenture, each \$1,000 principal face amount of such Note for the number of shares of New Amneal Class A Common Stock that a Holder of a number of shares of Impax Common Stock equal to the Conversion Rate immediately prior to the effective time of the Combination would have been entitled to receive upon the Combination. For purposes of this Second Supplemental Indenture, “Reference Property” and “unit of Reference Property,” as defined in the Indenture, means New Amneal Class A Common Stock and one share of New Amneal Class A Common Stock, respectively, and the initial Conversion Rate immediately following the Combination will be 15.7853 shares of New Amneal Class A Common Stock.

ARTICLE II  
ADDITION OF NEW AMNEAL AS A PARTY TO THE INDENTURE

Section 2.1 New Amneal hereby irrevocably and unconditionally agrees to be bound by the terms of the Indenture applicable to it and to issue shares of New Amneal Class A Common Stock as necessary to satisfy the Company’s conversion obligation with respect to any Notes validly surrendered for conversion pursuant to Article 14 of the Indenture.

Section 2.2 The Company and New Amneal hereby covenant and agree that, in connection with the delivery of New Amneal Class A Common Stock upon conversion of any Notes validly surrendered for conversion pursuant to Article 14 of the Indenture, they shall take such measures to protect the interests of the Holders of the Notes as they shall reasonably consider necessary in connection with the Combination and the matters set forth in Section 1.1 of this Second Supplemental Indenture in connection therewith.

ARTICLE III  
MISCELLANEOUS

Section 3.1 Conflict with Indenture.

To the extent not expressly amended or modified by this Second Supplemental Indenture, the Indenture shall remain in full force and effect. If any provision of this Second Supplemental Indenture is inconsistent with any provision of the Indenture, the provision of this Second Supplemental Indenture shall control.

Section 3.2 Effectiveness.

The provisions of this Second Supplemental Indenture shall be effective only upon execution and delivery of this instrument by the parties hereto. Notwithstanding the foregoing sentence, the provisions of this Second Supplemental Indenture shall become operative only upon the payment of the Consent Payment (as defined in the Statement), with the result that the amendments to the Indenture effected by this Second Supplemental Indenture shall be deemed to be revoked retroactively to the date hereof if the payment of the Consent Payment shall not occur.

Section 3.3 Governing Law.

THIS SECOND SUPPLEMENTAL INDENTURE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SECOND SUPPLEMENTAL INDENTURE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 3.4 Successors.

All agreements of the Company and the Trustee in the Indenture and as amended by this Second Supplemental Indenture shall bind their respective successors.

---

Section 3.5 Counterparts.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 3.6 The Trustee.

The Trustee shall not be responsible in any manner for or in respect of the validity or sufficiency of this Second Supplemental Indenture or the due execution thereof by the Company. The recitals of fact contained herein shall be taken as the statements solely of the Company, and the trustee assumes no responsibility for the correctness thereof.

**IN WITNESS WHEREOF**, the parties to this Second Supplemental Indenture have caused it to be duly executed as of the day and year first written.

IMPAX LABORATORIES, LLC

By: /s/ Bryan M. Reasons

Name: Bryan M. Reasons

Title: Chief Financial Officer

AMNEAL PHARMACEUTICALS, INC.

By: /s/ Bryan M. Reasons

Name: Bryan M. Reasons

Title: Chief Financial Officer

WILMINGTON TRUST, NATIONAL ASSOCIATION, as  
Trustee

By: /s/ Sarah Vilhauer

Name: Sarah Vilhauer

Title: Banking Officer

\$2,700,000,000

TERM LOAN CREDIT AGREEMENT,

dated as of May 4, 2018,

among

AMNEAL PHARMACEUTICALS LLC,  
as the Borrower,

THE LENDERS PARTY HERETO,

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent and Collateral Agent, and

JPMORGAN CHASE BANK, N.A.,  
BANK OF AMERICA, N.A. and  
RBC CAPITAL MARKETS,  
as Bookrunners and Arrangers

---

---

---

TABLE OF CONTENTS

		<u>Page</u>
	ARTICLE I	
	Definitions	
SECTION 1.01.	Defined Terms	1
SECTION 1.02.	Terms Generally	77
SECTION 1.03.	Accounting Terms; GAAP; Fair Market Value	78
SECTION 1.04.	Effectuation of Transfers	78
SECTION 1.05.	Currencies	78
SECTION 1.06.	Required Financial Statements	78
SECTION 1.07.	Certifications	79
SECTION 1.08.	Pro Forma Calculations	79
SECTION 1.09.	LCA Election	80
	ARTICLE II	
	The Credits	
SECTION 2.01.	Term Loans and Borrowings	81
SECTION 2.02.	Request for Borrowing	82
SECTION 2.03.	Funding of Borrowings	83
SECTION 2.04.	Interest Elections	83
SECTION 2.05.	Promise to Pay; Evidence of Debt	85
SECTION 2.06.	Repayment of Term Loans	85
SECTION 2.07.	Optional Prepayment of Term Loans	86
SECTION 2.08.	Mandatory Prepayment of Term Loans	86
SECTION 2.09.	Fees	91
SECTION 2.10.	Interest	91
SECTION 2.11.	Alternate Rate of Interest	92
SECTION 2.12.	Increased Costs	93
SECTION 2.13.	Break Funding Payments	94
SECTION 2.14.	Taxes	94
SECTION 2.15.	Payments Generally; <i>Pro Rata</i> Treatment; Sharing of Set-offs	98
SECTION 2.16.	Mitigation Obligations; Replacement of Lenders	100
SECTION 2.17.	Illegality	101
SECTION 2.18.	Incremental Facilities	102
SECTION 2.19.	Refinancing Term Loans	105
SECTION 2.20.	Extensions of Term Loans	106
SECTION 2.21.	Repricing Transaction	108

ARTICLE III

Representations and Warranties

SECTION 3.01.	Organization; Powers	109
SECTION 3.02.	Authorization; No Contravention	109
SECTION 3.03.	Enforceability	110
SECTION 3.04.	Governmental Approvals	110
SECTION 3.05.	Title to Properties; Liens	110
SECTION 3.06.	Subsidiaries	111
SECTION 3.07.	Litigation; Compliance with Laws	111
SECTION 3.08.	Federal Reserve Regulations	111
SECTION 3.09.	Investment Company Act	111
SECTION 3.10.	Use of Proceeds	112
SECTION 3.11.	Tax Returns	112
SECTION 3.12.	No Material Misstatements	112
SECTION 3.13.	Environmental Matters	113
SECTION 3.14.	Security Documents	113
SECTION 3.15.	Location of Real Property and Leased Premises	114
SECTION 3.16.	Solvency	114
SECTION 3.17.	Financial Statements; No Material Adverse Effect	115
SECTION 3.18.	Insurance	115
SECTION 3.19.	USA PATRIOT Act; Anti-Corruption; Sanctions	115
SECTION 3.20.	Intellectual Property Rights; Licenses, Etc.	116
SECTION 3.21.	Employee Benefit Plans	117
SECTION 3.22.	Labor Matters	117

ARTICLE IV

Conditions of Lending

SECTION 4.01.	Conditions Precedent	117
---------------	----------------------	-----

ARTICLE V

Affirmative Covenants

SECTION 5.01.	Existence; Businesses and Properties	120
SECTION 5.02.	Insurance	121
SECTION 5.03.	Taxes	121
SECTION 5.04.	Financial Statements, Reports, etc.	121
SECTION 5.05.	Litigation and Other Notices	125
SECTION 5.06.	Compliance with Laws	125
SECTION 5.07.	Maintaining Records; Access to Properties and Inspections	125
SECTION 5.08.	Use of Proceeds	126
SECTION 5.09.	Compliance with Environmental Laws	126
SECTION 5.10.	Further Assurances; Additional Security	126

SECTION 5.11.	Credit Ratings	128
SECTION 5.12.	Post-Closing Matters	128
ARTICLE VI		
Negative Covenants		
SECTION 6.01.	Indebtedness	129
SECTION 6.02.	Liens	134
SECTION 6.03.	[Reserved]	140
SECTION 6.04.	Investments, Loans and Advances	140
SECTION 6.05.	Fundamental Changes	145
SECTION 6.06.	Dispositions	147
SECTION 6.07.	Restricted Payments	151
SECTION 6.08.	Transactions with Affiliates	155
SECTION 6.09.	Business of the Borrower and its Subsidiaries	157
SECTION 6.10.	Burdensome Agreements	157
SECTION 6.11.	Limitation on Payments and Modifications of Certain Indebtedness; Amendments of Certain Documents	159
SECTION 6.12.	Use of Proceeds	162
ARTICLE VII		
[Reserved].		
ARTICLE VIII		
Events of Default		
SECTION 8.01.	Events of Default	162
ARTICLE IX		
The Agents		
SECTION 9.01.	Appointment	166
SECTION 9.02.	Delegation of Duties	167
SECTION 9.03.	Exculpatory Provisions	168
SECTION 9.04.	Reliance by Administrative Agent	169
SECTION 9.05.	Notice of Default	169
SECTION 9.06.	Non-Reliance on Agents and Other Lenders	169
SECTION 9.07.	Indemnification	170
SECTION 9.08.	Agent in Its Individual Capacity	170
SECTION 9.09.	Successor Agent	171
SECTION 9.10.	Arrangers	171
SECTION 9.11.	Collateral and Guaranty Matters	171
SECTION 9.12.	Certain ERISA Matters	174

---

ARTICLE X

Miscellaneous

SECTION 10.01.	Notices; Communications	177
SECTION 10.02.	Survival of Agreement	178
SECTION 10.03.	Binding Effect	178
SECTION 10.04.	Successors and Assigns	179
SECTION 10.05.	Expenses; Indemnity	187
SECTION 10.06.	Right of Set-off	189
SECTION 10.07.	Applicable Law	190
SECTION 10.08.	Waivers; Amendment	190
SECTION 10.09.	Interest Rate Limitation	195
SECTION 10.10.	Entire Agreement	195
SECTION 10.11.	WAIVER OF JURY TRIAL	195
SECTION 10.12.	Severability	195
SECTION 10.13.	Counterparts	196
SECTION 10.14.	Headings	196
SECTION 10.15.	Jurisdiction; Consent to Service of Process	196
SECTION 10.16.	Confidentiality	197
SECTION 10.17.	Platform; Borrower Materials	198
SECTION 10.18.	[Reserved]	199
SECTION 10.19.	USA PATRIOT Act Notice	199
SECTION 10.20.	Intercreditor Agreements	199
SECTION 10.21.	No Advisory or Fiduciary Responsibility	200
SECTION 10.22.	Private-Side Information Contacts	200
SECTION 10.23.	Acknowledgement and Consent to Bail-In of EEA Financial Institutions	201

---

Exhibits and Schedules

Exhibit A	Form of Assignment and Acceptance
Exhibit B	Form of Solvency Certificate
Exhibit C	Form of Borrowing Request
Exhibit D	Form of Interest Election Request
Exhibit E	Form of Non-Debt Fund Affiliate Assignment and Acceptance
Exhibit F	U.S. Tax Compliance Certificate
Exhibit G	Form of Pari Passu Intercreditor Agreement
Exhibit H	Form of Junior Lien Intercreditor Agreement
Exhibit I	Form of Note
Exhibit J	Dutch Auction Procedures
Exhibit K	Form of Escrow Agreement
Schedule 2.01	Commitments
Schedule 3.06	Subsidiaries
Schedule 3.11	Taxes
Schedule 3.13	Environmental Matters
Schedule 3.15(1)	Owned Material Real Property
Schedule 3.15(2)	Leased Material Real Property
Schedule 3.18	Insurance
Schedule 5.12	Post-Closing Matters
Schedule 6.04	Investments
Schedule 6.08	Transactions with Affiliates
Schedule 6.10	Burdensome Agreements
Schedule 10.01	Notice Information

TERM LOAN CREDIT AGREEMENT, dated as of May 4, 2018 (as amended, amended and restated, supplemented or otherwise modified from time to time, this “*Agreement*”), by and among AMNEAL PHARMACEUTICALS LLC, a Delaware limited liability company (the “*Borrower*”), the Lenders party hereto from time to time and JPMORGAN CHASE BANK, N.A. (“*JPM*”), as administrative agent (in such capacity, and as further defined in Section 1.01, the “*Administrative Agent*”), and as collateral agent (in such capacity, and as further defined in Section 1.01, the “*Collateral Agent*”).

## RECITALS

- (1) Pursuant to the Business Combination Agreement, dated as of October 17, 2017 (such agreement, including all exhibits and schedules thereto, each as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “*Acquisition Agreement*”), by and among Impax (as defined herein), Atlas Holdings, Inc., a Delaware corporation which on the Closing Date will change its name to Amneal Pharmaceuticals, Inc. (“*Amneal Inc.*”), and the Borrower, Amneal Inc. will directly or indirectly (a) acquire (the “*Acquisition*”) all of the Capital Stock of Impax and (b) contribute (the “*Contribution*”) all of the Capital Stock of Impax to the Borrower.
- (2) In connection with the consummation of the Acquisition, (a) the Lenders have agreed to extend credit to the Borrower in the form of Term Loans on the Closing Date in an aggregate principal amount of \$2,700.0 million, (b) certain financial institutions have agreed to extend credit to the Borrower in the form of revolving loans and letters of credit under the ABL Credit Agreement (as defined herein) and (c) the proceeds of the Term Loans and any ABL Loans (as defined herein) will be applied on the Closing Date to (i) consummate the Acquisition, the Closing Date Refinancing and the other Transactions (including the Specified Tender Offer, which shall be consummated with the portion of the Term Loans deposited into the Escrow Account (as defined herein)) and (ii) pay the Transaction Costs (as defined herein).

## AGREEMENT

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

## ARTICLE I

### *Definitions*

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“*ABL Claims*” means the “*ABL Claims*” as defined in the Closing Date Intercreditor Agreement.

“*ABL Credit Agreement*” means the Revolving Credit Agreement, dated as of the Closing Date, among the Borrower, the lenders party thereto and JPM, as administrative agent and collateral agent, as such document may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

---

“**ABL Credit Agreement Refinancing Indebtedness**” means “*Credit Agreement Refinancing Indebtedness*” as defined in the ABL Credit Agreement.

“**ABL Extended Revolving Commitments**” means “*Extended Loans*” as defined in the ABL Credit Agreement.

“**ABL Facility**” means the “*Revolving Facility*” and any “*Incremental Facility*,” each as defined in the ABL Credit Agreement.

“**ABL Incremental Facilities**” means any “*Incremental Facility*” as defined in the ABL Credit Agreement.

“**ABL Loan Documents**” means the ABL Credit Agreement and the other “*Loan Documents*” as defined in the ABL Credit Agreement, as each such document may be amended, restated, amended and restated, supplemented or otherwise modified.

“**ABL Loans**” means any “*Loans*” as defined in the ABL Credit Agreement.

“**ABL Obligations**” means the “*Obligations*” as defined in the ABL Credit Agreement.

“**ABL Other Loans**” means “*Refinancing Term Loans*” as defined in the ABL Credit Agreement.

“**ABL Priority Collateral**” means the “*ABL Priority Collateral*” as defined in the Closing Date Intercreditor Agreement.

“**ABL Priority Collateral Asset Sale**” means any Asset Sale that consists of or includes the disposition of ABL Priority Collateral outside the ordinary course of business.

“**ABL Security Documents**” means the “*Security Documents*” as defined in the ABL Credit Agreement.

“**ABR**” means, for any day, a fluctuating rate *per annum* equal to the highest of:

- (1) the NYFRB Rate in effect on such day plus  $\frac{1}{2}$  of 1%;
- (2) the Prime Rate in effect on such day;
- (3) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; *provided* that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day; and
- (4) 1.00% per annum.

---

Any change in the ABR due to a change in the NYFRB Rate, the Prime Rate or the Adjusted LIBO Rate will be effective from and including the effective date of such change in the NYFRB Rate, the Prime Rate or the Adjusted LIBO Rate, as the case may be. If the ABR is being used as an alternate rate of interest pursuant to Section 2.11 hereof, then the ABR shall be the greater of clauses (1), (2) and (4) above and shall be determined without reference to clause (3) above. For the avoidance of doubt, if the ABR as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**ABR Borrowing**” means a Borrowing comprised of ABR Loans.

“**ABR Loan**” means any Term Loan bearing interest at a rate determined by reference to the ABR.

“**Acquisition**” has the meaning assigned to such term in the recitals hereto.

“**Acquisition Agreement**” has the meaning assigned to such term in the recitals hereto.

“**Acquisition Documents**” means the collective reference to the Acquisition Agreement, all exhibits and schedules thereto and all agreements expressly contemplated thereby, each as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“**Additional Lender**” means the banks, financial institutions and other institutional lenders and investors (other than natural persons and any Disqualified Institution) that become Lenders in connection with an Incremental Term Loan or Refinancing Term Loan; *provided* that the Administrative Agent shall have consented (such consent not to be unreasonably withheld, conditioned or delayed) to any Additional Lender to the extent its consent would be required under Section 10.04 for an assignment of Term Loans to such Additional Lender.

“**Adjusted LIBO Rate**” means, with respect to any Eurocurrency Borrowing for any Interest Period, an interest rate *per annum* (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“**Administrative Agent**” means JPM, in its capacity as administrative agent for itself and the Lenders hereunder, and any duly appointed successor in such capacity.

“**Administrative Agent Fees**” has the meaning assigned to such term in Section 2.09(1).

“**Administrative Questionnaire**” means a customary Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Affiliate**” means, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. No Person (other than the Borrower or any Subsidiary of the Borrower) in whom a Receivables Subsidiary makes an Investment in connection with a Qualified Receivables Financing will be deemed to be an Affiliate of the Borrower or any of its Subsidiaries solely by reason of such Investment.

---

“**Affiliated Lender**” means, at any time, any Lender that is an Investor or an Affiliate of an Investor at such time, excluding in any case (a) the Borrower or any of its Subsidiaries and (b) any natural person.

“**Agency Fee Letter**” means the Agency Fee Letter, dated November 6, 2017, by and among the Borrower, JPM, BANA and MLPFSI, as amended and in effect from time to time and including any joinders thereto.

“**Agents**” means the Administrative Agent and the Collateral Agent, in their respective capacities as such.

“**Agreement**” has the meaning assigned to such term in the introductory paragraph hereof.

“**All-In Yield**” means, as to any Indebtedness or Term Loans of any Class, the yield thereof, whether in the form of interest rate, margin, OID, upfront fees, an increase due to an Adjusted LIBO Rate floor or ABR floor (with such increased amount being equated to interest margins for purposes of determining any increase to the Applicable Margin); *provided* that (1) OID will be measured with reference to the Term Loan proceeds received by the Borrower (and not with reference to any price at which Term Loans are assigned), (2) OID and upfront fees shall be equated to interest rate assuming a 4-year life to maturity (or, if less, the stated life to maturity at the time of its incurrence of the applicable Indebtedness) and (3) “All-In Yield” shall not include any arrangement fees, structuring fees, underwriting fees, commitment fees, ticking fees or any other fees similar to the foregoing in each case to the extent not paid or payable generally to all applicable lenders.

“**Amneal Holdings**” means Amneal Holdings, LLC, a Delaware limited liability company.

“**Amneal Inc.**” has the meaning assigned to such term in the recitals hereto.

“**Annual Financial Statements**” has the meaning assigned to such term in Section 5.04(1).

“**Anti-Corruption Laws**” shall mean all laws, rules, and regulations of any jurisdiction applicable to the Borrower or the Restricted Subsidiaries from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, and other similar legislation in any other jurisdictions (as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced).

“ **Applicable Margin** ” means:

- (1) with respect to any Initial Term Loans made on the Closing Date, (a) as of the Closing Date, (x) for ABR Loans, 2.50% and (y) for Eurocurrency Loans, 3.50% and (b) following delivery of the Required Financial Statements for the fiscal quarter ending September 30, 2018, the percentage per annum determined in accordance with the pricing grid set forth below, based on the First Lien Net Leverage Ratio for the most recent fiscal quarter ending on the date prior to the first day of each fiscal quarter of the Borrower:

<u>First Lien Net Leverage Ratio</u>	<u>Applicable Margin For ABR Loans</u>	<u>Applicable Margin for Eurocurrency Loans</u>
Category 1: Greater than 3.00 to 1.00	2.50%	3.50%
Category 2: Less than or equal to 3.00 to 1.00	2.25%	3.25%

For purposes of the foregoing, each change in the Applicable Margin under this clause (1) resulting from a change in the First Lien Net Leverage Ratio shall be effective during the period commencing on and including the date of delivery to the Administrative Agent pursuant to Section 5.04(1) or 5.04(2) of the Required Financial Statements indicating such change and ending on the date immediately preceding the effective date of the next such change; provided that the First Lien Net Leverage Ratio shall be deemed to be in Category 1, at the option of the Administrative Agent or at the request of the Required Lenders, if the Borrower fails to deliver the Required Financial Statements required to be delivered by it pursuant to Section 5.04(1) or 5.04(2) or the certificate of a Financial Officer of the Borrower required pursuant to Section 5.04(3) during the period from the expiration of the time for delivery thereof until such Required Financial Statements and such certificate are delivered;

- (2) with respect to any Incremental Term Loans, the “Applicable Margin” set forth in the Incremental Facility Amendment establishing the terms thereof;
- (3) with respect to any Refinancing Term Loans, the “Applicable Margin” set forth in the Refinancing Amendment establishing the terms thereof; and
- (4) with respect to any Extended Term Loans, the “Applicable Margin” set forth in the Extension Amendment establishing the terms thereof.

“ **Approved Fund** ” means, with respect to any Lender any fund that is administered, advised or managed by:

- (a) such Lender;
- (b) any Affiliate of such Lender; or
- (c) any entity or an Affiliate of an entity that administers, advises or manages such Lender.

“ **Arranger** ” means each of JPM, BANA and RBC.

“**Arranger Fee Letter**” means the Amended and Restated Fee Letter, dated November 6, 2017, by and among the Borrower, JPM, BANA, MLPFSI and RBC, as amended and in effect from time to time and including any joinders thereto.

“**Asset Sale**” means any Casualty Event or any sale, transfer or other disposition (including any Sale Leaseback Transaction) to any Person of any asset or assets of the Borrower or any Restricted Subsidiary, other than any disposition of any Securitization Assets.

“**Assignee**” has the meaning assigned to such term in Section 10.04(2).

“**Assignment and Acceptance**” means an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent and the Borrower (if required by Section 10.04), substantially in the form of Exhibit A or such other form that is approved by the Administrative Agent and reasonably satisfactory to the Borrower.

“**Attributable Indebtedness**” means, on any date, in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“**Available Amount**” means, as of any date, an amount, not less than zero, determined on a cumulative basis, equal to the sum, without duplication, of:

- (1) the greater of (a) \$165.0 million and (b) an amount equal to the Equivalent Percentage of the amount in the preceding clause (a) multiplied by TTM Consolidated EBITDA as of the applicable date of determination; *plus*
- (2) 50% of Consolidated Net Income of the Borrower for the period (taken as one accounting period) from the first day of the fiscal quarter during which the Closing Date occurs to the end of the Borrower’s most recently ended fiscal quarter for which Required Financial Statements have been or are required to be delivered (or in the case such Consolidated Net Income is a deficit, minus 100% of such deficit); *provided* that if such amount as so determined would be less than zero, such amount shall be deemed to be zero; *plus*
- (3) the cumulative amount of cash proceeds and the fair market value of property (other than cash) received by the Borrower or any Parent Entity in connection with the sale or issuance of Equity Interests of the Borrower or any Parent Entity after the Closing Date and on or prior to such date (including upon exercise of warrants or options or in connection with a Permitted Acquisition or other Permitted Investment) which, with respect to proceeds or property received in connection with the sale or issuance of Equity Interests of a Parent Entity, have been contributed to the capital of the Borrower or exchanged for Equity Interest of the Borrower, other than the proceeds of Disqualified Stock, Excluded Contributions, Cure Amounts, or equity used to incur Contribution Indebtedness and, in each case, Not Otherwise Applied; *plus*
- (4) 100% of the aggregate amount of cash contributions to the capital of the Borrower and the fair market value of property other than cash contributed to the capital of the Borrower after the Closing Date, other than the proceeds of Disqualified Stock, Excluded Contributions, Cure Amounts, or equity used to incur Contribution Indebtedness and, in each case, Not Otherwise Applied; *plus*

- 
- (5) 100% of the aggregate principal amount of any Indebtedness (including the liquidation preference or maximum fixed repurchase price, as the case may be, of any Disqualified Stock) of the Borrower or any Restricted Subsidiary issued after the Closing Date (other than Indebtedness (including Disqualified Stock) issued to the Borrower or a Restricted Subsidiary), which has been converted into or exchanged for Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Entity; *plus*
  - (6) 100% of the aggregate amount of cash (and the fair market value of property other than cash) received by the Borrower or any Restricted Subsidiary after the Closing Date from (a) the sale, transfer or other disposition (other than to the Borrower or any Restricted Subsidiary) of the Equity Interests of any Unrestricted Subsidiary or Minority Investment to the extent such Investments were made in reliance on the Available Amount or (b) any dividend or other distribution (including any payment on intercompany Indebtedness) by any such Unrestricted Subsidiary or Minority Investment to the extent any such Investments were made in reliance on the Available Amount; *plus*
  - (7) in the event any Unrestricted Subsidiary or Minority Investment becomes a Restricted Subsidiary or any Unrestricted Subsidiary or Minority Investment has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Borrower or any Restricted Subsidiary, the lesser of (a) the fair market value of the Investments of the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary or Minority Investment at the time such Unrestricted Subsidiary or Minority Investment becomes a Restricted Subsidiary or at the time of such merger, consolidation, amalgamation, transfer or liquidation (or of the assets transferred or conveyed, as applicable) and (b) the fair market value of the original Investments by the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary or Minority Investment, in each case, solely to the extent such Investments were made in reliance on the Available Amount and as determined by a Responsible Officer of the Borrower in good faith; *plus*
  - (8) the returns (including repayments of principal and payments of interest), profits, distributions, returns of capital and similar amounts received in cash or Cash Equivalents by the Borrower or any Restricted Subsidiary on Investments made by the Borrower or any Restricted Subsidiary in reliance on the Available Amount pursuant to Section 6.04(3) (including as a result of any termination or unwinding of such Investments) not in excess of the amount of such Investments; *plus*
  - (9) any mandatory prepayment declined by a Lender; *minus*
  - (10) the use of such Available Amount since the Closing Date.

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

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

“ **BANA** ” means Bank of America, N.A.

“ **Below Threshold Asset Sale Proceeds** ” means the cash proceeds of Asset Sales involving aggregate consideration of \$25.0 million or less.

“ **Beneficial Owner** ” has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act. The terms “ **Beneficially Owns** ” and “ **Beneficially Owned** ” have a corresponding meaning.

“ **Big Boy Letter** ” means (1) a letter from a Lender acknowledging that:

- (a) an Affiliated Lender may have information regarding the Borrower and its Subsidiaries, their ability to perform the Obligations or any other material information that has not previously been disclosed to the Administrative Agent and the Lenders (which may include MNPI) (“ **Excluded Information** ”),
  - (b) the Excluded Information may not be available to such Lender,
  - (c) such Lender has independently and without reliance on any other party made its own analysis and determined to assign Term Loans to or buy Term Loans from, as the case may be, an Affiliated Lender pursuant to Section 10.04 notwithstanding its lack of knowledge of the Excluded Information and
  - (d) such Lender waives and releases any claims it may have against the Administrative Agent, such Affiliated Lender, the Borrower, its Subsidiaries and their respective Affiliates with respect to the nondisclosure of the Excluded Information; or
- (2) a letter otherwise in form and substance reasonably satisfactory to such Affiliated Lender and assigning Lender.

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

“ **Board of Directors** ” means, as to any Person, the board of directors, board of managers or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity, and the term “ **directors** ” means members of the Board of Directors.

“ **Borrower** ” has the meaning assigned to such term in the recitals to this Agreement.

“ **Borrower Materials** ” has the meaning assigned to such term in Section 10.17(1).

“ **Borrowing** ” means a group of Term Loans of a single Type made on a single date under a single Term Facility and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect.

“ **Borrowing Request** ” means a request by the Borrower in accordance with the terms of Section 2.02 and substantially in the form of Exhibit C.

“ **Budget** ” has the meaning assigned to such term in Section 5.04(5).

“ **Business Day** ” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close; *provided* that when used in connection with a Eurocurrency Loan, the term “Business Day” also excludes any day on which banks are not open for dealings in deposits in the London interbank market.

“ **Capital Expenditures** ” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capital Leases) incurred by the Borrower and the Restricted Subsidiaries during such period that, in accordance with GAAP, are or should be included in “additions to property, plant or equipment” or similar items reflected in the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries for such period; *provided* that Capital Expenditures will not include:

- (1) expenditures to the extent they are made with (a) Equity Interests of any Parent Entity or (b) proceeds of the issuance of Equity Interests (other than Disqualified Stock) of, or a cash capital contribution to, the Borrower after the Closing Date;
- (2) expenditures with proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Borrower and its Restricted Subsidiaries;
- (3) interest capitalized during such period;
- (4) expenditures that are accounted for as capital expenditures of such Person and that actually are paid for by a third party (excluding the Borrower and any Restricted Subsidiary) and for which none of the Borrower or any Restricted Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other Person (whether before, during or after such period);
- (5) the book value of any asset owned by the Borrower or any Restricted Subsidiary prior to or during such period to the extent that such book value is included as a Capital Expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period; *provided* that any expenditure necessary in order to permit such asset to be reused will be included as a Capital Expenditure during the period that such expenditure is actually made;

- 
- (6) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (a) used or surplus equipment traded in at the time of such purchase or (b) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business;
  - (7) Investments in respect of any Permitted Acquisitions;
  - (8) the Acquisition; or
  - (9) the purchase of property, plant or equipment to the extent purchased with the proceeds of Asset Sales that are not applied to prepay Term Loans pursuant to Section 2.08.

“ **Capital Lease Obligations** ” means, with respect to any Person, at the time any determination thereof is to be made, the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP (excluding the footnotes thereto) and, for purposes hereof, the amount of such obligations at any time will be the capitalized amount thereof at such time determined in accordance with GAAP.

“ **Capital Leases** ” means all leases that have been or are required to be, in accordance with GAAP as in effect on the Closing Date, recorded as capitalized leases; *provided* that for all purposes hereunder the amount of obligations under any Capital Lease shall be the amount thereof accounted for as a liability in accordance with GAAP as in effect on the Closing Date.

“ **Capital Stock** ” means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“ **Captive Insurance Subsidiary** ” means any Subsidiary that is subject to regulation as an insurance company (or any Subsidiary thereof).

---

“ *Cash Equivalents* ” means:

- (1) Dollars, Canadian dollars, Japanese yen, pounds sterling, euros or the national currency of any participating member of the European Union or, in the case of any Non-U.S. Subsidiary, any local currencies held by it from time to time in the ordinary course of business and not for speculation;
- (2) direct obligations of the United States of America, the United Kingdom or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America, the United Kingdom or any member of the European Union or any agency thereof, in each case, with maturities not exceeding two years;
- (3) time deposits, eurodollar time deposits, certificates of deposit and money market deposits, in each case, with maturities not exceeding one year from the date of acquisition thereof, demand deposits, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any commercial bank having capital, surplus and undivided profits of not less than \$250.0 million (or the foreign currency equivalent thereof);
- (4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (6) below entered into with a bank meeting the qualifications described in clause (3) above;
- (5) commercial paper or variable or fixed rate notes maturing not more than one year after the date of acquisition issued by a corporation rated at least “P-1” by Moody’s or “A-1” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
- (6) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, having one of the two highest rating categories obtainable from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
- (7) Indebtedness issued by Persons with a rating of at least “A 2” by Moody’s or “A” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case, with maturities not exceeding one year from the date of acquisition, and marketable short-term money market and similar securities having a rating of at least “P-2” or “A-2” from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
- (8) Investments in money market funds with average maturities of 12 months or less from the date of acquisition that are rated “Aaa3” by Moody’s and “AAA” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
- (9) instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above customarily utilized in the countries where any such Restricted Subsidiary is located or in which such Investment is made;

- 
- (10) shares of mutual funds whose investment guidelines restrict 95% of such funds' investments to those satisfying the provisions of clauses (1) through (9) above; and
  - (11) solely with respect to any Captive Insurance Subsidiary, any investment that such Captive Insurance Subsidiary is not prohibited to make in accordance with applicable law.

“ **Casualty Event** ” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“ **Certain Funds Provisions** ” has the meaning given to such term in the Commitment Letter.

**A “ Change in Control ” will be deemed to occur if:**

- (1) at any time a “change of control” (or comparable event) occurs under the ABL Credit Agreement or the documentation governing any Permitted Refinancing Indebtedness in respect of the foregoing, in each case, if any Indebtedness is outstanding under such agreement; or
- (2) any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, but excluding any employee benefit plan of such Person and its subsidiaries and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the Permitted Holders, acquires, directly or indirectly, Beneficial Ownership of Equity Interests representing more than 35% of the aggregate ordinary voting power (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested) represented by the issued and outstanding Equity Interests of Amneal Inc. and the percentage of the aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Amneal Inc. Beneficially Owned, directly or indirectly, in the aggregate by the Permitted Holders, taken together (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested) unless, in the case of this clause (2), the Permitted Holders have the right or the ability by voting power, contract or otherwise to elect or designate for election a majority of the board of directors of Amneal Inc.; or
- (3) Amneal Inc. fails to Control the Borrower.

“ **Change in Law** ” means:

- (1) the adoption of any law, rule or regulation after the Closing Date;
- (2) any change in law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date; or

(3) compliance by any Lender (or, for purposes of Section 2.12(2), by any lending office of such Lender or by such Lender's holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority, made or issued after the Closing Date; *provided* that, notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives promulgated thereunder or issued in connection therewith and (b) 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 of America or foreign regulatory authorities, in each case pursuant to Basel III, in each case will be deemed to be a "Change in Law," regardless of the date enacted, adopted, promulgated or issued.

"**Charges**" has the meaning assigned to such term in Section 10.09.

"**Class**" means, with respect to a Term Facility, (a) when used with respect to Lenders, the Lenders under such Term Facility, and (b) when used with respect to Term Loans or Borrowings, Term Loans or Borrowings under such Term Facility.

"**Closing Date**" means May 4, 2018.

"**Closing Date EBITDA**" means \$619,791,601.

"**Closing Date First Lien Net Leverage Ratio**" means 4.20 to 1.00.

"**Closing Date Intercreditor Agreement**" means the ABL / Term Loan Intercreditor Agreement, dated as of the Closing Date, by and among the Administrative Agent, the Collateral Agent and JPM, as administrative agent and collateral agent under the ABL Credit Agreement, and acknowledged by the Loan Parties, as amended, restated, amended and restated, supplemented or otherwise modified from time to time pursuant to the terms hereof and thereof.

"**Closing Date Refinancing**" means the repayment of the debt and termination of the commitments under the Existing Credit Facilities and release of all Liens and security interests related thereto.

"**Closing Date Total Net Leverage Ratio**" means 4.20 to 1.00.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Collateral**" means the "*Collateral*" as defined in the Collateral Agreement and also includes all other property that is subject to any Lien in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to any Security Document; *provided* that, for the avoidance of doubt, the Collateral will not include any Excluded Assets.

"**Collateral Agent**" means JPM, in its capacity as Collateral Agent for itself and the other Secured Parties, and any duly appointed successor in that capacity.

"**Collateral Agreement**" means the Term Loan Guarantee and Collateral Agreement dated as of the Closing Date, among the Loan Parties party thereto and the Collateral Agent, as amended, amended and restated, supplemented or otherwise modified from time to time.

“**Commitment**” means, with respect to each Lender, the commitment of such Lender to make Term Loans as set forth on Schedule 2.01. On the Closing Date, the aggregate amount of Commitments is \$2,700.0 million.

“**Commitment Letter**” means that certain Amended and Restated Commitment Letter, dated as of November 6, 2017, by and among the Borrower, JPM, BANA, MLPFSI and RBC and including any joinders thereto.

“**Consolidated Amortization Expense**” means, with respect to any Person for any Test Period, the amortization expense of such Person and its Restricted Subsidiaries for such Test Period, including the amortization of deferred financing fees or costs for such Test Period, determined on a consolidated basis in accordance with GAAP.

“**Consolidated Cash Interest Expense**” means, with respect to any Person and its Restricted Subsidiaries (on a consolidated basis) for any Test Period, the sum of: (1) cash consolidated interest expense (less cash interest income) for such period plus (2) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock made during such period.

“**Consolidated Debt**” means, as of any date of determination, the sum (without duplication) of the aggregate principal amount of all Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date consisting of Indebtedness for borrowed money, unreimbursed obligations in respect of drawn letters of credit (to the extent not cash collateralized), Capital Lease Obligations, Indebtedness obligations evidenced by bonds, debentures, notes or similar instruments and obligations with respect to Disqualified Stock, determined on a consolidated basis in accordance with GAAP (but excluding the effects of the application of purchase accounting in connection with the Transactions, any Permitted Acquisition or any other investment permitted hereunder), based upon the most recent fiscal quarter for which Required Financial Statements have been or are required to have been delivered; *provided*, that Consolidated Debt will include any Convertible Indebtedness to the extent of the aggregate principal amount thereof; *provided, further*, that Consolidated Debt shall not include any Indebtedness in respect of:

- (1) any Qualified Receivables Transaction;
- (2) any letter of credit, except to the extent of unreimbursed obligations in respect of drawn letters of credit (*provided* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Debt until three business days after such amount is drawn (it being understood that any borrowing, whether automatic or otherwise, to fund such reimbursement shall be counted)); or
- (3) obligations under Hedge Agreements.

---

“ **Consolidated Depreciation Expense** ” means, with respect to any Person for any Test Period, the depreciation expense of such Person and its Restricted Subsidiaries for such Test Period, determined on a consolidated basis in accordance with GAAP.

“ **Consolidated EBITDA** ” means, with respect to any Person for any Test Period, Consolidated Net Income of such Person and its Restricted Subsidiaries for such Test Period, adjusted by:

- (1) adding thereto, in each case, only to the extent deducted (and not added back) in determining such Consolidated Net Income and without duplication:
  - (a) Consolidated Interest Expense for such Test Period;
  - (b) Consolidated Amortization Expense for such Test Period;
  - (c) Consolidated Depreciation Expense for such Test Period;
  - (d) Consolidated Tax Expense for such Test Period;
  - (e) the amount of any restructuring, severance, relocation, consolidation, integration, remediation or similar items or reserves in such Test Period (whether or not characterized as such in accordance with GAAP), including items or reserves incurred or taken in connection with (i) Permitted Acquisitions and other Permitted Investments after the Closing Date and (ii) severance and the consolidation or closing of any facilities after the Closing Date;
  - (f) the amount of costs relating to signing, retention and completion bonuses, relocation expenses, recruiting expenses, costs and expenses incurred in connection with any strategic or new initiatives, transition costs, consolidation and closing costs for facilities, business optimization expenses and new systems design and implementation costs;
  - (g) the amount of “run-rate” cost savings, operating expense reductions and synergies related to the Transactions, any Specified Transaction or any other restructuring, cost saving initiative or other initiative that are projected by such Person in good faith to result from actions taken, committed to be taken or expected to be taken no later than 24 months after the end of such Test Period (which amounts will be determined by such Person in good faith and calculated on a Pro Forma Basis as though such amounts had been realized on the first day of such Test Period), net of the amount of actual benefits realized during such Test Period from such actions; provided, that the amounts added back pursuant to this clause (g) shall not exceed 25% of Consolidated EBITDA after giving effect to this clause (g);
  - (h) any costs or expenses incurred in such Test Period pursuant to or in connection with or resulting from any management equity plan, profits interest or stock option plan or any other management or employee benefit plan or agreement or any post-employment benefit plans or agreements or any grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other similar rights or any stock subscription, stockholders or partnership agreement;

- 
- (i) any net loss from disposed, abandoned, closed or discontinued operations;
  - (j) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any Test Period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (2) below for any previous Test Period and not added back;
  - (k) any non-cash charges or expenses reducing Consolidated Net Income for such Test Period (provided that if any such non-cash item represents an accrual or reserve for potential cash items in any future Test Period, (i) such Person may determine not to add back such non-cash item in the current Test Period and (ii) to the extent such Person does decide to add back such non-cash item, the cash payment in respect thereof in such future Test Period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior Test Period);
  - (l) all charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Equity Interests held by officers or employees of such Person and all losses, charges and expenses related to payments made to holders of options or other derivative Equity Interests in the common equity of such Person or any direct or indirect parent thereof in connection with, or as a result of, any distribution being made to equity holders of such Person or any direct or indirect parent thereof, which payments are being made to compensate such option holders as though they were equity holders at the time of, and entitled to share in, such distribution;
  - (m) the amount of any expenses paid on behalf of any member of the board of directors or reimbursable to such member of the board of directors;
  - (n) all judgments, liabilities, obligations, damages of any kind, including liquidated damages, settlement amounts, losses, fines, costs, fees, expenses (including reasonable attorneys' fees and disbursements), penalties and interest and other charges or expenses in connection with any lawsuit or other proceeding against such Person and its Subsidiaries; provided, that the amounts added back pursuant to this clause (n) shall not exceed 15% of Consolidated EBITDA prior to giving effect to this clause (n);
  - (o) losses or discounts on any sale of receivables, Securitization Assets and related assets in connection with any Qualified Receivables Transaction;
  - (p) earn-outs and contingent consideration obligations (including to the extent accounted for as bonuses and other compensation), payments in respect of dissenting shares, and purchase price adjustments, made by such Person during such Test Period, in each case, in connection with an investment or acquisition permitted hereunder;

- 
- (q) the amount of any contingent payments in connection with the licensing of Intellectual Property Rights or other assets;
  - (r) any extraordinary, non-recurring or unusual costs items; and
  - (s) other adjustments consistent with Regulation S-X; and

(2) subtracting therefrom, in each case only to the extent (and in the same proportion) included or added in determining such Consolidated Net Income and without duplication:

- (a) the aggregate amount of all non-cash items increasing Consolidated Net Income (other than (i) the accrual of revenue or recording of receivables in the ordinary course of business and (ii) the reversal of any accrual of a reserve referred to in the parenthetical in clause (1)(k) of this definition (other than any such reversal that results from a cash payment subtracted from Consolidated EBITDA)) for such Test Period;
- (b) any extraordinary, non-recurring or unusual gains; and
- (c) any net income from disposed, abandoned, closed or discontinued operations.

Notwithstanding the foregoing, Consolidated EBITDA of the Borrower (i) for the fiscal quarter ended March 31, 2017, shall be deemed to be \$124,962,967, (ii) for the fiscal quarter ended June 30, 2017, shall be deemed to be \$146,611,301, (iii) for the fiscal quarter ended September 30, 2017, shall be deemed to be \$179,033,361, and (iv) for the fiscal quarter ended December 31, 2017, shall be deemed to be \$169,183,972, as such amounts may be adjusted pursuant to Pro Forma adjustments permitted by this Agreement.

“**Consolidated First Lien Net Debt**” means, as of any date, the Initial Term Loans and any other Consolidated Debt outstanding as of such date that is Pari Passu Lien Debt, *minus* all Unrestricted Cash as of such date in an aggregate amount not to exceed \$150,000,000, in each case, determined based upon the most recent fiscal quarter for which Required Financial Statements have been or are required to have been delivered; *provided* that for purposes of calculating the amount of Consolidated First Lien Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness. For the avoidance of doubt, Indebtedness under the ABL Credit Agreement will constitute Consolidated First Lien Net Debt.

---

“ **Consolidated Interest Expense** ” means, with respect to any Person for any Test Period, the total consolidated interest expense of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, *including* , without duplication:

- (1) imputed interest on Capital Lease Obligations and Attributable Indebtedness of such Person and its Restricted Subsidiaries for such Test Period;
- (2) commissions, discounts and other fees, charges and expenses owed by such Person and its Restricted Subsidiaries with respect to letters of credit securing financial obligations, bankers’ acceptance financing and receivables financings for such Test Period;
- (3) pay-in-kind interest payments, amortization and write-offs of deferred financing fees, debt issuance costs, debt discount, or premium, commissions and other financing fees and expenses (including expensing of any bridge, commitment or other financing fees) incurred by such Person and its Restricted Subsidiaries for such Test Period including net costs under Hedge Agreements dealing with interest rates and any commitment fees payable thereunder and all discounts, commissions, fees and other similar charges associated with any Qualified Receivables Transaction;
- (4) cash contributions to any employee stock ownership plan or similar trust made by such Person and its Restricted Subsidiaries to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than such Person or a wholly-owned Subsidiary) in connection with Indebtedness incurred by such plan or trust for such Test Period;
- (5) all interest paid or payable with respect to discontinued operations of such Person and its Restricted Subsidiaries for such Test Period;
- (6) the interest portion of any deferred payment obligations of such Person and its Restricted Subsidiaries for such Test Period; and
- (7) all interest on any Indebtedness of such Person and its Restricted Subsidiaries that is (a) Indebtedness of others secured by any Lien on property owned or acquired by such Person or its Subsidiaries, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such property or (b) contingent obligations of such Person or its Subsidiaries in respect of Indebtedness;

*provided* that Consolidated Interest Expense shall be calculated after giving effect to Hedge Agreements related to interest rates (including associated costs), but excluding unrealized gains and losses with respect to such Hedge Agreements; *provided further* that when determining Consolidated Interest Expense in respect of any Test Period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of such Test Period. For purposes of this definition, interest on Capital Lease Obligations will be deemed to accrue at the interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Capital Lease Obligations in accordance with GAAP.

---

“ *Consolidated Net Income* ” means, with respect to any Person for any Test Period, the Net Income of such Person and its Restricted Subsidiaries determined on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded from such consolidated net income (to the extent otherwise included therein), without duplication:

- (1) the Net Income for such Test Period of any Person that is not a Subsidiary, or that is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; provided that the Borrower’s or any Restricted Subsidiary’s equity in the Net Income of such Person shall be included in the Consolidated Net Income of the Borrower for such Test Period up to the aggregate amount of dividends or distributions or other payments in respect of such equity that are actually paid in cash (or to the extent converted into cash) by such Person to the Borrower or a Restricted Subsidiary, in each case, in such Test Period, to the extent not already included therein (subject in the case of dividends, distributions or other payments in respect of such equity made to a Restricted Subsidiary to the limitations contained in clause (2) below);
- (2) solely with respect to the calculation of Available Amount and Excess Cash Flow, (a) the Net Income of any Subsidiary of such Person during such Test Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of that income is not permitted by operation of the terms of its Organizational Documents or any agreement, instrument or requirement of Law applicable to such Subsidiary during such Test Period; *provided* that Consolidated Net Income of such Person shall be increased by the amount of dividends or distributions or other payments that are actually paid to such Person or its Restricted Subsidiaries in respect of such Test Period and (b) the Net Income of any Person for the period prior to it becoming a Subsidiary;
- (3) any gain (or loss), together with any related provisions for taxes on any such gain (or the tax effect of any such loss), realized by such Person or any of its Restricted Subsidiaries during such Test Period upon any asset sale or other disposition of any Equity Interests of any Person (other than any dispositions in the ordinary course of business) by such Person or any of its Restricted Subsidiaries;
- (4) gains and losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such Test Period;
- (5) earnings (or losses), including any impairment charge, resulting from any reappraisal, revaluation or write-up (or write-down) of assets during such Test Period;
- (6) (a) unrealized gains and losses with respect to Hedge Agreements for such Test Period pursuant to the application of Accounting Standards Codification 815 (Derivatives and Hedging) and (b) any after-tax effect of income (or losses) for such Test Period that result from the early extinguishment of (i) Indebtedness, (ii) obligations under any Hedge Agreements or (iii) other derivative instruments;
- (7) any extraordinary, non-recurring or unusual gain (or extraordinary, non-recurring or unusual loss), together with any related provision for taxes on any such gain (or the tax effect of any such loss), recorded or recognized by such Person or any of its Restricted Subsidiaries during such Test Period;

- 
- (8) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such Test Period;
  - (9) any after-tax gains (or losses) on disposal of disposed, abandoned or discontinued operations for such Test Period;
  - (10) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) in the inventory, property and equipment, software, goodwill, other intangible assets, in-process research and development, deferred revenue, debt and unfavorable or favorable lease line items in such Person's consolidated financial statements pursuant to GAAP for such Test Period resulting from the application of purchase accounting in relation to the Transactions or any acquisition consummated prior to the Closing Date and any Permitted Acquisition or other investment or the amortization or write-off of any amounts thereof, net of taxes, for such Test Period;
  - (11) any non-cash compensation charge or expense (including any deferred non-cash compensation expense) for such Test Period, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights and any cash charges or expenses associated with the rollover, acceleration or payout of Equity Interests by, or to, management of the such Person or any of its Restricted Subsidiaries in connection with the Transactions;
  - (12) (a) Transaction Costs incurred during such Test Period (including, for the avoidance of doubt, any charges, costs or expenses pursuant to or in connection with or resulting from any Existing Notes LM Transaction or Specified Tender Offer) and (b) any fees and expenses incurred during such Test Period, or any amortization thereof for such Test Period, in connection with any acquisition (other than the Transactions), investment, disposition, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt or equity instrument (in each case, including any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed) and any charges or non-recurring costs incurred during such Test Period as a result of any such transaction;
  - (13) any expenses, charges or losses for such Test Period that are covered by indemnification or other reimbursement provisions in connection with any investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days); and

(14) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses for such Test Period with respect to liability or casualty events or business interruption.

“**Consolidated Tax Expense**” means, with respect to any Person for any Test Period, taxes based on gross receipts, income, profits or capital, franchise, excise or similar taxes, and foreign withholding taxes, of such Person and its Restricted Subsidiaries for such Test Period, including (1) penalties and interest related thereto and (2) tax distributions made to any direct or indirect holders of Equity Interests of such Person in respect of any such taxes.

“**Consolidated Total Assets**” means, as of any date, the total assets of the Borrower and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“**Consolidated Total Net Debt**” means, as of any date, the Consolidated Debt outstanding as of such date *minus* all Unrestricted Cash as of such date in an aggregate amount not to exceed \$150,000,000, in each case, determined based upon the most recent financial statements available internally as of the date of determination; *provided* that for purposes of calculating the Consolidated Total Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness.

“**continuing**” means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

“**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.

“**Contribution**” has the meaning assigned to such term in the recitals hereto.

“**Contribution Indebtedness**” means Indebtedness in an aggregate outstanding principal amount not to exceed an amount equal to 100% of the net cash proceeds and the fair market value of property (other than cash) received by the Borrower from Permitted Equity Issuances or as a contribution to its common equity capital, in each case, after the Closing Date and on or prior to the date of such incurrence (other than Excluded Contributions, Cure Amounts and sales of Equity Interests to the Borrower or any of its Subsidiaries) that are Not Otherwise Applied.

“**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 ownership of voting securities, by contract or otherwise, and the terms “**Controlling**” and “**Controlled**” will have correlative meanings.

“**Convertible Indebtedness**” means (1) the Impax Convertible Notes and (2) any Indebtedness of a Loan Party (which may be Guaranteed by other Loan Parties) permitted to be incurred hereunder that is either (a) convertible into common Capital Stock of the Borrower or of any direct or indirect parent thereof (or other applicable securities or property following a merger event or other change of the common Capital Stock of the Borrower) (and cash in lieu of fractional shares) and/or cash (in an amount determined by reference to the price of such common Capital Stock or such other securities) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common Capital Stock of the Borrower or of any direct or indirect parent thereof and/or cash (in an amount determined by reference to the price of such common Capital Stock).

“**Credit Agreement Refinanced Debt**” has the meaning assigned to it in the definition of “Credit Agreement Refinancing Indebtedness.”

“**Credit Agreement Refinancing Indebtedness**” means secured or unsecured Indebtedness of the Borrower in the form of term loans or notes; provided that:

- (1) such Indebtedness is incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace or refinance, in whole or part, Indebtedness (“**Credit Agreement Refinanced Debt**”) that is either Term Loans or other Credit Agreement Refinancing Indebtedness;
- (2) such Indebtedness is in an original aggregate principal amount not greater than the principal amount of the Credit Agreement Refinanced Debt ( plus (a) the amount of unpaid, accrued or capitalized interest, penalties, premiums (including tender premiums), defeasance costs and other similar amounts payable with respect thereto and (b) underwriting discounts, fees, commissions, costs, expenses and other similar amounts payable with respect to such Credit Agreement Refinancing Indebtedness);
- (3) (a) the Weighted Average Life to Maturity of such Indebtedness is equal to or longer than the remaining Weighted Average Life to Maturity of the Credit Agreement Refinanced Debt, and (b) the final maturity date of such Credit Agreement Refinancing Indebtedness may not be earlier than the Latest Maturity Date;
- (4) such Indebtedness may participate on a *pro rata* basis or on a less than *pro rata* basis (but not on a greater than *pro rata* basis) in any mandatory prepayments hereunder;
- (5) such Indebtedness will rank *pari passu* or junior in right of payment to the Credit Agreement Refinanced Debt;
- (6) such Indebtedness is not secured by any assets or property of the Borrower or any Restricted Subsidiary that does not constitute Collateral (subject to customary exceptions for cash collateral in favor of an agent, letter of credit issuer or similar “fronting” lender);
- (7) such Indebtedness is not guaranteed by any Person other than a Guarantor;
- (8) if such Indebtedness is secured:
  - (a) it shall be secured on a *pari passu* “equal and ratable” basis with, or on a junior basis to, the Liens that secure the Credit Agreement Refinancing Indebtedness;

- 
- (b) the security agreements relating to such Indebtedness are substantially similar to or the same as the applicable Security Documents (as determined in good faith by a Responsible Officer of the Borrower);
  - (c) if such Indebtedness is Pari Passu Lien Debt, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a Pari Passu Intercreditor Agreement and, if applicable, the Closing Date Intercreditor Agreement; and
  - (d) if such Indebtedness is Junior Lien Debt, a Debt Representative, acting on behalf of the holders of such Indebtedness, has become party to or is otherwise subject to the provisions of a Junior Lien Intercreditor Agreement and, if applicable, the Closing Date Intercreditor Agreement; and
- (9) the terms and conditions of such Indebtedness (a) are substantially identical to, or, taken as a whole, no more favorable to the lenders or holders providing such Indebtedness than, those applicable to such Credit Agreement Refinanced Debt (except for covenants applicable only to periods after the Latest Maturity Date of the Initial Term Loans at the time of incurrence) and (b) solely to the extent that any terms and conditions applicable to any such Credit Agreement Refinanced Debt are not substantially the same as, or are materially more restrictive on the Borrower and the Restricted Subsidiaries than, those then applicable to the Credit Agreement Refinanced Debt, shall otherwise reflect customary market terms and conditions, including with respect to high yield debt securities to the extent applicable, at the time of such incurrence of such Credit Agreement Refinancing Indebtedness (*provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least four (4) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to the incurrence of such Credit Agreement Refinancing Indebtedness, together with a reasonably detailed description of the material covenants and events of default of such Credit Agreement Refinancing Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (9) shall be conclusive evidence that such Indebtedness satisfies this clause (9) unless the Administrative Agent notifies the Borrower within such four (4) Business Day (or shorter) period that it disagrees with such determination (including a description of the basis upon which it disagrees)); *provided* that this clause (9) will not apply to (v) terms addressed in the preceding clauses (1) through (8), (w) interest rate, rate floors, fees, funding discounts and other pricing terms, (x) redemption, prepayment or other premiums, or (y) optional prepayment or redemption terms; *provided further* that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof).

Credit Agreement Refinancing Indebtedness will include any Registered Equivalent Notes issued in exchange therefor.

“**Cure Amount**” means the amount of cash contributions to the capital of the Borrower made pursuant to Section 8.02 of the ABL Credit Agreement.

“**Current Assets**” means, as of any date, all assets (other than Cash Equivalents or other cash equivalents) that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries as “current assets” (other than amounts related to current or deferred Taxes based on income or profits), determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“**Current Liabilities**” means, as of any date, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries as “current liabilities,” other than:

- (1) the current portion of any Indebtedness;
- (2) accruals of Consolidated Interest Expense (excluding Consolidated Interest Expense that is due and unpaid);
- (3) accruals for current or deferred Taxes based on income or profits;
- (4) accruals, if any, of transaction costs resulting from the Transactions; and
- (5) accruals of any costs or expenses related to (a) severance or termination of employees prior to the Closing Date or (b) bonuses, pension and other post-retirement benefit obligations;

in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“**Debt Fund Affiliate**” means:

- (1) any Affiliate of a Permitted Investor (other than the Borrower or any of its Subsidiaries) that is a bona fide debt fund or investment vehicle that has the principal purpose of investing in, acquiring or trading commercial loans, bonds or similar extensions of credit in the ordinary course and that exercises investment discretion independent from the private equity business of such Permitted Investor; and
- (2) any investment fund or account of a Permitted Investor managed by third parties (including by way of a managed account, a fund or an index fund in which a Permitted Investor has invested) that is not organized or used primarily for the purpose of making equity investments,

in each case in clauses (1) and (2) above, with respect to which any Investor or Permitted Investor does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such entity.

“ **Debt Representative** ” means, with respect to any Pari Passu Lien Debt or Junior Lien Debt, the lenders or other holders of such Indebtedness or the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“ **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 and affecting the rights of creditors generally.

“ **Default** ” means any event or condition which, but for the giving of notice, lapse of time or both, would constitute an Event of Default.

“ **Defaulting Lender** ” means any Lender that:

- (1) has refused (without retraction) or failed to (a) fund its portion of any Borrowing or (b) pay to any Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due;
- (2) has notified the Borrower or any Agent that it does not intend to comply with its funding obligations under any Loan Document, or has made a public statement to that effect;
- (3) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations under any Loan Document ( *provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (3) upon receipt of such written confirmation by the Administrative Agent and the Borrower); or
- (4) has, or has a direct or indirect parent company that has, (i) become insolvent or the subject of a proceeding under any voluntary or involuntary case under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (1) through (4) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Borrower and each Lender.

“ **Designated Non-Cash Consideration** ” means the fair market value of non-cash consideration received by the Borrower or any Restricted Subsidiary in connection with an Asset Sale that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-Cash Consideration.

“ **Disinterested Director** ” means, with respect to any Person and transaction, a member of the Board of Directors of such Person who does not have any material direct or indirect financial interest in or with respect to such transaction.

“ **Disposition** ” or “ **Dispose** ” means the sale, transfer, license, lease or other disposition (excluding Liens, but including any sale or issuance of Equity Interests in a Restricted Subsidiary and any sale leaseback transactions of a Loan Party) of any property by any Person, 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.

“ **Disqualified Institution** ” means:

- (1) those entities identified by or on behalf of the Borrower in writing to the Administrative Agent, from time to time prior to or after the completion of general syndication, as competitors of the Borrower or its Subsidiaries or Impax or its Subsidiaries;
- (2) those banks, financial institutions, other institutional lenders and other persons identified in writing by or on behalf of the Borrower or Impax to the Arrangers from time to time prior to October 17, 2017;
- (3) those banks, financial institutions, other institutional lenders and other persons identified in writing by or on behalf of the Borrower to the Arrangers after October 17, 2017 if such designation is reasonably acceptable to the Arrangers; and
- (4) any clearly identifiable (solely on the basis of the similarity of its name or as identified in writing by or on behalf of the Borrower) Affiliate of the entities described in the preceding clauses (1), (2) and (3) (other than, with respect to this clause (4), any bona fide Debt Fund Affiliates thereof).

Notwithstanding the foregoing, each Loan Party and the Lenders acknowledge and agree that (i) the Administrative Agent will not have any responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Institution and the Administrative Agent will have no liability with respect to or arising out of any assignment or participation of Term Loans to a Disqualified Institution and (ii) any written notice of a Disqualified Institution shall be deemed not delivered and not effective unless delivered by or on behalf of the Borrower to the Administrative Agent by email to [JPMDQ\\_Contact@jpmorgan.com](mailto:JPMDQ_Contact@jpmorgan.com) and shall only become effective, as of and following, two (2) Business Days after such delivery.

---

“ **Disqualified Stock** ” means, with respect to any Person, any Equity Interests of such Person that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is redeemable or exchangeable at the option of the holder thereof), or upon the happening of any event or condition:

- (1) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale are subject to the prior Payment in Full and the termination of the Commitments);
- (2) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part;
- (3) provides for the scheduled payments of dividends in cash; or
- (4) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is 91 days after the earlier of:
  - (a) the Latest Maturity Date at the time of issuance; and
  - (b) the date on which the Term Loans and all other Obligations (other than Obligations in respect of Specified Hedge Agreements and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) are Paid in Full and the Commitments are terminated;

*provided* that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; *provided, further*, that if such Equity Interests are issued pursuant to any plan for the benefit of any future, current or former officers, directors, managers, employees, consultants or independent contractors of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof, or their respective estates, heirs, family members, spouses, former spouses, successors, executors, administrators, trustees, legatees or distributees, such Equity Interests will not constitute Disqualified Stock solely because they may be required to be repurchased by the Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of any such Person’s termination, death or disability; and *provided, further*, that any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of any Equity Interests that is not Disqualified Stock will not be deemed to be Disqualified Stock. For the avoidance of doubt, any Convertible Indebtedness or any Permitted Convertible Indebtedness Call Transaction will not be deemed to be Disqualified Stock.

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

“ **Dutch Auction Procedures** ” means, with respect to a purchase of Term Loans in a Dutch auction, Dutch auction procedures as set forth on Exhibit J or as reasonably agreed upon by the Borrower and the Administrative Agent.

“ **EEA Financial Institution** ” means:

- (1) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority;
- (2) any entity established in an EEA Member Country which is a parent of an institution described in clause (1) of this definition; or
- (3) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (1) or (2) of this definition and is subject to consolidated supervision with its parent.

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

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

“ **Enterprise Transformative Event** ” means any merger, acquisition, Investment, dissolution, liquidation, consolidation or Disposition, in each case, by the Borrower or any Restricted Subsidiary that is either (1) not permitted by the terms of any Loan Document immediately prior to the consummation of such transaction or (2) if permitted by the terms of the Loan Documents immediately prior to the consummation of such transaction, would not provide the Borrower and its Restricted Subsidiaries with adequate flexibility under the Loan Documents for the continuation or expansion of their combined operations following such consummation, as reasonably determined by the Borrower acting in good faith.

“ **Environment** ” means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources such as flora and fauna.

“ **Environmental Laws** ” means all applicable laws (including common law), statutes, rules, regulations, codes, ordinances, orders, binding agreements and final, binding decrees or judgments, in each case, promulgated or entered into by or with any Governmental Authority, relating in any way to the Environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to the environment or exposure to Hazardous Materials).

“ **Equity Interests** ” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock, any Convertible Indebtedness and any Permitted Warrant Transaction).

“**Equivalent Percentage**” means, as of any date of determination, with respect to any Dollar amount, the percentage of TTM Consolidated EBITDA of the Borrower for the four quarters ended December 31, 2017 that such Dollar amount represents, rounded to the nearest one tenth of 1%. For purposes of calculating Equivalent Percentage, TTM Consolidated EBITDA of the Borrower for the four quarters ended December 31, 2017 will be deemed to be the Closing Date EBITDA.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time, and any final regulations promulgated and the rulings issued thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with the Borrower or any of its Subsidiaries, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“**ERISA Event**” means:

- (1) a Reportable Event, or the requirements of Section 4043(b) of ERISA apply, with respect to a Plan;
- (2) a withdrawal by the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations by the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower or the Borrower, any ERISA Affiliate that is treated as a termination under Section 4062(e) of ERISA;
- (3) a complete or partial withdrawal by the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, any ERISA Affiliate from a Multiemployer Plan, receipt of written notification by the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, any ERISA Affiliate concerning the imposition of Withdrawal Liability or written notification that a Multiemployer Plan is, or is expected to be, insolvent or endangered or in critical status within the meaning of Section 305 of ERISA;
- (4) the provision by a Plan administrator or the PBGC of notice of intent to terminate a Plan, to appoint a trustee to administer a Plan, the treatment of a Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA or the commencement of proceedings by the PBGC to terminate a Plan or Multiemployer Plan;
- (5) the incurrence by the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan, other than for the payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA;
- (6) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Plan;

- 
- (7) the imposition of a lien under Section 303(k) of ERISA with respect to any Plan; and
  - (8) a determination that any Plan is in “at risk” status (within the meaning of Section 303 of ERISA).

“**Escrow Account**” has the meaning specified in the Escrow Agreement.

“**Escrow Agent**” means JPMorgan Chase Bank, N.A., together with its successors and assigns in such capacity.

“**Escrow Agreement**” means the Escrow Agreement substantially in the form of Exhibit K among the Borrower, the Administrative Agent and the Escrow Agent, as such may be amended, amended and restated supplemented, waived or otherwise modified from time to time in accordance with its terms and this Agreement.

“**Escrowed Funds**” has the meaning assigned to such term in Section 2.01(1).]

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

“**Eurocurrency Borrowing**” means a Borrowing comprised of Eurocurrency Loans.

“**Eurocurrency Loan**” means any Term Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“**Event of Default**” has the meaning assigned to such term in Section 8.01.

“**Excess Cash Flow**” means, for any Excess Cash Flow Period, an amount equal to the excess of:

- (1) the sum, without duplication of:
  - (a) the Consolidated Net Income of the Borrower for such period; *plus*
  - (b) all non-cash charges of the Borrower or any Restricted Subsidiary that were deducted in calculating such Consolidated Net Income, but excluding any such non-cash charges representing an accrual or reserve for potential cash items in any future period and excluding amortization of a prepaid cash item that was paid in a prior period; *plus*
  - (c) decreases in Working Capital of the Borrower for such period, if any, (other than any such decreases arising from acquisitions or Dispositions by the Borrower and the Restricted Subsidiaries completed during such period or the application of purchase accounting); *plus*

- 
- (d) an amount equal to the aggregate net non-cash loss on Dispositions by the Borrower and the Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income; *plus*
  - (e) the amount deducted as tax expense in determining Consolidated Net Income to the extent in excess of cash taxes paid in such period, *plus*
  - (f) cash receipts in respect of Hedge Agreements during such period to the extent not otherwise included in such Consolidated Net Income; *over*
- (2) the sum, without duplication, of:
- (a) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in clause (1)(b) above) and cash charges excluded by virtue of clauses (1) through (14) of the definition of “Consolidated Net Income”; *plus*
  - (b) the amount of Capital Expenditures or acquisitions of Intellectual Property Rights accrued or made in cash during such period to the extent not financed with the proceeds of Funded Debt; *plus*
  - (c) the aggregate amount of all principal payments of Indebtedness of the Borrower and the Restricted Subsidiaries (including (1) the principal component of payments in respect of Capital Lease Obligations, (2) the amount of any scheduled repayment of Term Loans pursuant to Section 2.06 and (3) the amount of a mandatory prepayment of Term Loans pursuant to Section 2.08 to the extent required due to a Disposition that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase) to the extent such prepayments or repayments are not funded with the proceeds of Funded Debt or made in reliance on any basket calculated by reference to the Available Amount, excluding (i) all other prepayments of Term Loans or payments of other Indebtedness described in Section 2.08(2)(b) and (ii) any prepayment of revolving loans to the extent there is not an equivalent permanent reduction in commitments thereunder, *plus*
  - (d) an amount equal to the aggregate net non-cash gain on Dispositions by the Borrower and the Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income and the net cash loss on Dispositions to the extent otherwise added to arrive at Consolidated Net Income; *plus*
  - (e) increases in Working Capital for such period (other than any such increases arising from acquisitions or Dispositions by the Borrower and the Restricted Subsidiaries completed during such period or the application of purchase accounting); *plus*

- 
- (f) cash payments by the Borrower and the Restricted Subsidiaries actually made during such period to the extent not financed with the proceeds of Funded Debt in respect of long-term liabilities of the Borrower and the Restricted Subsidiaries (other than Indebtedness) to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income for such period (and so long as there has not been any reduction in respect of such payments in arriving at Consolidated Net Income for such period); *plus*
  - (g) without duplication of amounts deducted pursuant to clauses (h) and (i) below in prior periods, cash payments made by the Borrower and its Restricted Subsidiaries in respect of Permitted Investments (including Permitted Acquisitions) made during such period to the extent that such Investments were not financed with the proceeds of Funded Debt, not deducted in calculating Consolidated Net Income and not made in reliance on any basket calculated by reference to the Available Amount; *plus*
  - (h) cash payments made by the Borrower in respect of Restricted Payments actually paid (and permitted to be paid) during such period, in each case to the extent such Restricted Payments were not financed with the proceeds of Funded Debt; *plus*
  - (i) the aggregate amount of cash expenditures actually made by the Borrower and its Restricted Subsidiaries during such period to the extent not financed with the proceeds of Funded Debt (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such fiscal year or are not deducted in calculating Consolidated Net Income (and so long as there has not been any reduction in respect of such expenditures in arriving at Consolidated Net Income for such period); *plus*
  - (j) to the extent such were not deducted in calculating Consolidated Net Income for such period, the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower or any of the Restricted Subsidiaries during such period that are made in connection with any prepayment of any principal of Indebtedness to the extent such prepayment of principal reduced Excess Cash Flow pursuant to clause (2)(c) above or reduced the mandatory prepayment required by Section 2.08(2)(a); *plus*
  - (k) without duplication of amounts deducted from Excess Cash Flow in prior periods, the aggregate consideration required to be paid in cash by the Borrower or any of the Restricted Subsidiaries within 365 days after the end of such period pursuant to binding contracts (to the extent not financed with the proceeds of Funded Debt, the “Contract Consideration”) entered into prior to or during such period relating to Permitted Investments, cash Capital Expenditures or acquisitions of Intellectual Property Rights to be consummated; *provided* that, to the extent the aggregate amount actually utilized to finance such Permitted Investments, Capital Expenditures or acquisitions of Intellectual Property Rights during any period is less than the Contract Consideration that reduced Excess Cash Flow for the prior period, the amount of such shortfall shall be added to the calculation of Excess Cash Flow for such period; *plus*

- 
- (l) the amount of cash taxes paid or tax reserves set aside in such period or payable (without duplication) in such period (including, for the avoidance of doubt, distributions made pursuant to Section 4.01(b) of the LLC Agreement), to the extent they exceed the amount of tax expense deducted in calculating Consolidated Net Income for such period; *plus*
  - (m) cash expenditures actually made in cash in respect of Hedge Agreements during such period to the extent not deducted in calculating Consolidated Net Income.

“ **Excess Cash Flow Period** ” means each fiscal year of the Borrower.

“ **Exchange Act** ” means the Securities Exchange Act of 1934, as amended.

“ **Excluded Assets** ” means “ *Excluded Assets* ” as defined in the Collateral Agreement.

“ **Excluded Contributions** ” means, as of any date, the aggregate amount of the net cash proceeds and Cash Equivalents, together with the aggregate fair market value of other assets that are used or useful in a business permitted under Section 6.08, received by the Borrower after the Closing Date from:

- (1) contributions to its common equity capital; or
- (2) the sale of Capital Stock of the Borrower;

in each case, designated as Excluded Contributions pursuant to a certificate of a Responsible Officer of the Borrower on the date such contribution is made or such Capital Stock is sold, less the aggregate amount of Investments made pursuant to Section 6.04(29) and Restricted Payments made pursuant to Section 6.07(12), in each case prior to such date and Not Otherwise Applied; *provided* that the proceeds of Disqualified Stock and Cure Amounts will not be treated as Excluded Contributions.

“ **Excluded Equity Interests** ” means “ *Excluded Equity Interests* ” as defined in the Collateral Agreement.

“ **Excluded Indebtedness** ” means all Indebtedness not incurred in violation of Section 6.01 and any Credit Agreement Refinancing Indebtedness.

“ **Excluded Subsidiary** ” means any:

- (1) Immaterial Subsidiary;
- (2) Subsidiary that is not a Wholly Owned Subsidiary of the Borrower or a Subsidiary Loan Party;

- 
- (3) Unrestricted Subsidiary;
  - (4) Non-U.S. Subsidiary;
  - (5) direct or indirect U.S. Subsidiary of a Non-U.S. Subsidiary;
  - (6) FSHCO;
  - (7) Subsidiary that is prohibited or restricted by applicable Law or by a binding contractual obligation (including any Contractual Obligation) existing on the Closing Date or at the time of the acquisition or creation of such Subsidiary (and not incurred in contemplation of such acquisition or creation) from providing a Guarantee or if such Guarantee would require consent, approval, license or authorization of or from a Governmental Authority or a third party (other than a Loan Party or a controlled Affiliate of a Loan Party);
  - (8) special purpose securitization vehicle (or similar entity) including any Receivables Subsidiary or like special purpose entity;
  - (9) Subsidiary that is a not-for-profit organization;
  - (10) Captive Insurance Subsidiary;
  - (11) Subsidiary with respect to which, in the reasonable judgment of the Borrower in consultation with the Administrative Agent, the providing of a Guarantee would result in material adverse tax consequences as reasonably determined by the Borrower in consultation with the Administrative Agent; and
  - (12) Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent, in consultation with the Borrower, the cost or other consequences (including any adverse tax consequences) of providing a Guarantee would be excessive in view of the benefits to be obtained by the Lenders therefrom;

*provided* that the Borrower, in its sole discretion, may cause any Subsidiary that otherwise qualifies as an “Excluded Subsidiary” to become a “Guarantor” in accordance with the definition thereof and thereafter such Subsidiary will not constitute an “Excluded Subsidiary” unless and until the Borrower elects otherwise.

“**Excluded Taxes**” means, with respect to any Recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder:

- (1) Taxes imposed on or measured by its net income (however denominated) or franchise Taxes imposed in lieu of net income Taxes, in each case, (a) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (b) that are Other Connection Taxes;
- (2) any branch profits Tax or any similar Tax that is imposed by any jurisdiction described in clause (1) above;

- 
- (3) any U.S. withholding Tax (including any backup withholding Tax) that is in effect and would apply to amounts payable hereunder to or for the account of a Recipient under the law applicable at the time such Recipient becomes a party to this Agreement (or in the case of a Lender, under the law applicable at the time such Lender changes its lending office), except to the extent that the Recipient's assignor (if any), at the time of assignment (or such Lender immediately before it changed its lending office), was entitled to receive additional amounts from the Loan Party with respect to any U.S. withholding Tax pursuant to Section 2.14(1) or Section 2.14(3);
  - (4) Taxes that are attributable to such Lender's or Administrative Agent's failure to comply with Section 2.14(5) or Section 2.14(6); and
  - (5) any withholding Taxes imposed under FATCA.

“**Exclusive License**” means, with respect to any drug or pharmaceutical product, any license to develop, commercialize, sell, market and promote such drug or pharmaceutical product and which provides for exclusive rights to develop, use, commercialize, sell, market, import and promote such drug or product within the United States; *provided* that an “Exclusive License” shall not include:

- (1) any license solely to distribute any such drug or product on an exclusive basis within any particular geographic region or territory,
- (2) any licenses, which may be exclusive, solely to manufacture any such drug or product, and
- (3) any license to manufacture, use, offer for sale or sell any authorized generic version of such drug or product; and “**Exclusively License**” shall have the correlative meaning.

“**Executive Order**” has the meaning assigned to such term in Section 3.19(3)(a).

“**Existing Credit Facilities**” means:

- (1) that certain Revolving Credit Agreement, dated as of November 1, 2013 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time) by, among others, the Borrower and Healthcare Financial Solutions, LLC (as successor in interest to General Electric Capital Corporation), as agent;
- (2) that certain Credit Agreement dated as of November 1, 2013 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time) by, among others, the Borrower and Healthcare Financial Solutions, LLC (as successor in interest to General Electric Capital Corporation), as agent; and
- (3) those certain credit facilities of Impax and its Subsidiaries with respect to which the Acquisition Agreement requires the delivery of a payoff letter.

“ **Existing Notes LM Transactions** ” means a consent solicitation to holders of the Impax Convertible Notes, pursuant to which Impax shall solicit consents to make certain amendments to the Impax Indenture such that the Acquisition and the transaction contemplated in the Acquisition Agreement would not result in a default or event of default under the Impax Indenture in exchange for monetary consideration (including an offer (on terms to be agreed) to purchase the Impax Convertible Notes at a price equal to, if coupled with any consent fee included therein, par) and/or other changes to the Impax Indenture for the benefit of holders of Impax Convertible Notes.

“ **Extended Term Commitments** ” means the term commitments held by any Extending Term Lenders.

“ **Extended Term Loan Installment Date** ” has the meaning assigned to such term in Section 2.06(2).

“ **Extended Term Loans** ” means the Term Loans made pursuant to Extended Term Commitments.

“ **Extending Term Lenders** ” means each Lender accepting an Extension Offer.

“ **Extension** ” has the meaning assigned to such term in Section 2.20(1).

“ **Extension Amendment** ” has the meaning assigned to such term in Section 2.20(2).

“ **Extension Offer** ” has the meaning assigned to such term in Section 2.20(1).

“ **Factoring Transaction** ” means any transaction or series of transactions that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or such Restricted Subsidiary may sell, convey, assign or otherwise transfer Securitization Assets (which may include a backup or precautionary grant of security interest in such Securitization Assets so sold, conveyed, assigned or otherwise transferred or purported to be so sold, conveyed, assigned or otherwise transferred) to any Person other than a Receivables Subsidiary.

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

“ **Federal Funds Effective Rate** ” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, provided that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

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

---

“ **Fee Letters** ” means the Agency Fee Letter and the Arranger Fee Letter.

“ **Fees** ” means the Administrative Agent Fees and all other fees set forth in the Fee Letters payable to a Lender, the Administrative Agent or any Arranger, in each case, with respect to the Initial Term Loans.

“ **Financial Covenant Default** ” has the meaning assigned to such term in Section 8.01(6).

“ **Financial Officer** ” means, with respect to any Person, the chief financial officer, principal accounting officer, director of financial services, treasurer, assistant treasurer or controller of such Person or other similar officer or Person performing similar functions of such Person, designated in writing by or on behalf of the Borrower to the Administrative Agent from time to time. Any document delivered hereunder that is signed by a Financial Officer of a Loan Party will be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership or other action on the part of such Loan Party and such Financial Officer will be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a “Financial Officer” shall refer to a Financial Officer of the Borrower.

“ **First Lien Net Leverage Ratio** ” means, with respect to any Test Period, the ratio of (1) Consolidated First Lien Net Debt outstanding as of the last day of such Test Period to (2) Consolidated EBITDA of the Borrower for such Test Period.

“ **Foreign Lender** ” means any Lender that is organized under the laws of a jurisdiction other than the United States of America. For purposes of this definition, the United States of America, each state thereof and the District of Columbia will be deemed to constitute a single jurisdiction.

“ **FSHCO** ” means any direct or indirect U.S. Subsidiary that has no material assets other than Equity Interests (or Equity Interests and Indebtedness) in one or more Non-U.S. Subsidiaries or other FSHCOs.

“ **Funded Debt** ” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date.

“ **GAAP** ” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies).

Notwithstanding anything to the contrary above or in the definition of Capital Lease Obligations or Capital Expenditures, in the event of a change under GAAP (or the application thereof) requiring any leases to be capitalized that are not required to be capitalized as of the Closing Date, only those leases that would result or would have resulted in Capital Lease Obligations or Capital Expenditures on the Closing Date (assuming for purposes hereof that they were in existence on the Closing Date) will be considered capital leases and all calculations under this Agreement will be made in accordance therewith.

“ **General Asset Sale Basket** ” has the meaning assigned to such term in Section 6.06(10)(b).

“ **Governmental Authority** ” means any federal, state, local or foreign court or governmental agency, authority, instrumentality, regulatory or legislative body, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“ **Guarantee** ” of or by any Person (the “ **guarantor** ”) means:

- (1) any obligation, contingent or otherwise, of the guarantor 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 the guarantor, direct or indirect:
  - (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligations;
  - (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof;
  - (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation;
  - (d) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part); or
  - (e) as an account party in respect of any letter of credit, bank guarantee or other letter of credit guaranty issued to support such Indebtedness or other obligation; or
- (2) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other Person, whether or not such Indebtedness or other obligation is assumed by the guarantor;

---

*provided*, that the term “Guarantee” will not include endorsements for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness).

The amount of any Guarantee will be deemed to be an amount equal to the stated or determinable amount of the related primary Indebtedness 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.

“**Guarantor**” means (1) each Subsidiary Loan Party; and (2) each Parent Entity or Restricted Subsidiary that the Borrower may elect in its sole discretion, from time to time, upon written notice to the Administrative Agent, to cause to Guarantee the Obligations (including by executing a supplement to the Collateral Agreement in substantially the form attached thereto), until such date that the Borrower has informed the Administrative Agent that it elects not to have such Person Guarantee the Obligations.

“**Hazardous Materials**” means all pollutants, contaminants, wastes, chemicals, materials, substances and constituents that are defined, listed or regulated under Environmental Law as hazardous or toxic, or words of similar import, or the Release or exposure to which would reasonably be expected to give rise to liability under any Environmental Law, including explosive or radioactive substances, petroleum or petroleum byproducts or distillates, friable asbestos or friable asbestos-containing materials, polychlorinated biphenyls or radon gas.

“**Health Care Laws**” means any Laws applicable to the research, development, manufacture, distribution, marketing, storage, transportation, use and sale of products controlled by the Borrower or any of the Subsidiaries, including without limitation, the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the civil monetary penalty laws (42 U.S.C. § 1320a-7a), the federal Food, Drug & Cosmetic Act (21 U.S.C. §§ 301 et seq.), the federal Controlled Substances Act (21 U.S.C. § 801 et seq.), HIPAA, the Medicaid Drug Rebate Program (42 U.S.C. § 1396r-8), Medicare average sales price reporting (42 U.S.C. § 1395w-3a), the Public Health Service Act (42 U.S.C. § 256b), the federal TRICARE program (10 U.S.C. § 1071 et seq.), the VA Federal Supply Schedule (38 U.S.C. § 8126), and the regulations promulgated pursuant to such laws, each as amended from time to time.

“**Hedge Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, not entered into for speculative purposes; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by any future, current or former officers, directors, managers, employees, consultants or independent contractors of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof will be a Hedge Agreement.

Notwithstanding the foregoing, agreements relating to any Permitted Convertible Indebtedness Call Transaction (and the obligations and transactions relating thereto) will not constitute a Hedge Agreement.

“**IFRS**” means International Financial Reporting Standards and applicable accounting requirements set by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants, or any successor to either such board, or the SEC, as the case may be), as in effect from time to time.

“**Immaterial Subsidiary**” means, as of any date, any Subsidiary that (i) did not, as of the last day of the most recent fiscal quarter for which Required Financial Statements have been delivered, have assets with a value in excess of 5.0% of the Consolidated Total Assets or revenues representing in excess of 5.0% of total revenues of the Borrower and the Restricted Subsidiaries for the period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a consolidated basis in accordance with GAAP; and (ii) taken together with all Immaterial Subsidiaries as of the last day of the most recent fiscal quarter of the Borrower for which Required Financial Statements have been delivered, did not have assets with a value in excess of 10.0% of Consolidated Total Assets or revenues representing in excess of 10.0% of total revenues of the Borrower and the Restricted Subsidiaries on a consolidated basis for such four-quarter period.

“**Impacted Interest Period**” has the meaning assigned to it in the definition of “LIBO Rate.”

“**Impax**” means (1) prior to the Impax Conversion, Impax Laboratories, Inc., a Delaware corporation, and (2) after the consummation of the Impax Conversion, Impax Laboratories, LLC, a Delaware limited liability company.

“**Impax Conversion**” means the conversion of Impax Laboratories, Inc., a Delaware corporation, into Impax Laboratories, LLC, a Delaware limited liability company.

“**Impax Convertible Notes**” means those certain 2.00% Convertible Senior Notes due 2022 in an aggregate principal amount not to exceed \$600 million, issued pursuant to the Impax Indenture.

“**Impax Indenture**” means the Indenture dated as of June 30, 2015 between Impax and Wilmington Trust, National Association (the “**Trustee**”), as amended and supplemented by the First Supplemental Indenture, dated as of November 6, 2017 between Impax and the Trustee, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“**Impax Merger**” means the merger of K2 Merger Sub Corporation, a Delaware corporation, with and into Impax, with Impax surviving such merger.

“**Impax Transactions**” means the Impax Merger and the Impax Conversion.

“**Incremental Amount**” has the meaning assigned to such term in Section 2.18(3).

---

“ **Incremental Equivalent Term Debt** ” means secured or unsecured Indebtedness of the Borrower in the form of term loans or notes; *provided* that:

- (1) the aggregate outstanding principal amount of such Incremental Equivalent Term Debt on any date that such Indebtedness is incurred pursuant to Section 6.01(1), will not, together with the aggregate principal amount of any Incremental Term Loans (or unfunded commitments with respect thereto) then outstanding, exceed the Incremental Amount; *provided* that:
  - (a) calculation of the Incremental Amount shall be made on Pro Forma Basis and evidenced by a certificate from a Responsible Officer of the Borrower demonstrating such calculation in reasonable detail;
  - (b) if the Borrower incurs any Incremental Equivalent Term Debt (or Indebtedness incurred under an Incremental Facility) using the Incremental Fixed Amount on the same date that it incurs Indebtedness using the Incremental Ratio Amount, the Incremental Ratio Amount will be calculated without regard to any incurrence of Indebtedness under the Incremental Fixed Amount;
  - (c) unless the Borrower elects otherwise, any Incremental Equivalent Term Debt will be deemed incurred first as Incremental Ratio Amount to the extent permitted, with any balance incurred under the Incremental Fixed Amount; and
  - (d) the Borrower may classify, and may later reclassify, any Incremental Equivalent Term Debt (or Indebtedness incurred under an Incremental Facility) as incurred as, and in reliance on, the Incremental Fixed Amount, Incremental Ratio Amount, or both, on the date of incurrence or thereafter, to the extent permitted on the date of classification (or the date of any such reclassification);
- (2) any Incremental Equivalent Term Debt, (a) that is secured on a *pari passu* basis with the Initial Term Loans shall not mature prior to the Latest Maturity Date of the Initial Term Loans at the time of incurrence thereof, or have a shorter Weighted Average Life to Maturity than the Initial Term Loans at the time of incurrence thereof (without giving effect to any amortization or prepayments of the Initial Term Loans) or (b) that is unsecured or secured on a junior lien basis to the Initial Term Loans shall not mature, or have scheduled amortization, prior to the date that is 91 days after the Latest Maturity Date of the Initial Term Loans at the time of incurrence thereof; *provided* that this clause (2) shall not apply to the incurrence of any such Indebtedness constituting a bridge facility to the incurrence of any other Indebtedness, so long as the Indebtedness into which such bridge facility is to be converted or exchanged satisfies the requirements of this clause (2) and such conversion or exchange is subject only to conditions customary for similar conversions or exchanges;
- (3) such Indebtedness is not guaranteed by any Person other than a Subsidiary Loan Party;

- 
- (4) if such Incremental Equivalent Term Debt is secured it shall be secured on a *pari passu* or junior lien basis to the Initial Term Loans and:
- (i) such Indebtedness is not secured by any assets or property that does not constitute Collateral (subject to customary exceptions for cash collateral in favor of an agent, letter of credit issuer or similar “fronting” lender); and
  - (ii) the security agreements relating to such assets or property are substantially similar to or the same as the applicable Collateral Documents (as determined in good faith by a Responsible Officer of the Borrower);
- (5) if such Incremental Equivalent Term Debt is secured on a *pari passu* basis with or junior lien basis to the Initial Term Loans, the holders of such Incremental Equivalent Term Debt or a Debt Representative acting on behalf of the holders of such Incremental Equivalent Term Debt has become party to or is otherwise subject to the provisions of an Intercreditor Agreement (as such Intercreditor Agreement may be amended in a manner reasonably acceptable to the Administrative Agent, such Debt Representative and the Borrower), which results in such holders or Debt Representative having rights to share in the Collateral on a *pari passu* or junior lien basis, as applicable;
- (6) if such Incremental Equivalent Term Debt is in the form of term loans and is secured on a *pari passu* basis with the Initial Term Loans, then the provisions of Section 2.18(8) shall apply as if such Incremental Equivalent Term Debt were Incremental Term Loans;
- (7) any mandatory prepayments of Incremental Equivalent Term Debt that is *Pari Passu Lien Debt* will be made on a *pro rata* basis or less than a *pro rata* basis (but not on a greater than *pro rata* basis except for prepayments with the proceeds of a refinancing and in respect of an earlier maturing tranche) with mandatory prepayments of the Initial Term Loans, and any mandatory prepayments of Incremental Equivalent Term Debt that is unsecured or that is *Junior Lien Debt* may not be made except to the extent that prepayments are made, to the extent required under the Initial Term Loans or any *Pari Passu Lien Debt*, first *pro rata* to the Initial Term Loans and any such *Pari Passu Lien Debt*; and
- (8) the terms and conditions of such Indebtedness (a) are substantially identical to, or, taken as a whole, no more favorable to the lenders or holders providing such Indebtedness than, those applicable to the Initial Term Loans (except for covenants applicable only to periods after the Latest Maturity Date of the Initial Term Loans at the time of incurrence) and (b) solely to the extent that any terms and conditions applicable to any such Indebtedness are not substantially the same as, or are materially more restrictive on the Borrower and the Restricted Subsidiaries than, those then applicable to the Initial Term Loans, shall otherwise reflect customary market terms and conditions, including with respect to high yield debt securities to the extent applicable, at the time of such incurrence of such Indebtedness, (*provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least four (4) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material covenants and events of default of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (8) shall be conclusive evidence that such

Indebtedness satisfies this clause (8) unless the Administrative Agent notifies the Borrower within such four (4) Business Day (or shorter) period that it disagrees with such determination (including a description of the basis upon which it disagrees)); provided that this clause (8) will not apply to (v) terms addressed in the preceding clauses (1) through (7), (w) interest rate, rate floors, fees, funding discounts and other pricing terms, (x) redemption, prepayment or other premiums, or (y) optional prepayment or redemption terms; *provided further* that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof).

Incremental Equivalent Term Debt will include any Registered Equivalent Notes issued in exchange therefor.

“**Incremental Facility**” has the meaning assigned to such term in Section 2.18(1).

“**Incremental Facility Amendment**” has the meaning assigned to such term in Section 2.18(5).

“**Incremental Fixed Amount**” means, as of the date of measurement, the sum of

- (1) Closing Date EBITDA of the Borrower, *plus*
- (2) the aggregate principal amount of, without duplication, (i) any prepayments of Term Loans made pursuant to Section 2.07, (ii) prepayments of ABL Loans made pursuant to Section 2.10 of the ABL Credit Agreement (if accompanied by a corresponding reduction of commitments), (iii) any voluntary prepayments, redemptions, repurchases and other permanent reductions of other Pari Passu Lien Debt (and, to the extent constituting revolving Indebtedness, accompanied by a corresponding reduction in commitments in respect thereof) (including loan buy-backs pursuant to Dutch auctions and open market purchases, in each case permitted hereunder, in the amount of the actual purchase price paid in cash) and (iv) any voluntary prepayment of Term Loans of a Non-Consenting Lender pursuant to a transaction permitted hereunder (in the amount of the actual purchase price paid in cash), and in each case in this clause (2), to the extent not funded with the proceeds of Funded Debt and other than any prepayments of Indebtedness incurred in reliance on clause (1) above; *minus*
- (3) the aggregate principal amount of any Incremental Term Loans and Incremental Equivalent Term Debt incurred in reliance on the Incremental Fixed Amount.

“**Incremental Lenders**” has the meaning assigned to such term in Section 2.18(5).

“ **Incremental Ratio Amount** ” means an aggregate principal amount that, after giving Pro Forma effect to the incurrence thereof, in accordance with Section 1.08, would not result in:

- (1) with respect to an Incremental Facility or Incremental Equivalent Term Debt to be secured on a *pari passu* basis with the Initial Term Loans, the First Lien Net Leverage Ratio for the applicable Test Period being greater than (a) the Closing Date First Lien Net Leverage Ratio or (b) the First Lien Net Leverage Ratio immediately prior to such incurrence;
- (2) with respect to any Incremental Facility or Incremental Equivalent Term Debt to be secured on a junior basis to the Initial Term Loans, the Total Net Leverage Ratio for the applicable Test Period being greater than (a) the Closing Date Total Net Leverage Ratio or (b) the Total Net Leverage Ratio immediately prior to such incurrence; and
- (3) with respect to any Incremental Facility or Incremental Equivalent Term Debt that is unsecured, the Total Net Leverage Ratio for the applicable Test Period being greater than 6.00 to 1.00.

“ **Incremental Term Loan Installment Date** ” has the meaning assigned to such term in Section 2.06(2).

“ **Incremental Term Loans** ” has the meaning assigned to such term in Section 2.18(1).

“ **Indebtedness** ” means, with respect to any Person, without duplication:

- (1) all obligations of such Person for borrowed money;
- (2) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
- (3) all obligations of such Person under conditional sale or title retention agreements relating to property or assets purchased by such Person;
- (4) all obligations of such Person issued or assumed as the deferred purchase price of property or services, to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP;
- (5) all Capital Lease Obligations of such Person;
- (6) all net payments that such Person would have to make in the event of an early termination, on the date Indebtedness of such Person is being determined, in respect of outstanding Hedge Agreements;
- (7) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and bank guarantees;
- (8) the principal component of all obligations of such Person in respect of bankers' acceptances;

- 
- (9) all Guarantees by such Person of Indebtedness described in clauses (1) through (8) above; and
- (10) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock);

*provided* that Indebtedness will not include:

- (a) trade payables, accrued expenses (including for payroll and other liabilities) and intercompany liabilities arising in the ordinary course of business;
- (b) prepaid or deferred revenue arising in the ordinary course of business;
- (c) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset; or
- (d) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP.

The Indebtedness of any Person (i) will include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof and (ii) in the case of Restricted Subsidiaries that are not Loan Parties, will exclude loans and advances made by Loan Parties having a term not exceeding 364 days (inclusive of any roll over or extensions of terms) and made in the ordinary course of business (such loans and advances, “**Short Term Advances**”). The amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“**Indemnified Taxes**” means (1) all 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 (2) to the extent not otherwise described in clause (1), Other Taxes.

“**Indemnitee**” has the meaning assigned to such term in Section 10.05(2).

“**Independent Financial Advisor**” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged and that is independent of the Borrower and its Affiliates.

“**Initial Term Loan Installment Date**” has the meaning assigned to such term in Section 2.06(1).

“**Initial Term Loans**” has the meaning assigned to such term in Section 2.01(1).

“**Intellectual Property Rights**” has the meaning assigned to such term in Section 3.20(1).

“**Intercreditor Agreement**” means the Closing Date Intercreditor Agreement, a Pari Passu Intercreditor Agreement or a Junior Lien Intercreditor Agreement that may be executed from time to time, as applicable.

“**Interest Election Request**” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.04 and substantially in the form of Exhibit D.

“**Interest Payment Date**” means (1) with respect to any Eurocurrency Loan, the last day of the Interest Period applicable to the Borrowing of which such Term Loan is a part and, in the case of a Eurocurrency Borrowing with an Interest Period of more than three months’ duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months’ duration been applicable to such Borrowing; and (2) with respect to any ABR Loan, the first Business Day after the end of each fiscal quarter of the Borrower commencing with the the first Business Day after the end of the fiscal quarter of the Borrower ending on June 30, 2018.

“**Interest Period**” means, as to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one, two, three or six months thereafter (or, if agreed by all applicable Lenders, 12 months or a shorter period), as the Borrower may elect, or the date any Eurocurrency Borrowing is converted to an ABR Borrowing in accordance with Section 2.04 or repaid or prepaid in accordance with Section 2.06, 2.07 or 2.08; *provided* that:

- (1) if any Interest Period would end on a day other than a Business Day, such Interest Period will be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period will end on the next preceding Business Day;
- (2) any Interest Period 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) will end on the last Business Day of the calendar month at the end of such Interest Period;
- (3) no Interest Period will extend beyond the applicable Maturity Date;
- (4) interest will accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period; and
- (5) the initial Interest Period, commencing on the Closing Date, will end on June 29, 2018.

“**Interpolated Rate**” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent in its reasonable discretion (which such determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time.

---

“ **Investment** ” has the meaning assigned to such term in Section 6.04.

“ **Investment Grade Rating** ” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P (or reasonably equivalent ratings of another internationally recognized rating agency).

“ **Investment Grade Securities** ” means:

- (1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);
- (2) securities that have an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Borrower and its Restricted Subsidiaries;
- (3) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition; and
- (4) investments in any fund that invests at least 95.0% of its assets in investments of the type described in clauses (1) and (2) above which fund may also hold immaterial amounts of cash pending investment or distribution.

“ **Investors** ” means, collectively:

- (1) all direct and indirect members of Amneal Holdings as of the Closing Date after giving effect to the Transactions;
- (2) B.U. Patel, Tushar Patel, Chirag Patel, Chintu Patel and/or their respective spouses, in their individual capacities and as direct or indirect owners, beneficiaries, officers, directors, trustees or managers of any Permitted Family Entities,
- (3) all immediate and extended family members of B.U. Patel, Tushar Patel, Chirag Patel, Chintu Patel and/or their respective spouses and the respective estates, heirs, family members, spouses, former spouses, executors, administrators, trustees, legatees or distributees of any of the foregoing, in each case, who have been cleared by the Administrative Agent under its standard and customary “Know Your Customer” policies, and
- (4) any Permitted Family Entities who have been cleared by the Administrative Agent under its standard and customary “Know Your Customer” policies.

“ **Joint Venture** ” means (1) any Person which would constitute an “equity method investee” of the Borrower or any of the Restricted Subsidiaries and (2) any Person in whom the Borrower or any of the Restricted Subsidiaries beneficially owns any Equity Interest that is not a Restricted Subsidiary (other than an Unrestricted Subsidiary).

---

“**JPM**” has the meaning assigned to such term in the introductory paragraph hereof.

“**Junior Financing**” means any Indebtedness permitted to be incurred hereunder that is contractually subordinated in right of payment to the Obligations or secured by Liens that are contractually subordinated to the Liens securing the Obligations (excluding, for the avoidance of doubt, the ABL Loans and any Indebtedness secured on a *pari passu* basis with the Liens that secure the ABL Loans) or any Permitted Refinancing Indebtedness in respect of any of the foregoing; *provided* that any Convertible Indebtedness will not constitute Junior Financing.

“**Junior Financing Documentation**” means the definitive documentation governing any Junior Financing.

“**Junior Lien Debt**” means any Indebtedness that is secured on a junior basis to the Liens that secure the Initial Term Loans (excluding, for the avoidance of doubt, the ABL Loans and any Indebtedness secured on a *pari passu* basis with the Liens that secure the ABL Loans).

“**Junior Lien Intercreditor Agreement**” means a “junior lien” intercreditor agreement substantially in the form attached hereto as Exhibit H (as the same may be modified in a manner satisfactory to the Administrative Agent, the applicable Debt Representative and the Borrower), or another lien subordination arrangement satisfactory to the Administrative Agent, the applicable Debt Representative and the Borrower. Upon the request of the Borrower, the Administrative Agent and Collateral Agent will execute and deliver a Junior Lien Intercreditor Agreement with one or more Debt Representatives (and acknowledged by the Loan Parties) for Indebtedness permitted hereunder that is permitted to be secured on a junior basis to the Term Loans.

“**Latest Maturity Date**” means, as of any date of determination, the latest Maturity Date of the Term Facilities in effect on such date.

“**Laws**” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, 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.

“**LCA Election**” has the meaning assigned to such term in Section 1.09.

“**LCA Test Date**” has the meaning assigned to such term in Section 1.09.

“**Lender**” means each financial institution listed on Schedule 2.01 (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 10.04), as well as any Person that becomes a Lender hereunder pursuant to Section 10.04 and any Additional Lender.

“ ***lending office*** ” means, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Term Loans.

“ ***Letter of Credit*** ” has the meaning assigned to such term in the ABL Credit Agreement.

“ ***LIBO Rate*** ” means, with respect to any Eurocurrency Borrowing for any Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “ ***Impacted Interest Period*** ”) then the LIBO Rate shall be the Interpolated Rate.

“ ***LIBO Screen Rate*** ” means, for any day and time, with respect to any Eurocurrency Borrowing for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion); *provided* that if the LIBO Screen Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“ ***Lien*** ” means, with respect to any asset (1) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset or (2) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset; *provided* that in no event will an operating lease or an agreement to sell be deemed to constitute a Lien.

“ ***Limited Condition Transaction*** ” means any transaction permitted hereunder by the Borrower or one or more Restricted Subsidiaries the consummation of which is not conditioned on the availability of, or on obtaining, third party financing

“ ***LLC Agreement*** ” means that certain Third Amended and Restated Limited Liability Company Agreement of Amneal Pharmaceuticals LLC, dated as of the Closing Date, as such agreement may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance herewith and therewith.

“ ***Loan Documents*** ” means this Agreement, the Security Documents, the Closing Date Intercreditor Agreement, any Pari Passu Intercreditor Agreement, any Junior Lien Intercreditor Agreement, the Escrow Agreement, any Note and, solely for the purposes of Sections 3.01, 3.02, and 8.01(3) hereof, the Fee Letters.

---

“ **Loan Parties** ” means the Borrower and the Subsidiary Loan Parties.

“ **Management Group** ” means the group consisting of the directors, executive officers and other management personnel of the Borrower and the Restricted Subsidiaries on the Closing Date or any Parent Entity, or their respective estates, heirs, family members, spouses, former spouses, executors, administrators, trustees, legatees or distributees.

“ **Margin Stock** ” has the meaning assigned to such term in Regulation U.

“ **Material Adverse Effect** ” means a material adverse effect on:

- (1) the business, financial condition or results of operations, in each case, of the Borrower and the Restricted Subsidiaries (taken as a whole);
- (2) the ability of the Borrower and the Guarantors (taken as a whole) to perform their payment obligations under the Loan Documents; or
- (3) the rights and remedies of the Administrative Agent and the Lenders (taken as a whole) under the Loan Documents.

“ **Material Indebtedness** ” means Indebtedness (other than the Term Loans and any Indebtedness held exclusively by Subsidiaries) of the Borrower or any Restricted Subsidiary in an aggregate outstanding principal amount exceeding the Threshold Amount.

“ **Material Restricted Subsidiary** ” means any Material Subsidiary that is a Restricted Subsidiary.

“ **Material Subsidiary** ” means any Subsidiary other than an Immaterial Subsidiary.

“ **Maturity Date** ” means, as the context may require:

- (1) with respect to Term Loans existing on the Closing Date, May 4, 2025;
- (2) with respect to any Incremental Term Loans, the final maturity date specified therefor in the applicable Incremental Facility Amendment;
- (3) with respect to any Refinancing Term Loans, the final maturity date specified therefor in the applicable Refinancing Amendment; and
- (4) with respect to any Extended Term Loans, the final maturity date specified therefor in the applicable Extension Amendment.

“ **Maximum Rate** ” has the meaning assigned to such term in Section 10.09.

“ **Minority Investment** ” means any Person other than a Subsidiary in which the Borrower or any Restricted Subsidiary owns any Equity Interests.

“ **MLPFSI** ” means Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“**MNPI**” means any material Nonpublic Information regarding the Borrower, any of its Affiliates and their respective Subsidiaries that has not been disclosed to the Lenders generally (other than Lenders who elect not to receive such information). For purposes of this definition “material Nonpublic Information” means Nonpublic Information that would reasonably be expected to be material to a decision by any Lender to assign or acquire any Term Loans or to enter into any of the transactions contemplated thereby.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Multiemployer Plan**” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower or any Restricted Subsidiary or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

“**Net Cash Proceeds**” means:

- (1) the with respect to any Asset Sale, the excess, if any, of:
  - (a) the aggregate cash proceeds (using the fair market value of any Cash Equivalents) received by the Borrower or any Restricted Subsidiary in respect of any Asset Sale (including any cash received in respect of or upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale and any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, and including any proceeds received as a result of unwinding any related Hedge Agreements in connection with such transaction but excluding the assumption by the acquiring Person of Indebtedness relating to the disposed assets or other consideration received in any other non-cash form), *over*
  - (b) the sum of:
    - (i) direct cash costs relating to such Asset Sale and the sale or disposition of such Designated Non-Cash Consideration (including legal, accounting and investment banking fees, brokerage and sales commissions, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees and restoration costs), and any relocation expenses incurred as a result thereof, taxes paid or payable as a result thereof (including taxes imposed on the distribution or repatriation of any such Net Cash Proceeds) (after taking into account any available tax credits or deductions and any tax sharing arrangements related thereto), amounts required to be applied to the repayment of principal, premium (if any) and interest on Indebtedness required to be paid as a result of such transaction (other than Indebtedness under the Loan Documents, Credit Agreement Refinancing Indebtedness, Pari Passu Lien Debt or Junior Lien Debt), any costs associated with unwinding any related Hedge Agreements in connection with such transaction;

- (ii) in the case of any Asset Sale by a non-wholly owned Restricted Subsidiary, the pro rata portion of the Net Cash Proceeds thereof (calculated without regard to this clause (ii)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Restricted Subsidiary of the Borrower as a result thereof, and
- (iii) any deduction of appropriate amounts to be provided by the Borrower or any of the Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrower or any of the Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction, it being understood that such reserved amounts will be deemed to be “Net Cash Proceeds” to the extent and at the time of any reversal thereof (to the extent not applied to the satisfaction of any applicable liabilities in cash in a corresponding amount);

*provided* that the definition of “Sale Leaseback Net Proceeds” shall apply for purposes of determining the “Net Cash Proceeds” of any Sale Leaseback Transaction; *provided, further*, that (i) no net cash proceeds calculated in accordance with the foregoing realized in a single transaction or series of related transactions shall constitute Net Cash Proceeds unless such amount exceeds \$20,000,000 and (ii) no such net cash proceeds shall constitute Net Cash Proceeds in any fiscal year until the aggregate amount of all such net cash proceeds (together with the aggregate amount of any Sale Leaseback Net Proceeds for such fiscal year (as determined without giving effect to the proviso in the last sentence of the definition thereof)) in such fiscal year exceeds \$40,000,000 (and thereafter only net cash proceeds in excess of such amount(s) shall constitute Net Cash Proceeds); and

- (2) with respect to the sale, incurrence or issuance of any Indebtedness by the Borrower or any Restricted Subsidiary, the excess, if any of:
  - (a) the sum of the cash and Cash Equivalents received by the Borrower and its Restricted Subsidiaries in connection with such incurrence or issuance *over*
  - (b) taxes paid or payable as a result thereof, fees (including investment banking fees, attorneys’ fees, accountants’ fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses, incurred by the Borrower and its Restricted Subsidiaries in connection with such sale, incurrence or issuance.

---

“**Net Income**” means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

“**New York Courts**” has the meaning assigned to such term in Section 10.15.

“**Non-Consenting Lender**” has the meaning assigned to such term in Section 2.16(3).

“**Non-Debt Fund Affiliate**” means any Affiliated Lender other than a Debt Fund Affiliate.

“**Non-Debt Fund Affiliate Assignment and Acceptance**” has the meaning assigned to such term in Section 10.04(10)(b).

“**Non-Loan Party**” means any Subsidiary of the Borrower that is not a Loan Party.

“**Non-U.S. Subsidiary**” means any Subsidiary that not a U.S. Subsidiary.

“**Not Otherwise Applied**” means, with reference to the amount of any net cash proceeds or fair market value of other assets received from Permitted Equity Issuances or capital contributions that is proposed to be applied to a particular use or transaction, that such amount was not previously applied in determining the permissibility of a transaction under this Agreement (including, for the avoidance of doubt, any use of such amount to increase the Available Amount, any Cure Amounts and any Excluded Contributions) where such permissibility was (or may have been) contingent on the receipt or availability of such amount.

“**Note**” means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit I hereto or otherwise in form and substance reasonably acceptable to the Administrative Agent and the Borrower, evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the Term Loans made by such Lender.

“**NYFRB**” means the Federal Reserve Bank of New York.

“**NYFRB Rate**” means, for any day, the Federal Funds Effective Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); *provided* that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; *provided, further*, that if any of the aforesaid rates as so determined be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**Obligations**” means all amounts owing to any Agent, any Lender or Qualified Counterparty pursuant to the terms of this Agreement, any other Loan Document, or any Specified Hedge Agreement, including all interest and expenses accrued or accruing (or that would, absent the commencement of an insolvency or liquidation proceeding, accrue) after the

commencement by or against any Loan Party or other Restricted Subsidiary of any proceeding under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law naming such Loan Party as the debtor in such proceeding, in accordance with and at the rate specified in this Agreement, whether or not the claim for such interest or expense is allowed or allowable as a claim in such proceeding.

“ **Organizational Documents** ” means,

- (1) 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);
- (2) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); and
- (3) 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 Applicable ECF Indebtedness** ” has the meaning assigned to such term in clause (A) of Section 2.08(2).

“ **Other Applicable Indebtedness** ” has the meaning assigned to such term in Section 2.08(1)(a).

“ **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 Term Loan or Loan Document).

“ **Other Taxes** ” means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.16).

“ **P aragraph IV Certification Notice** ” means the notice of certification required by 21 U.S.C. § 355(b)(3) or 21 U.S.C. § 355(j)(2)(B).

“**Paragraph IV Proceeding**” means an infringement Proceeding filed pursuant to 35 U.S.C. § 271(e)(2) with respect to a product controlled by the Borrower or any of the Subsidiaries.

“**Parent Entity**” means any direct or indirect parent of the Borrower.

“**Pari Passu Intercreditor Agreement**” means a “pari passu” intercreditor agreement substantially in the form attached hereto as Exhibit G (as the same may be modified in a manner satisfactory to the Administrative Agent, the applicable Debt Representative and the Borrower), or another intercreditor arrangement reasonably satisfactory to the Administrative Agent, the applicable Debt Representative and the Borrower. Upon the request of the Borrower, the Administrative Agent and Collateral Agent will execute and deliver a Pari Passu Intercreditor Agreement with one or more Debt Representatives (and acknowledged by the Loan Parties) for Indebtedness permitted hereunder that is permitted to be secured on a *pari passu* basis with the Initial Term Loans.

“**Pari Passu Lien Debt**” means any Indebtedness that is secured on a pari passu basis with the Liens that secure the Initial Term Loans, and including the ABL Loans and any Indebtedness secured on a pari passu basis with Liens that secure the ABL Loans.

“**Participant**” has the meaning assigned to such term in Section 10.04(4)(a).

“**Participant Register**” has the meaning assigned to such term in Section 10.04(4)(a).

“**Payment in Full**” means the payment in full of the Obligations (other than Obligations in respect of Specified Hedge Agreements and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted), and the termination of all commitments hereunder and “**Paid in Full**” has a correlative meaning.

“**Payment Office**” means the office of the Administrative Agent located at 10 S. Dearborn St., L2 floor, Chicago, IL 60603 or such other office as the Administrative Agent may designate to the Borrower and the Lenders from time to time.

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA, or any successor thereto.

“**Perfection Certificate**” means the Perfection Certificate with respect to the Loan Parties in a form substantially similar to that delivered on the Closing Date.

“**Permit**” means any license, franchise, approval, authorization or clearances issued by a Governmental Authority and required for the conduct of its business of the Borrower or its Restricted Subsidiaries as currently conducted.

“**Permitted Acquisition**” means any acquisition of all or substantially all the assets of, or a majority of the Equity Interests in, or merger, consolidation or amalgamation with, a Person or any acquisition of assets constituting a business unit, line of business, division or

facility of another Person or any Exclusive License (or any subsequent investment made in a Person, division or line of business previously acquired in a Permitted Acquisition), in each case if (1) no Event of Default is continuing (or in the case of a Limited Condition Transaction, no Specified Event of Default is continuing) immediately prior to making such Investment or would result therefrom; and (2) immediately after giving effect thereto, the Borrower is in compliance with Sections 5.10 and 6.09.

“ **Permitted Additional Indebtedness** ” means Indebtedness of the Borrower or any Restricted Subsidiary in the form of term loans or notes; *provided* that:

- (1) any Permitted Additional Indebtedness, (a) that is secured on a *pari passu* basis with the Initial Term Loans shall not mature prior to the Latest Maturity Date of the Initial Term Loans at the time of incurrence thereof, or have a shorter Weighted Average Life to Maturity than the Initial Term Loans at the time of incurrence thereof (without giving effect to any amortization or prepayments of the Initial Term Loans) or (b) that is unsecured (or not secured by Collateral) or secured on a junior lien basis to the Initial Term Loans shall not mature, or have scheduled amortization, prior to the date that is 91 days after the Latest Maturity Date of the Initial Term Loans at the time of incurrence thereof; *provided* that this clause (1) shall not apply to the incurrence of any such Indebtedness constituting a bridge facility to the incurrence of any other Indebtedness, so long as the Indebtedness into which such bridge facility is to be converted or exchanged satisfies the requirements of this clause (1) and such conversion or exchange is subject only to conditions customary for similar conversions or exchanges;
- (2) if such Permitted Additional Indebtedness is incurred by a Loan Party, it is not guaranteed by any Person other than a Loan Party;
- (3) if such Permitted Additional Indebtedness incurred by a Loan Party is secured it shall be secured on a *pari passu* or junior lien basis to the Initial Term Loans and:
  - (i) such Indebtedness is not secured by any assets or property that does not constitute Collateral (subject to customary exceptions for cash collateral in favor of an agent, letter of credit issuer or similar “fronting” lender); and
  - (ii) the security agreements relating to such assets or property are substantially similar to or the same as the applicable Collateral Documents (as determined in good faith by a Responsible Officer of the Borrower);
- (4) if such Permitted Additional Indebtedness is secured on a *pari passu* basis with or junior lien basis to the Initial Term Loans, the holders of such Permitted Additional Indebtedness or a Debt Representative acting on behalf of the holders of such Permitted Additional Indebtedness has become party to or is otherwise subject to the provisions of an Intercreditor Agreement (as such Intercreditor Agreement may be amended in a manner reasonably acceptable to the Administrative Agent, such Debt Representative and the Borrower), which results in such holders or Debt Representative having rights to share in the Collateral on a *pari passu* or junior lien basis, as applicable;

- 
- (5) if such Permitted Additional Indebtedness incurred by a Loan Party is in the form of term loans and is secured on a *pari passu* basis with the Initial Term Loans, then the provisions of Section 2.18(8) shall apply as if such Permitted Additional Indebtedness were Incremental Term Loans; and
- (6) the terms and conditions of such Indebtedness (a) are substantially identical to, or, taken as a whole, no more favorable to the lenders or holders providing such Indebtedness than, those applicable to the Initial Term Loans (except for covenants applicable only to periods after the Latest Maturity Date of the Initial Term Loans at the time of incurrence) and (b) solely to the extent that any terms and conditions applicable to any such Indebtedness are not substantially the same as, or are materially more restrictive on the Borrower and the Restricted Subsidiaries than, those then applicable to the Initial Term Loans, shall otherwise reflect customary market terms and conditions, including with respect to high yield debt securities to the extent applicable, at the time of such incurrence of such Indebtedness (*provided* that a certificate of a Responsible Officer delivered to the Administrative Agent in good faith at least four (4) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material covenants and events of default of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (6) shall be conclusive evidence that such Indebtedness satisfies this clause (6) unless the Administrative Agent notifies the Borrower within such four (4) Business Day (or shorter) period that it disagrees with such determination (including a description of the basis upon which it disagrees)); *provided* that this clause (6) will not apply to (v) terms addressed in the preceding clauses (1) through (5), (w) interest rate, rate floors, fees, funding discounts and other pricing terms, (x) redemption, prepayment or other premiums, or (y) optional prepayment or redemption terms; *provided further* that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof).

“ **Permitted Amendment** ” means any Incremental Facility Amendment, Refinancing Amendment or Extension Amendment.

“ **Permitted Bond Hedge Transaction** ” means any call or capped call option (or substantively equivalent derivative transaction) on the Borrower’s common Capital Stock or the common Capital Stock of any direct or indirect parent of the Borrower (or other securities or property following a merger event or other change of the common Capital Stock of Borrower or such parent) purchased by the Borrower or any direct or indirect parent thereof in connection with the issuance of any Convertible Indebtedness; *provided*, that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Borrower from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction. For the avoidance of doubt, those certain bond hedge transactions entered into on June 25, 2015 and June 26, 2015 with Royal Bank of Canada, as amended or modified, constitute Permitted Bond Hedge Transactions.

“ **Permitted Convertible Indebtedness Call Transaction** ” means any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction.

“ **Permitted Debt** ” has the meaning assigned thereto in Section 6.01.

“ **Permitted Equity Issuances** ” means any sale or issuance of any Qualified Equity Interests of the Borrower or any direct or indirect parent of the Borrower

“ **Permitted Family Entity** ” means any Person in which any combination of B.U. Patel, Tushar Patel, Chirag Patel, Chintu Patel, their respective spouses, any immediate or extended family member of the foregoing, the respective estates, heirs, family members, and/or the spouses, former spouses, executors, administrators, trustees, legatees or distributees of any of the foregoing (1) are the direct or indirect owners, beneficiaries (whether income, fixed or contingent), officers, directors, trustees or managers and, in each case, are entitled to all of the economic rights and interests in such Person, or (2) Control such Person.

“ **Permitted Holders** ” means each of:

- (1) the Investors;
- (2) any member of the Management Group (or any controlled Affiliate thereof);
- (3) any group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of which Persons described in the foregoing clauses (1) or (2) are members; *provided* that, without giving effect to the existence of such group or any other group, the Persons described in clauses (1) and (2), collectively, Beneficially Own Equity Interests representing 50% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Amneal Inc. (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested) then held by such group; and
- (4) any Permitted Parent.

“ **Permitted Investment** ” has the meaning assigned to such term in Section 6.04.

“ **Permitted Investor** ” means:

- (1) each Investor;
- (2) each of their respective Affiliates and investment managers;
- (3) any fund or account managed by any of the Persons described in clause (1) or (2) of this definition;

- 
- (4) any employee benefit plan of the Borrower or any of its Subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan; and
  - (5) investment vehicles of members of management of the Borrower that invest in, acquire or trade commercial loans but excluding natural persons.

“ **Permitted Junior Secured Refinancing Debt** ” means any Credit Agreement Refinancing Indebtedness that is secured on a junior basis to the Initial Term Loans.

“ **Permitted Liens** ” has the meaning assigned to such term in Section 6.02.

“ **Permitted Parent** ” means any Parent Entity for so long as it is Controlled by one or more Persons that are Permitted Holders pursuant to clause (1), (2) or (3) of the definition thereof.

“ **Permitted Pari Passu Secured Refinancing Debt** ” means any Credit Agreement Refinancing Indebtedness that is secured on a *pari passu* basis with the Initial Term Loans.

“ **Permitted Refinancing Indebtedness** ” means any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, “ **Refinance** ”) the Indebtedness being Refinanced (the “ **Refinanced Debt** ”); *provided that*:

- (1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Refinanced Debt ( *plus* unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses) and any existing commitments unutilized thereunder being terminated in connection with such Refinancing;
- (2) other than with respect to a Refinancing of Indebtedness initially incurred pursuant to Section 6.01(3) (other than the Impax Convertible Notes) or Section 6.01(4), the final maturity date of such Permitted Refinancing Indebtedness is equal to or later than the final maturity date of the Refinanced Debt and the Weighted Average Life to Maturity of the Permitted Refinancing Indebtedness is greater than or equal to the Weighted Average Life to Maturity of the Refinanced Debt;
- (3) if the Refinanced Debt constitutes Junior Financing:
  - (a) such Permitted Refinancing Indebtedness is (i) unsecured or (ii) Junior Lien Debt that is permitted hereunder at the time of incurrence;
  - (b) to the extent such Refinanced Debt is subordinated in right of payment to any Obligations under this Agreement, such Permitted Refinancing Indebtedness is subordinated in right of payment to such Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Refinanced Debt; and
  - (c) such Permitted Refinancing Indebtedness has the same obligors as the Refinanced Debt (unless any such additional obligors are also Loan Parties);

- 
- (4) (i) to the extent such Refinanced Debt is secured by Liens, such Permitted Refinancing Indebtedness is either unsecured or is not secured by any Liens that do not secure such Refinanced Debt, (ii) to the extent such Refinanced Debt is secured by Liens that are subordinated to the Liens securing the Obligations, such Permitted Refinancing Indebtedness is secured by Liens that are subordinated to the Liens securing the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Refinanced Debt and (iii) to the extent such Refinanced Debt is unsecured, such Permitted Refinancing Indebtedness is unsecured;
- (5) the terms and conditions of such Permitted Refinancing Indebtedness (a) are substantially identical to, or, taken as a whole, not more favorable to the lenders or holders providing such Permitted Refinancing Indebtedness than, those applicable to such Refinanced Debt (except for covenants applicable only to periods after the Latest Maturity Date of the Initial Term Loans at the time of incurrence) and (b) solely to the extent that any terms and conditions applicable to any such Permitted Refinancing Indebtedness are not substantially the same as, or are materially more restrictive on the Borrower and the Restricted Subsidiaries than, those then applicable to the Refinanced Debt, shall otherwise reflect customary market terms and conditions at the time of such incurrence, including with respect to high yield debt securities to the extent applicable (*provided* that a certificate of a Responsible Officer delivered to the Administrative Agent in good faith at least four (4) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to the incurrence of such Permitted Refinancing Indebtedness, together with a reasonably detailed description of the material covenants and events of default of such Permitted Refinancing Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (5) shall be conclusive evidence that such Permitted Refinancing Indebtedness satisfies this clause (4) unless the Administrative Agent notifies the Borrower within such four (4) Business Day (or shorter) period that it disagrees with such determination (including a description of the basis upon which it disagrees)); *provided, further* that this clause (4) will not apply to (w) terms addressed in the other clauses of this “Permitted Refinancing Indebtedness” definition, (x) interest rate, rate floors, fees, funding discounts and other pricing terms, (y) redemption, prepayment or other premiums or (z) optional prepayment or redemption terms; and
- (6) to the extent such Refinanced Debt is Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt, in each case, such Permitted Refinancing Indebtedness is secured only by assets that constitute Collateral and pursuant to one or more security agreements permitted by and subject to any applicable Intercreditor Agreements (as such Intercreditor Agreements may be amended in a manner reasonably acceptable to the Administrative Agent, the applicable Debt Representatives and the Borrower); and

- (7) to the extent such Refinanced Debt is (a) Incremental Equivalent Term Debt, such Permitted Refinancing Indebtedness shall be subject to the terms of clauses (3) – (7) of the definition of “Incremental Equivalent Term Debt” as if such Permitted Refinancing Indebtedness were also Incremental Equivalent Term Debt or (b) Ratio Debt, such Permitted Refinancing Indebtedness shall be required to satisfy the requirements of clauses (2) – (5) of the definition of “Permitted Additional Indebtedness” as if such Permitted Refinancing Indebtedness were also Permitted Additional Indebtedness.

Indebtedness constituting Permitted Refinancing Indebtedness will not cease to constitute Permitted Refinancing Indebtedness solely as a result of the subsequent extension of the Latest Maturity Date after the date of original incurrence thereof.

“**Permitted Warrant Transaction**” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on the Borrower’s common Capital Stock or the common Capital Stock of any direct or indirect parent of the Borrower (or other securities or property following a merger event or other change of the common Capital Stock of Borrower or such parent) and/or cash (in an amount determined by reference to the price of such common Capital Stock) sold by the Borrower or any direct or indirect parent thereof substantially concurrently with any purchase by the Borrower of a related Permitted Bond Hedge Transaction. For the avoidance of doubt, those certain warrant transactions entered into on June 25, 2015 and June 26, 2015 with Royal Bank of Canada, as amended or modified, constitute Permitted Warrant Transactions.

“**Person**” means any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, government, individual or family trust, Governmental Authority or other entity of whatever nature.

“**PIPE Investment**” means the redemption by certain existing equityholders of the Borrower of a portion of their equity interests in the Borrower in exchange for shares of common stock in Amneal Inc., and the sale of such shares in a private transaction to certain institutional investors including TPG Improv Holdings, L.P. and funds affiliated with Fidelity Management & Research Company pursuant to the Share Purchase Agreement, dated as of October 17, 2017, between Amneal Holdings and the purchasers party thereto.

“**PIPE Registration Statement**” means the registration statement of Amneal, Inc. (f/k/a Atlas Holdings, Inc.) on Form S-1 filed with the SEC on March 7, 2018.

“**Plan**” means any “employee pension benefit plan” as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) that is (1) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA; and (2) either (a) sponsored or maintained (at the time of determination or at any time within the five years prior thereto) by the Borrower or any of its Subsidiaries or any ERISA Affiliate or (b) in respect of which the Borrower or any of its Subsidiaries or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“**Platform**” has the meaning assigned to such term in Section 10.17(1).

---

“ **Pledged Collateral** ” means “ *Pledged Collateral* ” as defined in the Collateral Agreement.

“ **Prime Rate** ” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“ **Pro Forma Basis** ”, “ **Pro Forma** ” and “ **Pro Forma Effect** ” mean, with respect to compliance with any test or covenant or calculation hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.08.

“ **Products in Development** ” means drug products that, as of the Closing Date, (a) are in development or (b) the Borrower or any of the Subsidiaries does not yet sell, offer for sale, import, promote, market, distribute or otherwise commercialize.

“ **Projections** ” means all projections (including financial estimates, financial models, forecasts, other financial projections and other forward-looking information) furnished to the Lenders or the Administrative Agent by or on behalf of the Borrower, Impax or any of their respective Subsidiaries on or prior to the Closing Date.

“ **Public Company Costs** ” means costs relating to compliance with the Sarbanes-Oxley Act of 2002, as amended (or similar Laws in any other applicable jurisdiction), and other expenses arising out of or incidental to the Borrower’s (or any Parent Entity’s) status as a public reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act (or similar Laws in any other applicable jurisdiction), the rules of national securities exchange companies with listed equity securities, directors’ compensation, fees and expense reimbursement, shareholder meetings and reports to shareholders, directors’ and officers’ insurance and other executive costs, legal and other professional fees, and listing fees relating to the foregoing.

“ **Public Lender** ” has the meaning assigned to such term in Section 10.17(2).

“ **Purchasing Borrower Party** ” means the Borrower or any Subsidiary of the Borrower that becomes an Assignee or Participant pursuant to Section 10.04(14).

“ **Qualified Counterparty** ” means any counterparty to any Specified Hedge Agreement that, at the time such Specified Hedge Agreement was entered into or, if later, on the Closing Date, was an Agent, an Arranger, a Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be an Agent, an Arranger, a Lender or an Affiliate of the foregoing.

---

“ **Qualified Equity Interests** ” means any Equity Interests other than Disqualified Stock.

“ **Qualified Receivables Factoring** ” means any Factoring Transaction that meets the following conditions:

- (1) such Factoring Transaction is non-recourse to, and does not obligate, the Borrower or any Restricted Subsidiary, or their respective properties or assets (other than Securitization Assets) in any way other than pursuant to Standard Securitization Undertakings;
- (2) the Board of Directors of the Borrower has determined in good faith that such Qualified Receivables Factoring (including financing terms, covenants, termination events and other provisions) is, in the aggregate, economically fair and reasonable to the Borrower and the Restricted Subsidiaries;
- (3) all sales, conveyances, assignments and/or contributions of Securitization Assets by the Borrower or any Restricted Subsidiary are made at fair market value (as determined in good faith by the Borrower), and
- (4) such Factoring Transaction (including financing terms, covenants, termination events (if any) and other provisions thereof) are market terms at the time such Factoring Transaction is first entered into (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings.

The grant of a security interest (other than a precautionary grant) in any Securitization Assets of the Borrower or any of its Restricted Subsidiaries to secure any Indebtedness shall not be deemed a Qualified Receivables Factoring.

“ **Qualified Receivables Financing** ” means any Receivables Financing that meets the following conditions:

- (1) the Board of Directors of the Borrower has determined in good faith that such Qualified Receivables Financing (including financing terms, covenants, termination events and other provisions) is, in the aggregate, economically fair and reasonable to the Borrower and the Restricted Subsidiaries;
- (2) all sales, conveyances, assignments or contributions of Securitization Assets by the Borrower or any Restricted Subsidiary to the Receivables Subsidiary are made at fair market value; and
- (3) the financing terms, covenants, termination events and other provisions thereof are market terms at the time such Receivables Financing is first entered into (as determined in good faith by a Responsible Officer of the Borrower) and may include Standard Securitization Undertakings.

The grant of a security interest (other than a precautionary grant) in any Securitization Assets of the Borrower or any Restricted Subsidiary (other than a Receivables Subsidiary) to secure any Indebtedness will not be deemed a Qualified Receivables Financing.

“**Qualified Receivables Transaction**” means a Qualified Receivables Factoring or a Qualified Receivables Financing.

“**Quarterly Financial Statements**” has the meaning assigned to such term in Section 5.04(2).

“**Ratio Amount**” means an aggregate principal amount that, after giving Pro Forma effect to the incurrence thereof, in accordance with Section 1.08, would not result in:

- (1) with respect to Ratio Debt to be secured on a *pari passu* basis with the Initial Term Loans, the First Lien Net Leverage Ratio for the applicable Test Period being greater than (a) the Closing Date First Lien Net Leverage Ratio or (b) the First Lien Net Leverage Ratio immediately prior to such incurrence;
- (2) with respect to any Ratio Debt to be secured on a junior basis to the Initial Term Loans, the Total Net Leverage Ratio for the applicable Test Period being greater than (a) the Closing Date Total Net Leverage Ratio or (b) the Total Net Leverage Ratio immediately prior to such incurrence; and
- (3) with respect to any Ratio Debt that is unsecured (or not secured by Collateral), the Total Net Leverage Ratio for the applicable Test Period being greater than 6.00 to 1.00.

“**Ratio Debt**” has the meaning assigned to such term in Section 6.01.

“**Ratio Debt Cap**” means, as of the date of measurement, the sum of (1) \$100 million (less the aggregate principal amount of all Indebtedness incurred prior to such date in reliance on this clause (1)) and (2) the Ratio Amount.

“**RBC**” means Royal Bank of Canada.

“**Real Property**” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by any Loan Party, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“**Receivables Financing**” means any transaction or series of transactions that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or any Restricted Subsidiaries may sell, assign, contribute, convey or otherwise transfer Securitization Assets to (1) a Receivables Subsidiary (in the case of a transfer by the Borrower or any Restricted Subsidiary that is not a Receivables Subsidiary) or (2) any other Person (in the case of a transfer by a Receivables Subsidiary) and, in either case, may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries.

“**Receivables Repurchase Obligation**” means any obligation of a seller of Securitization Assets in a Qualified Receivables Transaction to repurchase Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a Securitization Asset or portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

“ **Receivables Subsidiary** ” means a Wholly Owned Subsidiary of the Borrower (or another Person formed solely for the purposes of engaging in a Qualified Receivables Financing with the Borrower or any Restricted Subsidiary and to which the Borrower or any Restricted Subsidiary transfers Securitization Assets) which engages in no activities other than in connection with the financing of Securitization Assets of the Borrower or its Subsidiaries, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Borrower (as provided below) as a Receivables Subsidiary and:

- (1) no portion of the Indebtedness or any other obligations (contingent or otherwise):
  - (a) is guaranteed by the Borrower or any Restricted Subsidiary (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings);
  - (b) is recourse to or obligates the Borrower or any Restricted Subsidiary in any way other than pursuant to Standard Securitization Undertakings; or
  - (c) subjects any property or asset of the Borrower or any Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;
- (2) with which neither the Borrower nor any Restricted Subsidiary has any material contract, agreement, arrangement or understanding other than on terms which the Borrower reasonably believes to be no less favorable to the Borrower or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower, other than with respect to Standard Securitization Undertakings; and
- (3) to which neither the Borrower nor any other Restricted Subsidiary has any obligation to maintain or preserve such entity’s financial condition or cause such entity to achieve certain levels of operating results.

Any such designation by the Board of Directors of the Borrower will be evidenced to the Administrative Agent by filing with the Administrative Agent a certified copy of the resolution of the Board of Directors of the Borrower giving effect to such designation and a certificate of a Responsible Officer of the Borrower certifying that such designation complied with the foregoing conditions.

“ **Recipient** ” means the Administrative Agent and any Lender, as applicable.

“ **Refinance** ” has the meaning assigned to such term in the definition of “ *Permitted Refinancing Indebtedness*, ” and the terms “ **Refinanced** ” and “ **Refinancing** ” will have correlative meanings.

“ **Refinanced Debt** ” has the meaning assigned to such term in the definition of “ *Permitted Refinancing Indebtedness*. ”

“ **Refinancing Amendment** ” means an amendment, in accordance with the terms of Section 2.19, to this Agreement and, as necessary, each other Loan Document (which may, at the option of the Administrative Agent and the Borrower, be in the form of an amendment and restatement of this Agreement or such other Loan Document, as applicable) executed by each of (1) the Borrower; (2) the Administrative Agent; and (3) with respect to an amendment (or an amendment and restatement) of this Agreement, each Lender that agrees to provide any portion of the Refinancing Term Loans in accordance with Section 2.19.

“ **Refinancing Term Loan Installment Date** ” has the meaning assigned to such term in Section 2.06(2).

“ **Refinancing Term Loans** ” means one or more Classes of Term Loans that result from a Refinancing Amendment.

“ **Register** ” has the meaning assigned to such term in Section 10.04(2)(d).

“ **Registered Equivalent Notes** ” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees and collateral provisions) issued by the same issuer in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“ **Regulation U** ” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“ **Regulation X** ” means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“ **Reinvestment Deferred Amount** ” has the meaning assigned to such term in Section 2.08(8).

“ **Related Parties** ” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“ **Release** ” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating in, into, upon, onto or through the Environment.

“ **Replaced Loans** ” has the meaning assigned to such term in Section 10.08(7).

“ **Replacement Loans** ” has the meaning assigned to such term in Section 10.08(7).

“ **Reportable Event** ” means any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30 day notice period referred to in Section 4043(c) of ERISA has been waived, with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code).

---

“ **Repricing Transaction** ” means:

- (1) the incurrence by the Borrower or any of the other Restricted Subsidiary of any term loan Indebtedness (a) having an All-In Yield that is less than the All-In Yield for the Initial Term Loans of the respective Type, and (b) the proceeds of which are used to prepay (or, in the case of a conversion, deemed to prepay or replace), in whole or in part, the outstanding principal of the Initial Term Loans, or
- (2) any effective reduction in All-In Yield applicable to the Initial Term Loans (e.g. by way of amendment);

*provided* that a Repricing Transaction will not include any event described in the preceding clause (1) or (2) above that (a) is not consummated for the primary purpose of lowering the All-In Yield applicable to the Initial Term Loans or (b) is consummated in connection with a Change in Control or Enterprise Transformative Event.

“ **Required Financial Statements** ” has the meaning assigned to such term in Section 5.04(2).

“ **Required Lender Consent Items** ” has the meaning assigned to such term in Section 10.04(12)(c).

“ **Required Lenders** ” means, at any time, Lenders having Term Loans outstanding and unused Commitments that, taken together, represent more than 50.0% of the sum of all Term Loans outstanding and Commitments at such time. The Term Loans and Commitments of any Defaulting Lenders will be disregarded in determining the Required Lenders; *provided* that, subject to the Borrower’s right to replace any Defaulting Lenders as set forth herein:

- (1) the Commitment of any Defaulting Lender may not be increased or extended, or the maturity of any of its Term Loans may not be extended, the rate of interest on any of its Term Loans may not be reduced and the principal amount of any of its Term Loans may not be forgiven, in each case without the consent of such Defaulting Lender (it being understood that waivers or other modifications of any conditions precedent, covenants, mandatory prepayments, mandatory Commitment reductions, Defaults or Events of Default shall not constitute an increase or extension of any Commitment, a reduction of the rate of interest on any Term Loan or a forgiveness of the principal amount of any Term Loan); and
- (2) any amendment, waiver or consent requiring the consent of all the Lenders or each affected Lender pursuant to clauses (i) through (vi) of Section 10.08(2) that by its terms affects any Defaulting Lender more adversely than the other affected Lenders shall require the consent of such Defaulting Lender.

“**Required Percentage**” means, with respect to any Excess Cash Flow Period, the percentage set forth in the table below based on First Lien Net Leverage Ratio determined as of the last day of such Excess Cash Flow Period:

<b>First Lien Net Leverage Ratio</b>	<b>Required Percentage</b>
Greater than 3.70 to 1.00	50.0%
Less than or equal to 3.70 to 1.00 but greater than 3.20 to 1.00	25.0%
Less than or equal to 3.20 to 1.00	0%

“**Responsible Officer**” means, with respect to any Loan Party, the chief executive officer, president, vice president, secretary, assistant secretary or any Financial Officer of such Loan Party or other similar officer or Person performing similar functions of a Loan Party and, as to any document delivered on the Closing Date, any secretary or assistant secretary of a Loan Party, designated in writing by or on behalf of the Borrower to the Administrative Agent from time to time. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party will be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer will be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a “Responsible Officer” shall refer to a Responsible Officer of the Borrower.

“**Restricted Payment**” means any (1) dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any of its Restricted Subsidiaries (other than dividends or other distributions on Equity Interests payable solely by the issuance of additional Equity Interests (other than Disqualified Stock) of the Person paying such dividends or distributions) and (2) payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of (a) the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any Equity Interest of the Borrower or any of the Restricted Subsidiaries or (b) any return of capital to the Borrower’s equityholders, partners or members (or the equivalent Persons thereof); *provided* that (i) cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from any future, current or former officers, directors, managers, employees, consultants and independent contractors of the Borrower, any Restricted Subsidiary or any direct or indirect parent thereof, or their respective estates, heirs, family members, spouses, former spouses, successors, executors, administrators, trustees, legatees or distributees in connection with a repurchase of Equity Interests of the Borrower or such parent entity and (ii) any payment(s) of principal (not in excess of the stated principal amount thereof), interest, fees, reimbursement obligations, charges, costs, expenses, indemnities and other amounts in respect of Convertible Indebtedness, in each case will not constitute a Restricted Payment; *provided further* that notwithstanding anything herein to the contrary, any payment in cash included in the settlement amount due upon conversion in excess of the stated principal amount of any Convertible Indebtedness shall constitute a Restricted Payment for all purposes hereunder.

“**Restricted Subsidiary**” means any Subsidiary of a Person other than an Unrestricted Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Restricted Subsidiaries will mean Restricted Subsidiaries of the Borrower.

“**S&P**” means Standard & Poor’s Ratings Services or any successor entity thereto.

“**Sale Leaseback Net Proceeds**” means with respect to the sale component of any Sale Leaseback Transaction, the excess, if any, of (1) the sum of cash and Cash Equivalents received as purchase consideration in connection with such Sale Leaseback Transaction sale component pursuant to the applicable purchase and sale agreement over (2) the sum of (a) the out-of-pocket fees and expenses (including attorneys’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees) actually incurred or required to be paid by the Borrower or any Restricted Subsidiary in connection with such Sale Leaseback Transaction, (b) taxes (including transfer taxes) paid or reasonably estimated to be payable in connection therewith (including taxes imposed on the repatriation of any such Sale Leaseback Net Proceeds), and (c) any reserve for adjustment in respect of (i) the sale price of such asset or assets established in accordance with GAAP and (ii) any liabilities associated with such asset or assets and retained by the Borrower or any Restricted Subsidiary after such Sale Leaseback Transaction or any obligations payable by the Borrower or any Restricted Subsidiary in connection with such Sale Leaseback Transaction, including liabilities or obligations related to environmental matters, immediate repairs or deferred maintenance or against any indemnification obligations associated with such Sale Leaseback Transaction, it being understood that “Sale Leaseback Net Proceeds” shall include the amount of any reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in this clause (c); provided, that (i) no net cash proceeds calculated in accordance with the foregoing realized in a single transaction or series of related transactions shall constitute Sale Leaseback Net Proceeds unless such amount exceeds \$20,000,000 and (ii) no such net cash proceeds shall constitute Sale Leaseback Net Proceeds in any fiscal year until the aggregate amount of all such net cash proceeds (together with the aggregate amount of any Net Cash Proceeds described in clause (1) of the definition thereof for such fiscal year (as determined without giving effect to the second proviso in the last sentence of such clause (1))) in such fiscal year exceeds \$40,000,000 (and thereafter only net cash proceeds in excess of such amount(s) shall constitute Sale Leaseback Net Proceeds).

“**Sale Leaseback Transaction**” means a sale leaseback transaction with respect to all or any portion of any real property owned by the Borrower or any Restricted Subsidiary.

“**Sanctioned Country**” shall mean, at any time, a country, region or territory that is subject to comprehensive Sanctions (at the time of the Agreement, the Crimea region of Ukraine, Cuba, Iran, North Korea and Syria).

“**Sanctioned Person**” shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or by the United Nations Security Council, the European Union, any EU member state, Her Majesty’s Treasury of the United Kingdom, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person.

“**Sanctions**” shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom.

---

“**SEC**” means the Securities and Exchange Commission or any successor thereto.

“**Secured Parties**” means the collective reference to the “*Secured Parties*” as defined in the Collateral Agreement.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Securitization Assets**” means accounts receivable, royalty or other revenue streams, other rights to payment, including with respect to rights of payment pursuant to the terms of Joint Ventures (in each case, whether now existing or arising in the future), and any assets related thereto, including all collateral securing any of the foregoing, all contracts and all guarantees or other obligations in respect of any of the foregoing, proceeds of any of the foregoing and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with non-recourse, asset securitization or factoring transactions and any Hedge Agreements entered into by the Borrower or any such Restricted Subsidiary in connection with such assets subject to a Qualified Receivables Transaction.

“**Security Documents**” means the Collateral Agreement and each of the security agreements and other instruments and documents executed and delivered by any Loan Party pursuant thereto or pursuant to Section 5.10.

“**Short Term Advances**” has the meaning assigned to such term in the definition of “Indebtedness”.

“**Similar Business**” means any business, the majority of whose revenues are derived from (1) business or activities conducted by the Borrower and its Restricted Subsidiaries on the Closing Date, (2) any business that is a natural outgrowth or reasonable extension, development or expansion of any such business or any business similar, reasonably related, incidental, complementary or ancillary to any of the foregoing or (3) any business that in the Borrower’s good faith business judgment constitutes a reasonable diversification of businesses conducted by the Borrower and its Restricted Subsidiaries.

“**Specified Acquisition Agreement Representations**” means such of the representations and warranties made by or with respect to Impax and its Subsidiaries in the Acquisition Agreement as are material to the interests of the Lenders, but only to the extent that the Borrower (or its Affiliates) have the right (taking into account any applicable cure provisions) to terminate its (or their) obligations under the Acquisition Agreement as a result of a breach of such representations in the Acquisition Agreement or the failure of an Acquisition Agreement Representation to be true and correct results in a failure of a condition precedent to the Borrower’s (or its affiliates’) obligations to consummate the Acquisition in the Acquisition Agreement.

“**Specified Event of Default**” means any Event of Default under Section 8.01(2), 8.01(3), 8.01(8) or 8.01(9).

“**Specified Hedge Agreement**” means any Hedge Agreement entered into or assumed between or among the Borrower or any Restricted Subsidiary and any Qualified Counterparty and designated by the Qualified Counterparty and the Borrower in writing to the Administrative Agent as a “Specified Hedge Agreement” under this Agreement (but only if such Hedge Agreement has not been designated as a “Specified Hedge Agreement” under the ABL Credit Agreement).

“**Specified Hedge Obligations**” means all amounts owing to any Qualified Counterparty under any Specified Hedge Agreement.

“**Specified IP Subsidiary**” means a wholly-owned Restricted Subsidiary of the Borrower that:

- (1) owns no assets other than Transferred IP and cash or Cash Equivalents necessary to support the business set forth in clause (2) of this definition;
- (2) conducts no business other than the licensing, development, promotion, marketing, and supply of the Transferred IP; and
- (3) is prohibited from incurring any Indebtedness and/or Liens under its Organizational Documents.

“**Specified Representations**” means the representations and warranties of the Borrower set forth in the following sections of this Agreement:

- (1) Section 3.01(1) and (4) (but solely with respect to its organizational existence and organizational power and authority as to the execution, delivery and performance of this Agreement, the Collateral Agreement and any applicable Intellectual Property Security Agreements (as defined in the Collateral Agreement) and the extensions of credit hereunder);
- (2) Section 3.02(1) (but solely with respect to its authorization of this Agreement, the Collateral Agreement and any applicable Intellectual Property Security Agreements (as defined in the Collateral Agreement));
- (3) Section 3.02(2)(c) (but solely with respect to non-conflict of its entry into and performance of this Agreement and the other Loan Documents with its certificate or article of incorporation or other applicable Organizational Document);
- (4) Section 3.03 (but solely with respect to this Agreement, the Collateral Agreement and any applicable Intellectual Property Security Agreements (as defined in the Collateral Agreement));
- (5) Section 3.08(2) (but solely with respect to use of proceeds on the Closing Date);
- (6) Section 3.09;

- 
- (7) Section 3.14(1) (but solely with respect to the creation, validity, attachment and perfection of the Liens granted by it in the Collateral on the Closing Date (subject to Permitted Liens and subject to the Certain Funds Provisions));
  - (8) Section 3.16; and
  - (9) Section 3.19.

“**Specified Tender Offer**” means the offer to be commenced by Impax on or following the Closing Date to holders to repurchase for cash all of the outstanding Impax Convertible Notes, or any portion thereof, pursuant to Section 4.10 of the Impax Indenture.

“**Specified Tender Offer Prepayment Date**” has the meaning assigned to such term in Section 2.08(3).

“**Specified Transaction**” means any Investment that results in a Person becoming a Restricted Subsidiary, any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary, any Permitted Acquisition, any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower, any Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person or a facility or any parcels of or interests (including leasehold interests) in real property and all improvements and fixtures thereon or any Disposition of a business unit, line of business or division or a facility or any parcels of or interests (including leasehold interests) in real property and all improvements and fixtures thereon (including any buyout or conversion of an operating lease to a capital lease) of the Borrower or a Restricted Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise, or any incurrence or repayment of Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), Restricted Payment or Incremental Facility that by the terms of this Agreement requires such test to be calculated on a “Pro Forma Basis” or after giving “Pro Forma Effect.”

“**Standard Securitization Undertakings**” means representations, warranties, covenants, indemnities and Guarantees of performance entered into by the Borrower or any Restricted Subsidiary of the Borrower that a Responsible Officer of the Borrower has determined in good faith to be customary in a Receivables Financing including those relating to the servicing of the assets of a Receivables Subsidiary, it being understood that any Receivables Repurchase Obligation will be deemed to be a Standard Securitization Undertaking.

“**Statutory Reserve Rate**” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Federal Reserve Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D). Such reserve percentage shall include those imposed pursuant to Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

---

“**Subagent**” has the meaning assigned to such term in Section 9.02.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which (1) Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company or other entity are at the time owned by such Person; or (2) more than 50.0% of the Equity Interests are at the time owned by such Person. Unless otherwise indicated in this Agreement, all references to Subsidiaries will mean Subsidiaries of the Borrower.

“**Subsidiary Loan Parties**” means (1) each Wholly Owned U.S. Subsidiary of the Borrower on the Closing Date (other than any Excluded Subsidiary); and (2) each Wholly Owned U.S. Subsidiary (other than any Excluded Subsidiary) of the Borrower that becomes, or is required pursuant to Section 5.10 to become, a party to the Collateral Agreement after the Closing Date.

“**Swap Termination Value**” means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (1) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (2) for any date prior to the date referenced in clause (1), the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

“**Tax Receivable Agreement**” means the Tax Receivable Agreement, dated as of the Closing Date, among Amneal Inc., the Borrower, and the other parties from time to time party thereto, as amended, amended and restated, supplemented or otherwise modified from time to time in any manner that is not materially adverse to the interests of the Administrative Agent or the Lenders.

“**Taxes**” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding) or similar charges imposed by any Governmental Authority and any and all interest and penalties related thereto.

“**Term Facility**” means the facility and commitments utilized in making Term Loans hereunder. Following the establishment of any Incremental Term Loans (other than an increase to an existing Term Facility), Refinancing Term Loans or Extended Term Loans, such Incremental Term Loans, Refinancing Term Loans or Extended Term Loans will be considered a separate Term Facility hereunder.

“**Term Loan Agent**” means “**Term Loan Agent**” as defined in the Closing Date Intercreditor Agreement.

“ **Term Loan Installment Date** ” means, as the context requires, an Initial Term Loan Installment Date, an Incremental Term Loan Installment Date, a Refinancing Term Loan Installment Date or an Extended Term Loan Installment Date.

“ **Term Loans** ” means the Initial Term Loans, any Incremental Term Loans, any Refinancing Term Loans and any Extended Term Loans, collectively (or if the context so requires, any of them individually).

“ **Term Priority Collateral** ” means “ *Term Loan Priority Collateral* ” as defined in the Closing Date Intercreditor Agreement.

“ **Test Period** ” means, at any time, (1) with respect to the Borrower, the four consecutive fiscal quarters of the Borrower most recently ended (in each case taken as one accounting period) for which the Required Financial Statements have been or are required to be delivered pursuant to Section 5.04(1) or 5.04(2) and (2) in the case of any Person other than the Borrower, the period of four consecutive fiscal quarters most closely corresponding to the period set forth in clause (1).

“ **Threshold Amount** ” means the greater of (1) \$80 million and (2) 12.5% of TTM Consolidated EBITDA as of the applicable date of determination.

“ **Total Net Leverage Ratio** ” means, with respect to any Test Period, the ratio of (a) Consolidated Total Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA of the Borrower for such Test Period.

“ **Transaction Costs** ” means all fees, costs and expenses related to the Transactions.

“ **Transaction Documents** ” means the Acquisition Documents, the ABL Loan Documents and the Loan Documents.

“ **Transactions** ” means, collectively, the transactions to occur pursuant to the Transaction Documents, including:

- (1) the consummation of the Acquisition;
- (2) the consummation of the Contribution;
- (3) the execution and delivery of the Loan Documents, the creation of the Liens pursuant to the Security Documents and the initial borrowings hereunder;
- (4) the execution and delivery of the ABL Loan Documents, the creation of the Liens pursuant to the ABL Security Documents and the initial borrowings under the ABL Credit Agreement;
- (5) the Closing Date Refinancing;

- 
- (6) the undertaking of one or more Existing Notes LM Transactions or Specified Tender Offers;
  - (7) the PIPE Investment;
  - (8) the Impax Transactions; and
  - (9) the payment of all Transaction Costs.

“ **Transferred IP** ” has the meaning assigned to such term in Section 6.04(30)(b).

“ **TTM Consolidated EBITDA** ” means, as of any date of determination, the Consolidated EBITDA of the Borrower on a Pro Forma Basis for the four consecutive fiscal quarters most recently ended prior to such date for which financial statements have been furnished or are required to have been furnished to the Lenders hereunder (or, in the case of a determination date that occurs prior to the first such delivery, for the four consecutive fiscal quarters ended as of December 31, 2017).

“ **Type** ” means, when used in respect of any Term Loan or Borrowing, the Rate by reference to which interest on such Term Loan or on the Term Loans comprising such Borrowing is determined. For purposes of this definition, the term “Rate” means Adjusted LIBO Rate or ABR, as applicable.

“ **U.S. Subsidiary** ” means any Subsidiary of the Borrower that is organized under the laws of the United States or any political subdivision thereof, and “ **U.S. Subsidiaries** ” means any two or more of them. Unless otherwise indicated in this Agreement, all references to U.S. Subsidiaries will mean U.S. Subsidiaries of the Borrower.

“ **U.S. Tax Compliance Certificate** ” has the meaning specified in Section 2.14(5).

“ **Uniform Commercial Code** ” or “ **UCC** ” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“ **Unrestricted Cash** ” means, as of any date, all cash and Cash Equivalents of the Borrower or any of its Restricted Subsidiaries as of such date that would not appear as “restricted” on the Required Financial Statements (unless such appearance is related to a restriction in favor of any Agent for the benefit of the Secured Parties or an agent under the ABL Credit Agreement for the benefit of the secured parties thereunder), determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“ **Unrestricted Subsidiary** ” means (1) each Receivables Subsidiary and (2) any Subsidiary of the Borrower designated by the Borrower as an Unrestricted Subsidiary hereunder by written notice to the Administrative Agent; *provided* that the Borrower will only be permitted to so designate a new Unrestricted Subsidiary after the Closing Date or subsequently re-designate any such Unrestricted Subsidiary as a Restricted Subsidiary (by written notice to the Administrative Agent) if no Specified Event of Default has occurred and is continuing or would result therefrom.

---

The designation of any Restricted Subsidiary as an Unrestricted Subsidiary will constitute an Investment for purposes of Section 6.04 at the date of designation in an amount equal to the fair market value of the Borrower's or its Restricted Subsidiary's (as applicable) Investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary will constitute the incurrence at the time of designation of any Indebtedness and Liens of such Subsidiary existing at such time and a return on any Investment by the Borrower in Unrestricted Subsidiaries in an amount equal to the fair market value at the date of such designation of the Borrower's or its Restricted Subsidiary's (as applicable) Investment in such Subsidiary. Except as expressly set forth in this paragraph, no Investment will be deemed to exist or have been made, and no Indebtedness or Liens shall be deemed to have occurred, solely by virtue of a Subsidiary becoming an Excluded Subsidiary.

“ **USA PATRIOT Act** ” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“ **Weighted Average Life to Maturity** ” means, when applied to any Indebtedness as of any date, the number of years obtained by dividing (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal (excluding nominal amortization), including payment at final maturity, in respect thereof by (b) the number of years (calculated to the nearest 1/12) that will elapse between such date and the making of such payment; by (2) the then outstanding principal amount of such Indebtedness.

“ **Wholly Owned Subsidiary** ” means, with respect to any Person, a Subsidiary of such Person, all of the Equity Interests of which (other than directors' qualifying shares or nominee or other similar shares required pursuant to applicable law) are owned by such Person or another Wholly Owned Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Wholly Owned Subsidiaries will mean Wholly Owned Subsidiaries of the Borrower.

“ **Wholly Owned U.S. Subsidiary** ” means, with respect to any Person, a U.S. Subsidiary of such Person that is a Wholly Owned Subsidiary. Unless otherwise indicated in this Agreement, all references to Wholly Owned U.S. Subsidiaries will mean Wholly Owned U.S. Subsidiaries of the Borrower.

“ **Withdrawal Liability** ” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“ **Working Capital** ” means, with respect to the Borrower and its Subsidiaries on a consolidated basis as of any date of determination, Current Assets at such date of determination *minus* Current Liabilities at such date of determination; *provided* that, for purposes of calculating

Excess Cash Flow, increases or decreases in Working Capital will be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) reclassification after the date hereof in accordance with GAAP of assets or liabilities, as applicable, between current and non-current or (b) the effects of purchase accounting.

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

SECTION 1.02. Terms Generally. The definitions set forth or referred to in Section 1.01 will apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine and neuter forms. Unless the context requires otherwise,

- (1) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation;”
- (2) 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;”
- (3) the word “will” will be construed to have the same meaning and effect as the word “shall;”
- (4) the word “incur” will be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” will have correlative meanings);
- (5) the word “or” will be construed to mean “and/or;”
- (6) any reference to any Person will be construed to include such Person’s legal successors and permitted assigns; and
- (7) the words “asset” and “property” will be construed to have the same meaning and effect.

All references herein to Articles, Sections, Exhibits and Schedules will be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context otherwise requires. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document or organizational document of the Loan Parties means such document as amended, restated, amended and restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document). Any reference to any law will include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation means, unless otherwise specified, such law or regulation as amended, modified or supplemented from time to time. Whenever this Agreement refers to the “knowledge” of Impax or any Loan Party, such reference will be construed to mean the knowledge of the chief executive officer, president, chief financial officer, treasurer or controller of such Person.

SECTION 1.03. Accounting Terms: GAAP; Fair Market Value. Except as otherwise expressly provided herein, all terms of an accounting or financial nature will be construed in accordance with GAAP, as in effect from time to time; *provided* that, notwithstanding anything to the contrary herein, all accounting or financial terms used herein will be construed, and all financial computations pursuant hereto will be made, without giving effect to any election under Statement of Financial Accounting Standards Board Accounting Standards Codification 825-10 (or any other Statement of Financial Accounting Standards Board Accounting Standards Codification having a similar effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at “fair value,” as defined therein. In the event that any Accounting Change (as defined below) occurs and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then upon the written request of the Borrower or the Administrative Agent (acting upon the request of the Required Lenders), the Borrower, the Administrative Agent and the Lenders will enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating the Borrower’s financial condition will be the same after such Accounting Change as if such Accounting Change had not occurred; *provided* that, until so amended, calculation of financial covenants, standards or terms in this Agreement will be computed in accordance with GAAP in effect prior to such Accounting Change until the effective date of such amendment. “**Accounting Change**” means (1) any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or (2) any change in the application of GAAP by the Borrower (including through the adoption of IFRS). All determinations of fair market value under a Loan Document will be made by a Responsible Officer of the Borrower in good faith and if such determination is supported by an opinion of an Independent Financial Advisor, such determination will be conclusive for all purposes under the Loan Documents or related to the Obligations.

SECTION 1.04. Effectuation of Transfers. Each of the representations and warranties of the Borrower contained in this Agreement (and all corresponding definitions) is made after giving effect to the Transactions, unless the context otherwise requires.

SECTION 1.05. Currencies. Unless otherwise specifically set forth in this Agreement, monetary amounts are in Dollars. Notwithstanding anything to the contrary herein, no Default or Event of Default will arise as a result of any limitation or threshold set forth in Dollars being exceeded solely as a result of changes in currency exchange rates.

SECTION 1.06. Required Financial Statements. With respect to the determination of the First Lien Net Leverage Ratio, the Total Net Leverage Ratio or under any other applicable provision of the Loan Documents (including the definition of Immaterial Subsidiary) made on or prior to the date on which Required Financial Statements have been delivered for the fiscal quarter ended March 31, 2018, such calculation will be determined for the period of four consecutive fiscal quarters ended December 31, 2017, and calculated on a Pro Forma Basis.

SECTION 1.07. Certifications. Any certificate or other writing required hereunder or under any other Loan Document to be certified by any officer or other authorized representative (including any Responsible Officer) of any Person will be deemed to be executed and delivered by such officer, other authorized representative or Responsible Officer solely in such individual's capacity as an officer, other authorized representative or Responsible Officer of such Person and not in such officer's or other authorized representative's individual capacity and without any personal liability.

SECTION 1.08. Pro Forma Calculations.

- (1) Notwithstanding anything to the contrary herein, financial ratios shall be calculated in the manner prescribed by this Section 1.08; *provided* that, notwithstanding anything to the contrary in clauses (2), (3) or (4) of this Section 1.08, when calculating any financial ratio for purposes of (a) determining Applicable Margins and pricing grid step-downs, (b) calculations of mandatory prepayments, (c) determining compliance with any financial covenant (including any financial covenant under the ABL Credit Agreement and (d) any provisions related to the foregoing, the events described in this Section 1.08 that occurred subsequent to the end of the applicable Test Period shall not be given pro forma effect.
- (2) For purposes of calculating the First Lien Net Leverage Ratio, the Total Net Leverage Ratio or any other financial ratio, Specified Transactions (and the incurrence or repayment of any Indebtedness in connection therewith) that have been made (a) during the applicable Test Period or (b) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.08 then the financial ratios shall be calculated to give pro forma effect thereto in accordance with this Section 1.08.
- (3) Whenever pro forma effect is to be given to a Specified Transaction, the pro forma calculations shall be made in good faith by a Responsible Officer and may include, for the avoidance of doubt, the amount of cost savings, operating expense reductions and synergies projected by the Borrower in good faith to be realized as a result of specified actions taken, committed to be taken or expected to be taken (calculated on a pro forma basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such Test Period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period but, for the avoidance of doubt, subject to the limitations set forth in clause (g) of the definition of "Consolidated EBITDA" set forth herein) relating to such Specified Transaction, net of the amount of actual benefits realized during such period from such actions (such cost savings and synergies, "*Specified Transaction Adjustments*"); provided, that

- 
- (a) such Specified Transaction Adjustments are reasonably identifiable and quantifiable in the good faith judgment of a Responsible Officer of the Borrower,
  - (b) such actions are taken, committed to be taken or reasonably anticipated to be taken no later than twenty four (24) months after the date of such Specified Transaction, and
  - (c) no amounts shall be added pursuant to this clause (3) to the extent duplicative of any amounts that are otherwise added back in calculating Consolidated EBITDA, whether through a pro forma adjustment or otherwise, with respect to such period.
- (4) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of a financial covenant (in each case, other than Indebtedness incurred or repaid under any revolving credit facility (including, for the avoidance of doubt, the ABL Facility) in the ordinary course of business for working capital purposes), (a) during the applicable Test Period or (b) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then each financial ratio shall be calculated giving pro forma effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period.

SECTION 1.09. LCA Election. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, when (1) calculating any applicable ratio in connection with incurrence of Indebtedness, the creation of Liens, the making of any disposition, the making of an Investment, the designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or the repayment of Indebtedness or (2) determining compliance with any provision of this Agreement which requires that no Default or Event of Default has occurred, is continuing or would result therefrom, in each case of the preceding clauses (1) and (2) in connection with a Limited Condition Transaction, the date of determination of such ratio and determination of whether any Default or Event of Default has occurred, is continuing or would result therefrom shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCA Election**"), be deemed to be the date the definitive agreements for such Limited Condition Transaction are entered into (the "**LCA Test Date**"). If on a Pro Forma Basis after giving effect to such Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof), with such ratios and other provisions being calculated as if such Limited Condition Transaction or other transactions had occurred at the beginning of the most recent Test Period ending prior to the LCA Test Date for which financial statements are available, the Borrower could have taken such action on the relevant LCA Test Date in compliance with the applicable ratios or other provisions, such ratios or provisions shall be deemed to have been complied with, unless a Specified Event of Default shall be continuing on the date such Limited Condition Transaction is consummated. For the avoidance of doubt, (a) if any of such ratios or other provisions are exceeded or breached as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA) or other provisions at or prior to the consummation of the relevant Limited Condition Transaction,

such ratios and other provisions will not be deemed to have been exceeded or breached solely for purposes of determining whether the Limited Condition Transaction is permitted hereunder and (b) such ratios and compliance with such conditions shall not be tested at the time of consummation of such Limited Condition Transaction or related Specified Transactions, unless on such date a Specified Event of Default shall be continuing. If the Borrower has made an LCA Election for any Limited Condition Transaction, then in connection with any subsequent calculation of any ratio or basket availability with respect to any other Specified Transaction on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any such ratio or basket shall be calculated on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated. Notwithstanding anything in this Agreement or any Loan Document to the contrary, if the Borrower or any Restricted Subsidiary (i) incurs Indebtedness, creates Liens, makes dispositions, makes investments, makes Restricted Payments, designates any Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or repays any Indebtedness in connection with any Limited Condition Transaction under a ratio-based basket and (ii) incurs Indebtedness, creates Liens, makes dispositions, makes Investments, makes Restricted Payments, designates any Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or repays any Indebtedness in connection with such Limited Condition Transaction under a non-ratio-based basket (which shall occur within five Business Days of the events in the preceding clause (i) above), then the applicable ratio will be calculated with respect to any such action under the applicable ratio-based basket without regard to any such action under such non-ratio-based basket made in connection with such Limited Condition Transaction.

## ARTICLE II

### *The Credits*

#### SECTION 2.01. Term Loans and Borrowings.

- (1) Subject to the terms and conditions set forth herein, each Lender severally agrees to make to the Borrower Term Loans denominated in Dollars equal to such Lender's Commitment on the Closing Date (the "**Initial Term Loans**"). The failure of any Lender to make any Initial Term Loan required to be made by it will not relieve any other Lender of its obligations hereunder; *provided* that the Commitments of the Lenders are several and no Lender will be responsible for any other Lender's failure to make Initial Term Loans as required. Amounts paid or prepaid in respect of Initial Term Loans may not be reborrowed. A portion of the proceeds of the Initial Term Loans equal to the aggregate principal amount of the Impax Convertible Notes outstanding on the Closing Date shall be deposited by (or at the direction of) the Borrower into the Escrow Account (the "**Escrowed Funds**").

- (2) Subject to Sections 2.04(7) and 2.11, each Borrowing will be comprised entirely of ABR Loans or Eurocurrency Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any ABR Loan or Eurocurrency Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Term Loan; *provided* that any exercise of such option will not affect the obligation of the Borrower to repay such Term Loan in accordance with the terms of this Agreement, and such Lender will not be entitled to any amounts payable under Section 2.12 or 2.14 solely in respect of increased costs resulting from, and existing at the time of, such exercise.
- (3) Notwithstanding anything to the contrary contained herein, the funded portion of the Initial Term Loans (i.e., the amount advanced in cash to the Borrower on the Closing Date) will be equal to 99.50% of the principal amount of such Term Loan (it being agreed that the Borrower is obligated to repay 100.00% of the principal amount of the Initial Term Loans, the Initial Term Loans will amortize based on 100.00% of the principal amount of the Initial Term Loan and interest will accrue on 100.00% of the principal amount of the Initial Term Loan, in each case as provided herein).
- (4) Notwithstanding any other provision of this Agreement, the Borrower will not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.02. Request for Borrowing.

Subject to Section 4.01(2), the Borrower will deliver to the Administrative Agent a Borrowing Request not later than 12:00 p.m., New York City time, one Business Day prior to the anticipated Closing Date, requesting that the Lenders make Term Loans on the Closing Date (or such later date or time as the Administrative Agent may agree), which Borrowing Request may be conditioned on the consummation of the Acquisition. The Borrowing Request must specify:

- (1) the principal amount of Term Loans to be borrowed;
- (2) the requested date of the Borrowing (which will be a Business Day);
- (3) the Type of Term Loans to be borrowed;
- (4) in the case of a Eurocurrency Borrowing, the initial Interest Period to be applicable thereto, which will be a period contemplated by the definition of the term "Interest Period;" and
- (5) the location and number of the Borrower's account to which funds are to be disbursed (which, for the avoidance of doubt, may be provided by reference to a separate "funds flow" document).

If no election as to the Type of Borrowing is specified in the applicable Borrowing Request, then the Borrowing shall be an ABR Borrowing. If no Interest Period with respect to any Eurocurrency Borrowing is specified in the applicable Borrowing Request, then the Borrower will be deemed to have selected an Interest Period of one-month's duration. Upon receipt of such Borrowing Request, the Administrative Agent will promptly notify each Lender thereof. The proceeds of the Term Loans requested under this Section 2.02 will be disbursed by the Administrative Agent in immediately available funds by wire transfer to such bank account or accounts as designated by the Borrower in the Borrowing Request.

SECTION 2.03. Funding of Borrowings.

- (1) Each Lender will make each Term Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 10:00 a.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. Subject to the last sentence of Section 2.01(1), the Administrative Agent will make such Term Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower as specified in the Borrowing Request.
- (2) Unless the Administrative Agent has received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (1) of this Section 2.03 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent, forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent at (a) in the case of such Lender, the greater of (i) the Federal Funds Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (b) in the case of the Borrower, the interest rate applicable to ABR Loans at such time. If such Lender pays such amount to the Administrative Agent then such amount will constitute such Lender's Term Loan included in such Borrowing.

SECTION 2.04. Interest Elections.

- (1) Subject to Section 2.02, each Borrowing initially will be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Borrowing, will have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurocurrency Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.04. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion will be allocated ratably among the Lenders holding the Term Loans comprising such Borrowing, and the Term Loans comprising each such portion will be considered a separate Borrowing; *provided* that the Term Loans comprising any Borrowing will be in an aggregate principal amount that is an integral multiple of \$500,000 and not less than \$1,000,000; *provided further* that there shall not be more than ten Eurocurrency Borrowings outstanding hereunder at any time.
- (2) To make an election pursuant to this Section 2.04 following the Closing Date, the Borrower will notify the Administrative Agent of such election by telephone (a) in the case of an election to convert to or continue a Eurocurrency Borrowing, not later than 2:00 p.m., New York City time, three Business Days before the effective date of such

---

election or (b) in the case of an election to convert to or continue an ABR Borrowing, not later than 1:00 p.m., New York City time, on the date of such election (or in each case, at such later date or time as the Administrative Agent may agree). Each such telephonic Interest Election Request will be confirmed promptly by hand delivery, facsimile transmission or e-mail to the Administrative Agent of a written Interest Election Request.

- (3) Each telephonic and written Interest Election Request will be irrevocable and will specify the following information:
  - (a) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (c) and (d) below will be specified for each resulting Borrowing);
  - (b) the effective date of the election made pursuant to such Interest Election Request, which will be a Business Day;
  - (c) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing; and
  - (d) if the resulting Borrowing is a Eurocurrency Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which will be a period contemplated by the definition of "Interest Period."
- (4) If any such Interest Election Request requests a Eurocurrency Borrowing but does not specify an Interest Period, then the Borrower will be deemed to have selected a Eurocurrency Borrowing having an Interest Period of one month's duration.
- (5) Promptly following receipt of an Interest Election Request, the Administrative Agent will advise each applicable Lender of the details thereof and of such Lender's portion of each resulting Borrowing.
- (6) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing will be automatically converted into or continued an ABR Borrowing.
- (7) Any portion of a Borrowing maturing or required to be repaid in less than one month may not be converted into or continued as a Eurocurrency Borrowing.
- (8) Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required Lenders, so notifies the Borrower, then, so long as such Event of Default is continuing, (a) no outstanding Borrowing may be converted to or continued as a Eurocurrency Borrowing and (b) unless repaid, each Eurocurrency Borrowing will be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.05. Promise to Pay; Evidence of Debt.

- (1) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan of such Lender as provided in Section 2.06.
- (2) Each Lender will maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Term Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.
- (3) The Administrative Agent will maintain accounts in which it will record (a) the amount of each Term Loan made hereunder, the Type thereof and the Interest Period (if any) applicable thereto, (b) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (c) any amount received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.
- (4) The entries made in the accounts maintained pursuant to paragraph (2) or (3) of this Section 2.05 will be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein will not in any manner affect the obligation of the Borrower to repay the Term Loans in accordance with the terms of this Agreement.
- (5) Any Lender may request that Term Loans made by it be evidenced by a Note. In such event, the Borrower will prepare, execute and deliver to such Lender a Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent and reasonably acceptable to the Borrower.

SECTION 2.06. Repayment of Term Loans.

- (1) The Borrower will repay to the Administrative Agent for the ratable account of the Lenders on the last Business Day of each fiscal quarter of the Borrower, commencing with the last Business Day of the fiscal quarter of the Borrower ending on September 30, 2018, an aggregate principal amount equal to 0.25% of the aggregate principal amount of the Initial Term Loans outstanding on the Closing Date, which payments will be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.07 or 2.08, as applicable (each such date being referred to as an “**Initial Term Loan Installment Date**”);
- (2) (a) In the event that any Incremental Term Loans are made, the Borrower will repay Borrowings consisting of Incremental Term Loans on the dates (each an “**Incremental Term Loan Installment Date**”) and in the amounts set forth in the applicable Incremental Facility Amendment, (b) in the event that any Refinancing Term Loans are made, the Borrower will repay Borrowings consisting of Refinancing Term Loans on the dates (each an “**Refinancing Term Loan Installment Date**”) and in the amounts set forth in the applicable Refinancing Amendment and (c) in the event that any Extended Term Loans are made, the Borrower will repay Borrowings consisting of Extended Term Loans on the dates (each an “**Extended Term Loan Installment Date**”) and in the amounts set forth in the applicable Extension Amendment; and

- 
- (3) to the extent not previously paid, all outstanding Term Loans will be due and payable on the applicable Maturity Date;

together, in each case, with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment.

SECTION 2.07. Optional Prepayment of Term Loans. The Borrower may at any time and from time to time prepay the Term Loans in whole or in part, without premium or penalty (except as provided in Section 2.21 and subject to Section 2.13), in an aggregate principal amount, (1) in the case of Eurocurrency Loans, that is an integral multiple of \$500,000 and not less than \$1.0 million, and (2) in the case of ABR Loans, that is an integral multiple of \$100,000 and not less than \$1.0 million, or, in each case, if less, the amount outstanding. The Borrower will notify the Administrative Agent by telephone (confirmed by hand delivery, facsimile transmission or e-mail) of such election not later than 2:00 p.m., New York City time, (a) in the case of a Eurocurrency Borrowing, three Business Days before the anticipated date of such prepayment and (b) in the case of an ABR Borrowing, one Business Day before the anticipated date of such prepayment (or in each case, at such later date or time as the Administrative Agent may agree). Each such notice of prepayment will specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid. All prepayments under this Section 2.07 will be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment. Any such notice may be revocable or conditioned on a refinancing of all or any portion of a Term Facility. Any optional prepayments of Term Loans pursuant to this Section 2.07 will be applied to the remaining scheduled amortization payments as directed by the Borrower (or in the absence of such direction, in direct order of maturity) and, subject to the immediately succeeding sentence, will be applied ratably to the Term Loans included in the prepaid Borrowing. Notwithstanding anything in any Loan Document to the contrary (including Section 2.15), so long as no Specified Event of Default has occurred and is continuing, and no proceeds of any ABL Loans are used to consummate any such prepayment, the Borrower may prepay Term Loans of one or more Class on a non-pro rata basis at or below par in accordance with the Dutch Auction Procedures.

SECTION 2.08. Mandatory Prepayment of Term Loans.

- (1) Subject to Sections 2.08(6), 2.08(8) and 2.08(9), the Borrower will apply 100% of all Net Cash Proceeds received by it or any of its Restricted Subsidiaries in an Asset Sale made pursuant to the General Asset Sale Basket (other than any ABL Priority Collateral Asset Sale) or any Sale Leaseback Transaction to prepay Term Loans within ten Business Days following receipt of such Net Cash Proceeds; *provided* that:
- (a) if at the time that any such prepayment would be required, the Borrower is required to, or to offer to, repurchase, redeem, repay or prepay any Pari Passu Lien Debt or ABL Loans (any such Pari Passu Lien Debt and ABL Loans, “*Other Applicable Indebtedness*”) with such Net Cash Proceeds, then the Borrower may

- 
- apply such Net Cash Proceeds to redeem, repurchase, repay or prepay Term Loans and Other Applicable Indebtedness (in the case of any revolving facilities to the extent accompanied by a permanent reduction of the corresponding commitment) on a *pro rata* basis (or more favorable basis from the perspective of the applicable Lenders) and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.08(1) will be reduced accordingly;
- (b) for purposes of the preceding clause (a), *pro rata* basis will be determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness outstanding at such time, with it being agreed that the portion of such Net Cash Proceeds allocated to the Other Applicable Indebtedness will not exceed the amount of such Net Cash Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Net Cash Proceeds will be allocated to the prepayment of the Term Loans (in accordance with the terms hereof) to the extent such Net Cash Proceeds would otherwise have been required to be so applied if such Other Applicable Indebtedness was not then outstanding; and
  - (c) to the extent the holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased, redeemed, repaid or prepaid, the declined amount will promptly (and in any event within ten Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof (to the extent such Net Cash Proceeds would otherwise have been required to be so applied if such Other Applicable Indebtedness was not then outstanding).
- (2) Subject to Section 2.08(6) and 2.08(9), commencing with the fiscal year ending December 31, 2019, not later than five Business Days after the Financial Officer certificate pursuant to Section 5.04(3) for the corresponding Excess Cash Flow Period shall have been delivered or required to be delivered, the Borrower will apply the following amount to the prepayment of Term Loans:
- (a) the Required Percentage of such Excess Cash Flow (if any); *minus*
  - (b) the sum of:
    - (i) voluntary prepayments of Term Loans and Pari Passu Lien Debt (including those made through debt buybacks and in the case of below-par buybacks in an amount equal to the discounted amount actually paid in cash in respect thereof), in each case other than revolving Indebtedness; and
    - (ii) loans under the ABL Credit Agreement, any ABL Incremental Facility or other revolving Pari Passu Lien Debt (to the extent accompanied by a corresponding reduction in the commitments);

in each case, (x) during such Excess Cash Flow Period or following the end of such Excess Cash Flow Period and prior to the date of delivery of such Financial Officer certificate (*provided* that, with respect to any such amount following the end of such Excess Cash Flow Period, such amount is not included in any subsequent calculation pursuant to this clause (b)) and (y) to the extent such prepayments are not funded with the proceeds of Funded Debt; *provided* that no such payment shall be required if such amount is equal to or less than \$15,000,000; *provided*, *further*, that:

(A) if at the time that any such prepayment would be required, the Borrower is required to, or to offer to, repurchase, redeem, repay or prepay any Pari Passu Lien Debt with all or a portion of such Excess Cash Flow (any such Pari Passu Lien Debt, “**Other Applicable ECF Indebtedness**”), then the Borrower may apply such Excess Cash Flow to redeem, repurchase, repay or prepay Term Loans and Other Applicable ECF Indebtedness (in the case of any revolving facilities, to the extent accompanied by a permanent reduction of corresponding commitments) on a *pro rata* basis (or more favorable basis from the perspective of the applicable Lenders) and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.08(2) will be reduced accordingly;

(B) for purposes of the preceding clause (A), *pro rata* basis will be determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable ECF Indebtedness outstanding at such time, with it being agreed that the portion of such Excess Cash Flow allocated to the Other Applicable ECF Indebtedness will not exceed the amount of such Excess Cash Flow required to be allocated to the Other Applicable ECF Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Excess Cash Flow will be allocated to the prepayment of the Term Loans in accordance with the terms hereof (to the extent such Excess Cash Flow would otherwise have been required to be so applied if such Other Applicable ECF Indebtedness was not then outstanding); and

(c) to the extent the holders of Other Applicable ECF Indebtedness decline to have such indebtedness repurchased, repaid or prepaid, the declined amount will promptly (and in any event within ten Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof (to the extent such Excess Cash Flow would otherwise have been required to be so applied if such Other Applicable ECF Indebtedness was not then outstanding).

(3) On the date that is the earlier of (x) 45 Business Days following the Closing Date and (y) the date of settlement of the Specified Tender Offer (such earlier date, the “**Specified Tender Offer Prepayment Date**”), the Borrower will prepay the Term Loans in an amount equal to the aggregate outstanding principal amount of any Impax Convertible Notes, if any, on the Specified Tender Offer Prepayment Date after giving effect to the Specified Tender Offer, if any.

- 
- (4) The Borrower will apply 100% of the Net Cash Proceeds from the incurrence, issuance or sale by the Borrower or any Restricted Subsidiary of any Indebtedness that is not Excluded Indebtedness to the prepayment of Term Loans, on or prior to the date which is five Business Days after the receipt of such Net Cash Proceeds.
- (5) Except as may otherwise be set forth in any Permitted Amendment to the extent permitted by the terms hereof, (a) each prepayment of Term Loans pursuant to Section 2.08(1), (2), (3) and (4) will be applied ratably to each Class of Term Loans then outstanding, (b) with respect to each Class of Loans, each prepayment pursuant to Section 2.08(1), (2), (3) and (4) will be applied to the then remaining scheduled installments of principal thereof pursuant to Section 2.06 as directed by the Borrower (and absent such direction, in direct order of maturity), and (c) each such prepayment shall be paid to the Lenders in accordance with their respective proportionate shares (based on each such Lender's participation in the Term Loans prepaid).
- (6) Notwithstanding anything in this Section 2.08 to the contrary, any Lender may elect, by notice to the Administrative Agent by telephone (confirmed by hand delivery, facsimile transmission or e-mail) at least two Business Days prior to the required prepayment date, to decline all or any portion of any mandatory prepayment of its Term Loans pursuant to this Section 2.08 (other than clauses (3) and (4) of this Section 2.08), in which case the aggregate amount of the prepayment that would have been applied to prepay Term Loans but was so declined will be retained by the Borrower and applied for any permitted purpose hereunder. Such prepayments will be applied on a *pro rata* basis to the then outstanding Term Loans being prepaid irrespective of whether such outstanding Term Loans are ABR Loans or Eurocurrency Loans.
- (7) The Borrower will deliver to the Administrative Agent, at the time of each prepayment required under this Section 2.08, (a) a certificate signed by a Financial Officer of the Borrower setting forth in reasonable detail the calculation of the amount of such prepayment and (b) to the extent practicable, at least three (3) Business Days prior written notice of such prepayment. Each notice of prepayment shall specify the prepayment date, the Type of each Term Loan being prepaid and the principal amount of each Term Loan (or portion thereof) to be prepaid. Prepayment of the Term Loans pursuant to this Section 2.08 will be made without premium or penalty, accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment. No payments under Section 2.13 will be required in connection with a prepayment of Term Loans pursuant to this Section 2.08.
- (8) With respect to any Net Cash Proceeds received with respect to any Asset Sale that gives rise to a prepayment event pursuant to Section 2.08(1), at the option of the Borrower, the Borrower may (in lieu of making a prepayment pursuant to Section 2.08(1)) elect to reinvest (directly, or through one or more of its Restricted Subsidiaries) an amount equal to all or any portion of such Net Cash Proceeds (the "**Reinvestment Deferred Amount**") in assets used or useful for the business of the Borrower and its Restricted Subsidiaries (a) within eighteen (18) months following receipt of such Net Cash Proceeds or (b) if the Borrower or any of its Restricted Subsidiaries enters into a legally binding commitment to reinvest such Net Cash Proceeds within eighteen (18) months following receipt of such Net Cash Proceeds, no later than one hundred and eighty (180) days after the end of such eighteen month period.

(9) Notwithstanding any provisions of this Section 2.08 to the contrary,

- (a) to the extent that a Responsible Officer of the Borrower has reasonably determined in good faith in consultation with the Administrative Agent that any or all of the Net Cash Proceeds or Excess Cash Flow giving rise to a prepayment event pursuant to Section 2.08(1), (2) or (4) is prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Cash Proceeds or Excess Cash Flow so affected will not be required to be applied to prepay Term Loans at the times provided in this Section 2.08, but may be retained by the Borrower or the applicable Subsidiary for so long, but only so long, as the applicable local law will not permit repatriation to the United States. Once such repatriation of any of such affected Net Cash Proceeds or Excess Cash Flow is permitted under the applicable local law, such repatriation will be effected promptly and such repatriated Net Cash Proceeds or Excess Cash Flow will be promptly applied (net of additional taxes payable or reserved against as a result thereof) to the prepayment of the Term Loans pursuant to this Section 2.08 to the extent provided herein; *provided* that the Borrower hereby agrees, and will cause any applicable Subsidiary, to promptly take all commercially reasonable actions required by applicable local law to permit any such repatriation; or
- (b) to the extent that a Responsible Officer of the Borrower has reasonably determined in good faith in consultation with the Administrative Agent that repatriation of any of or all the Net Cash Proceeds or Excess Cash Flow giving rise to a prepayment event pursuant to this Section 2.08 would have an adverse tax cost consequence,

then in each case the Net Cash Proceeds or Excess Cash Flow so affected will not be required to be applied to prepay Term Loans at the times provided in this Section 2.08, but may be retained by the Borrower or the applicable Subsidiary without being repatriated. The non- application of Net Cash Proceeds as a consequence of this Section will not constitute an Event of Default under this Agreement. Such amounts shall not be deemed to be Net Cash Proceeds, regardless of whether the limitations set forth above in clauses (a) or (b) cease to apply after such initial determination.

For purposes of this Section 2.08(9), references to “law” mean, with respect to any Person, (A) the common law and any federal, state, local, foreign, multinational or international statutes, laws, treaties, judicial decisions, standards, rules and regulations, guidances, guidelines, ordinances, rules, judgments, writs, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions (including administrative or judicial precedents or authorities), in each case whether now or hereafter in effect, and (B) the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding (or purported to be binding) upon such Person, its Subsidiaries or any of its or their property or to which such Person, any of its Subsidiaries or any of its or their property is subject (or purported to be subject).

SECTION 2.09. Fees.

- (1) The Borrower agrees to pay to the Administrative Agent, for its own account, the “Agency Fee” in respect of the Term Facility set forth in the Agency Fee Letter at the times and on the terms specified therein or in such other amounts and at such other times as may be separately agreed in writing by the Administrative Agent and the Borrower from time to time (the “*Administrative Agent Fees*”).
- (2) All Fees will be paid on the dates due and payable, in immediately available funds, to the Administrative Agent at the Payment Office for distribution, if and as appropriate, among the Lenders. Once paid, none of the Fees will be refundable under any circumstances (except as expressly agreed between the Borrower and the Administrative Agent, including pursuant to the Agency Fee Letter).

SECTION 2.10. Interest.

- (1) The Term Loans comprising each ABR Borrowing will bear interest at the ABR *plus* the Applicable Margin.
- (2) The Term Loans comprising each Eurocurrency Borrowing will bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing *plus* the Applicable Margin.
- (3) Following the occurrence and during the continuation of a Specified Event of Default, the Borrower will pay interest on overdue amounts hereunder at a rate per annum equal to (a) in the case of overdue principal of, or interest on, any Term Loan, 2.0% *plus* the rate otherwise applicable to such Term Loan as provided in the preceding paragraphs of this Section 2.10 or (b) in the case of any other overdue amount, 2.0% *plus* the rate applicable to ABR Loans as provided in clause (1) of this Section 2.10.
- (4) Accrued interest on each Term Loan will be payable in arrears (a) on each Interest Payment Date for such Term Loan and (b) on the applicable Maturity Date; *provided* that (i) interest accrued pursuant to paragraph (3) of this Section 2.10 will be payable on demand, (ii) in the event of any repayment or prepayment of any Term Loan, accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurocurrency Loan prior to the end of the current Interest Period therefor, accrued interest on such Term Loan will be payable on the effective date of such conversion.
- (5) All interest hereunder will be computed on the basis of a year of 360 days, except that interest computed by reference to the ABR at times when the ABR is based on the prime rate, will be computed on the basis of a year of 365 days (or 366 days in a leap year), and, in each case, will be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable ABR, Adjusted LIBO Rate or LIBO Rate will be determined by the Administrative Agent, and such determination will be conclusive absent manifest error.

SECTION 2.11. Alternate Rate of Interest.

- (1) If prior to the commencement of any Interest Period for a Eurocurrency Borrowing:
- (a) the Administrative Agent determines (which determination will be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including because the LIBO Screen Rate is not available or published on a current basis), for such Interest Period; or
  - (b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Term Loans included in such Borrowing for such Interest Period;

then the Administrative Agent will give notice thereof to the Borrower and the Lenders by telephone, facsimile transmission or e-mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (a) any Interest Election Request that requests the conversion of any applicable Borrowing to, or continuation of any such Borrowing as, a Eurocurrency Borrowing will be ineffective and such Borrowing will be converted to or continued as on the last day of the Interest Period applicable thereto an ABR Borrowing and (b) if any Borrowing Request requests a Eurocurrency Borrowing, such Borrowing will be made as an ABR Borrowing.

- (2) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (1)(a) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (1)(a) have not arisen but the supervisor for the administrator of the LIBO Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Screen Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment (or amendment and restatement) to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Rate); *provided* that, if such alternate rate of interest as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 10.08, such amendment (or amendment and restatement) shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date

notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders of any Class stating that such Required Lenders object to such amendment (or amendment and restatement); *provided* that any such objection will only be effective with respect to the applicable Class of Term Loans. Until an alternate rate of interest shall be determined in accordance with this clause (2) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 2.11(2), only to the extent the LIBO Screen Rate for such Interest Period is not available or published at such time on a current basis), (x) any Interest Election Request that requests the conversion of any applicable Borrowing to, or continuation of any such Borrowing as, a Eurocurrency Borrowing will be ineffective and (y) if any Borrowing Request requests a Eurocurrency Borrowing, such Borrowing shall be made as an ABR Borrowing; *provided* that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

SECTION 2.12. Increased Costs.

- (1) If any Change in Law:
  - (a) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate);
  - (b) imposes on any Lender or the London interbank market any other condition (other than Taxes) affecting this Agreement or Eurocurrency Loans made by such Lender; or
  - (c) subjects any Recipient to any Taxes (other than (i) Indemnified Taxes and (ii) Excluded Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any such Term Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then 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.

- (2) If any Lender determines that any Change in Law 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 or the Term 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 or liquidity), 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.

- 
- (3) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as applicable, as specified in paragraph (1) or (2) of this Section 2.12 will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.
  - (4) Promptly after any Lender has determined that it will make a request for increased compensation pursuant to this Section 2.12, such Lender will notify the Borrower thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.12 will not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower will not be required to compensate a Lender pursuant to this Section 2.12 for any increased costs or reductions incurred more than 180 days 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; *provided, further*, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above will be extended to include the period of retroactive effect thereof.

SECTION 2.13. Break Funding Payments. Except as otherwise set forth herein, the Borrower will compensate each Lender for the actual loss, cost and expense (excluding loss of anticipated profits) attributable to the following events:

- (1) the payment of any principal of any Eurocurrency Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default);
- (2) the conversion of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto;
- (3) the failure to borrow, convert, continue or prepay any Eurocurrency Loan on the date specified in any notice delivered pursuant hereto; or
- (4) the assignment of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.16.

A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.13 will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

SECTION 2.14. Taxes.

- (1) Any and all payments by or on account of any obligation of any Loan Party hereunder will be made free and clear of and without deduction for any Indemnified Taxes; *provided* that if a Loan Party is required to deduct any Indemnified Taxes from such payments, then (a) the sum payable will be increased as necessary so that after making all

---

required deductions (including deductions applicable to additional sums payable under this Section 2.14) the Administrative Agent or any Lender, as applicable, receives an amount equal to the amount it would have received had no such deductions been made, (b) such Loan Party will make such deductions and (c) such Loan Party will timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

- (2) In addition, the Loan Parties will pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.
- (3) Each Loan Party will, jointly and severally, indemnify the Administrative Agent and each Lender, within ten days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Administrative Agent or such Lender (other than as a result of the Administrative Agent's or any Lender's gross negligence or willful misconduct), on or with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.14) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Loan Party by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, will be conclusive absent manifest error.
- (4) As soon as practicable after any payment of Indemnified Taxes by a Loan Party to a Governmental Authority, such Loan Party will deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.
- (5)
  - (a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document will 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 Lender, if reasonably requested by the Borrower or the Administrative Agent, will 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 Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.14(5)(b), 2.14(5)(c) and 2.14(6) below) will not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

- 
- (b) Without limiting the effect of Section 2.14(5)(a) above, each Foreign Lender will deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two original copies of whichever of the following is applicable:
- (i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States of America is a party, (A) with respect to payments of interest under any Loan Document, executed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any subsequent versions thereof or successors thereto) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (B) with respect to any other applicable payments under any Loan Document, Internal Revenue Service Form W-8BEN or W-8BEN-E 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) duly completed copies of Internal Revenue Service Form W-8ECI (or any subsequent versions thereof or successors thereto);
  - (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (A) a certificate substantially in the form of the applicable Exhibit F-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3) or 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 (B) duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any subsequent versions thereof or successors thereto);
  - (iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of Internal Revenue Service Form W-8IMY, accompanied by Internal Revenue Service Form W-8ECI, Internal Revenue Service Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, Internal Revenue Service Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner; or

- 
- (v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States 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.

In addition, in each of the foregoing circumstances, each Foreign Lender will deliver such forms, if legally entitled to deliver such forms, promptly upon the obsolescence, expiration or invalidity of any form previously delivered by such Foreign Lender. Each Foreign Lender will promptly notify the Borrower and the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the United States of America or other taxing authorities for such purpose). In addition, each Lender that is not a Foreign Lender will deliver to the Borrower and the Administrative Agent two copies of Internal Revenue Service Form W-9 (or any subsequent versions thereof or successors thereto) on or before the date such Lender becomes a party and upon the expiration of any form previously delivered by such Lender. Notwithstanding any other provision of this paragraph, a Lender will not be required to deliver any form pursuant to this paragraph (5) that such Lender is not legally able to deliver.

- (c) JPM, in its capacity as the Administrative Agent (and any Person succeeding the Administrative Agent upon assignment or succession under Section 9.09, if applicable) will also deliver to the Borrower, on or prior to the execution and delivery of this Agreement, (i) two duly completed copies of Internal Revenue Service form W-9 with respect to any amounts payable to JPM for its own account (or other withholding certification as appropriate) and (ii) if applicable, two duly completed copies of Internal Revenue Service Form W-8IMY certifying that it is a "U.S. branch" and that the payments it receives for the account of others are not effectively connected with the conduct of its trade or business in the United States and that it is using such form as evidence of its agreement with the Borrower to be treated as a United States person with respect to such payments, with the effect that the Borrower can make payments to JPM (acting as the Administrative Agent) without deduction or withholding of any taxes imposed by the United States.
- (6) If a payment made to a Recipient under any Loan Document would be subject to a 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 will 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 (6), "FATCA" will include any amendments made to FATCA after the date of this Agreement.

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

- (7) If the Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund (including a credit in lieu of a refund) of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.14, it will pay over reasonably promptly such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.14 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent or such Lender in good faith, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to such Loan Party (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 2.14(7) will not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems, in good faith, to be confidential) to the Loan Parties or any other Person.
- (8) Each party's obligations under this Section 2.14 will 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 obligations under any Loan Document.
- (9) For purposes of this Section 2.14, the term "applicable law" includes FATCA.

SECTION 2.15. Payments Generally; Pro Rata Treatment; Sharing of Set-offs .

- (1) Unless otherwise specified, the Borrower will make each payment required to be made by it hereunder (whether of principal, interest, fees or otherwise) prior to 2:00 p.m., New York City time, at the Payment Office, except that (unless the Borrower, the Administrative Agent and the applicable Persons otherwise agree) payments pursuant to Sections 2.12, 2.13, 2.14 and 10.05 will be made directly to the Persons entitled thereto, on the date when due. All payments shall be in immediately available funds, without

---

condition or deduction for any defense, recoupment, set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. The Administrative Agent will distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof and will make settlements with the Lenders with respect to other payments at the times and in the manner provided in this Agreement. Except as otherwise provided herein, if any payment hereunder is due on a day that is not a Business Day, the date for payment will be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon will be payable for the period of such extension. Any payment required to be made by the Administrative Agent hereunder will be deemed to have been made by the time required if the Administrative Agent, at or before such time, has taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

- (2) Except as otherwise provided in this Agreement, if (a) at any time insufficient funds are received by and available to the Administrative Agent from the Borrower to pay fully all amounts of principal, interest and fees then due from the Borrower hereunder or (b) at any time an Event of Default shall have occurred and be continuing and the Administrative Agent will receive proceeds of Term Priority Collateral in connection with the exercise of remedies, such funds will be applied in accordance with Section 5.02 of the Collateral Agreement (subject to the application of proceeds provisions contained in the Intercreditor Agreement (as applicable)).
- (3) Except as otherwise provided in this Agreement, if any Lender, by exercising any right of set-off or counterclaim or otherwise, obtains payment in respect of any principal of or interest on any of its Class of Term Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Class of Term Loans than the proportion received by any other Lender in such Class, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Term Loans of such Class of other Lenders in such Class to the extent necessary so that the benefit of all such payments will be shared by the Lenders in such Class ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Term Loans of such Class; *provided* that (a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest, and (b) the provisions of this paragraph (3) will not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Term Loans to any assignee or participant. The Borrower 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 the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

- 
- (4) Unless the Administrative Agent has received notice from the Borrower prior to the date on 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 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.
  - (5) If any Lender fails to make any payment required to be made by it pursuant to Section 2.03(1) or 2.15(3), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under Section 2.03(1) or 2.15(3), as applicable, until all such unsatisfied obligations are fully paid.

SECTION 2.16. Mitigation Obligations: Replacement of Lenders .

- (1) If any Lender requests compensation under Section 2.12, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then such Lender will use reasonable efforts to designate a different lending office for funding or booking its Term Loans hereunder or assign its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the reasonable judgment of such Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 2.12 or 2.14, as applicable, in the future and (b) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.
- (2) If any Lender requests compensation under Section 2.12 or is a Defaulting Lender, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then the Borrower may, at its sole expense, upon notice to such Lender and the Administrative Agent, either (a) prepay such Lender's outstanding Term Loans hereunder in full on a non- *pro rata* basis without premium or penalty (including with respect to the processing and recordation fee referred to in Section 10.04(2)(b)(ii)) or (b) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that will assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (i) in the case of clause (b) above, the Borrower has received the prior written consent of the Administrative Agent, which consent will not unreasonably be withheld, if a consent by the Administrative Agent

would be required under Section 10.04 for an assignment of Term Loans to such assignee, (ii) such Lender has received payment of an amount equal to the outstanding principal of its Term Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.14, such assignment will result in a reduction in such compensation or payments. No action by or consent of the Defaulting Lender will be necessary in connection with such removal or assignment. In connection with any such assignment, the Borrower, the Administrative Agent, the Defaulting Lender and the replacement Lender will otherwise comply with Section 10.04; *provided* that if such Defaulting Lender does not comply with Section 10.04 within three Business Days after the Administrative Agent's or the Borrower's request, compliance with Section 10.04 will not be required to effect such assignment. Nothing in this Section 2.16 will be deemed to prejudice any rights that the Borrower may have against any Lender that is a Defaulting Lender.

- (3) If any Lender (such Lender, a “**Non-Consenting Lender**”) has failed to consent to a proposed amendment, waiver, discharge or termination that, pursuant to the terms of Section 10.08, requires the consent of such Lender and with respect to which the Required Lenders have granted their consent, then the Borrower will have the right (unless such Non-Consenting Lender grants such consent) at its sole expense, to either (a) prepay such Lender's outstanding Term Loans hereunder in full on a non- *pro rata* basis without premium or penalty (including with respect to the processing and recordation fee referred to in Section 10.04(2)(b)(ii) or (b) replace such Non-Consenting Lender by deeming such Non-Consenting Lender to have assigned its Term Loans and its Commitments hereunder to one or more assignees reasonably acceptable to the Administrative Agent if a consent by the Administrative Agent would be required under Section 10.04 for an assignment of Term Loans to such Assignee; *provided* that (i) all Obligations of the Borrower owing to such Non-Consenting Lender (including accrued Fees and any amounts due under Section 2.12, 2.13 or 2.14) being removed or replaced will be paid in full to such Non-Consenting Lender concurrently with such removal or assignment and (ii) in the case of clause (b) above, such Non-Consenting Lender will have received payment of an amount equal to the principal amount thereof *plus* accrued and unpaid interest thereon. No action by or consent of the Non-Consenting Lender will be necessary in connection with such removal or assignment, in the case of clause (b) above, which shall be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment, the Borrower, the Administrative Agent, such Non-Consenting Lender and the replacement Lender will otherwise comply with Section 10.04; *provided* that if such Non-Consenting Lender does not comply with Section 10.04 within three Business Days after the Administrative Agent's or the Borrower's request, compliance with Section 10.04 will not be required to effect such assignment.

SECTION 2.17. Illegality. If any Lender reasonably determines that any change in law has made it unlawful, or if any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable lending office to make or maintain any Eurocurrency Loans, then, upon notice thereof by such Lender to the Borrower

through the Administrative Agent, any obligations of such Lender to make or continue Eurocurrency Loans or to convert ABR Borrowings to Eurocurrency Borrowings will be suspended 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, the Borrower will upon demand from such Lender (with a copy to the Administrative Agent), either convert all Eurocurrency Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Term Loans. Upon any such prepayment or conversion, the Borrower will also pay accrued interest on the amount so prepaid or converted.

SECTION 2.18. Incremental Facilities.

- (1) Notice. At any time and from time to time, on one or more occasions, subject to the terms and conditions set forth herein, the Borrower may, by notice to the Administrative Agent, increase the aggregate principal amount of any outstanding tranche of Term Loans or add one or more additional tranches of term loans under the Loan Documents (the “**Incremental Term Loans**;Incremental Facility”).
- (2) Ranking. Incremental Facilities will rank either *pari passu* or junior in right of payment with the Initial Term Loans and will be either unsecured or secured by Liens that secure the Initial Term Loans on a *pari passu* or junior basis, in each case as set forth in the applicable Incremental Facility Amendment.
- (3) Size. The aggregate principal amount of Incremental Facilities incurred pursuant to this Section 2.18 together with the aggregate principal amount of Incremental Equivalent Term Debt incurred pursuant to Section 6.01(1) will not exceed, in the aggregate, an amount equal to (a) the Incremental Fixed Amount *plus* (b) the Incremental Ratio Amount (the sum of the Incremental Fixed Amount and the Incremental Ratio Amount, the “**Incremental Amount**”). Calculation of the Incremental Amount shall be made on a Pro Forma Basis and evidenced by a certificate from a Responsible Officer of the Borrower demonstrating such calculation in reasonable detail. Each Incremental Facility Amendment executed in connection with an Incremental Facility will identify whether all or any portion of such Incremental Facility is being incurred pursuant to the Incremental Fixed Amount, the Incremental Ratio Amount or a combination thereof. If the Borrower incurs Indebtedness under an Incremental Facility (or Incremental Equivalent Term Debt) using the Incremental Fixed Amount on the same date that it incurs any such Indebtedness using the Incremental Ratio Amount, the Incremental Ratio Amount will be calculated without regard to any incurrence of indebtedness under the Incremental Fixed Amount. Unless the Borrower elects otherwise, each incurrence of Incremental Facility (or Incremental Equivalent Term Debt) will be deemed incurred first as Incremental Ratio Amount to the extent permitted, with any balance incurred under the Incremental Fixed Amount. The Borrower may classify, and may later reclassify, indebtedness incurred under an Incremental Facility (or any Incremental Equivalent Term Debt) as incurred as, and in reliance on, the Incremental Fixed Amount, Incremental Ratio Amount, or both, on the date of incurrence and thereafter, to the extent permitted on the date of classification (or the date of any such reclassification). Each Incremental Facility

---

will be in an integral multiple of \$1,000,000 and in an aggregate principal amount that is not less than \$10,000,000 (or such lesser minimum amount approved by the Administrative Agent in its reasonable discretion); *provided* that such amount may be less than such minimum amount or integral multiple amount without the Administrative Agent's consent if such amount represents all the remaining availability under the Incremental Amount at such time.

- (4) Incremental Lenders. Incremental Term Loans may be provided by any existing Lender (it being understood that no existing Lender will have an obligation to provide Incremental Term Loans) or any Additional Lender. While existing Lenders may (but are not obligated unless invited and so elect) participate in any syndication of an Incremental Facility and may (but are not obligated unless invited and so elect) become lenders with respect thereto, the existing Lenders will not have any right to participate in any syndication of, and will not have any right of first refusal or other right to provide all or any portion of, any Incremental Facility or Incremental Term Loan except to the extent the Borrower and the arrangers thereof, if any, in their discretion, choose to invite or include any such existing Lender (which may or may not apply to all existing Lenders and may or may not be pro rata among existing Lenders). Final allocations in respect of any Incremental Facilities will be made by the Borrower together with the arrangers thereof, if any, in their discretion, in accordance with this Section 2.18.
- (5) Incremental Facility Amendments: Use of Proceeds. Each Incremental Facility will become effective pursuant to an amendment (which may, at the option of the Administrative Agent and the Borrower, be in the form of an amendment and restatement) (each, an “**Incremental Facility Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, the Administrative Agent and, with respect to any amendment (or amendment and restatement) of this Agreement, each Lender or Additional Lender providing such Incremental Facility (the “**Incremental Lenders**”). The Administrative Agent will promptly notify each Lender as to the effectiveness of each Incremental Facility Amendment. Incremental Facility Amendments 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 and the Borrower, to effect the provisions of this Section 2.18 and to make an Incremental Term Loan fungible (including for tax purposes) with other Term Loans (subject to the limitations under paragraphs (7) and (8) of this Section 2.18). Without limiting the foregoing, an Incremental Facility Amendment may, without the consent of any other Lenders, (a) extend or add “call protection” to any existing tranche of Term Loans, including in the form of amendments to Section 2.21, and (b) amend the schedule of amortization payments relating to any existing tranche of Term Loans, including in the form of amendments to Section 2.06 (*provided*, that any such amendment shall not decrease any amortization payment to any Lender that would have otherwise been payable to such Lender prior to the effectiveness of the applicable Incremental Facility Amendment), in the case of each clause (a) and (b), so that such Incremental Term Loans and the applicable existing Term Loans form the same Class of Term Loans; *provided*, that such amendments are not materially adverse to the existing Lenders (as determined in good faith by the Borrower). Each of the parties hereto hereby agrees that, upon the

effectiveness of any Incremental Facility Amendment, this Agreement and the other Loan Documents, as applicable, will be deemed amended (or amended and restated) to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Facility and the Incremental Term Loans evidenced thereby. This Section 2.18 shall supersede any provisions in Section 2.15 or 10.08 to the contrary. The Borrower and its Restricted Subsidiaries may use the proceeds of the Incremental Term Loans for any purpose not prohibited by this Agreement.

- (6) Conditions. The availability of Incremental Term Loans will be subject solely to the following conditions, subject, for the avoidance of doubt, to Section 1.09, measured on the date of the initial borrowing under (or, as applicable pursuant to Section 1.09, receipt of commitments with respect to) any such Incremental Facility:
- (a) no Event of Default shall have occurred and be continuing on the date such Incremental Term Loans are incurred or would exist immediately after giving effect thereto; *provided* that the condition set forth in this clause (a) may be waived or not required (other than with respect to any Specified Event of Default) by the Persons providing such Incremental Facilities if the proceeds of the initial Borrowings under such Incremental Facilities will be used to finance, in whole or in part, a Permitted Acquisition or other Investment permitted hereunder;
  - (b) the representations and warranties in the Loan Documents will be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be accurate in all respects) immediately prior to, and immediately after giving effect to, the incurrence of such Incremental Term Loans; *provided* that the condition set forth in this clause (b) may be waived or not required (other than with respect to the Specified Representations) if the proceeds of the initial Borrowings under such Incremental Facilities will be used to finance, in whole or in part, a Permitted Acquisition or other Investment permitted hereunder; and
  - (c) such other conditions (if any) as may be required by the Incremental Lenders providing such Incremental Term Loans, unless such other conditions are waived by such Incremental Lenders;
- (7) Terms. Each Incremental Facility Amendment will set forth the amount and terms of the relevant Incremental Facility. The terms of each Incremental Facility will be as agreed between the Borrower and the Incremental Lenders providing such Incremental Term Loans; *provided* that:
- (a) the final maturity date of such Incremental Term Loans will be no earlier than the Latest Maturity Date of the Initial Term Loans;
  - (b) the Weighted Average Life to Maturity of such Incremental Term Loans will be no shorter than the longest remaining Weighted Average Life to Maturity of the Initial Term Loans;

- 
- (c) such Incremental Term Loans may participate on a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any mandatory repayments or prepayments of the Initial Term Loans (other than any repayment of such Incremental Term Loans at maturity or with the proceeds of Credit Agreement Refinancing Indebtedness);
  - (d) no Incremental Facility will be secured by any assets or property that does not constitute Collateral;
  - (e) no Incremental Facility will be guaranteed by any Person other than a Guarantor; and
  - (f) (i) any Incremental Facility will be on terms and conditions that are, taken as a whole, not materially more favorable to the lenders or holders providing such Indebtedness than, those applicable to the Initial Term Loans, as determined in good faith by a Responsible Officer of the Borrower (except for covenants applicable only to periods after the Latest Maturity Date of the Initial Term Loans at the time of incurrence) and (ii) solely to the extent that any terms and conditions applicable to any Incremental Term Loans are not consistent with those then applicable to the Initial Term Loans, such Incremental Term Loans shall be reasonably satisfactory to the Administrative Agent and the Borrower.
- (8) Pricing. The interest rate, fees and original issue discount for any Incremental Term Loans will be as determined by a Responsible Officer of the Borrower and the Incremental Lenders providing such Incremental Term Loans; *provided* that in the event that the All-In Yield applicable to any Incremental Term Loans that are secured on a *pari passu* basis with the Initial Term Loans exceeds the All-In Yield of the Initial Term Loans by more than 50 basis points, then the All-In Yield for the Initial Term Loans shall be increased to the extent necessary so that the All-In Yield of such Term Loans is equal to the All-In Yield of such Incremental Term Loans *minus* 50 basis points; *provided, further*, that any increase in the All-In Yield of the Term Loans due to an increase in an Adjusted LIBO Rate, LIBO Rate, LIBO Screen Rate or ABR, as applicable, “floor” on any Incremental Term Loan shall be effected solely through an increase in such “floor” (or an implementation thereof, as applicable) applicable to the Initial Term Loans.

SECTION 2.19. Refinancing Term Loans.

- (1) Refinancing Term Loans. At any time after the Closing Date, the Borrower may obtain, from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness in respect of all or any portion of the Term Loans, in the form of Refinancing Term Loans pursuant to a Refinancing Amendment.
- (2) Refinancing Amendments. The effectiveness of any Refinancing Amendment will be subject only to the satisfaction on the date thereof of such of the conditions as may be requested by the providers of the Refinancing Term Loans. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any

Refinancing Amendment, this Agreement will be deemed amended (or amended and restated, as applicable) to the extent (but only to the extent) necessary to reflect the existence and terms of the Refinancing Term Loans incurred pursuant thereto (including any amendments necessary to treat the Term Loans subject thereto as Refinancing Term Loans).

- (3) Required Consents. Any Refinancing Amendment may, without the consent of any Person other than the Administrative Agent, the Borrower and the Lenders or Additional Lenders providing Refinancing Term Loans, effect such amendments (or amendment and restatements) to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.19. This Section 2.19 supersedes any provisions in Section 2.15 or 10.08 to the contrary. The transactions contemplated by this Section 2.19 will not require the consent of any other Lender or any other Person, and the requirements of any provision of this Agreement (including Sections 2.08 and 2.15) or any other Loan Document that may otherwise prohibit any transaction contemplated by this Section 2.19 will not apply to any of the transactions effected pursuant to this Section 2.19.
- (4) Providers of Refinancing Term Loans. Refinancing Term Loans may be provided by any existing Lender (it being understood that no existing Lender shall have an obligation to make all or any portion of any Refinancing Term Loan) or by any Additional Lender. Any Lender approached to provide all or a portion of Refinancing Term Loans may elect or decline, in its sole discretion, to provide such Refinancing Term Loans (it being understood that there is no obligation to approach any existing Lenders to provide Refinancing Term Loans).

#### SECTION 2.20. Extensions of Term Loans.

- (1) Extension Offers. Pursuant to one or more offers (each, an “*Extension Offer*”) made from time to time by the Borrower to all Lenders of Term Loans of a particular Class with a like Maturity Date (and with respect to any Extension Offer each Lender may, in its sole discretion, choose whether to accept or reject such Extension Offer), the Borrower may extend such Maturity Date and otherwise modify the terms of such Term Loans pursuant to the terms set forth in an Extension Offer (each, an “*Extension*,” and each group of such Term Loans so extended, as well as any such Term Loans of the same Class not so extended, being a “*tranche*”). Each Extension Offer will specify the minimum amount of Term Loans with respect to which an Extension Offer may be accepted, which will be an integral multiple of \$1.0 million and an aggregate principal amount that is not less than \$10.0 million (or (a) if less, the aggregate principal amount of such Term Loans outstanding or (b) such lesser minimum amount as is approved by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed), and will be made on a *pro rata* basis to all Lenders of Term Loans of a particular Class with a like Maturity Date. If the aggregate outstanding principal amount of such Term Loans (calculated on the face amount thereof) in respect of which Lenders have accepted an Extension Offer exceeds the maximum aggregate principal amount of Term Loans offered to be extended pursuant to an Extension Offer, then the Term Loans

of such Lenders will be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer. There is no requirement that any Extension Offer or Extension Amendment (defined as follows) be subject to any “most favored nation” pricing provisions. The terms of an Extension Offer will be determined by the Borrower and an Extension Offer may contain one or more conditions to its effectiveness, including that a minimum amount of Term Loans or any or all applicable tranches be tendered.

- (2) Extension Amendments. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents (which may, at the option of the Administrative Agent and the Borrower, be in the form of an amendment and restatement of this Agreement or such Loan Document, as applicable) (an “**Extension Amendment**”) as may be necessary in order to establish new tranches in respect of Extended Term Loans and such amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new tranches. This Section 2.20 supersedes any provisions of Section 2.15 or 10.08 to the contrary. Except as otherwise set forth in an Extension Offer, there will be no conditions to the effectiveness of an Extension Amendment. Extensions will not constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.
- (3) Terms of Extension Offers and Extension Amendments. The terms of any Extended Term Loans will be set forth in an Extension Offer and as agreed between the Borrower and the Extending Term Lenders accepting such Extension Offer; *provided* that:
- (a) the final maturity date of such Extended Term Loans will be no earlier than the Latest Maturity Date applicable to the Term Loans subject to such Extension Offer;
  - (b) the Weighted Average Life to Maturity of any such Extended Term Loans will be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans subject to such Extension Offer;
  - (c) any Extended Term Loans may participate on a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in mandatory repayments or prepayments of Term Loans;
  - (d) such Extended Term Loans are not secured by any assets or property that does not constitute Collateral;
  - (e) such Extended Term Loans are not guaranteed by any Person other than a Subsidiary Loan Party; and
  - (f) the other terms and conditions applicable to the Extended Term Loans are (i) substantially identical to, or, taken as a whole, no more favorable to the lenders or holders providing such Extended Term Loans than, those applicable to the Term Loans subject to such Extension Offer (except for covenants applicable only to

---

periods after the Latest Maturity Date of the Initial Term Loans at the time of incurrence) (*provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least four (4) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to the incurrence of such Extended Term Loans together with a reasonably detailed description of the material covenants and event of default of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (f) shall be conclusive evidence that such Indebtedness satisfies this clause (f) unless the Administrative Agent notifies the Borrower within such four (4) Business Day (or shorter) period that it disagrees with such determination (including a description of the basis upon which it disagrees)); *provided* that this clause (f) will not apply to (v) terms addressed in the preceding clauses (a) through (e), (x) interest rate, rate floors, fees, funding discounts and other pricing terms, (y) redemption, prepayment or other premiums, or (z) optional prepayment or redemption terms.

Any Extended Term Loans will constitute a separate tranche of Term Loans from the Term Loans held by Lenders that did not accept the applicable Extension Offer.

- (4) Required Consents. No consent of any Lender or any other Person will be required to effectuate any Extension, other than the consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned), the Borrower and the applicable Extending Term Lender(s). The transactions contemplated by this Section 2.20 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Offer) will not require the consent of any other Lender or any other Person, and the requirements of any provision of this Agreement (including Sections 2.08 and 2.15) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.20 will not apply to any of the transactions effected pursuant to this Section 2.20.

SECTION 2.21. Repricing Transaction. In the event that a Repricing Transaction is consummated during the period commencing on the Closing Date and ending prior to the date that is one year after the Closing Date, the Borrower agrees to pay to the Administrative Agent, for the ratable account of each Lender with Initial Term Loans that are either repaid, converted or subjected to a pricing reduction in connection with such Repricing Transaction a fee in an amount equal to 1.00% of (a) in the case of a Repricing Transaction described in clause (1) of the definition thereof, the aggregate principal amount of all Initial Term Loans prepaid (or converted) in connection with such Repricing Transaction and (b) in the case of a Repricing Transaction described in clause (2) of the definition thereof, the aggregate principal amount of all Initial Term Loans outstanding on such date that are subject to an effective pricing reduction or a mandatory assignment pursuant to such Repricing Transaction. Such fees shall be earned, due and payable upon the date of the consummation of such Repricing Transaction.

---

## ARTICLE III

### *Representations and Warranties*

To induce the Lenders to make any extension of credit hereunder on or after the Closing Date, the Borrower, with respect to itself and each of the Restricted Subsidiaries, represents and warrants (i) on the Closing Date solely to the extent set forth in Section 4.01(12) and (ii) on each date and to the extent otherwise required hereunder (and subject, for the avoidance of doubt, to Section 1.09), each of the following to each Agent and to each of the Lenders.

SECTION 3.01. Organization; Powers. The Borrower and each Loan Party:

- (1) is a Person duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (to the extent such status or an analogous concept applies to such an organization or in such jurisdiction);
- (2) has all requisite corporate or other organizational power and authority to own its property and assets and to carry on its business as now conducted;
- (3) is qualified to do business in each jurisdiction where such qualification is required, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect; and
- (4) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents to which it is a party and each other agreement or instrument contemplated thereby to which it is a party.

SECTION 3.02. Authorization; No Contravention.

- (1) The execution, delivery and performance by the Loan Parties of each of the Loan Documents to which it is a party have been duly authorized by all necessary corporate or other organizational action.
- (2) The execution, delivery and performance by each Loan Party of each Loan Document to which such Loan Party is a party and the consummation of the Transactions will not:
  - (a) result in a breach or contravention of, or the creation of any Lien (other than any Liens created by the Loan Documents and Permitted Lien) upon the property or assets of such Loan Party or any of the Restricted Subsidiaries under (i) any Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or the properties or assets of such Loan Party or any of its Restricted Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property or assets is subject;
  - (b) violate applicable Law; or

- 
- (c) contravene the terms of its Organizational Documents;

except with respect to clauses (a) and (b) of this Section 3.02(2) as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.03. Enforceability. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to:

- (1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws (including Debtor Relief Laws) affecting creditors' rights generally;
- (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);
- (3) implied covenants of good faith and fair dealing; and
- (4) any foreign laws, rules and regulations as they relate to pledges of Equity Interests in Non-U.S. Subsidiaries.

SECTION 3.04. Governmental Approvals. No material action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for:

- (1) filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties;
- (2) filings which may be required under Environmental Laws;
- (3) filings as may be required under the Exchange Act and applicable stock exchange rules in connection therewith;
- (4) such as have been made or obtained and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Security Documents);
- (5) such actions, consents, approvals, registrations or filings the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect.

SECTION 3.05. Title to Properties; Liens. Each of the Borrower and the Subsidiary Loan Parties has valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all of its Real Properties and valid title to its personal property and assets, in each case, except for Permitted Liens or defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes, in each case, except where the failure to have such title, interest or easement would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

---

SECTION 3.06. Subsidiaries. Schedule 3.06 sets forth as of the Closing Date and after giving effect to the Transactions, the name and jurisdiction of incorporation, formation or organization of the Borrower and each Restricted Subsidiary and, as to each Restricted Subsidiary, the percentage of each class of Equity Interests owned by the Borrower or by any other Subsidiary of the Borrower.

SECTION 3.07. Litigation; Compliance with Laws.

- (1) There are no actions, suits or proceedings, or, to the knowledge of the Borrower, investigations at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any Restricted Subsidiary or any business, property or rights (including any studies, tests or preclinical or clinical trials) of any such Person (excluding any actions, suits or proceedings arising under or relating to any Environmental Laws, which are subject to Section 3.13, but including in respect of any Health Care Law), in each case, which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.
- (2) To the knowledge of the Borrower, none of the Borrower, any Restricted Subsidiary or their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval, or any building permit, but excluding any Environmental Laws, which are subject to Section 3.13) or any restriction of record or agreement affecting any property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.08. Federal Reserve Regulations.

- (1) None of the Borrower or any Restricted Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.
- (2) No part of the proceeds of any Term Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund Indebtedness originally incurred for such purpose or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

SECTION 3.09. Investment Company Act. None of the Borrower or any Subsidiary Loan Party is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.10. Use of Proceeds. The Borrower shall use the proceeds of the Term Loans made on the Closing Date to finance a portion of the Transactions (including the Specified Tender Offer, which shall be financed with the Escrowed Funds) and the Transaction Costs and, if applicable, make a prepayment in accordance with Section 2.08(3).

SECTION 3.11. Tax Returns. Except as set forth on Schedule 3.11:

- (1) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of the Borrower and the Restricted Subsidiaries has filed or caused to be filed all federal, state, local and non-U.S. Tax returns required to have been filed by it; and
- (2) Each of the Borrower and the Restricted Subsidiaries has timely paid or caused to be timely paid (a) all Taxes shown to be due and payable by it on the returns referred to in clause (1) of this Section 3.11 and (b) all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes due) with respect to all periods or portions thereof ending on or before the Closing Date, which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, in each case except Taxes or assessments that are being contested in good faith by appropriate proceedings and for which, if applicable, the Borrower or any Restricted Subsidiary (as the case may be) has set aside on its books adequate reserves in accordance with GAAP.

SECTION 3.12. No Material Misstatements.

- (1) All written factual information and written factual data (other than the Projections, estimates and information of a general economic or industry specific nature) concerning the Borrower or any Restricted Subsidiary that has been made available to the Administrative Agent or the Lenders, directly or indirectly, by or on behalf of the Borrower or any Restricted Subsidiary in connection with the Transactions, when taken as a whole and after giving effect to all supplements and updates provided thereto, is correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made.
- (2) The Projections that have been made available to the Administrative Agent or the Lenders by or on behalf of the Borrower in connection with the Transactions, when taken as a whole, have been prepared in good faith based upon assumptions that are believed by the Borrower to be reasonable at the time made and at the time delivered to the Administrative Agent or the Lenders, it being understood by the Administrative Agent and the Lenders that:
  - (a) the Projections are merely a prediction as to future events and are not to be viewed as facts;
  - (b) the Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower or Impax;

- 
- (c) no assurance can be given that any particular Projections will be realized; and
  - (d) actual results may differ and such differences may be material.

SECTION 3.13. Environmental Matters. Except as set forth on Schedule 3.13 or as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

- (1) the Borrower and each of the Restricted Subsidiaries are in compliance with all Environmental Laws (including having obtained and complied with all permits, licenses and other approvals required under any Environmental Law for the operation of its business);
- (2) neither the Borrower nor any Restricted Subsidiary has received notice of or is subject to any pending, or to the Borrower's knowledge, threatened action, suit or proceeding alleging a violation of, or liability under, any Environmental Law that remains outstanding or unresolved;
- (3) to the Borrower's knowledge, no Hazardous Material is located at, on or under any property currently or formerly owned, operated or leased by the Borrower or any Restricted Subsidiary and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by the Borrower or any Restricted Subsidiary and transported to or Released at any location which, in each case, described in this clause (3), would reasonably be expected to result in liability to the Borrower or any Restricted Subsidiaries; and
- (4) there are no agreements in which the Borrower or any Restricted Subsidiary has expressly assumed or undertaken responsibility for any known or reasonably anticipated liability or obligation of any other Person arising under or relating to Environmental Laws or Hazardous Materials.

SECTION 3.14. Security Documents.

- (1) Except as otherwise contemplated hereunder or under any other Loan Documents, the Collateral Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) legal and valid Liens on the Collateral described therein; and when financing statements in appropriate form are filed in the offices specified on Schedule III to the Collateral Agreement, a short form grant of security interest in Intellectual Property Rights (in substantially the form of Exhibit II to the Collateral Agreement (for trademarks), Exhibit III to the Collateral Agreement (for patents) or Exhibit IV to the Collateral Agreement (for copyrights)) is properly filed in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, and the Pledged Collateral described in the Collateral Agreement is delivered to the Collateral Agent, the Liens on the Collateral granted pursuant to the Collateral Agreement will constitute fully perfected Liens on all right, title and interest of the grantors in such Collateral in which (and to the extent) a security interest can be perfected under Article 9 of the Uniform Commercial Code, in each case prior to and superior in right of the Lien of any other Person (subject to Permitted Liens).

- 
- (2) Notwithstanding anything herein (including this Section 3.14) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty (a) as to the effects of perfection or non-perfection, the priority or enforceability of any pledge of or security interest in any Excluded Assets or (b) as to the effects of perfection or non-perfection, the priority or enforceability of any pledge of or security interest in any Equity Interests of any Non-U.S. Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign law.

SECTION 3.15. Location of Real Property and Leased Premises.

- (1) Schedule 3.15(1) correctly identifies, in all material respects, as of the Closing Date, all material Real Property owned in fee by the Loan Parties. As of the Closing Date, the Loan Parties own in fee all the Real Property set forth as being owned by them on Schedule 3.15(1).
- (2) Schedule 3.15(2) lists correctly in all material respects, as of the Closing Date, all material Real Property leased by any Loan Party and the addresses thereof. As of the Closing Date, the Loan Parties have in all material respects valid leases in all material Real Property set forth as being leased by them on Schedule 3.15(2).

SECTION 3.16. Solvency. On the Closing Date, after giving effect to the consummation of the Transactions, including the making of the Term Loans hereunder, and after giving effect to the application of the proceeds of the Term Loans:

- (1) the fair value of the assets of the Borrower and its Restricted Subsidiaries, on a consolidated basis, exceeds their debts and liabilities (subordinated, contingent or otherwise), on a consolidated basis;
- (2) the present fair saleable value of the property of the Borrower and its Restricted Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities (subordinated, contingent or otherwise), on a consolidated basis, as such debts and other liabilities become absolute and matured;
- (3) the Borrower and its Restricted Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities (subordinated, contingent or otherwise), on a consolidated basis, as such liabilities become absolute and matured; and
- (4) the Borrower and its Restricted Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

For purposes of this Section 3.16, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

SECTION 3.17. Financial Statements; No Material Adverse Effect.

- (1) The consolidated balance sheets of the Borrower and its consolidated subsidiaries and of Impax and its consolidated subsidiaries as at December 31, 2017, and related statements of operations and cash flows of the Borrower and its consolidated subsidiaries and Impax and its consolidated set forth in the PIPE Registration Statement fairly present in all material respects the financial condition of each of the Borrower and Impax, as applicable, and their respective Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.
- (2) The unaudited *pro forma* condensed combined financial information and explanatory notes of Amneal Inc. set forth in the PIPE Registration Statement, prepared after giving effect to the Transactions as if the Transactions had occurred on December 31, 2017 (in the case of such balance sheet) or at the beginning of such period (in the case of the statement of operations), copies of which have heretofore been furnished to the Administrative Agent, have been prepared in good faith, based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a *pro forma* basis the estimated financial position of Amneal Inc. and its Subsidiaries as of December 31, 2017 and their estimated results of operations for the period covered thereby.
- (3) Since December 31, 2017, there has been no event that has had, or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.
- (4) The forecasts of consolidated balance sheets and income statements of the Borrower and its Subsidiaries which have been furnished to the Administrative Agent prior to the Closing Date, when taken as a whole, have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time furnished, it being understood that (i) no forecasts are to be viewed as facts, (ii) any forecasts are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower, Impax and their respective Subsidiaries and Affiliates, (iii) no assurance can be given that any particular forecasts will be realized and (iv) actual results may differ and such differences may be material.

SECTION 3.18. Insurance. Schedule 3.18 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of the Borrower or any Restricted Subsidiary as of the Closing Date. As of such date, such insurance is in full force and effect.

SECTION 3.19. USA PATRIOT Act; Anti-Corruption; Sanctions.

- (1) To the extent applicable, each of the Borrower and the Restricted Subsidiaries is in compliance, in all material respects, with the USA PATRIOT Act.
- (2) No part of the proceeds of the Term Loans will be used by the Borrower or any of the Restricted Subsidiaries, directly or indirectly, (i) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of Anti-Corruption Laws, or (ii) in any manner that would result in the violation of any applicable Sanctions.

- 
- (3) None of the Borrower or any Restricted Subsidiary, nor any of their respective directors or officers, nor, to the knowledge of the Borrower or any Restricted Subsidiary, any of their respective agents and employees, is any of the following:
- (a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the “*Executive Order*”);
  - (b) a Person owned or Controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
  - (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any laws with respect to terrorism or money laundering;
  - (d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or
  - (e) a Sanctioned Person.
- (4) The Borrower and the Restricted Subsidiaries, and their respective officers and directors, and, to the knowledge of the Borrower or any Restricted Subsidiary, their respective employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects and are not knowingly engaged in any activity that could reasonably be expected to result in the Borrower or any Restricted Subsidiary being designated as a Sanctioned Person.
- (5) The Borrower has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance in all material respects by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 3.20. Intellectual Property Rights; Licenses, Etc. Except as would not reasonably be expected to have a Material Adverse Effect:

- (1) the Borrower and each Restricted Subsidiary owns, or possesses the right to use, all of the patents, patent rights, inventions, know-how, trademarks, service marks, trade names, copyrights or mask works, domain names, trade secrets and other intellectual property rights (collectively, “*Intellectual Property Rights*”) that are reasonably necessary for the operation of their respective businesses (provided the foregoing shall not be construed as a warranty with respect to non-infringement of third party intellectual property rights);

- 
- (2) to the knowledge of the Borrower or any Restricted Subsidiary, neither the Borrower nor any of the Restricted Subsidiaries nor any Intellectual Property Rights, product, process, method, substance, part or other material now made, used, employed, sold or offered for sale by the Borrower or the Restricted Subsidiaries, nor the business of the Borrower or any of the Restricted Subsidiaries is infringing upon, misappropriating or otherwise violating Intellectual Property Rights of any Person, but excluding any (i) infringement of any Intellectual Property Rights caused by the filing of any abbreviated new drug application for a product filed with the FDA pursuant to §505(j) of the United States Federal Food, Drug, and Cosmetic Act, as amended from time to time (the “FFDCA”) or by the filing of any new drug application for a product filed with the FDA pursuant to §505(b)(2) of the FFDCA and (ii) infringement of any Intellectual Property Rights alleged pursuant to a Paragraph IV Proceeding for which a Paragraph IV Certification Notice has been made; and
- (3) no claim or litigation (including any cease and desist letters) regarding any of the foregoing in (1) or (2) is pending or, to the knowledge of the Borrower, threatened. The representations set forth in Section 3.20(2) and this Section 3.20(3) are the only representations given by the Borrower (including on behalf of its Restricted Subsidiaries) with respect to non-infringement of Intellectual Property Rights.

SECTION 3.21. Employee Benefit Plans. Except as would not reasonably be expected to have a Material Adverse Effect, the Borrower and each of its ERISA Affiliates are in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, would reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, the present value of all accumulated benefit obligations under all Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plans, in the aggregate.

SECTION 3.22. Labor Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (1) there are no strikes or other labor disputes against any of the Borrower or its Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened and (2) hours worked by and payment made based on hours worked to employees of each of the Borrower or its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with wage and hour matters.

## ARTICLE IV

### *Conditions of Lending*

SECTION 4.01. Conditions Precedent. The agreement of each Lender to make Initial Term Loans on the Closing Date is subject solely to the satisfaction or waiver by the Administrative Agent, prior to or concurrently with the making of the Initial Term Loans on the Closing Date, of the following conditions precedent:

- (1) Loan Documents. The Administrative Agent shall have received (a) this Agreement duly executed and delivered by a Responsible Officer of the Borrower, (b) the Collateral Agreement duly executed and delivered by a Responsible Officer of the Borrower and its Restricted Subsidiaries that are Subsidiary Loan Parties (including the related short form grants of security interest in Intellectual Property Rights duly executed and delivered by a Responsible Officer of each applicable Loan Party), (c) the Escrow Agreement, duly executed and delivered by the Borrower and the Escrow Agent and (d) an acknowledgment to the Closing Date Intercreditor Agreement duly executed and delivered by a Responsible Officer of the Borrower and its Restricted Subsidiaries that are Subsidiary Loan Parties.
- (2) Borrowing Request. On or prior to the Closing Date, the Administrative Agent shall have received a Borrowing Request.
- (3) Acquisition Transactions. Prior to or substantially concurrently with the making of the Initial Term Loans on the Closing Date:
  - (a) the Acquisition will be consummated pursuant to the Acquisition Agreement, and no provision thereof shall have been amended, modified or waived, and no consent shall have been given thereunder, in each case in any manner materially adverse to the interests of the Lenders without the prior written consent of the Arrangers (it being understood and agreed that any modification, amendment, consent or waiver of the definition of “Impax Material Adverse Effect” contained in the Acquisition Agreement as in effect on October 17, 2017 shall be deemed to be materially adverse to the interests of the Lenders); and
  - (b) the Closing Date Refinancing will be consummated.
- (4) Fees. Payment of all (a) Fees required to be paid on the Closing Date pursuant to the Fee Letters and (b) reasonable (and reasonably documented) out-of-pocket expenses required to be paid on the Closing Date pursuant to the Commitment Letter, in each case to the extent invoiced in reasonable detail at least three (3) Business Days prior to the Closing Date (except as otherwise reasonably agreed by the Borrower).
- (5) Solvency Certificate. The Administrative Agent shall have received a solvency certificate substantially in the form attached hereto as Exhibit B.
- (6) Closing Date Certificates. The Administrative Agent shall have received such certificates of good standing from the applicable secretary of state (or other similar Governmental Authority) of the jurisdiction of organization of the Borrower and its Restricted Subsidiaries that are Subsidiary Loan Parties as of the Closing Date, customary resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of the Borrower and its Restricted Subsidiaries that are Subsidiary Loan Parties as of the Closing Date evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which it is a party or is to be a party on the Closing Date, the Organizational Documents of each such Loan Party and, in

---

the case of the Borrower including certification by a Responsible Officer of the Borrower that the conditions specified in clauses (3), (9) and (12) of this Section 4.01 have been or substantially concurrent with the borrowing of the Initial Term Loans on the Closing Date will be satisfied;

- (7) Legal Opinions. The Administrative Agent shall have received a customary legal opinion of Latham & Watkins LLP, special counsel to the Loan Parties.
- (8) Pledged Equity Interests. Except as otherwise agreed by the Administrative Agent, the Administrative Agent shall have received (a) to the extent delivered to the Borrower pursuant to the terms of the Closing Date Refinancing and constituting Collateral, the certificates representing the Equity Interests (if such Equity Interests are certificated) of the Borrower and its Wholly Owned U.S. Subsidiaries that are Material Subsidiaries and (b) to the extent delivered to the Borrower pursuant to the terms of the Acquisition Agreement and constituting Collateral, the certificates representing the Equity Interests (if such Equity Interests are certificated) of Impax and its Wholly Owned U.S. Subsidiaries that are Material Subsidiaries, in each case to the extent such Equity Interests are required to be pledged pursuant to the Collateral Agreement, together with a customary stock power for each such certificate executed in blank.
- (9) No Material Adverse Effect. Since the date of the Acquisition Agreement, there shall not have been any change, effect, event, circumstance, occurrence or state of facts that has had or would reasonably be expected to have, individually or in the aggregate, an Impax Material Adverse Effect (as defined in the Acquisition Agreement as in effect on October 17, 2017).
- (10) Registration Statement. The Registration Statement (as defined in the Acquisition Agreement as of October 17, 2017) shall have been declared effective under the Securities Act (as defined in the Acquisition Agreement as of October 17, 2017).
- (11) Know Your Customer and Other Required Information. All outstanding documentation and other information about the Loan Parties required under applicable “know your customer” and anti-money laundering rules and regulations, as has been reasonably requested in writing by the Administrative Agent at least ten (10) Business Days prior to the Closing Date, will be provided not later than the date that is two (2) Business Days prior to the Closing Date.
- (12) Representations and Warranties. Subject to the Certain Funds Provisions, the Specified Acquisition Agreement Representations and Specified Representations will be true and correct in all material respects; *provided* that the failure of a Specified Acquisition Agreement Representation to be true and correct will not result in a failure of a condition precedent under this Article IV unless such failure results in a failure of a condition precedent to the Borrower’s (or its Affiliates’) obligation to consummate the Acquisition pursuant to the terms of the Acquisition Agreement or such failure gives the Borrower the right (taking into account any applicable cure provisions) to terminate its obligations under the Acquisition Agreement.

There are no conditions, implied or otherwise, to the making of Term Loans on the Closing Date other than as set forth in the preceding clauses (1) through (12) and upon satisfaction or waiver by the Administrative Agent of such conditions the Term Loans will be made by the Lenders. 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 written notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

## ARTICLE V

### *Affirmative Covenants*

The Borrower covenants and agrees with each Lender that so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations have been Paid in Full, unless the Required Lenders otherwise consent in writing, the Borrower will, and will cause its Restricted Subsidiaries, to:

#### SECTION 5.01. Existence; Businesses and Properties.

- (1) Preserve, renew and keep in full force and effect its legal existence under the Laws of the jurisdiction of its incorporation or organization, except:
  - (a) in the case of a Restricted Subsidiary, where the failure to do so would not reasonably be expected to have a Material Adverse Effect; or
  - (b) in connection with a transaction permitted under Section 6.05.
- (2) (a) Do or cause to be done all things reasonably necessary to lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, Intellectual Property Rights, licenses and rights with respect thereto material to the normal conduct of its business (including the Permits) and (b) maintain and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition (ordinary wear and tear and casualty or condemnation excepted), in each case, except:
  - (i) as expressly permitted by this Agreement;
  - (ii) such as may expire, be abandoned or lapse in the ordinary course of business; or
  - (iii) where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.02. Insurance. Maintain, with insurance companies that the Borrower reasonably believes in good faith to be financially sound and reputable at the time the relevant coverage is placed or renewed, or with a Captive Insurance Subsidiary, insurance (including property, casualty and general liability) in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) and against such risks as are customarily maintained by similarly situated Persons engaged in the same or similar businesses operating in the same or similar locations, and cause, as is appropriate and customary and, with respect to jurisdictions outside of the United States, to the extent available and customary in such jurisdictions, the Collateral Agent (a) to be listed as an additional insured on liability policies or (b) in the case of property and casualty policies, contain a loss payable clause or endorsement listing the Collateral Agent as a co-loss payee thereon. The Borrower will furnish to the Administrative Agent or Collateral Agent, upon reasonable written request, information in reasonable detail as to the insurance so maintained. Notwithstanding the foregoing, it is understood and agreed that no Loan Party will be required to maintain flood insurance unless any material Real Property owned by it is required to be so insured pursuant to the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1968, and the regulations promulgated thereunder, because such material Real Property is located in an area which has been identified by the Secretary of Housing and Urban Development as a “special flood hazard area.”

SECTION 5.03. Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, pay and discharge promptly when due and payable all Taxes imposed upon it or its income or profits or in respect of its property, before the same becomes delinquent or in default; *provided* that such payment and discharge will not be required with respect to any Tax if (1) the validity or amount thereof is being contested in good faith by appropriate proceedings and (2) the Borrower or any affected Restricted Subsidiary, as applicable, has set aside on its books reserves in accordance with GAAP with respect thereto.

SECTION 5.04. Financial Statements, Reports, etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders):

- (1) within 90 days following the end of each fiscal year, commencing with the fiscal year ended December 31, 2018, a consolidated balance sheet and related statements of operations, cash flows and owners’ equity showing the financial position of the Borrower and the Restricted Subsidiaries as of the close of such fiscal year and the consolidated results of its operations during such fiscal year and, in each case, commencing with the fiscal year ending December 31, 2019, setting forth in comparative form the corresponding figures for the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners’ equity will be prepared in accordance with GAAP, audited by any independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants (which opinion shall not be subject to any “going concern” statement, explanatory note or like qualification or exception (other than a “going concern” statement, explanatory note or like qualification or exception relating to an anticipated, but not actual, financial covenant default or an upcoming maturity date) (the applicable financial statements delivered pursuant to this clause (1) being the “*Annual Financial Statements*”);

- 
- (2) for the first three fiscal quarters of each fiscal year, commencing with the fiscal quarter ended March 31, 2018,
- (a) within 71 days following the Closing Date, for the fiscal quarter ending March 31, 2018, (i) (A) a consolidated balance sheet for the Borrower and its Restricted Subsidiaries (excluding, for the avoidance of doubt, Impax and its subsidiaries) as of the close of such fiscal quarter and (B) the consolidated results of its operations and cash flows for the Borrower and its Restricted Subsidiaries (excluding, for the avoidance of doubt, Impax and its subsidiaries) during such fiscal quarter and the then-elapsed portion of the fiscal year and (ii) (A) a consolidated balance sheet for Impax and its Restricted Subsidiaries (excluding, for the avoidance of doubt, the Borrower and its subsidiaries), as of the close of such fiscal quarter and (B) the consolidated results of operations and cash flows for Impax and its Restricted Subsidiaries (excluding, for the avoidance of doubt, the Borrower and its subsidiaries) during such fiscal quarter and the then-elapsed portion of the fiscal year;
  - (b) for the fiscal quarter ending June 30, 2018, within 45 days of such fiscal quarter end,
    - (i) (A) a consolidated balance sheet for the Borrower and its Restricted Subsidiaries as of the close of such fiscal quarter and (B) the consolidated statement of operations and cash flows for the Borrower and its Restricted Subsidiaries (which will include Impax and its Restricted Subsidiaries for the period from the Closing Date to such fiscal quarter end) during such fiscal quarter and the then-elapsed portion of the fiscal year; and
    - (ii) an unaudited pro forma condensed combined statement of operations for the Borrower and its Restricted Subsidiaries (which will include Impax and its Restricted Subsidiaries) during such fiscal quarter (which pro forma financial statements will be certified by a Responsible Officer of the Borrower on behalf of the Borrower as having been prepared in good faith, based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a pro forma basis the estimated results of operations of the Borrower and its Restricted Subsidiaries during such fiscal quarter end); and
  - (c) for each such fiscal quarter thereafter, within 45 days of such fiscal quarter end, (A) a consolidated balance sheet for the Borrower and the Restricted Subsidiaries as of the close of such fiscal quarter and (B) the consolidated results of operations and cash flows for the Borrower and the Restricted Subsidiaries during such fiscal quarter and the then-elapsed portion of the fiscal year and, commencing with the fiscal quarter ending September 30, 2019, setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year,

in each case (other than the preceding clause (ii)), certified by a Responsible Officer of the Borrower on behalf of the Borrower as fairly presenting, in all material respects, the financial position and results of operations of the Borrower and the Restricted Subsidiaries (or Impax and its Restricted Subsidiaries, as applicable) on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes (the applicable financial statements delivered pursuant to this clause (2) being the “*Quarterly Financial Statements*” and, together with the Annual Financial Statements, the “*Required Financial Statements*”).

- (3) no later than five (5) days after the delivery of any Required Financial Statements, a certificate of a Financial Officer of the Borrower:
  - (a) certifying that no Default or Event of Default has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;
  - (b) setting forth the calculation and uses of the Available Amount for the fiscal period then ended if the Borrower has used the Available Amount for any purpose during such fiscal period;
  - (c) certifying a list of all Immaterial Subsidiaries, that each Subsidiary set forth on such list individually qualifies as an Immaterial Subsidiary and that all such Subsidiaries in the aggregate do not exceed the limitation set forth in clause (ii) of the definition of the term “Immaterial Subsidiary;”
  - (d) setting forth, in reasonable detail, the calculation of the First Lien Net Leverage Ratio for the most recent period of four consecutive fiscal quarters as of the close of such fiscal year or such fiscal quarter, as applicable;
  - (e) certifying a list of all Unrestricted Subsidiaries at such time and that each Subsidiary set forth on such list qualifies as an Unrestricted Subsidiary; and
  - (f) with respect to the Financial Officer certificate delivered with regard to Annual Financial Statements only, setting forth the calculation of Excess Cash Flow for such Excess Cash Flow Period.
- (4) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials publicly filed by the Borrower or any Restricted Subsidiary with the SEC or, after an initial public offering, distributed to its stockholders generally, as applicable, and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any Loan Document;
- (5) within 60 days following the end of each fiscal year, commencing with the fiscal year ending December 31, 2018, a consolidated annual budget for such fiscal year in the form customarily prepared by the Borrower (the “*Budget*”), which Budget will in each case be accompanied by the statement of a Financial Officer of the Borrower on behalf of the Borrower to the effect that the Budget is based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof; *provided* that no Budget will be required to be delivered with respect to the fiscal year ending December 31, 2018;

- 
- (6) upon the reasonable written request of the Collateral Agent, concurrently with the delivery of the Annual Financial Statements, an updated Perfection Certificate (or, to the extent such request relates to specified information contained in the Perfection Certificate, such information) reflecting all changes since the date of the information most recently received pursuant to this paragraph (6) or Section 5.10, as applicable;
  - (7) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of the Borrower or any Restricted Subsidiary, in each case, as the Administrative Agent may reasonably request (for itself or on behalf of any Lender) in writing; and
  - (8) promptly upon reasonable written request by the Administrative Agent (so long as the following are obtainable using commercially reasonable measures), copies of any documents described in Section 101(k)(1) of ERISA that the Borrower or any of its ERISA Affiliates may request with respect to any Multiemployer Plan; *provided* that if the Borrower or any of its ERISA Affiliates has not requested such documents from the administrator or sponsor of the applicable Multiemployer Plan, the Borrower or the applicable ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof.

Anything to the contrary notwithstanding, the obligations in clauses (1) and (2) of this Section 5.04 may be satisfied with respect to financial information of the Borrower and the Restricted Subsidiaries by furnishing (1) the applicable financial statements of any Parent Entity or (2) the Borrower's (or any such other Parent Entity's), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that with respect to each of the foregoing clauses (1) and (2) (a) to the extent such information relates to a Parent Entity, such information is accompanied by consolidating information (which need not be audited) that explains in reasonable detail the differences between the information relating to such Parent Entity, on the one hand, and the information relating to the Borrower and the Restricted Subsidiaries on a standalone basis, on the other hand, and (b) to the extent such information is in lieu of information required to be provided under Section 5.04(1), such materials are prepared in accordance with GAAP and accompanied by a report and opinion of any independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants (which opinion shall not be subject to any "going concern" statement, explanatory note or like qualification or exception (other than a "going concern" statement, explanatory note or like qualification or exception relating to an anticipated, but not actual, financial covenant default or an upcoming maturity date)). The obligations in clauses (1) and (2) of this Section 5.04 may be satisfied by delivery of financial information of the Borrower and its Subsidiaries so long as such financial statements include a reasonably detailed presentation (which need not be audited), either on the face of the financial statements or in the footnotes thereto, of the financial condition and results of operations of the Borrower and the Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Borrower.

---

Documents required to be delivered pursuant to this Section 5.04 may be delivered electronically in accordance with Section 10.01(5).

SECTION 5.05. Litigation and Other Notices. Furnish to the Administrative Agent (which will promptly thereafter furnish to the Lenders) written notice of the following promptly after any Responsible Officer of the Borrower obtains actual knowledge thereof:

- (1) any Default or Event of Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;
- (2) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against the Borrower or any of the Restricted Subsidiaries as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect; and
- (3) the occurrence of any ERISA Event that, together with all other ERISA Events that have occurred, would reasonably be expected to have a Material Adverse Effect.

SECTION 5.06. Compliance with Laws. Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property and assets (including ERISA and Health Care Laws), except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; *provided* that this Section 5.06 will not apply to Environmental Laws, which are the subject of Section 5.09, or laws related to Taxes, which are the subject of Section 5.03. The Borrower will, and will cause each of its Subsidiaries to, maintain in effect and enforce policies and procedures reasonably designed to ensure compliance by the Borrower, its Subsidiaries and the respective directors, officers, employees and agents of the foregoing with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.07. Maintaining Records; Access to Properties and Inspections. Permit any Persons designated by the Administrative Agent to visit and inspect the financial records and the properties of the Borrower or any Restricted Subsidiary at reasonable times, upon reasonable prior written notice from the Administrative Agent to the Borrower, and as often as reasonably requested, to make extracts from and copies of such financial records, and permit any Persons designated by the Administrative Agent, upon reasonable prior written notice from the Administrative Agent to the Borrower, to discuss the affairs, finances and condition of the Borrower or any Restricted Subsidiary with the officers thereof and independent accountants therefor (subject to such accountant's policies and procedures); *provided* that the Administrative Agent may not exercise such rights more often than two times during any calendar year unless an Event of Default is continuing and only one such time will be at the Borrower's expense; and *provided, further*, that when an Event of Default is continuing, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent and the Lenders shall give the Borrower

the opportunity to participate in any discussions with the Borrower's independent accountants. Notwithstanding anything to the contrary in this Agreement (including Sections 5.04(7), 5.05 and 5.07) or any other Loan Document, none of the Loan Parties or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter with any Disqualified Institution or other competitor to the Borrower or any of its Subsidiaries or that (1) constitutes non-financial trade secrets or non-financial proprietary information, (2) in respect of which disclosure is prohibited by law or any binding agreement, (3) is subject to attorney-client or similar privilege or constitutes attorney work product or (4) creates an unreasonably excessive expense or burden on the Borrower or any of its Subsidiaries.

SECTION 5.08. Use of Proceeds. Use the proceeds of the Term Loans made on the Closing Date to finance, in part, the Transactions and the Transaction Costs and, if applicable, make a prepayment in accordance with Section 2.08(3).

SECTION 5.09. Compliance with Environmental Laws. Comply, and make reasonable efforts to cause all lessees and other Persons occupying its fee-owned Real Properties to comply, with all Environmental Laws applicable to its operations and properties, and obtain and renew all material authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws, except, in each case, to the extent the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.10. Further Assurances; Additional Security.

- (1) If (a) a Restricted Subsidiary (other than an Excluded Subsidiary) of the Borrower is formed or acquired after the Closing Date or (b) an Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, within 120 days after the date such Restricted Subsidiary is formed or acquired or such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, as applicable (or such longer period as the Collateral Agent agrees), the Borrower will or will cause such Restricted Subsidiary to:
  - (i) deliver a joinder to the Collateral Agreement, substantially in the form specified therein or in such other form as is acceptable to such Restricted Subsidiary, the Borrower and the Administrative Agent, duly executed on behalf of such Restricted Subsidiary;
  - (ii) to the extent required by and subject to the exceptions set forth in this Section 5.10 or the Security Documents, pledge the outstanding Equity Interests (other than Excluded Equity Interests) owned by such Restricted Subsidiary, and cause each Loan Party owning any Equity Interests issued by such Restricted Subsidiary to pledge such outstanding Equity Interests (other than Excluded Equity Interests), and deliver all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof);

- (iii) to the extent required by and subject to the exceptions set forth in this Section 5.10 or the Security Documents, deliver to the Collateral Agent (or a designated bailee thereof) Uniform Commercial Code financing statements with respect to such Restricted Subsidiary and such other documents reasonably requested by the Collateral Agent to create the Liens intended to be created under the Security Documents and perfect such Liens to the extent required by the Security Documents; and
  - (iv) except as otherwise contemplated by this Section 5.10 or any Security Document or as otherwise agreed by the Collateral Agent, obtain all consents and approvals required to be obtained by it in connection with (A) the execution and delivery of all Security Documents (or supplements thereto) to which it is a party and the granting by it of the Liens thereunder and (B) the performance of its obligations thereunder.
- (2) Furnish to the Collateral Agent within 20 calendar days of such event (or such later date as the Collateral Agent may agree in its sole discretion) written notice of any change in any Loan Party's:
- (a) legal name;
  - (b) type of organization;
  - (c) location (determined as provided in UCC Section 9-307); or
  - (d) jurisdiction of organization;
- except, in the case of each of the foregoing clauses (a) through (c), in connection with the Impax Conversion.

The Borrower will not effect or permit any such change unless all filings have been made, or will be made within any statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest, for the benefit of the applicable Secured Parties, in all Collateral held by such Loan Party.

- (3) Execute any and all other documents, financing statements, agreements and instruments, and take all such other actions (including the filing and recording of financing statements and other documents), not described in the preceding clauses (1) and (2) and that may be required under any applicable law, or that the Collateral Agent may reasonably request in writing to the Borrower to satisfy the requirements set forth in this Section 5.10 and in the Security Documents with respect to the creation and perfection of the Liens on the Collateral in favor of the Collateral Agent, for the benefit of the Secured Parties, contemplated herein and in the Security Documents and to cause such requirement to be and remain satisfied, all at the expense of the Borrower, and provide to the Collateral Agent, from time to time upon Collateral Agent's reasonable written request, evidence as to the perfection and priority of the Liens created by the Security Documents (subject to Permitted Liens).

- 
- (4) Notwithstanding anything to the contrary,
- (a) the other provisions of this Section 5.10 need not be satisfied with respect to any Excluded Assets or Excluded Equity Interests or any exclusions and carve-outs from the security or perfection requirements, as applicable, set forth in the Collateral Agreement or other applicable Security Document;
  - (b) neither the Borrower nor the other Loan Parties will be required to grant a security interest in any asset or perfect a security interest in any Collateral to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by a Responsible Officer of the Borrower and the Administrative Agent (or with respect to matters relating primarily to the ABL Priority Collateral, the Borrower and the ABL Agent); and
  - (c) (i) no actions will be required (A) outside of the United States in order to create or perfect any security interest in any assets located outside of the United States, (B) in any non-United States jurisdiction or (C) under the laws of any non-United States jurisdiction to create any security interests or to perfect or make enforceable any security interests, and (ii) no non-United States law security or pledge agreements, non-United States law mortgages or deeds or non-United States intellectual property filings or other agreements or documents governed under the laws of any non-United States jurisdiction or non-United States searches will be required.

SECTION 5.11. Credit Ratings. Use commercially reasonable efforts to maintain (1) a public credit rating by each of S&P and Moody's in respect of the Term Loans and (2) a public corporate rating by S&P and a public corporate family rating by Moody's for the Borrower, in each case with no requirement to maintain any specific rating.

SECTION 5.12. Post-Closing Matters. Deliver to Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, the items described on Schedule 5.12 hereof on or before the dates specified with respect to such items on Schedule 5.12 (or, in each case, such later date as may be agreed to by Administrative Agent in its sole discretion or, with respect to matters relating primarily to the ABL Priority Collateral, in the sole discretion of the administrative agent under the ABL Credit Agreement). All representations and warranties contained in this Agreement and the other Loan Documents will be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described on Schedule 5.12 within the time periods specified thereon, rather than as elsewhere provided in any of the Loan Documents).

## ARTICLE VI

### *Negative Covenants*

The Borrower covenants and agrees with each Lender that, so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations have been Paid in Full, unless the Required Lenders otherwise consent in writing, it will not and will not permit any of its Restricted Subsidiaries to:

SECTION 6.01. Indebtedness. Issue, incur or assume any Indebtedness; *provided* that the Borrower and the Restricted Subsidiaries may issue, incur or assume Permitted Additional Indebtedness so long as immediately after giving effect to the issuance, incurrence or assumption of such Permitted Additional Indebtedness, the aggregate outstanding principal amount of such Permitted Additional Indebtedness does not exceed the Ratio Debt Cap (“*Ratio Debt*”).

The foregoing limitation will not apply to (collectively, “*Permitted Debt*”):

- (1) (a) Indebtedness created under the Loan Documents (including Incremental Term Loans, Refinancing Term Loans and Extended Term Loans); (b) Incremental Equivalent Term Debt, (c) Specified Hedge Obligations and (d) Credit Agreement Refinancing Indebtedness;
- (2) (a) Indebtedness incurred pursuant to the ABL Loan Documents (including Indebtedness created under ABL Incremental Facilities, ABL Other Loans and ABL Extended Revolving Commitments) and the issuance and creation of letters of credit and bankers’ acceptances thereunder (with letters of credit and bankers’ acceptances being deemed to have a principal amount equal to the face amount thereof), (b) [Reserved] and (c) ABL Credit Agreement Refinancing Indebtedness, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (2) (and any successive Permitted Refinancing Indebtedness thereof) in an aggregate outstanding principal amount for all such Indebtedness pursuant to this clause (2) not to exceed \$775.0 million, *plus*, in the case of ABL Credit Agreement Refinancing Indebtedness, the amount of (i) unpaid, accrued or capitalized interest, penalties, premiums (including tender premiums), defeasance costs and other amounts payable with respect thereto and (ii) underwriting discounts, fees, commissions, costs, expenses and other amounts payable with respect to the Indebtedness being refinanced;
- (3) Indebtedness existing on the Closing Date (other than Indebtedness described in clause (1) or (2) above), including the Impax Convertible Notes;
- (4) any (a) Attributable Indebtedness relating to any transactions and (b) Capital Lease Obligations and other Indebtedness with respect to mortgage financings and purchase money Indebtedness to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets and Indebtedness arising from the conversion of the obligations of the Borrower or any Restricted Subsidiary under or pursuant to any “synthetic lease” transactions to on-balance sheet Indebtedness of the Borrower or such Restricted Subsidiary, in an aggregate outstanding principal amount incurred pursuant to this clause (4), including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (4) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (i) \$160.0 million and (ii) an amount equal to the Equivalent Percentage of the amount in the preceding clause (i)

---

multiplied by TTM Consolidated EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination, in each case determined as of the time of incurrence; *provided* that such Indebtedness is incurred within 270 days after the purchase, lease, construction, installation, repair or improvement of the property that is the subject of such Indebtedness; *provided further* that for the purposes of determining compliance with this Section 6.01(4), Attributable Indebtedness and Capital Lease Obligations will not be deemed to arise from any Sale Leaseback Transaction that is originally treated under GAAP as an operating lease at the time such Sale Leaseback Transaction is consummated but is subsequently treated under GAAP as a capital lease;

- (5) Indebtedness (including obligations in respect of letters of credit or bank Guarantees, bankers' acceptances or similar instruments) in respect of workers' compensation, health, disability or other employee benefits (whether to current or former employees) or property, casualty or liability insurance or self-insurance in respect of such items, or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance;
- (6) Indebtedness constituting indemnification obligations, earn-outs, milestones, royalties, adjustment of purchase or acquisition price or similar obligations, in each case, incurred or assumed in connection with the Transactions, a commercial or license agreement, any Permitted Investment or the disposition of any business, assets or Restricted Subsidiaries not prohibited by this Agreement;
- (7) intercompany Indebtedness between or among the Borrower and the Restricted Subsidiaries to the extent such Indebtedness is not prohibited by Section 6.04 (without regard to Section 6.04(14));
- (8) Indebtedness pursuant to Hedge Agreements;
- (9) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion Guarantees and similar obligations and instruments, in each case, provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;
- (10) Guarantees of Indebtedness permitted to be incurred under this Agreement to the extent such Guarantees are not prohibited by the provisions of Section 6.04 (without regard to Section 6.04(14)); provided that, if the Indebtedness being guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Obligations on terms at least as favorable to the Lenders;
- (11) Indebtedness
  - (a) of any Person that becomes a Restricted Subsidiary after the Closing Date pursuant to a Permitted Investment, which Indebtedness is (i) existing at the time such Person becomes a Restricted Subsidiary, (ii) not incurred in contemplation of such Person becoming a Restricted Subsidiary and (iii) non-recourse to the Borrower or any other Restricted Subsidiary (other than any Person that becomes a Subsidiary in connection with the foregoing and its Subsidiaries);

- 
- (b) issued, incurred or assumed in connection with any Permitted Investment so long as (i) in the case of any such issued or incurred Indebtedness, immediately after giving effect to such issuance or incurrence, such Indebtedness would be permitted to be incurred as Ratio Debt and (ii) in the case of any such assumed Indebtedness, such Indebtedness was not incurred in anticipation of such Permitted Investment;
- provided that the outstanding principal amount of such Indebtedness issued, incurred or assumed by Restricted Subsidiaries that are not Guarantors pursuant to this clause (11)(b) does not exceed the greater of (A) \$125.0 million and (B) an amount equal to the Equivalent Percentage of the amount set forth in clause (A) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of incurrence; and
- (c) all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to the preceding clauses (11)(a) and (11)(b) (and any successive Permitted Refinancing Indebtedness);
- (12) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;
- (13) Indebtedness (a) supported by a Letter of Credit, in a principal amount not in excess of the stated amount of such Letter of Credit, (b) in respect of letters of credit in an aggregate face amount at any time outstanding not to exceed the greater of (i) \$25.0 million and (ii) an amount equal to the Equivalent Percentage of the amount in the preceding clause (i) multiplied by TTM Consolidated EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination, in each case determined as of the time of incurrence, and (c) in respect of letters of credit that are cash collateralized;
- (14) Contribution Indebtedness;
- (15) Indebtedness consisting of (a) the financing of insurance premiums or (b) take or pay obligations contained in supply arrangements, in each case, in the ordinary course of business;
- (16) Indebtedness incurred in connection with a Qualified Receivables Transaction that is not recourse (except for Standard Securitization Undertakings) to the Borrower or any Restricted Subsidiary other than a Receivables Subsidiary;
- (17) Cash Management Obligations (as defined in the ABL Credit Agreement) and other Indebtedness in respect of Cash Management Services (as defined in the ABL Credit Agreement), and netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements entered into in the ordinary course of business;

- 
- (18) Indebtedness issued to any future, current or former officers, directors, managers, employees, consultants and independent contractors of the Borrower or any Restricted Subsidiary or any direct or indirect parent thereof, or their respective estates, heirs, family members, spouses, former spouses, executors, administrators, trustees, legatees or distributees, in each case to finance the purchase or redemption of Equity Interests of the Borrower (or any Parent Entity) permitted by Section 6.07;
- (19) Indebtedness incurred on behalf of, or representing Guarantees of Indebtedness of, joint ventures in an aggregate outstanding principal amount of such Indebtedness, together with any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (19) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) \$50.0 million and (b) an amount equal to the Equivalent Percentage of the amount set forth in clause (a) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of incurrence;
- (20) [Reserved];
- (21) Indebtedness of any Non-U.S. Subsidiaries or Non-Loan Parties (a) in an aggregate outstanding principal amount, together with any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (21) (and any successive Permitted Refinancing Indebtedness), not exceed the greater of (i) \$100.0 million and (ii) an amount equal to the Equivalent Percentage of the amount set forth in clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of incurrence and (b) consisting of working capital or other local lines of credit that are not secured by any Collateral and non-recourse to the Loan Parties;
- (22) obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services so long as such obligations are incurred in the ordinary course of business and not in connection with the borrowing of money;
- (23) Indebtedness representing deferred compensation or other similar arrangements incurred by the Borrower or any Restricted Subsidiary (a) in the ordinary course of business or (b) in connection with the Transactions or any Permitted Investment;
- (24) any Permitted Refinancing Indebtedness incurred to Refinance Incremental Equivalent Term Debt or Indebtedness incurred under clauses (2), (3), (4), (11), (13)(b), (14), (19), (21), this clause (24) or clause (28) of this Section 6.01;
- (25) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;
- (26) Indebtedness incurred by the Borrower or any Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange, warehouse receipts or similar facilities or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business;

- 
- (27) any Permitted Convertible Indebtedness Call Transaction entered into in connection with any Convertible Indebtedness otherwise permitted to be incurred under this Section 6.01;
  - (28) additional Indebtedness in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant this clause (28) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) \$225.0 million and (b) an amount equal to the Equivalent Percentage of the amount set forth in clause (a) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of incurrence; and
  - (29) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (28) above.

For purposes of determining compliance with this Section 6.01, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Permitted Debt or is entitled to be incurred (in whole or in part) as Ratio Debt, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this covenant at the time of incurrence or at such later time (as applicable); *provided* that all Indebtedness outstanding under the Loan Documents and the ABL Credit Agreement and any Permitted Refinancing thereof will be deemed to have been incurred in reliance on the exception in clauses (1) and (2), respectively, of the definition of "Permitted Debt" and shall not be permitted to be reclassified pursuant to this paragraph. All unsecured Permitted Debt originally incurred under clause (4), (11)(b), (19), (21) or (28) of the definition of Permitted Debt will be automatically reclassified as Ratio Debt on the first date on which such Indebtedness would have been permitted to be incurred as Ratio Debt. The accrual of interest, the accretion of accreted value, amortization of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms (including any pay-in-kind interest) and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will not be deemed to be an incurrence of Indebtedness for purposes of this Section 6.01. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP. Guarantees of, or obligations in respect of letters of credit relating to Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such Guarantee or letter of credit, as the case may be, was in compliance with this Section 6.01. Any incurrence of Permitted Refinancing Debt with respect to any Refinanced Debt that was incurred in reliance on a dollar or Equivalent Percentage basket (and not subsequently reclassified) shall not, for the avoidance of doubt, reload any such dollar or Equivalent Percentage based basket.

For purposes of determining compliance with any Dollar-denominated (or Equivalent Percentage, if greater) restriction on the incurrence of Indebtedness, the Dollar equivalent principal amount of Indebtedness denominated in a currency other than Dollars shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to Refinance other Indebtedness denominated in a currency other than Dollars, and such refinancing would cause the applicable Dollar-denominated (or Equivalent Percentage, if greater) restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated (or Equivalent Percentage, if greater) restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced ( *plus* unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses in connection therewith).

Any Indebtedness permitted to be incurred under this Section 6.01 may, at the option of the Borrower, be Convertible Indebtedness.

SECTION 6.02. Liens. Create, incur, assume or permit to exist any Lien that secures obligations under any Indebtedness on any property or assets at the time owned by it, except the following (collectively, “ *Permitted Liens* ”):

- (1) Liens securing Indebtedness incurred in accordance with Sections 6.01(1) or 6.01(2), including Liens on the Collateral securing obligations in respect of Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt and all Permitted Refinancing Indebtedness incurred to Refinance any such Indebtedness; *provided* that, in the case of Indebtedness incurred in accordance with Section 6.01(2), the applicable Liens are subject to the Closing Date Intercreditor Agreement or other Intercreditor Agreement(s) substantially consistent with and no less favorable to the Lenders in any material respect than the Closing Date Intercreditor Agreement as determined in good faith by a Responsible Officer of the Borrower;
- (2) Liens securing Indebtedness existing on the Closing Date; *provided* that such Liens only secure the obligations that they secure on the Closing Date (and any Permitted Refinancing Indebtedness in respect of such obligations permitted by Section 6.01) and do not apply to any other property or assets of the Borrower or any Restricted Subsidiary other than replacements, additions, accessions and improvements thereto and products thereof and customary security deposits; *provided further* , that individual financings of equipment or other assets provided by a lender may be cross collateralized to other financings of equipment or other assets financed by such lender;
- (3) Liens securing Indebtedness incurred in accordance with Sections 6.01(4); *provided* that such Liens only extend to the assets financed with such Indebtedness (and any replacements, additions, accessions and improvements thereto and products thereof and customary security deposits); *provided further* , that individual financings of equipment or other assets provided by a lender may be cross collateralized to other financings of equipment or other assets financed by such lender;

- 
- (4) Liens on Securitization Assets sold, conveyed, assigned or otherwise transferred or purported to be sold, conveyed, assigned or otherwise transferred in connection with a Qualified Receivables Transaction;
  - (5) Liens on assets of Non-Loan Parties securing Indebtedness incurred in accordance with Section 6.01(19) or (21);
  - (6) [Reserved];
  - (7) (a) Liens on property or Equity Interests of a Person at the time such Person becomes a Restricted Subsidiary if such Liens were not created in connection with, or in contemplation of, such other Person becoming a Restricted Subsidiary and (b) Liens on property at the time the Borrower or a Restricted Subsidiary acquired such property, including any acquisition by means of a merger or consolidation with or into the Borrower or any of the Restricted Subsidiaries, if such Liens were not created in connection with, or in contemplation of, such acquisition;
  - (8) Liens on property or assets of any Restricted Subsidiary that is not a Guarantor and on any Excluded Assets securing Indebtedness in an aggregate principal amount not to exceed \$100,000,000;
  - (9) Liens for Taxes, assessments or other governmental charges or levies that are not overdue for a period of more than 60 days or that are not yet delinquent or that are being contested in compliance with Section 5.03;
  - (10) Liens disclosed by any title insurance policies delivered on or subsequent to the Closing Date and any replacement, extension or renewal of any such Liens (so long as the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal (*plus* any replacements, additions, accessions and improvements thereto and products thereof);
  - (11) Liens securing any judgments or orders that do not constitute an Event of Default under Section 8.01(10) and notices of lis pendens or similar notices and associated rights related to litigation being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Borrower or any affected Restricted Subsidiary has set aside on its books reserves in accordance with GAAP with respect thereto;
  - (12) Liens imposed by law, including landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens arising in the ordinary course of business securing obligations that are not overdue by more than 60 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Borrower or a Restricted Subsidiary has set aside on its books reserves in accordance with GAAP;

- 
- (13) (a) pledges and deposits and other Liens made in the ordinary course of business in compliance with any workers' compensation, health, disability or other similar employee benefits, unemployment insurance and other similar laws or regulations and other insurance-related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (b) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Restricted Subsidiary;
  - (14) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, stay, customs, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) incurred by the Borrower or any Restricted Subsidiary in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;
  - (15) survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights of way, covenants, conditions, restrictions (including zoning restrictions), and declarations on or with respect to the use of Real Property, encroachments, protrusions, servicing agreements, development agreements, site plan agreements and other encumbrances and title defects or irregularities that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole;
  - (16) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under any leases, subleases, licenses or sublicenses entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business;
  - (17) Liens that are contractual rights of set-off relating to (a) the establishment of depository relations with banks or other deposit-taking financial institutions in the ordinary course of business, (b) pooled deposit or sweep accounts of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Restricted Subsidiary or (c) purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business;
  - (18) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;
  - (19) leases or subleases, licenses or sublicenses (including with respect to Intellectual Property Rights and software) (or other agreement under which the Borrower or any Restricted Subsidiary has granted rights to end users to access and use the Borrower's or any Restricted Subsidiary's products, technologies or services) granted to others in the ordinary course of business that do not interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

- 
- (20) Liens (a) solely on any cash earned money deposits made by the Borrower or any Restricted Subsidiary in connection with any letter of intent or other agreement in respect of any Permitted Investment and (b) incurred in connection with escrow arrangements or other similar agreements relating to an acquisition or Investment permitted hereunder;
  - (21) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;
  - (22) purported Liens evidenced by precautionary Uniform Commercial Code financing statements or similar public filings;
  - (23) Liens on Equity Interests or assets of any joint venture (a) securing obligations of such joint venture or (b) pursuant to the relevant joint venture agreement or arrangement;
  - (24) Liens 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;
  - (25) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;
  - (26) Liens (a) securing insurance premium financing arrangements and (b) securing obligations to insurance companies with respect to insurable liabilities incurred in the ordinary course of business;
  - (27) Liens on vehicles or equipment of the Borrower or any of the Restricted Subsidiaries granted in the ordinary course of business;
  - (28) Liens on property or assets used to defease or to satisfy and discharge Indebtedness; *provided* that such defeasance or satisfaction and discharge is not prohibited by this Agreement;
  - (29) Liens:
    - (a) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection;
    - (b) attaching to pooling, commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business; or
    - (c) in favor of banking or other financial institutions or entities, or electronic payment service providers, arising as a matter of law encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking or finance industry;

- 
- (30) Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment, processing or storage of such inventory or other goods;
- (31) Liens securing Ratio Debt, Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness or Indebtedness incurred in accordance with Section 6.01(11)(b), in each case, that constitutes Pari Passu Lien Debt; *provided* that after giving Pro Forma Effect to the incurrence of such Indebtedness, the First Lien Net Leverage Ratio measured as of the date of initial incurrence of such Pari Passu Lien Debt is (a) less than or equal to the Closing Date First Lien Net Leverage Ratio or (b) the First Lien Net Leverage Ratio immediately prior to such incurrence; *provided* that a Debt Representative acting on behalf of the holders of such Indebtedness will become party to or otherwise subject to the provisions of the Closing Date Intercreditor Agreement and/or a Pari Passu Lien Intercreditor Agreement, as applicable;
- (32) Liens securing Ratio Debt, Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness or Indebtedness incurred in accordance with Section 6.01(11)(b), in each case, that constitutes Junior Lien Debt; *provided* that, after giving Pro Forma Effect to the incurrence of such Indebtedness, the Total Net Leverage Ratio measured as of the date of initial incurrence of such Junior Lien Debt is less than or equal to (a) the Closing Date Total Net Leverage Ratio or (b) the Total Net Leverage Ratio immediately prior to such incurrence; *provided* that a Debt Representative acting on behalf of the holders of such Indebtedness will become party to or otherwise subject to the provisions of the Closing Date Intercreditor Agreement and/or a Junior Lien Intercreditor Agreement, as applicable;
- (33) Liens securing Indebtedness or other obligations in an aggregate outstanding principal amount not to exceed the greater of (a) \$150.0 million and (b) an amount equal to the Equivalent Percentage of the amount in the preceding clause (a) multiplied by TTM Consolidated EBITDA, as of the applicable date of determination, in each case determined as of the time of initial attachment of such lien;
- (34) Liens in favor of the Borrower or a Loan Party securing any Indebtedness permitted to be incurred under Section 6.01;
- (35) [Reserved];
- (36) Liens (a) on cash advances in favor of the seller of any property to be acquired in a Permitted Investment, (b) consisting of an agreement to Dispose of any property, (c) arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods in the ordinary course of business or (d) imposed by law or incurred pursuant to customary reservations or retentions of title (including contractual Liens in favor of sellers and suppliers of goods) incurred in the ordinary course of business;
- (37) Liens in respect of cash collateralization of letters of credit;

- 
- (38) (a) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Restricted Subsidiaries are located, (b) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business and (c) 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 and its Restricted Subsidiaries, taken as a whole;
- (39) Liens deemed to exist in connection with Permitted Investments in repurchase agreements and reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts maintained in the ordinary course of business and not for speculative purposes;
- (40) the modification, replacement, renewal or extension of any Lien permitted by this Section 6.02; *provided* that the Lien does not extend to any additional property other than property that is affixed or incorporated into the property covered by such Lien and replacements, improvements, proceeds and products thereof; *provided further* that the modification, replacement, renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 6.01;
- (41) Liens securing Permitted Refinancing Indebtedness (but without reloading any dollar or Equivalent Percentage based basket); *provided* that:
- (i) such Indebtedness being Refinanced was permitted by Section 6.01 and was secured by a Lien permitted by this Section 6.02,
  - (ii) such Permitted Refinancing Indebtedness is permitted by Section 6.01, and
  - (iii) the Lien does not extend to any additional property other than property that is affixed or incorporated into the property covered by such Lien and replacements, improvements, proceeds and products thereof, and
- (42) Liens securing amounts owing to any Qualified Counterparty (as defined in the ABL Credit Agreement) under any Specified Hedge Agreement (as defined in the ABL Credit Agreement) and Cash Management Obligations (as defined in the ABL Credit Agreement), which amounts are secured under the ABL Loan Documents; *provided* that, in each case, the applicable Liens are subject to the Closing Date Intercreditor Agreement or other Intercreditor Agreement(s) substantially consistent with and no less favorable to the Lenders in any material respect than the Closing Date Intercreditor Agreement as determined in good faith by a Responsible Officer of the Borrower.

For purposes of determining compliance with this Section 6.02, in the event that any Lien (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Lien (or any portion thereof) in any manner that complies with this covenant on the date such Lien is incurred or such later time, as applicable; *provided* that all Liens created pursuant to the Loan Documents will be deemed to have been incurred in reliance on Section 6.02(1) above and shall not be permitted to be reclassified pursuant to this paragraph.

SECTION 6.03. [Reserved].

SECTION 6.04. Investments, Loans and Advances. Purchase, hold or acquire (including pursuant to any merger, consolidation or amalgamation with a Person that is not a Wholly Owned Subsidiary immediately prior to such merger, consolidation or amalgamation) any Equity Interests, evidences of Indebtedness or other securities of, make any loans or advances to or Guarantees of the obligations of, or make any investment or any other interest in (in each case, excluding any (i) Short Term Advances and (ii) acquisitions of or licenses under intellectual property or related tangible assets used or useful in a business permitted under Section 6.09) (each, a “ *Investment* ”), any other Person, except the following (collectively, “ *Permitted Investments* ”):

- (1) the Transactions (including payment of the purchase consideration under the Acquisition Agreement);
- (2) (a) payroll advances in the ordinary course of business and (b) loans and advances to officers, directors, employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary
  - (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes,
  - (ii) in connection with such Person’s purchase of Equity Interests of the Borrower (or any Parent Entity); *provided* that, to the extent such loans or advances are made in cash, the amount of such loans and advances used to acquire such Equity Interests shall be contributed to the Borrower in cash, and
  - (iii) for any other purpose; *provided* that the aggregate principal amount outstanding under this clause (iii) shall not exceed the greater of (A) \$20.0 million and (B) an amount equal to the Equivalent Percentage of the amount set forth in clause (A) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Investment;
- (3) Investments in Joint Ventures, Unrestricted Subsidiaries or Similar Businesses that do not exceed in the aggregate at any time outstanding the greater of (i) \$200 million and (ii) an amount equal to the Equivalent Percentage of the amount set forth in clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Investment;
- (4) Permitted Acquisitions and pre-existing Investments held by Persons acquired in Permitted Acquisitions or acquired in connection with Permitted Acquisitions;

- 
- (5) Investments of any Person that becomes a Restricted Subsidiary on or after the date hereof (or of a Person merged, consolidated or amalgamated with or into a Restricted Subsidiary); *provided* that any such Investment (a) exists at the time such person becomes (or merges, consolidates or amalgamates with or into) a Restricted Subsidiary and (b) is not made in anticipation of such Person becoming a Restricted Subsidiary (or such merger, consolidation or amalgamation);
- (6) Investments
- (a) by the Borrower or any Restricted Subsidiary in the Borrower or any Restricted Subsidiary; and
- (b) by the Borrower or any Restricted Subsidiary in a Person if, as a result of such Investment, (i) such Person becomes a Restricted Subsidiary or (ii) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Borrower or any Restricted Subsidiary;
- provided* that Investments made after the Closing Date pursuant to this Section 6.04(6) by a Person that is a Loan Party on the date such Investment is made in any Person that on the date of such Investment is not a Loan Party (or does not become a Loan Party as a result thereof) shall not exceed, in the aggregate at any time outstanding, the greater of (i) \$155.0 million and (ii) an amount equal to the Equivalent Percentage of the amount set forth in clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Investment;
- (7) [Reserved];
- (8) Cash Equivalents and, to the extent not made for speculative purposes, Investment Grade Securities or Investments that were Cash Equivalents or Investment Grade Securities when made;
- (9) Investments arising out of the receipt by the Borrower or any of the Restricted Subsidiaries of promissory notes and other non-cash consideration in connection with any Disposition permitted under Section 6.06;
- (10) (a) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy, workout, recapitalization or reorganization of, or in settlement of delinquent obligations of, or other disputes with, the issuer of such Investment or an Affiliate thereof and (b) Investments consisting of accounts or notes receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in each case in the ordinary course of business;

- 
- (11) Investments (including debt obligations and Equity Interests) (a) upon a foreclosure with respect to any secured Investments or other transfer of title with respect to any secured Investment in default, (b) in satisfaction of judgments against other Persons and (c) as a result of the settlement, compromise or resolution of litigation, arbitration or other disputes with Persons who are not Affiliates;
  - (12) Hedge Agreements;
  - (13) Investments existing on or contractually committed as of the Closing Date, and, with respect to each such Investment in an amount in excess of \$25.0 million, set forth on Schedule 6.04, and any modification, replacements, refinancings, refunds, extensions, renewals or reinvestments thereof, so long as the aggregate amount of all Investments pursuant to this clause (13) is not increased at any time above the amount of such Investments existing or committed on the Closing Date (other than pursuant to an increase as required by the terms of any such Investment as in existence on the Closing Date);
  - (14) Investments consisting of Indebtedness (including, for the avoidance of doubt, Guarantees) permitted under Section 6.01, Permitted Liens, mergers, dissolutions, liquidations and consolidations permitted under Section 6.05, Dispositions permitted under Section 6.06 and Restricted Payments permitted under Section 6.07;
  - (15) [Reserved];
  - (16) acquisitions of obligations of one or more future, present or former employees, managers, officers, directors, consultants or contractors (or spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing) of the Borrower, any of its Restricted Subsidiaries or any direct or indirect parent thereof, in connection with such employee's, manager's, officer's, director's, consultant's or contractor's acquisition of Equity Interests of the Borrower or any direct or indirect parent thereof, so long as no cash is actually advanced by the Borrower or any Restricted Subsidiary to such Persons in connection with the acquisition of any such obligations;
  - (17) Guarantees of operating leases or of other obligations that do not constitute Indebtedness, in each case, entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business;
  - (18) Investments to the extent that payment for such Investments is made with Equity Interests of the Borrower or any Parent Entity or the proceeds from the issuance thereof;
  - (19) the issuance of, entry into (including any payments of premiums in connection therewith), performance of obligations under, or exercise, transfer, assignment, unwinding, settlement or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any Permitted Bond Hedge Transaction; the issuance of, entry into, performance of obligations under, or repurchase, redemption, transfer, assignment, unwinding, settlement or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any related Permitted Warrant Transaction; and the issuance of, entry into performance of obligations under

---

(including any payments of interest), conversion, exercise, repurchase, redemption, transfer, assignment, unwinding, settlement, cancellation or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any Convertible Indebtedness, in each case, whether in cash, common Capital Stock of Borrower or any direct or indirect parent of Borrower or other securities or property following a merger event or other change of the common Capital Stock of Borrower or such parent and whether in whole or in part and including by netting or set-off;

- (20) 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;
- (21) [Reserved];
- (22) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Borrower or any Restricted Subsidiary;
- (23) Investments, including loans and advances, to any Person so long as the Borrower or any Restricted Subsidiary (as applicable) would otherwise be permitted to make a Restricted Payment in such amount to such Person; *provided* that the amount of any such Investment will be deemed to be a Restricted Payment under the appropriate clause of Section 6.07 for all purposes of this Agreement;
- (24) Investments consisting of the leasing, subleasing, licensing or sublicensing of Intellectual Property Rights in the ordinary course of business or the contribution of Intellectual Property Rights pursuant to joint marketing arrangements with other Persons;
- (25) Investments (a) consisting of purchases or acquisitions of inventory, supplies, materials, equipment, contract rights or Intellectual Property Rights in each case in the ordinary course of business and (b) made in the ordinary course of business in connection with obtaining, maintaining or renewing client contracts or similar arrangements and loans or advances made to distributors in the ordinary course of business;
- (26) Investments in assets useful in the business of the Borrower or any Restricted Subsidiary made with (or in an amount equal to) any Reinvestment Deferred Amount or Below Threshold Asset Sale Proceeds; *provided* that if the underlying Asset Sale was with respect to assets of the Borrower or a Subsidiary Loan Party, then such Investment shall be consummated by the Borrower or a Subsidiary Loan Party;
- (27) any Investment in a Receivables Subsidiary or any Investment by a Receivables Subsidiary in any other Person, in each case in connection with a Qualified Receivables Financing, including Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Receivables Financing or any related Indebtedness;

- 
- (28) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries;
- (29) Investments that are made with Excluded Contributions that are Not Otherwise Applied;
- (30) Investments
- (a) made in furtherance of collaboration, development, promotion, marketing, supply, research or similar arrangements with respect to pharmaceutical or other therapeutic products, diagnostic products or medical device businesses products, including payments for shared development costs, reimbursements for product development or for patent, regulatory, manufacturing or commercialization expenses, or other payments or Investments paid to a Person in the pharmaceutical industry with a view toward developing the Borrower's or any Restricted Subsidiary's business in the ordinary course of business and in a manner consistent with standard business practices;
  - (b) constituting (i) any customary upfront milestone, marketing, revenue sharing, royalty, profit sharing or other funding payment in the ordinary course of business to another Person in connection with obtaining a right to receive royalty or other payments in the future, (ii) Exclusive Licenses from a Restricted Subsidiary that is not a Loan Party to a Loan Party of rights to a drug or other biologic or therapeutic products, diagnostic products, delivery technologies, medical devices or biotechnology businesses or (iii) transfers of Intellectual Property Rights (“*Transferred IP*”) to a Specified IP Subsidiary; *provided* that (x) such transfers do not, individually or in the aggregate, materially impair the Loan Parties' ability to pay their obligations under the Loan Documents as when due and (y) except as otherwise agreed by the Collateral Agent, prior to such transfer (or at such later date as the Collateral Agent may agree), the Borrower shall pledge (or cause to be pledged) 100% of the issued and outstanding Equity Interests (other than any voting Equity Interests of any non-U.S. Subsidiary or any FSHCO in excess of 65% of the issued and outstanding voting Equity Interests of such non-U.S. Subsidiary or FSHCO) of such Specified IP Subsidiary to the Collateral Agent for the benefit of the Secured Parties under (and in accordance with) the Collateral Agreement; or
  - (c) consisting of the licensing (or equivalent thereof), acquisition, sale or contribution of Intellectual Property Rights or proprietary materials pursuant to pharmaceutical or therapeutic product licensing, collaboration, development, promotion, marketing, supply, research or similar arrangements with other Persons made in the ordinary course of business or not exceeding at any time outstanding an aggregate principal amount of the greater of (i) \$60 million and (ii) an amount equal to the Equivalent Percentage of the amount in clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of incurrence;

- 
- (31) Investments, so long as the Total Net Leverage Ratio (after giving Pro Forma Effect to the incurrence of such Investment and the use of proceeds thereof) for the Test Period immediately preceding the incurrence of such Investment for which internal financial statements are available shall be less than or equal to 0.75x inside of the Closing Date Total Net Leverage Ratio; and
- (32) Investments that do not exceed the sum of (a) the greater of (i) \$320.0 million and (ii) an amount equal to the Equivalent Percentage of the amount in the preceding clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Investment, and (b) so long as no Specified Event of Default shall have occurred and be continuing or would result from the making of such Investment, the Available Amount at such time.

For purposes of determining compliance with this Section 6.04, (x) the amount of any Investment at any time shall be the amount of cash and the fair market value of other property actually invested (measured at the time made), without adjustment for subsequent changes in the value of such Investment, net of any return, whether a return of capital, interest, dividend or otherwise, with respect to such Investment and (y) in the event that any Investment (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time such Investment is made, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Investment (or any portion thereof) in any manner that complies with this Section 6.04 on the date such Investment is made or such later time, as applicable.

To the extent any Investment in any Person is made in compliance with this Section 6.04 in reliance on a category above that is subject to a Dollar-denominated restriction on the making of Investments and, subsequently, such Person returns to the Borrower, any other Loan Party or, to the extent applicable, any Restricted Subsidiary all or any portion of such Investment (in the form of a dividend, distribution, liquidation or otherwise but excluding intercompany Indebtedness), such return shall be deemed to be credited to the Dollar-denominated category against which the Investment is then charged (but in any event not in an amount that would result in the aggregate Dollar amount able to be invested in reliance on such category to exceed such Dollar-denominated restriction).

The amount set forth in Section 6.07(14)(a) and clause (1)(f)(i) of Section 6.11 (without duplication) may, in lieu of Restricted Payments or prepayments, repayments, redemptions, purchases, defeasances or satisfactions of any Junior Financings, as applicable, be utilized by the Borrower or any Restricted Subsidiary to make or hold any Investments without regards to this Section 6.04.

SECTION 6.05. Fundamental Changes (1) . Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of related transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person:

- 
- (1) any Restricted Subsidiary may merge or consolidate with the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided that*:
    - (a) the Borrower will be the continuing or surviving Person, and
    - (b) such merger or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia;
  - (2) any Restricted Subsidiary may merge or consolidate with or into any other Restricted Subsidiary, liquidate, dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and the Restricted Subsidiaries and is not materially disadvantageous to the Lenders, taken as a whole;
  - (3) any merger the sole purpose of which is to reincorporate or reorganize (i) any U.S. Subsidiary in another jurisdiction in the U.S. or (ii) any Non-U.S. Subsidiary in the U.S. or any other jurisdiction shall be permitted;
  - (4) so long as no Event of Default has occurred and is continuing or would result therefrom; the Borrower may merge or consolidate with any other Person; *provided that*
    - (a) the Borrower will be the continuing or surviving Person, or
    - (b) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the “**Successor Borrower**”),
      - (i) the Successor Borrower will be an entity organized or existing under the Laws of the United States, any state thereof or the District of Columbia;
      - (ii) the Successor Borrower will expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent;
      - (iii) each Guarantor, unless it is party to such merger or consolidation, will have confirmed that its Guarantee of the Obligations pursuant to the Collateral Agreement will apply to, and the Secured Obligations (as defined in the Collateral Agreement) will include, the Successor Borrower’s Obligations; and
      - (iv) the Borrower will have delivered to the Administrative Agent (A) an officer’s certificate stating that such merger or consolidation complies with this Agreement and (B) an opinion of counsel, including customary organization, due execution, no conflicts and enforceability opinions with respect to the Successor Borrower, in each case to the extent reasonably requested by the Administrative Agent; it being agreed that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement; and

- 
- (5) subject to clauses (1) and (4) above, transactions the purpose of which is to effect a Permitted Investment (other than pursuant to Section 6.04(14)) or a Disposition permitted pursuant to Section 6.06 (other than pursuant to Section 6.06(5)) or a Disposition of all or substantially all of the assets of the Borrower and its Restricted Subsidiaries); and
  - (6) the Transactions.

SECTION 6.06. Dispositions. Make any Disposition, except:

- (1) Dispositions of obsolete, damaged, worn out, used or surplus property (including for purposes of recycling) in the ordinary course of business or Dispositions of property no longer used or useful in the conduct of the business of the Borrower and the Restricted Subsidiaries;
- (2) Dispositions of inventory and goods held for sale in the ordinary course of business;
- (3) Dispositions of property to the extent that (a) such property is exchanged for credit against the purchase price of similar replacement property or (b) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property; *provided* that to the extent the property being transferred constitutes Collateral such replacement property shall constitute Collateral;
- (4) Dispositions of property to the Borrower or a Restricted Subsidiary; *provided*, that if the transferor of such property is a Loan Party (a) the transferee thereof must be a Loan Party or (b) to the extent constituting an Investment, such Investment must be a Permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04 (other than Section 6.04(14));
- (5) Dispositions consisting of Investments permitted under Section 6.04 (other than Section 6.04(14)), transactions permitted under Section 6.05 (other than Section 6.05(5)) or Restricted Payments permitted under Section 6.07 (other than Section 6.07(4)) or consisting of Permitted Liens;
- (6) Dispositions of property pursuant to Sale Leaseback Transactions, *provided* that (i) no Event of Default has occurred and is continuing or would result therefrom (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Event of Default has occurred and is continuing) and (ii) such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;
- (7) Dispositions of Cash Equivalents (or Investments that were Cash Equivalents when made); *provided*, that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;
- (8) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower and the Restricted Subsidiaries, taken as a whole, *provided*, that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;

---

(9) Dispositions of property subject to any Casualty Event;

(10) Dispositions; *provided* that

- (a) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Event of Default has occurred and is continuing), no Event of Default has occurred and is continuing or would result therefrom; and
- (b) with respect to any Disposition pursuant to this clause (10) for a purchase price in excess of the greater of (i) \$25.0 million and (ii) an amount equal to the Equivalent Percentage of the amount in the preceding clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Disposition, the Borrower or any of the Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents; *provided, however*, that for the purposes of this clause (b) each of the following will be deemed to be cash,
  - (i) any liabilities (as shown on the Borrower's or any Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or any Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and the Restricted Subsidiaries have been validly released by all applicable creditors in writing;
  - (ii) any securities received by the Borrower or any Restricted Subsidiary from such transferee that are converted by the Borrower or any Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred and eighty (180) days following the closing of the applicable Disposition;
  - (iii) any Designated Non-Cash Consideration received in respect of such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (iii) that is at that time outstanding, not in excess of the greater of (A) \$25.0 million and (B) an amount equal to the Equivalent Percentage of the amount set forth in clause (A) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value; and

- 
- (iv) such Disposition shall be for no less than the fair market value of such property at the time of such Disposition (or, if earlier, the definitive documentation or other Contractual Obligation with respect to such Disposition is entered into by the Borrower or any Restricted Subsidiary (as applicable) (this clause (10), the “*General Asset Sale Basket*”);
- (11) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements among, the joint venture parties set forth in joint venture or similar agreements or arrangements;
- (12) Dispositions or discounts of accounts receivable and related assets in connection with the collection or compromise thereof;
- (13) Dispositions (including issuances or sales) of Equity Interests in, or Indebtedness owing to, or of other securities of, an Unrestricted Subsidiary;
- (14) Dispositions constituting any exchange of like property (excluding any boot thereon) for use in any business conducted by the Borrower or any of the Restricted Subsidiaries, to the extent allowable under Section 1031 of the Code (or comparable or successor provision); *provided* that to the extent the property being transferred constitutes Collateral, such replacement property shall constitute Collateral;
- (15) the unwinding of any Hedge Agreement;
- (16) Dispositions of assets in connection with the closing or sale of a facility, including Dispositions of inventory, fee or leasehold interests in the premises of such facility, equipment and fixtures located at such premises, and the books and records relating to the operations of such facility; *provided* that as to each and all such sales and closings, (a) no Event of Default shall have occurred and be continuing or shall result therefrom and (b) such Dispositions shall be for no less than fair market value at the time of such Disposition;
- (17) the sale, assignment or other transfer of Securitization Assets to (a) a Receivables Subsidiary in a Qualified Receivables Financing or (b) any other Person in a Qualified Receivables Factoring;
- (18) (i) settlement of litigation concerning Intellectual Property Rights, or (ii) the lease, sublease, license or sublicense of Intellectual Property Rights outside the United States or (iii) the lapse, abandonment, discontinuance of the use or maintenance of any Intellectual Property Rights, in each case of (i), (ii) and (iii), if the Borrower or any Restricted Subsidiary determines in its reasonable business judgment that it would not materially interfere with the business of the Borrower and its Restricted Subsidiaries, taken as a whole;
- (19) Disposition of any property or asset with a fair market value not to exceed either (a) the greater of (i) \$10.0 million and (ii) an amount equal to the Equivalent Percentage of the amount in the preceding clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such

---

Disposition, with respect to any transaction or series of related transactions or (b) the greater of (i) \$50.0 million and (ii) an amount equal to the Equivalent Percentage of the amount in the preceding clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Disposition, in the aggregate for all such transactions in any fiscal year;

- (20) Disposition of assets acquired in a Permitted Investment that the Borrower determines will not be used or useful in the business of the Borrower and its Restricted Subsidiaries;
- (21) Dispositions of pipeline, marketed or other assets required by regulatory authorities in connection with the Transactions, any Permitted Acquisition or other investment permitted hereunder;
- (22) any Disposition(s) in connection with licensing of Intellectual Property Rights to any Non-Loan Party Restricted Subsidiary or Non-Loan Party Restricted Subsidiaries in connection with bona fide tax planning purposes as determined in good faith by the Borrower; *provided*, that the Collateral and the Lenders are not adversely affected in any material respect by such Disposition(s);
- (23) Dispositions, including leases, subleases, licenses or sublicenses, of Products in Development in jurisdictions outside the United States; *provided*, that (a) such disposition does not materially interfere with the business of the Borrower and the Restricted Subsidiaries, taken as a whole and (b) such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;
- (24) the Transactions; and
- (25) the issuance of, entry into (including any payments of premiums in connection therewith), performance of obligations under, or exercise, transfer, assignment, unwinding, settlement or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any Permitted Bond Hedge Transaction; the issuance of, entry into, performance of obligations under, or repurchase, redemption, transfer, assignment, unwinding, settlement, cancellation or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any related Permitted Warrant Transaction; and the issuance of, entry into performance of obligations under (including any payments of interest), conversion, exercise, repurchase, redemption, transfer, assignment, unwinding, settlement, cancellation or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any Convertible Indebtedness, in each case, whether in cash, common Capital Stock of Borrower or any direct or indirect parent of Borrower or other securities or property following a merger event or other change of the common Capital Stock of Borrower or such parent and whether in whole or in part and including by netting or set-off.

To the extent any Collateral is Disposed of as expressly permitted (or not prohibited) by this Section 6.05 to any Person other than a Loan Party, such Collateral will be Disposed of free and clear of the Liens created by the Loan Documents, and, without limiting, and subject to, the provisions of Section 9.11, the Administrative Agent will take, and each Lender hereby authorizes the Administrative Agent to take, any actions reasonably requested by the Borrower or deemed appropriate in order to evidence or effect the foregoing.

SECTION 6.07. Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, other than the declaration or making of the following:

- (1) Restricted Payments to the Borrower or any Restricted Subsidiary (or, in the case of any non-Wholly Owned Restricted Subsidiary, to the Borrower, any Restricted Subsidiary and each other owner of Equity Interests of such non-Wholly Owned Subsidiary on a *pro rata* basis (or more favorable basis from the perspective of the Borrower or such Restricted Subsidiary) according to their relative ownership interests);
- (2) the declaration and making of any Restricted Payments payable solely in the form of Equity Interests (other than Disqualified Stock) of the Borrower;
- (3) Restricted Payments to consummate the Transactions (including payments in respect of dissenting shares, which, for the avoidance of doubt, may be made after the Closing Date), to pay any amounts pursuant to the Acquisition Agreement or the Specified Tender Offer;
- (4) to the extent constituting a Restricted Payment or Restricted Payments, mergers, dissolutions, liquidations and consolidations permitted under Section 6.05 (other than a merger or consolidation involving the Borrower) or transactions permitted under Section 6.08 (other than Section 6.08(9));
- (5) repurchases of Equity Interests (a) deemed to occur upon exercise of options, warrants or similar rights if such Equity Interests represent a portion of the exercise price of such options or warrants or similar rights or (b) in consideration of withholding or similar taxes payable by any future, present or former employee, manager, officer, director, consultant or contractor (or any spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing), including deemed repurchases in connection with the exercise of stock options or the vesting of any equity awards;
- (6) Restricted Payments to purchase, repurchase, retire, redeem or otherwise acquire Equity Interests (including related stock appreciation rights or similar securities) (or to allow any direct or indirect parent entity to purchase, retire, redeem or otherwise acquire Equity Interests (including related stock appreciation rights or similar securities)) held directly or indirectly by any future, present or former employee, manager, officer, director, consultant or contractor (or any spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing) of the Borrower, any of its Subsidiaries or any Parent Entity upon the death, disability, retirement or termination of employment of any such Person or otherwise pursuant to any management, employee or director equity plan, management, employee or director stock option or profits interest plan or any other management, employee or director benefit plan or other agreement or arrangement (including any separation, stock subscription,

shareholder, partnership or similar agreement) in an aggregate amount after the Closing Date, together with the aggregate amount of loans and advances to any Parent Entity made pursuant to Section 6.04(23) in lieu of Restricted Payments permitted by this clause (6), not to exceed \$25 million in any fiscal year with any unused amounts in any fiscal year being carried over to succeeding fiscal years; *provided* that such amount in any fiscal year may be increased by,

- (a) the amount of net proceeds of any key man life insurance policies received by the Borrower or any Restricted Subsidiary after the Closing Date;
  - (b) to the extent contributed in cash to the common equity of the Borrower and Not Otherwise Applied, the proceeds from the sale of Equity Interests of the Borrower or any direct or indirect parent thereof (other than Disqualified Stock, Excluded Contributions or Cure Amounts), in each case to any future, present or former employee, manager, officer director, consultant or contractor (or any spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing) of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof that occurs after the Closing Date; and
  - (c) the amount of any cash bonuses or other compensation otherwise payable to any future, present or former employee, manager, officer, director, consultant or contractor (or any spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing) of the Borrower or any of its Restricted Subsidiaries or any Parent Entity that are foregone in return for the receipt of Equity Interests of the Borrower or any of its Restricted Subsidiaries or any direct or indirect parent thereof;
- (7) Restricted Payments to purchase, repurchase, retire, redeem or otherwise acquire (or permit any direct or indirect parent entity to acquire) Equity Interests of the Borrower or any direct or indirect parent thereof in an aggregate amount per fiscal year not to exceed the greater of (a) \$25.0 million and (b) an amount equal to the Equivalent Percentage of the amount set forth in clause (a) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Restricted Payment;
- (8) Restricted Payments the proceeds of which will be used to pay or finance (or permit any Parent Entity to pay or finance):
- (a) distributions made pursuant to Section 4.01(b) of the LLC Agreement;
  - (b) operating, overhead, legal, accounting and other professional fees costs and expenses (including directors' fees and expenses and Public Company Costs) and other ordinary course overhead costs and operational expenses (including administrative, legal, accounting, filing and similar expenses provided by third parties), in each case to the extent related to any such Parent Entity's separate existence as a holding company or attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries;

- 
- (c) franchise taxes and other fees, taxes and expenses in connection with (i) the ownership of the Borrower or any Restricted Subsidiary or (ii) the maintenance of the Borrower's or any such parent entity's corporate or legal existence;
  - (d) to the extent constituting Restricted Payments, the Borrower and the Restricted Subsidiaries may enter into and consummate transactions expressly permitted under Sections 6.08(3), (5), (7), (16), (17), (19) and (21), in each case to the extent such payments are due at the time of such Restricted Payment;
  - (e) any Permitted Investment; *provided* that (i) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (ii) the Borrower will, immediately following the closing thereof, cause (A) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or a Subsidiary (which shall be a Restricted Subsidiary to the extent required by Section 6.04) or (B) the merger (to the extent permitted in Section 6.05) of the Person formed or acquired with or into the Borrower or a Subsidiary (which shall be a Restricted Subsidiary to the extent required by Section 6.04) in order to consummate such Investment;
  - (f) costs, fees and expenses related to any equity or debt offering expressly permitted by this Agreement or any Permitted Investment, whether or not consummated; and
  - (g) (i) customary salary, bonus and other benefits payable to future, present or former employees, managers, officers, directors, consultants or contractors (or any spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing) to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries or (ii) payments permitted under Sections 6.08(7);
- (9) Restricted Payments to pay (or permit any direct or indirect parent entity to pay) cash in lieu of the issuance of fractional Equity Interests in connection with the exercise of warrants, upon the conversion or exchange of Equity Interests of any such Person, in connection with any merger, consolidation, amalgamation or other business combination, or in connection with any dividend, distribution, split or combination of Equity Interests or any Permitted Investment;
- (10) [Reserved];
- (11) the making of any Restricted Payment in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary of the Borrower) of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Entity or from the substantially concurrent contribution of common equity capital to the Borrower, in each case that are Not Otherwise Applied, other than (a) Excluded Contributions and (b) Cure Amounts;

- 
- (12) Restricted Payments that are made with Excluded Contributions that are Not Otherwise Applied;
- (13) Restricted Payments of Investments in one or more Unrestricted Subsidiaries;
- (14) Restricted Payments (the proceeds of which may be utilized by any Parent Entity) in an aggregate amount not to exceed the sum of:
- (a) when taken together with any prepayments, repayments, redemptions, purchases, defeasances or satisfactions made under clause (1)(f)(i) of Section 6.11, the greater of (i) \$125.0 million and (ii) an amount equal to the Equivalent Percentage of the amount set forth in clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Restricted Payment; *provided*, in each case, that no Event of Default shall have occurred and be continuing; and
  - (b) the Available Amount at such time; *provided* that (i) no Event of Default shall have occurred and be continuing or result therefrom and (ii) solely with respect to amounts attributable to clause (2) of the definition of the Available Amount, the Total Net Leverage Ratio (after giving Pro Forma Effect to such Restricted Payment) would be less than or equal to the Closing Date Total Net Leverage Ratio;
- (15) Restricted Payments; *provided* that the Total Net Leverage Ratio (after giving Pro Forma Effect to such Restricted Payment) would be less than or equal to 1.00x inside of the Closing Date Total Net Leverage Ratio; and
- (16) the issuance of, entry into (including any payments of premiums in connection therewith), performance of obligations under, or exercise, transfer, assignment, unwinding, settlement or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any Permitted Bond Hedge Transaction; the issuance of, entry into, performance of obligations under, or repurchase, redemption, transfer, assignment, unwinding, settlement, cancellation or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any related Permitted Warrant Transaction; and the issuance of, entry into performance of obligations under (including any payments of interest), conversion, exercise, repurchase, redemption, transfer, assignment, unwinding, settlement, cancellation or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any Convertible Indebtedness, in each case, whether in cash, common Capital Stock of Borrower or any direct or indirect parent of Borrower or other securities or property following a merger event or other change of the common Capital Stock of Borrower or such parent and whether in whole or in part and including by netting or set-off.

The amount set forth in Section 6.07(14)(a) may (without duplication), in lieu of Restricted Payments, be utilized by the Borrower or any Restricted Subsidiary to (i) make or hold any Investments without regards to Section 6.04 or (ii) prepay, repay redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof any Junior Financing without regards to Section 6.11.

SECTION 6.08. Transactions with Affiliates. Engage in any transaction with any Affiliate of the Borrower, except that this Section 6.08 will not prohibit:

- (1) any transactions between or among the Borrower or any of the Restricted Subsidiaries or any Person that becomes a Restricted Subsidiary as a result of such transaction;
- (2) any transactions on terms substantially as favorable to the Borrower or such Restricted Subsidiary (as applicable) as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate (as determined by the Borrower in good faith);
- (3) the Transactions (including the issuance or conversion of Equity Interests in connection therewith) and the payment of fees and expenses (including the Transaction Costs) related to the Transactions;
- (4) the issuance, transfer or conversion of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Entity not constituting a Change in Control;
- (5) employment and severance arrangements and confidentiality agreements among the Borrower, any of its Subsidiaries or any direct or indirect parent thereof and any future, present or former employee, manager, officer, director, consultant or contractor (or any spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing) of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof in the ordinary course of business and transactions pursuant to equity plans, stock option or profits interest plan or any other equity or benefit plan or other similar agreement or arrangement (including to the extent set forth in any separation, stock subscription, shareholder, partnership or similar agreement);
- (6) the licensing of Intellectual Property Rights in the ordinary course of business to permit the commercial exploitation of Intellectual Property Rights between or among the Borrower, its Affiliates or its Restricted Subsidiaries;
- (7) the payment of fees, reasonable out-of-pocket costs and expenses to, and indemnities provided to or on behalf of, any officers, directors, managers, employees, consultants or contractors of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries or any such parent's separate existence;
- (8) any other transaction, agreement, instrument or arrangement as in effect as of the Closing Date and, with respect to each such transaction, agreement, instrument or arrangement involving aggregate payments or consideration in excess of \$25.0 million, set forth on Schedule 6.08, or any amendment thereto (so long as any such amendment is not materially adverse to the Lenders, taken as a whole, as compared to the applicable transaction, agreement, instrument or arrangement as in effect on the Closing Date);

- 
- (9) any Restricted Payments permitted under Section 6.07, transactions permitted under Sections 6.05 and Investments permitted under Section 6.04;
  - (10) (a) the Tax Receivable Agreement or transactions thereunder or (b) payments by the Borrower, any Subsidiary or any direct or indirect parent thereof pursuant to reasonable tax sharing arrangements between or among such Persons;
  - (11) any transactions in which the Borrower or any of the Restricted Subsidiaries, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or any such Restricted Subsidiary, as applicable, from a financial point of view or meets the requirements of clause (2) of this Section 6.08 (without giving effect to the parenthetical phrase at the end thereof);
  - (12) any transaction or series of related transactions with consideration valued (as determined in good faith by the Borrower) at less than the greater of (a) \$20.0 million and (b) an amount equal to the Equivalent Percentage of the amount set forth in clause (a) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of consummating such transaction(s);
  - (13) investments by the Investors in securities of the Borrower or any Parent Entity or Indebtedness of the Borrower, any Parent Entity or any of the Restricted Subsidiaries so long as (a) the investment is being offered generally to other investors on the same or more favorable terms and (b) any such investment constitutes less than 5.0% of the proposed or outstanding issue amount of such class of securities; *provided*, that any investments in debt securities by any Debt Fund Affiliates shall not be subject to the limitation in this clause (b);
  - (14) payments to or from, and transactions with, Joint Ventures (to the extent any such Joint Venture is only an Affiliate as a result of Investments by the Borrower and the Restricted Subsidiaries in such Joint Venture);
  - (15) transactions between or among the Borrower or its Subsidiaries effected as part of any Qualified Receivables Transaction;
  - (16) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to shareholders of the Borrower or any Parent Entity pursuant to the stockholders agreement or the registration and participation rights agreement entered into on the Closing Date in connection therewith;
  - (17) the payment of any dividend or distribution or consummation of any redemption within sixty (60) days after the date of declaration thereof or the giving of a redemption notice related thereto, if at the date of declaration or notice such payment would have complied with the provisions of this Agreement;

- 
- (18) transactions between or among the Borrower, any of its Restricted Subsidiaries or any direct or indirect parent thereof and any Person, a director of which Person is also a director of the Borrower or any Parent Entity of the Borrower; *provided, however*, that such director abstains from voting as a director of the Borrower or such Parent Entity, as the case may be, on any matter involving such other Person and such Person is not an Affiliate of the Borrower for any reason other than such director's acting in such capacity;
  - (19) payments, loans (or cancellation of loans) or advances to any future, present or former employee, manager, officer, director, consultant or contractor (or any spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing) that are approved in good faith by a majority of the Disinterested Directors of the Borrower, any of its applicable Restricted Subsidiaries or any applicable direct or indirect parent of the foregoing;
  - (20) any purchase by any Parent Entity of the Equity Interests of the Borrower and the issuance, sale or transfer of Equity Interests of the Borrower to any Parent Entity and capital contributions by any Parent Entity to the Borrower (and payment of reasonable out-of-pocket expenses incurred in connection therewith);
  - (21) the existence of, or the performance by the Borrower or any of its Subsidiaries of its obligations under the terms of, any customary registration rights agreement to which such Person or any Parent Entity is a party or becomes a party in the future; and
  - (22) transactions approved by a majority of the Disinterested Directors of the Borrower or any applicable Parent Entity.

SECTION 6.09. Business of the Borrower and its Subsidiaries. Engage in any material line of business substantially different from those lines of business conducted or proposed to be conducted by the Borrower and its Restricted Subsidiaries on the Closing Date (after giving effect to the Transactions) and any business that is similar, corollary, ancillary, incidental or complementary or related to, or a reasonable extension, development or expansion of, the businesses conducted or proposed to be conducted by the Borrower and its Restricted Subsidiaries on the Closing Date (after giving effect to the Transactions), including any Similar Business.

SECTION 6.10. Burdensome Agreements. Enter or permit any Material Restricted Subsidiary to enter into any Contractual Obligation (other than the Loan Documents, the ABL Loan Documents or the Impax Convertible Notes) that by its terms restricts (I) with respect to any such Material Restricted Subsidiary that is not a Guarantor, Restricted Payments from such Material Restricted Subsidiary to the Borrower or any other Loan Party, as applicable, that is a direct or indirect parent of such Restricted Subsidiary or (II) with respect to the Borrower or any such Material Restricted Subsidiary that is a Loan Party, the granting of Liens by such Material Restricted Subsidiary pursuant to the Security Documents; *provided* that the foregoing clauses (I) and (II) will not apply to any Contractual Obligations that:

- (1) (a) exist on the Closing Date and are, to the extent such Contractual Obligation relates to any security with a value exceeding \$25.0 million, listed on Schedule 6.10 and (b) to the extent Contractual Obligations permitted by clause (a) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted Refinancing of such Indebtedness so long as (to the extent not otherwise permitted by this Section 6.10) such Refinancing does not materially expand the scope of such Contractual Obligation with respect to restrictions described in the preceding clauses (I) or (II);

- 
- (2) are (a) binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary or (b) acquired in connection with a Permitted Investment, so long as, in each case, such Contractual Obligations were not entered into in contemplation of such Person becoming a Restricted Subsidiary or such Permitted Investment, in each case as such Contractual Obligations may be amended, restated, supplemented, modified extended renewed or replaced, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement does not expand in any material respect the scope of any restriction contemplated by this Section 6.10 contained therein;
  - (3) represent Indebtedness of a Restricted Subsidiary that is not a Loan Party;
  - (4) are customary restrictions and conditions that arise in connection with (a) any Lien (other than Liens on Collateral) permitted by Section 6.02, and relate to the property permitted to be subject to such Lien; or (b) any Disposition pending consummation of such Disposition and solely with respect to the assets (including Equity Interests) subject to such Disposition;
  - (5) are customary provisions in joint venture or similar agreements relating to the applicable joint venture;
  - (6) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 6.01, but solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness and the proceeds and products thereof;
  - (7) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto;
  - (8) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted under Section 6.01 to the extent that such restrictions apply only to the property or assets securing such Indebtedness;
  - (9) are (a) customary provisions restricting subletting or assignment of any lease governing a leasehold interest or (b) customary net worth provisions contained in Real Property leases entered into by Restricted Subsidiaries, so long as a Responsible Officer of the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower and the other Restricted Subsidiaries to meet their ongoing obligations;
  - (10) are customary provisions restricting assignment of any Contractual Obligation entered into in the ordinary course of business;

- 
- (11) are customary provisions contained in leases or licenses of Intellectual Property Rights and other similar agreements entered into in the ordinary course of business;
  - (12) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;
  - (13) arise in connection with cash or other deposits permitted under Section 6.02;
  - (14) comprise restrictions in any Indebtedness permitted pursuant to Section 6.01 that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Restricted Subsidiary than customary market terms for agreements governing Indebtedness of such type or otherwise reasonably acceptable to the Administrative Agent, so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required hereunder;
  - (15) apply by reason of any applicable Law, rule, regulation or order or are required by any Governmental Authority having or purporting to have jurisdiction over the Borrower or any Restricted Subsidiary;
  - (16) customary restrictions contained in Indebtedness permitted to be incurred pursuant to Sections 6.01(4) and (11)(a), and any Permitted Refinancing Indebtedness in respect of the foregoing;
  - (17) consist of any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (16) above, so long as such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, not materially more restrictive with respect to such Lien, dividend and other payment restrictions, taken as a whole, than those contained in the Lien, dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; or
  - (18) are encumbrances or restrictions applicable to a Receivables Subsidiary in connection with a Qualified Receivables Financing that, in the good faith determination of the Borrower, are necessary or advisable to effect such Qualified Receivables Financing.

SECTION 6.11. Limitation on Payments and Modifications of Certain Indebtedness; Amendments of Certain Documents.

- (1) Prepayments of Junior Financing. Prepay, repay, redeem, purchase, defease or otherwise satisfy prior to scheduled maturity thereof any Junior Financing, except:
  - (a) the refinancing thereof with the Net Cash Proceeds of, or in exchange for, any Permitted Refinancing Indebtedness;

- 
- (b) the conversion or exchange of any Junior Financing into or for Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Entity;
  - (c) the prepayment repayment, redemption, purchase, defeasance or satisfaction of any of Indebtedness of the Borrower or any of its Restricted Subsidiaries owed to the Borrower or any of its Restricted Subsidiaries;
  - (d) the prepayment, repayment, redemption, purchase, defeasance or satisfaction of any Junior Financing with the proceeds of (i) any other Junior Financing or (ii) any Qualified Equity Interests or any cash contribution to the common equity capital of the Borrower after the Closing Date (other than any Cure Amount or Excluded Contribution) that is Not Otherwise Applied; *provided* that such prepayment, repayment, redemption, purchase, defeasance or satisfaction is made within 60 days after receipt of such proceeds and no Event of Default has occurred and is continuing;
  - (e) payments or distributions in respect of all or any portion of such Junior Financing with the proceeds contributed directly or indirectly to the Borrower by any Parent Entity from the issuance, sale or exchange by any Parent Entity of Equity Interests (other than Disqualified Stock, Cure Amounts or Excluded Contributions) made within eighteen (18) months prior thereto and Not Otherwise Applied;
  - (f) prepayments, repayments, redemptions, purchases, defeasances or satisfactions of any Junior Financing in an aggregate amount not to exceed the sum of:
    - (i) when taken together with any Restricted Payments made under Section 6.07(14)(a), the greater of (A) \$125.0 million and (B) an amount equal to the Equivalent Percentage of the amount set forth in clause (A) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such prepayment, repayment, redemption, purchase, defeasance or satisfaction; *provided*, in each case, that no Event of Default shall have occurred and be continuing or shall result therefrom; and
    - (ii) the Available Amount at such time; *provided* that (A) no Event of Default shall exist after giving effect to such Restricted Payment or shall result therefrom and (B) solely with respect to amounts attributable to clause (2) of the definition of the Available Amount, the Total Net Leverage Ratio (after giving Pro Forma Effect to such Restricted Payment) would be less than or equal to the Closing Date Total Net Leverage Ratio;
  - (g) prepayments, repayments, redemptions, purchases, defeasances or satisfactions, of any Junior Financing so long as the Total Net Leverage Ratio (after giving Pro Forma Effect to such prepayment, repayment, redemption, purchase, defeasance or satisfaction) would be less than or equal to 1.00x inside of the Closing Date Total Net Leverage Ratio; or
  - (h) any Specified Tender Offer;

---

*provided, however*, that each of the following shall be permitted: payments of regularly scheduled principal and interest (including default interest and any “AHYDO” catch-up payment) on Junior Financing, fees related to Junior Financing, indemnity and expense reimbursement payments in connection with Junior Financing, and mandatory prepayments, mandatory redemptions and mandatory purchases of any Junior Financing (including any principal, premium or interest with respect thereto), in each case pursuant to the terms of the applicable Junior Financing Documentation.

The amount set forth in clause (1)(f)(i) of this Section 6.11 (without duplication) may be, in lieu of prepayments, repayments, redemptions, purchases, defeasances or satisfactions of any Junior Financing, be utilized by the Borrower or any Restricted Subsidiary to (i) make or hold any Investments without regards to Section 6.04 or (ii) make Restricted Payments without regards to Section 6.07.

- (2) Amendments to Junior Financing Documentation. Amend, modify or change in any manner without the consent of the Administrative Agent, any Junior Financing Documentation in a manner that is materially adverse to the interests of the Lenders (taken as a whole), in each case other than as a result of a Permitted Refinancing thereof; *provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least four (4) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to any such amendment, modification or change, together with a reasonably detailed description of the material terms and conditions of such amendment, modification or change or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (2) shall be conclusive evidence that such amendment, modification or change satisfies this clause (2) unless the Administrative Agent notifies the Borrower within such four (4) Business Day (or shorter) period that it disagrees with such determination (including a description of the basis upon which it disagrees); or
- (3) Amendments to Organization Documents. Amend, modify or change its certificate or articles of incorporation or formation (including by the filing or modification of any certificate or articles of designation), certificate of formation, limited liability company agreement or by-laws (or the equivalent organizational documents), as applicable, in each case, in any manner materially adverse to the interests of the Lenders (taken as a whole); *provided* that, in each case, a certificate of a Responsible Officer delivered to the Administrative Agent at least four (4) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to any such amendment, modification or change, together with a reasonably detailed description of the material terms and conditions of such amendment, modification or change or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (3) shall be conclusive evidence that such amendment, modification or change satisfies such requirement unless the Administrative Agent notifies the Borrower within such four (4) Business Day (or shorter) period that it disagrees with such determination (including a description of the basis upon which it disagrees).

SECTION 6.12. Use of Proceeds. The Borrower shall not use, and the Borrower shall procure that its Subsidiaries and its or their respective directors, officers, employees and, to the Borrower's knowledge, agents shall not use, the proceeds of the Term Loans (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in or with any Sanctioned Country, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

## ARTICLE VII

*[Reserved]*.

## ARTICLE VIII

### *Events of Default*

SECTION 8.01. Events of Default. In case of the happening of any of the following events (each, an “*Event of Default*”):

- (1) any representation or warranty made by the Borrower or any other Loan Party herein or in any other Loan Document or any certificate or document required to be delivered pursuant hereto or thereto proves to have been false or misleading in any material respect when so made; *provided* that the failure of any Specified Acquisition Agreement Representation to be true and correct will not result in a Default or an Event of Default, unless such failure results in a failure of a condition precedent to the Borrower's (or its Affiliates') obligation to consummate the Acquisition pursuant to the terms of the Acquisition Agreement or such failure gives the Borrower (or its Affiliates) the right (taking into account any applicable cure provisions) to terminate its (or their) obligations under the Acquisition Agreement;
- (2) default is made in the payment of any principal of any Term Loan when and as the same becomes due and payable, whether at the due date thereof, at a date fixed for prepayment thereof, by acceleration thereof or otherwise;
- (3) default is made in the payment of any interest on any Term Loan or in the payment of any fee (other than an amount referred to in clause (2) of this Section 8.01), when and as the same becomes due and payable, and such default continues unremedied for a period of five (5) Business Days;
- (4) default is made in the due observance or performance by the Borrower or any Restricted Subsidiary of any covenant, condition or agreement contained in Section 5.01(1) (with respect to the Borrower only), 5.05(1) or in Article VI (in each case solely to the extent applicable to such Person);
- (5) default is made in the due observance or performance by the Borrower or any Restricted Subsidiary of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (1), (2), (3) and (4) of this Section 8.01), in each

---

case solely to the extent applicable to such Person, and such default continues unremedied for a period of 30 days after the earlier of (x) receipt of written notice thereof from the Administrative Agent to the Borrower and (y) the date on which an executive officer of the Borrower becomes aware of such default;

- (6) (a) (i) any event or condition occurs (other than, with respect to Indebtedness under any Hedge Agreement, termination events or equivalent events pursuant to the terms of such Hedge Agreement that do not result from a default thereunder by a Loan Party or Restricted Subsidiary) that (A) results in any Material Indebtedness becoming due prior to its scheduled maturity or (B) enables or permits (with all applicable grace periods having expired) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity or (ii) the Borrower or any Restricted Subsidiary fails to pay the principal of any Material Indebtedness at the stated final maturity thereof and (b) such event, condition or failure is unremedied and is not waived or cured by the holders of such Indebtedness prior to any acceleration of the Term Loans pursuant to this Section 8.01; *provided* that this clause (6) will not apply to any (A) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of all or a portion of the property or assets securing such Indebtedness or (B) any redemption, repurchase, conversion, exercise or settlement (or the occurrence of any event or satisfaction of any condition giving rise to or permitting any of the foregoing) with respect to any Convertible Indebtedness pursuant to its terms unless such redemption, repurchase, conversion or settlement (or occurrence, giving rise to, or permitting any of the foregoing) results from a default thereunder or an event of the type that constitutes an Event of Default thereunder; *provided, further*, that the failure to observe or perform a financial maintenance covenant under the ABL Credit Agreement (a “**Financial Covenant Default**”) shall not in and of itself constitute an Event of Default hereunder until the later of (i) 90 days following the date of such Financial Covenant Default and (ii) the date on which the lenders under the ABL Credit Agreement shall have accelerated payment of the ABL Obligations and terminated the commitments with respect thereto; *provided, further*, that, for the avoidance of doubt, prior to the time it becomes an Event of Default hereunder, any Financial Covenant Default may be waived, amended, terminated or otherwise modified from time to time in accordance with the ABL Credit Agreement;
- (7) a Change in Control occurs;
- (8) an involuntary proceeding is commenced or an involuntary petition is filed in a court of competent jurisdiction seeking:
- (a) relief in respect of the Borrower or any of the Material Restricted Subsidiaries, or of a substantial part of the property or assets of the Borrower or any Material Restricted Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other applicable federal, state or foreign bankruptcy, insolvency, receivership or similar law;

- 
- (b) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any of the Material Restricted Subsidiaries or for a substantial part of the property or assets of the Borrower or any Restricted Subsidiary; or
  - (c) the winding up or liquidation of the Borrower or any Material Restricted Subsidiary (except, in the case of any Material Restricted Subsidiary, in a transaction permitted by Section 6.05) and such proceeding or petition continues undismissed for 60 days or an order or decree approving or ordering any of the foregoing is entered;
- (9) the Borrower or any Material Restricted Subsidiary:
- (a) voluntarily commences any proceeding or files any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other applicable federal, state or foreign bankruptcy, insolvency, receivership or similar law;
  - (b) consents to the institution of, or fails to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (8) of this Section 8.01;
  - (c) applies for or consents to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any of the Material Restricted Subsidiaries or for a substantial part of the property or assets of the Borrower or any Material Restricted Subsidiary;
  - (d) files an answer admitting the material allegations of a petition filed against it in any such proceeding;
  - (e) makes a general assignment for the benefit of creditors; or
  - (f) becomes unable or admits in writing its inability or fails generally to pay its debts as they become due;
- (10) the Borrower or any Restricted Subsidiary fails to pay one or more final judgments for the payment of money aggregating in excess of the Threshold Amount (to the extent not covered by insurance or other indemnity obligation), which such judgment(s) are not satisfied, vacated, discharged, stayed, bonded pending appeal or effectively waived or stayed for a period of 60 consecutive days;
- (11) an ERISA Event occurs with respect to any Plan or Multiemployer Plan, and such ERISA Event, together with all other such ERISA Events, if any, is reasonably expected to have a Material Adverse Effect; or
- (12) (a) any material provision of the Loan Documents, taken as a whole, at any time after their execution and delivery and prior the Payment In Full of the Obligations, for any reason other than as expressly permitted under a Loan Document (including as a result of

---

a transaction permitted under Section 6.05), ceases to be, or is asserted in writing by the Borrower or any Restricted Subsidiary not to be, for any reason, a legal, valid and binding obligation of any party thereto, (b) any security interest purported to be created by any Security Document and to extend to assets that are not immaterial to the Borrower and the Restricted Subsidiaries, when taken as a whole, on a consolidated basis ceases to be, or is asserted in writing by the Borrower or any other Loan Party not to be, a valid and perfected security interest in the Collateral covered thereby, except to the extent that any such loss of validity or perfection results from (i) the limitations of foreign laws, rules and regulations or the application thereof, or (ii) the failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under a Security Document or to file Uniform Commercial Code continuation statements or take any other action and except to the extent that such loss is covered by a lender's title insurance policy and the Collateral Agent is reasonably satisfied with the credit of such insurer or (c) the Guarantees pursuant to the Security Documents by any Material Restricted Subsidiary Guarantor of any of the Obligations cease to be in full force and effect (other than in accordance with the terms hereof or thereof, including the release of such Person as provided for under the Loan Documents and the Payment in Full of the Obligations) or are asserted in writing by the Borrower or any other Subsidiary Loan Party not to be in effect or not to be legal, valid and binding obligations, except in the cases of clauses (b) and (c), in connection with an Asset Sale permitted by this Agreement;

then, (i) upon the occurrence of any such Event of Default (other than an Event of Default with respect to the Borrower described in clause (8) or (9) of this Section 8.01), and at any time thereafter during the continuance of such Event of Default, the Administrative Agent, at the request of the Required Lenders, will, by notice to the Borrower, take any or all of the following actions, at the same or different times: (A) declare the Term Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Term Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, will become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; and (B) exercise all rights and remedies granted to it under any Loan Document and all of its rights under any other applicable law or in equity, and (ii) in any event with respect to the Borrower described in clause (8) or (9) of this Section 8.01, the principal of the Term Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, will automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding.

---

## ARTICLE IX

### *The Agents*

#### SECTION 9.01. Appointment.

- (1) Each Lender (in its capacities as a Lender and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) hereby irrevocably designates and appoints the entity named as Administrative Agent in the heading of this Agreement and its permitted successors and assigns to serve as administrative agent under this Agreement and the other Loan Documents, as applicable, including as the Collateral Agent for such Lender and the other applicable Secured Parties under the applicable Security Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacities, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are delegated to the Administrative Agent under this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the United States, each of the Lenders hereby grants to the Administrative Agent any required powers of attorney to execute and enforce any Security Document governed by the laws of such jurisdiction on such Lender's behalf. Without limiting the foregoing, each Lender hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents.
- (2) Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent; additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and transactions contemplated hereby. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. For the avoidance of doubt, no Borrower shall have liability for the actions of the Administrative Agent pursuant to the immediately preceding sentence.
- (3) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, (a) the Administrative Agent (irrespective of whether the principal of any Obligation 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 (i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of any or all of the 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 Agents and any Subagents allowed in such judicial proceeding and (ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and (b) 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, if 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 the Loan Documents. 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 or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

SECTION 9.02. Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement and the other Loan Documents (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof)) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of the agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent may also from time to time, when the Administrative Agent deems it to be necessary or desirable, appoint one or more trustees, co-trustees, collateral co-agents, collateral subagents or attorneys-in-fact (each, a “**Subagent**”) with respect to all or any part of the Collateral; *provided* that no such Subagent shall be authorized to take any action with respect to any Collateral unless and except to the extent expressly authorized in writing by the Administrative Agent. Should any instrument in writing from the Borrower or any other Loan Party be reasonably required by any Subagent so appointed by the Administrative Agent to more fully or certainly vest in and confirm to such Subagent such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon reasonable written request by the Administrative Agent. If any Subagent, or successor thereto, shall die, become incapable of acting, resign or be removed, all rights, powers, privileges and duties of such Subagent, to the extent permitted by law, shall automatically vest in and be exercised by the Administrative Agent until the appointment of a new Subagent. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent, attorney-in-fact or Subagent that it selects in accordance with the foregoing provisions of this Section 9.02 in the absence of the Administrative Agent’s gross negligence or willful misconduct.

SECTION 9.03. Exculpatory Provisions. None of the Administrative Agent, its Affiliates or any of their respective officers, directors, employees, agents or attorneys-in-fact shall be (1) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (2) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, and (b) the Administrative Agent 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 Administrative Agent or any of its Affiliates in any capacity. 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 or Event of 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 Security Documents;
- (v) the value or 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.

---

SECTION 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) or conversation believed in good faith 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 in good faith 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 any Borrowing 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 such Borrowing. The Administrative Agent may consult with legal counsel (including counsel to 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. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all or other Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement, all or other Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Term Loans.

SECTION 9.05. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all or other Lenders); *provided* that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

SECTION 9.06. Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that neither the Agents nor any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates have made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of a Loan Party or any Affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other

condition and creditworthiness of the Loan Parties and their Affiliates and made its own decision to make its Term Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any Affiliate of a Loan Party that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

SECTION 9.07. Indemnification. The Lenders agree to indemnify each Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), in the amount of its *pro rata* share (based on its aggregate outstanding Term Loans) (determined at the time such indemnity is sought), 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 Term Loans) be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Commitments, 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 the Administrative Agent 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 non-appealable decision of a court of competent jurisdiction to have resulted from the Administrative Agent's gross negligence or willful misconduct. The failure of any Lender to reimburse the Administrative Agent promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Administrative Agent as *provided* herein shall not relieve any other Lender of its obligation hereunder to reimburse the Administrative Agent for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Administrative Agent for such other Lender's ratable share of such amount. The agreements in this Section 9.07 shall survive the payment of the Term Loans and all other amounts payable hereunder.

SECTION 9.08. Agent in Its Individual Capacity. Each Agent and its Affiliates may make loans to, accept deposits from, and generally engage in any kind of business with any Loan Party as though the Administrative Agent were not the Administrative Agent. With respect to its Term Loans made or renewed by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not the Administrative Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

SECTION 9.09. Successor Agent. The Administrative Agent may resign as Administrative Agent upon thirty days' notice to the Lenders and the Borrower. If the Administrative Agent resigns as the Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall (unless a Specified Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the reference to the resigning Administrative Agent means such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Term Loans. If no 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, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. If no successor agent has accepted appointment as Administrative Agent by the date that is 30 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation will nevertheless thereupon become effective, and the Required Lenders will thereafter perform all the duties of such Administrative Agent hereunder or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent, which shall (unless a Specified Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed). After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Section 9.09 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

SECTION 9.10. Arrangers. None of the Arrangers will have any duties, responsibilities or liabilities hereunder in their respective capacities as such.

SECTION 9.11. Collateral and Guaranty Matters.

- (1) Each of the Lenders (including in its capacity as a potential Qualified Counterparty) and the other Secured Parties irrevocably appoints and authorizes the Administrative Agent and the Collateral Agent to be the agent for and representative of the Lenders with respect to the Collateral Agreement, the Collateral and the Security Documents, together with such powers and discretion as are reasonably incidental thereto; *provided* that neither the Administrative Agent nor the Collateral Agent shall owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure or any other obligation whatsoever to any holder of Obligations with respect to any Specified Hedge Agreement.
- (2) Each Agent, each Lender and each other Secured Party agrees that:
  - (a) Liens on any property granted to or held by an Agent in favor of any Secured Party under any Loan Document will be automatically released,

- 
- (i) upon Payment in Full and the termination of the Commitments;
  - (ii) at the time the property subject to such Lien is Disposed (or to be Disposed) as part of, or in connection with, any transfer permitted under the Loan Documents to any Person that is not (and is not required to be) a Loan Party,
  - (iii) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under the Collateral Agreement pursuant to clause (c) below;
  - (iv) subject to Section 10.08, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders; or
  - (v) upon such property becoming an Excluded Asset or Excluded Equity Interest.
- (b) it will release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(3);
- (c) if any Subsidiary Loan Party ceases to be a Subsidiary in a transaction permitted hereunder, is not a Material Subsidiary or as a result of a transaction permitted hereunder becomes an Excluded Subsidiary (in each case, as certified in writing by a Responsible Officer), and the Borrower notifies the Administrative Agent in writing that it wishes such Guarantor to be released from its obligations under the Collateral Agreement and, upon request of the Administrative Agent or the Collateral Agent, as applicable, provides the Administrative Agent and the Collateral Agent certifications that such Subsidiary Loan Party is not a Material Subsidiary or has become an Excluded Subsidiary (as applicable), it will release (or evidence the release) of (i) such Subsidiary Loan Party from its obligations under the Collateral Agreement and the other Loan Documents and (ii) any Liens granted by such Subsidiary or Liens on the Equity Interests of such Subsidiary; and
- (d) the Administrative Agent and the Collateral Agent will exclusively exercise the rights and remedies under the Loan Documents, and neither the Lenders nor any other Secured Party will exercise such rights and remedies (other than the Required Lenders through the Administrative Agent); *provided* that the foregoing shall not preclude any Lender from exercising any right of set-off in accordance with the provisions of Section 10.06 or enforcing compliance with the provisions set forth in clauses (i) through (vi) of Section 10.08(2) or from exercising rights and remedies (other than the enforcement of Collateral) with respect to any payment default after the occurrence of the Maturity Date with respect to any Term Loans made by it or 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.

Each Agent agrees that it will take such action and execute any such documents as may be reasonably requested by the Borrower in connection with any of the foregoing releases or any such subordination. Each of the Collateral Agent and the Administrative Agent shall be entitled to rely exclusively on an officers certificate of the Borrower confirming that such release or subordination (as applicable) is permitted hereunder. Each Lender and each Secured Party irrevocably authorizes each Administrative Agent to take such action and execute any such document and consents to such reliance. No Agent will 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 Collateral Agent's Lien thereon, or contained in any certificate prepared or delivered by the Borrower or any Loan Party in connection with the Collateral or compliance with the terms set forth above or in a Loan Document, nor shall any Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

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 Loan Party from its obligations under, the Loan Documents. Notwithstanding anything to the contrary set forth herein, any execution and delivery of documents by any Agent pursuant to this Section 9.11 shall be without recourse to or warranty by such Agent and at the Borrower's expense; and such documents shall be reasonably acceptable to such Agent and the Borrower.

- (3) Anything contained in any of the Loan Documents to the contrary notwithstanding, each Agent, each Lender and each Secured Party hereby agree that:
- (a) no Lender or other Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Collateral Agreement or any other Loan Document, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent or the Collateral Agent, as applicable, for the benefit of the Secured Parties in accordance with the terms hereof and thereof, and all powers, rights and remedies under the Collateral Documents may be exercised solely by the Collateral Agent for the benefit of the Lenders in accordance with the terms thereof;
  - (b) in the event of a foreclosure or similar enforcement action by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the U.S. Bankruptcy Code), the Collateral Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the U.S. Bankruptcy Code) may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Collateral Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities), shall be entitled, upon instructions from the Required Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition;

- 
- (c) no provision of any Loan Documents shall require the creation, perfection or maintenance of pledges of or security interests in, or the obtaining of title insurance or abstracts with respect to, any Excluded Assets, any Excluded Equity Interests and any other particular assets, if and for so long as, in the reasonable judgment of the Collateral Agent, the cost of creating, perfecting or maintaining such pledges or security interests in such other particular assets or obtaining title insurance or abstracts in respect of such other particular assets is excessive in view of the fair market value of such assets or the practical benefit to the Lenders afforded thereby as reasonably determined by a Responsible Officer of the Borrower and the Administrative Agent (or with respect to matters relating primarily to the ABL Priority Collateral, the Borrower and the ABL Agent);
  - (d) the Collateral Agent may grant extensions of time for the creation or perfection of security interests in or the obtaining of title insurance and surveys with respect to particular assets (including extensions beyond the Closing Date for the creation or perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that creation or perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents;
  - (e) no actions required by the Laws of any non-U.S. jurisdiction shall be required in order to create any security interests in any assets or to perfect such security interests (including any intellectual property registered in any non-U.S. jurisdiction) (it being understood that there shall be no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction);
  - (f) no control agreements shall be required with respect to assets requiring perfection through control agreements or perfection by “control” (as defined in the Uniform Commercial Code); and
  - (g) the provisions of Section 5.10(4) of this Agreement and Sections 4.01(4) and 4.01(6) of the Collateral Agreement shall supersede any other provision of a Loan Document to the contrary.

SECTION 9.12. Certain ERISA Matters (h).

- (1) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, solely for the benefit of, the Administrative Agent, the Arrangers and the Bookrunners and their respective Affiliates (the “Relevant Parties”), and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

- 
- (a) such Lender is not using “plan assets” of one or more Benefit Plans in connection with the Loans, the Letter of Credit or the Commitments;
- (b) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable, and the conditions of such exemptions are satisfied will continue to be satisfied, with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letter of Credit, the Commitments and this Agreement;
- (c) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letter of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letter of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied, and the conditions of such exemption are satisfied and will continue to be satisfied, with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letter of Credit, the Commitments and this Agreement; or
- (d) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.
- (2) In addition, (I) unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (II) if such sub-clause (i) is not true with respect to a Lender and such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Relevant Parties, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:
- (a) none of the Relevant Parties is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, or any of the other Loan Documents);

- 
- (b) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21, as amended from time to time) and is a bank, an insurance carrier, a registered investment adviser, a registered broker-dealer or other person that has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E), as amended from time to time;
  - (c) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letter of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies;
  - (d) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letter of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder; and
  - (e) no fee or other compensation is being paid directly to any Relevant Party for investment advice (as opposed to other services) in connection with the Loans, the Letter of Credit, the Commitments or this Agreement.
- (3) Each of the Administrative Agent, the Lead Arrangers and the Bookrunners hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letter of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letter of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letter of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

For purposes of this Section 9.12, the following definitions apply to each of the capitalized terms below:

“**Benefit Plan**” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code, to which Section 4975 of the Code applies or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“ *PTE* a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.  
” means

## ARTICLE X

### *Miscellaneous*

#### SECTION 10.01. Notices; Communications.

- (1) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.01(2)), 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 or e-mail, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, in each case, as follows:
  - (a) if to any Loan Party or any Agent, to the address, facsimile number, e-mail address or telephone number specified for such Person on Schedule 10.01; and
  - (b) if to any Lender, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Questionnaire.
- (2) Notices and other communications to the Lenders 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 Lender 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, 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. Notices sent by e-mail shall be deemed to have been given when sent and confirmation of transmission received (except that, if not sent during normal business hours for the recipient, such e-mail shall be deemed to have been given at the opening of business on the next Business Day for the recipient).
- (3) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by facsimile shall be deemed to have been given when sent and confirmation of transmission received (except that, if not sent during normal business hours for the recipient, such notice shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 10.01(2) shall be effective as provided in such Section 10.01(2).

- 
- (4) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.
- (5) Documents required to be delivered hereunder may be delivered electronically (including as set forth in Section 10.17) and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.01 or (b) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that (i) the Borrower shall notify the Administrative Agent (by facsimile or e-mail) of the posting of any such documents and, upon the Administrative Agent's written request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents and (ii) upon reasonable written request by the Administrative Agent, the Borrower shall also provide a hard copy to the Administrative Agent of any such document; *provided, further*, that any documents posted for which a link is provided after normal business hours for the recipient shall be deemed to have been given at the opening of business on the next Business Day. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

SECTION 10.02. Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document will be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Term Loans and the execution and delivery of the Loan Documents, regardless of any investigation made by such Persons or on their behalf, and shall continue in full force and effect until the principal of or any accrued interest on any Term Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is Paid in Full and the Commitments have been terminated. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Sections 2.12, 2.14 and 10.05) shall survive the payment in full of the principal and interest hereunder and the termination of the Commitments or this Agreement.

SECTION 10.03. Binding Effect. This Agreement shall become effective when it has been executed by the Borrower and the Administrative Agent and when the Administrative Agent has received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the Borrower, the other Loan Parties, each Agent, each Lender and their respective permitted successors and assigns.

SECTION 10.04. Successors and Assigns.

- (1) 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 (a) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void), except to any Successor Borrower pursuant to Section 6.05, and (b) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 10.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto and their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (3) of this Section 10.04) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement or the other Loan Documents.
- (2) (a) Subject to the conditions set forth in paragraph (2)(b) of this Section 10.04 (and, with respect to an assignment to the Borrower, any Subsidiary or any of their respective Affiliates, subject to the limitations set forth in Section 10.04(10) or 10.04(14), as applicable), any Lender may assign to one or more assignees (other than a natural person, a Disqualified Institution or a Defaulting Lender) (each, an “*Assignee*”) all or a portion of its rights and obligations under this Agreement (including all or a portion of the Term Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) of:
  - (i) the Borrower; *provided* that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if a Specified Event of Default with respect to the Borrower has occurred and is continuing; *provided, further*, that such consent shall be deemed to have been given if the Borrower has not responded within ten (10) Business Days after delivery of a written request therefor by the Administrative Agent; and
  - (ii) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund;
- (b) Assignments shall be subject to the following additional conditions:
  - (i) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender’s Term Loans, the amount of the Term Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$500,000, unless each of the Borrower and the Administrative Agent otherwise consent; *provided* that (1) no such consent of the Borrower shall be

- 
- required if a Specified Event of Default with respect to the Borrower has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds (with simultaneous assignments to or by two or more Approved Funds being treated as one assignment for purposes of meeting the minimum assignment amount requirement), if any;
- (ii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance (or Non-Debt Fund Affiliate Assignment and Acceptance, as applicable) via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent);
  - (iii) the Assignee, if it shall not already be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required to be delivered pursuant to Section 2.14; and
  - (iv) the Assignor shall deliver to the Administrative Agent any Note issued to it with respect to the assigned Term Loan.
- (c) Subject to acceptance and recording thereof pursuant to paragraph (2)(e) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance (or Non-Debt Fund Affiliate Assignment and Acceptance, as applicable), the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, 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 Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance 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 2.12, 2.13, 2.14 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such Assignment and Acceptance). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04 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 paragraph (4) of this Section 10.04 to the extent such participation would be permitted by such Section 10.04(4).
- (d) The Administrative Agent, acting for this purpose as the Administrative Agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the principal amount (and stated interest with respect thereto) of the Term Loans owing to, each Lender pursuant to the terms

hereof from time to time (the “*Register*”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender (but solely, in the case of a Lender, entries with respect to such Lender’s Term Loans) at any reasonable time and from time to time upon reasonable prior notice. This clause (d) and Section 2.05 shall be construed so that all Term Loans are at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

- (e) Upon its receipt of a duly completed Assignment and Acceptance (or Non-Debt Fund Affiliate Assignment and Acceptance, as applicable) executed by an assigning Lender and an Assignee, the Assignee’s completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), all applicable tax forms, any Note outstanding with respect to the assigned Term Loan (or other documentation (including an affidavit of loss and indemnitee agreement) reasonably acceptable to the Borrower in lieu thereof), the processing and recordation fee referred to in paragraph (2)(b)(ii) of this Section 10.04 and any written consent to such assignment required by paragraph (2) of this Section 10.04, the Administrative Agent promptly shall accept such Assignment and Acceptance (or Non-Debt Fund Affiliate Assignment and Acceptance, as applicable) and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (2)(e).
- (3) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows:
- (a) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim;
  - (b) except as set forth in clause (a) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Restricted Subsidiary or the performance or observance by the Borrower or any Restricted Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto;

- 
- (c) the Assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance;
  - (d) the Assignee confirms that it has received a copy of this Agreement, together with copies of the most recent Required Financial Statements delivered pursuant to Section 5.04, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance;
  - (e) the Assignee will independently and without reliance upon the Administrative Agent or the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement;
  - (f) the Assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms of this Agreement, together with such powers as are reasonably incidental thereto; and
  - (g) the Assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.
- (4) (a) Any Lender may, without the consent of the Administrative Agent or, subject to Section 10.04(8), the Borrower, sell participations to one or more banks or other entities (other than any Disqualified Institution) (a “*Participant*”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of the Term 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 other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement.

Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; *provided that* (A) such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to Section 10.04(1)(a) or clauses (i), (ii), (iii), (iv), (v) or (vi) of the first proviso to Section 10.08(2) and (2) directly affects such Participant and (B) no other agreement with

respect to amendment, modification or waiver may exist between such Lender and such Participant. Subject to clause (4)(b) of this Section 10.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.14 (in each case subject to the requirements thereof and the delivery of any documentation required thereunder) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (2) of this Section 10.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.06 as though it were a Lender; *provided* that such Participant shall be subject to Section 2.15(3) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Term 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, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. Each Lender shall indemnify the Loan Parties for any Taxes (including any additions to Tax) attributable to or resulting from such Lender's failure to comply with the provisions of this Section 10.04(4)(a) relating to the maintenance of a Participant Register.

- (b) A Participant shall not be entitled to receive any greater payment under Section 2.12, 2.13 or 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, 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. A Participant shall not be entitled to the benefits of Section 2.14 to the extent such Participant fails to comply with Section 2.14(5) as though it were a Lender.
- (5) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

- 
- (6) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (5) of this Section 10.04; *provided* that such Lender will have delivered for exchange any Notes previously issued with respect to the applicable Term Loans (or other documentation (including an affidavit of loss and indemnitee agreement) reasonably acceptable to the Borrower in lieu thereof).
- (7) If the Borrower wishes to replace the Term Loans with ones having different terms, it shall have the option, with the consent of the Administrative Agent and subject to at least three Business Days' advance notice to the Lenders, instead of prepaying the Term Loans to be replaced, to (a) require the Lenders to assign such Term Loans to the Administrative Agent or its designee(s) and (b) amend the terms thereof in accordance with Section 10.08 (with such replacement, if applicable, being deemed to have been made pursuant to Section 10.08(5)). Pursuant to any such assignment, all Term Loans to be replaced shall be purchased at par (allocated among the Lenders in the same manner as would be required if such Term Loans were being optionally prepaid), accompanied by payment of any accrued interest and fees thereon and any amounts owing pursuant to Section 10.05(2). By receiving such purchase price, the Lenders shall automatically be deemed to have assigned the Term Loans pursuant to the terms of the form of Assignment and Acceptance attached hereto as Exhibit A (or Non-Debt Fund Affiliate Assignment and Acceptance, as applicable), and accordingly no other action by such Lenders shall be required in connection therewith. The provisions of this paragraph (7) are intended to facilitate the maintenance of the perfection and priority of existing security interests in the Collateral during any such replacement.
- (8) Notwithstanding the foregoing, no assignment may be made or participation sold to a Disqualified Institution without the prior written consent of the Borrower; *provided* that, in connection with a participation, the Lenders shall have received a list of the Disqualified Institutions prior to the execution of such participation right. To the extent that any assignment is purported to be made or participation is purported to be sold to a Disqualified Institution (notwithstanding this clause (8) or otherwise), such Disqualified Institution shall be required immediately (and in any event within five (5) Business Days) to assign all Loans and Commitments then owned by such Disqualified Institution to another Lender (other than a Defaulting Lender) or another Assignee in accordance with this Section 10.04 or unwind such participation, as applicable (and the Borrower shall be entitled to seek specific performance in any applicable court of law or equity to enforce this sentence).
- (9) Notwithstanding anything to the contrary contained herein, no Non-Debt Fund Affiliate shall have any right to:
- (a) attend (including by telephone) any meeting or discussions (or portion thereof) among the Administrative Agent or any Lender to which representatives of the Borrower are not then present;
  - (b) receive the advice of counsel to the Administrative Agent or the Lenders, nor may any Non-Debt Fund Affiliate challenge the attorney-client privilege between the Administrative Agent and counsel to the Administrative Agent or between the Lenders and counsel to the Lenders; or

- 
- (c) receive any information or material prepared by the Administrative Agent or any Lender or any other Person or any communication by or among Administrative Agent and one or more Lenders, except (i) to the extent such information or materials have been made available to the Borrower or its representatives or (ii) notices of prepayments and other administrative notices in respect of its Term Loans required to be delivered to Lenders pursuant to this Agreement.
- (10) Notwithstanding anything to the contrary contained herein, any Lender may assign all or any portion of its Term Loans hereunder to any Person who is or, after giving effect to such assignment, would be an Affiliated Lender (including, for the avoidance of doubt, any Debt Fund Affiliate); *provided that*:
- (a) such assignment shall be made pursuant to (i) an open market purchase (including, for the avoidance of doubt, any purchase made during the initial syndication of the Term Loans) on a non- *pro rata* basis or (ii) a Dutch auction open to all Lenders of the applicable Class in accordance with the Dutch Auction Procedures;
- (b) in the case of an assignment to a Non-Debt Fund Affiliate, the assigning Lender and such Non-Debt Fund Affiliate purchasing such Lender's Term Loans shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit E (a "***Non-Debt Fund Affiliate Assignment and Acceptance***") in lieu of an Assignment and Acceptance;
- (c) each Lender (other than any Affiliated Lender) that (i) sells any Term Loans to an Affiliated Lender (other than a Debt Fund Affiliate) or (B) buys any Term Loan from any Affiliated Lender (other than a Debt Fund Affiliate) hereunder shall deliver to the Administrative Agent and the Borrower a Big Boy Letter;
- (d) in the case of an assignment to a Non-Debt Fund Affiliate, at the time of such assignment and after giving effect to such assignment, Non-Debt Fund Affiliates shall not, in the aggregate, hold Term Loans with an aggregate principal amount in excess of 25.0% of the principal amount of all Term Loans of any Class then outstanding;
- (e) no proceeds from revolving loans under the ABL Credit Agreement shall be used to fund any such purchases; and
- (11) To the extent not previously disclosed to the Administrative Agent, the Borrower shall, upon reasonable request of the Administrative Agent (but not more frequently than once per calendar quarter), report to the Administrative Agent the amount and Class of Term Loans held by Non-Debt Fund Affiliates and the identity of such holders. Notwithstanding the foregoing, any Affiliated Lender shall be permitted to contribute any Term Loan so assigned to such Affiliated Lender pursuant to this Section 10.04(11) to the Borrower or any of the Restricted Subsidiaries for purposes of cancellation, which

contribution may be made, subject to Section 6.07, in exchange for Equity Interests (other than Disqualified Stock) of any Parent Entity or Indebtedness (including Disqualified Stock) of the Borrower on a dollar-for-dollar basis to the extent such Indebtedness is permitted to be incurred pursuant to Section 6.01 at such time; *provided* that any Term Loans so contributed shall be automatically and permanently canceled upon the effectiveness of such contribution and will thereafter no longer be outstanding for any purpose hereunder.

- (12) Notwithstanding anything in Section 10.04 or the definition of “Required Lenders” to the contrary, for purposes of determining whether the Required Lenders have:
- (a) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom;
  - (b) otherwise acted on any matter related to any Loan Document; or
  - (c) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document
- in each case, that does not require the consent of each Lender or each affected Lender or does not adversely affect any such Non-Debt Fund Affiliate in its capacity as such in any material respect as compared to other Lenders holding similar obligations (collectively, “**Required Lender Consent Items**”):
- (i) a Non-Debt Fund Affiliate shall be deemed to have voted its interest as a Lender in the same proportion as the allocation of voting with respect to such matter by Lenders who are not Non-Debt Fund Affiliates; and
  - (ii) Term Loans held by Debt Fund Affiliates may not account for more than 49.9% of the Term Loans of consenting Lenders included in determining whether the Required Lenders have consented to any action pursuant to Section 10.04.
- (13) Additionally, the Loan Parties and each Non-Debt Fund Affiliate hereby agree that if a case under Title 11 of the United States Code is commenced against any Loan Party, such Loan Party shall seek (and each Non-Debt Fund Affiliate shall consent) to provide that the vote of any Non-Debt Fund Affiliate (in its capacity as a Lender) with respect to any plan of reorganization of such Loan Party shall not be counted except that such Non-Debt Fund Affiliate’s vote (in its capacity as a Lender) may be counted to the extent any such plan of reorganization proposes to treat the Obligations or claims held by such Non-Debt Fund Affiliate in a manner that is less favorable to such Non-Debt Fund Affiliate than the proposed treatment of the Term Loans or claims held by Lenders that are not Affiliates of the Borrower.
- (14) Notwithstanding anything to the contrary contained in this Agreement, so long as no Specified Event of Default has occurred and is continuing or would result therefrom, any Lender may assign all or a portion of its Term Loans to any Purchasing Borrower Party; *provided* that:

- 
- (a) such assignment shall be made pursuant to (i) an open market purchase (including, for the avoidance of doubt, any purchase made during the initial syndication of the Term Loans) on a non- *pro rata* basis or (ii) a Dutch auction open to all Lenders of the applicable Class in accordance with the Dutch Auction Procedures;
  - (b) any Term Loans assigned to any Purchasing Borrower Party shall be automatically and permanently cancelled upon the effectiveness of such assignment and will thereafter no longer be outstanding for any purpose hereunder; and
  - (c) the aggregate outstanding principal amount of the Term Loans of the applicable Class shall be deemed reduced by the full par value of the aggregate principal amount of the Term Loans purchased pursuant to this Section 10.04(14) and each principal repayment installment with respect to the Term Loans of such Class shall be reduced *pro rata* by the aggregate principal amount of Term Loans purchased.

SECTION 10.05. Expenses; Indemnity.

- (1) If the Transactions are consummated and the Closing Date occurs, the Borrower agrees to pay all reasonable, documented and invoiced out-of-pocket expenses incurred by the Administrative Agent and the Arrangers in connection with the preparation of this Agreement and the other Loan Documents, or by the Administrative Agent, the Arrangers (and, in the case of enforcement of this Agreement, each Lender) in connection with the preparation, execution and delivery, amendment, modification, waiver or enforcement of this Agreement and the other Loan Documents or in connection with the administration of this Agreement or the other Loan Documents and any amendments, modifications or waivers of the provisions hereof or thereof, including the reasonable, documented and invoiced fees and out-of-pocket charges and disbursements of a single counsel for the Administrative Agent and the Arrangers (which shall be Simpson Thacher and Bartlett LLP), one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and, in the case of any actual or perceived conflict of interest, one additional firm of counsel for each such group of affected Persons similarly situated taken as a whole.
- (2) The Borrower agrees to indemnify the Administrative Agent, each Arranger, each Lender, each of their respective Affiliates and each of their respective directors, officers, employees, agents, advisors, controlling Persons, equityholders, partners, members and other representatives and each of their respective successors and permitted assigns (each such Person being called an “ *Indemnitee* ”) against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and reasonable, documented and invoiced out-of-pocket fees and expenses (limited to reasonable and documented legal fees of a single firm of counsel for all Indemnitees, taken as a whole, and, if necessary,

one firm of counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, where the applicable Indemnitees affected by such conflict informs the Borrower of such conflict, and has retained, or thereafter retains, its own counsel of an additional counsel for each group of affected Indemnitees similarly situated, taken as a whole)), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of:

- (a) the execution, delivery or administration of this Agreement or any other Loan Document, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated hereby;
- (b) the use of the proceeds of the Term Loans; or
- (c) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether based in contract, tort or any other theory, whether or not any Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of their Restricted Subsidiaries or Affiliates or creditors (and including any investigation, preparation for, or defense of any pending or threatened claim, litigation, investigation or proceeding);

*provided* that no Indemnitee will be indemnified for any loss, claim, damage, liability, cost or expense to the extent it: (i) has been determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (A) the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties or (B) a material breach of the obligations of such Indemnitee under the Loan Documents or (ii) relates to any proceeding between or among Indemnitees other than (A) claims against Administrative Agent or Arrangers or their respective Affiliates, in each case, in their capacity or in fulfilling their role as the agent or arranger or any other similar role under a Term Facility (excluding their role as a Lender) to the extent such Persons are otherwise entitled to receive indemnification under this Section 10.05(2) or (B) claims arising out of any act or omission on the part of the Borrower or their Restricted Subsidiaries.

- (3) Subject to and without limiting the generality of the foregoing sentence, the Borrower agrees to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses claims, damages, liabilities and related out-of-pocket expenses, including reasonable, documented and invoiced fees, and out-of-pocket charges and disbursements of one firm of counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest where the applicable Indemnitees affected by such conflict informs the Borrower of such conflict, an additional counsel for each group of affected Indemnitees similarly situated, taken as a whole) and reasonable, documented and invoiced consultant fees, in each case, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result any claim related

in any way to Environmental Laws and the Borrower or any of the Restricted Subsidiaries, or any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on or from any property for which the Borrower or any Restricted Subsidiaries would reasonably be expected to be held liable under Environmental Laws; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties.

- (4) Any indemnification or payments required by the Loan Parties under this Section 10.05 shall not apply with respect to (a) Taxes other than (x) any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim and (y) expenses related to the enforcement of Section 2.14 or (b) Taxes that are duplicative of any indemnification or payments required by the Loan Parties under Sections 2.12 or 2.14.
- (5) To the fullest extent permitted by applicable law, no Indemnitee or Loan Party shall assert, and each hereby waives, any claim against any Indemnitee or Loan Party, as applicable, nor will any Indemnitee, Loan Party or any of their respective Affiliates be liable, 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 Term Loan or the use of the proceeds thereof. No Indemnitee, Loan Party or any of their respective Affiliates shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby; provided that, nothing in this clause (5) shall relieve any Loan Party of any obligation it may otherwise have hereunder to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.
- (6) The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement. All amounts due under this Section 10.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

SECTION 10.06. Right of Set-off. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Lender to or for the credit or the account of the Borrower or any Subsidiary Loan Party against any of and all the Obligations of the Borrower or any Subsidiary Loan Party now or hereafter existing under this Agreement or any other Loan Document held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or

such other Loan Document and although the Obligations may be unmatured. The rights of each Lender under this Section 10.06 are in addition to other rights and remedies (including other rights of set-off) that such Lender may be exercised only at the direction of the Administrative Agent or the Required Lenders.

SECTION 10.07. Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN THE OTHER LOAN DOCUMENTS) AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 10.08. Waivers; Amendment.

- (1) No failure or delay of the Administrative Agent or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (2) of this Section 10.08, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower or any other Loan Party in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.
- (2) Subject to Section 2.11(2), 10.08(7) and 10.08(11) below, except as otherwise set forth in this Agreement (or the applicable Loan Document), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except
  - (a) as provided in Sections 2.18, 2.19, 2.20 and 10.20;
  - (b) in the case of this Agreement, pursuant to an agreement or agreements in writing signed by the Borrower and the Required Lenders; and
  - (c) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto, the Administrative Agent (with the consent of the Required Lenders) and the Borrower;

---

*provided*, that except as expressly provided in Section 2.11(2), 2.18, 2.19, 2.20 and 10.20, no such agreement shall:

- (i) decrease, forgive, waive or excuse the principal amount of, or any interest on, or extend the final maturity of, or decrease the rate of interest on, any Term Loan, without the prior written consent of each Lender directly and adversely affected thereby (it being understood that waivers or other modifications of any conditions precedent, covenants, mandatory prepayments, mandatory commitment reductions, default interest, Defaults or Events of Default shall not constitute a decrease, forgiveness, waiver or excuse of the principal amount of, or any interest on, or an extension of the final maturity of, or a decrease the rate of interest on, any Term Loan);
- (ii) increase or extend the Commitment of any Lender or decrease, forgive, waive or excuse the fees of any Agent without the prior written consent of such Lender or Agent (it being understood that waivers or other modifications of any conditions precedent, covenants, mandatory prepayments, mandatory commitment reductions, default interest, Defaults or Events of Default shall not constitute an increase or extension of the Commitments of any Lender or a decrease, forgiveness, waiver or excuse of any Agent fees);
- (iii) extend or waive any Term Loan Installment Date or reduce the amount due on any Term Loan Installment Date or extend any date on which payment of principal or interest on any Term Loan or any Fee is due, without the prior written consent of each Lender directly and adversely affected thereby (it being understood that waivers or other modifications of any conditions precedent, covenants, mandatory prepayments, mandatory commitment reductions, default interest, Defaults or Events of Default shall not constitute an extension or waiver of any Term Loan Installment Date, a reduction of any amount due on a Term Loan Installment Date or an extension of any date on which payment of principal or interest on any Term Loan or any Fee is due);
- (iv) amend the provisions of Section 2.15(2) or (3) of this Agreement, Section 5.02 of the Collateral Agreement or any analogous provision of any other Loan Document, in a manner that would by its terms alter the *pro rata* sharing of payments required thereby, without the prior written consent of each Lender directly and adversely affected thereby;
- (v) amend or modify the provisions of this Section 10.08 or the definition of the term “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender (it being understood that, with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Term Loans are included on the Closing Date); or

- 
- (vi) subordinate or release the liens on all or substantially all of the Collateral or all or substantially all of the aggregate value of the Guarantees (other than in connection with any transfer or other release of Collateral or of the relevant Guarantor permitted by the Loan Documents), without the prior written consent of each Lender;

*provided, further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent acting as such at the effective date of such agreement, as applicable. Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 10.08 and any consent by any Lender pursuant to this Section 10.08 shall bind any assignee of such Lender.

- (3) Without the consent of any Lender, the Loan Parties and the Administrative Agent may enter into any amendment, modification or waiver of any Loan Document, or enter into any new agreement or instrument, in each case to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law.
- (4) No Lender consent is required to effect any amendment or supplement to any Intercreditor Agreement that is:
  - (a) for the purpose of adding the holders of Pari Passu Lien Debt, Junior Lien Debt, Incremental Equivalent Term Debt, Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt (or a Debt Representative with respect thereto) as parties thereto, as expressly contemplated by the terms of such Intercreditor Agreement (it being understood that any such amendment or supplement may make such other changes to the applicable Intercreditor Agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing), or
  - (b) expressly contemplated by any Intercreditor Agreement.
- (5) This Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

- 
- (6) Notwithstanding anything in this Section 10.08 to the contrary, the Borrower may enter into Incremental Facility Amendments in accordance with Section 2.18, Refinancing Amendments in accordance with Section 2.19, and Extension Amendments in accordance with Section 2.20, and such Incremental Facility Amendments, Refinancing Amendments and Extension Amendments shall be effective to amend the terms of this Agreement and the other applicable Loan Documents, in each case, without any further action or consent of any other party to any Loan Document.
- (7) Notwithstanding anything in this Section 10.08 to the contrary, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the lenders providing the Replacement Loans (as defined below) to permit the refinancing, replacement or exchange of all outstanding Term Loans of any Class (“**Replaced Loans**”) with replacement term loans (“**Replacement Loans**”) hereunder; *provided* that,
- (a) the aggregate principal amount of such Replacement Loans shall not exceed the aggregate principal amount of such Replaced Loans (*plus* (i) the amount of all unpaid, accrued, or capitalized interest, penalties, premiums (including tender premiums), and other amounts payable with respect to any such Replaced Loans and (ii) underwriting discounts, fees, commissions, costs, expenses and other amounts payable with respect to such Replacement Loans);
  - (b) the All-in Yield with respect to such Replacement Loans (or similar interest rate spread applicable to such Replacement Loans) should not be higher than the All-in Yield for such Replaced Loans;
  - (c) the Weighted Average Life to Maturity of such Indebtedness is equal to or longer than the remaining Weighted Average Life to Maturity of the Replaced Loans at the time of such refinancing (except by virtue of amortization or prepayment of the Replaced Loans prior to the time of such incurrence); and
  - (d) all other terms of such Replacement Loans are substantially identical to, or, taken as a whole, not materially more favorable to the lenders or holders providing such Indebtedness than, those applicable to such Replaced Loans (except for covenants applicable only to periods after the Latest Maturity Date of the Replaced Loans at the time of incurrence) as determined in good faith by a Responsible Officer of the Borrower (*provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least four (4) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to the incurrence of such Replacement Loans, together with a reasonably detailed description of the material covenants and events of default of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (d) shall be conclusive evidence that such terms and conditions satisfy this clause (d) unless the Administrative Agent notifies the Borrower within such four (4) Business Day (or shorter) period that it disagrees with such determination (including a description of the basis upon which it disagrees)); *provided* that this clause (d) will not apply to (x) terms addressed in the preceding clauses, (y)

---

redemption, prepayment or other premiums or (z) optional prepayment or redemption terms; *provided, further*, that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof).

- (8) Notwithstanding anything to the contrary herein or any other Loan Document other than as set forth in the definition of “Required Lenders”, no Defaulting Lender or Disqualified Institution will have any right to approve or disapprove any amendment, waiver or consent hereunder and any amendment, waiver or consent which by its terms requires the consent of all Lenders, the Required Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than any Defaulting Lenders or Disqualified Institutions.
- (9) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, any amendment or waiver that by its terms affects the rights or duties of Lenders holding Term Loans or Commitments of a particular Class (but not the Lenders holding Term Loans or Commitments of any other Class) will require only the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto if such Class of Lenders were the only Class of Lenders.
- (10) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent.
- (11) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Administrative Agent, with the consent of the Borrower, may amend, modify or supplement any Loan Document without the consent of any Lender or the Required Lenders in order to correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error or other manifest error in any Loan Document, and such amendment, modification or supplement shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof.
- (12) In addition, notwithstanding anything to the contrary herein or any other Loan Document, the Collateral Agreement, each of the other Security Documents and any related documents may be in a form reasonably determined by the Administrative Agent and the Borrower and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (a) to comply with local Law or advice of local counsel, (b) to cure ambiguities or defects (as reasonably determined by the Administrative Agent and the Borrower) or (c) to cause such Security Document or other document to be consistent with this Agreement and the other Loan Documents.

SECTION 10.09. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the “*Charges*”), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender, shall exceed the maximum lawful rate (the “*Maximum Rate*”) that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable to such Lender, shall be limited to the Maximum Rate; *provided* that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation. In no event will the total interest received by any Lender exceed the amount which it could lawfully have received and any such excess amount received by any Lender will be applied to reduce the principal balance of the Term Loans or to other amounts (other than interest) payable hereunder to such Lender, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining will be paid to the Borrower.

SECTION 10.10. Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain Fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Notwithstanding the foregoing, the Fee Letters shall survive the execution and delivery of this Agreement and remain in full force and effect. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 10.11. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY 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, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

SECTION 10.12. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

---

SECTION 10.13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract, and shall become effective as provided in Section 10.03. Delivery of an executed counterpart to this Agreement by facsimile or other electronic transmission (e.g., “*PDF*” or “*TIFF*”) shall be as effective as delivery of a manually signed original.

SECTION 10.14. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 10.15. Jurisdiction; Consent to Service of Process.

- (1) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in the Borough of Manhattan (or if such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in the Borough of Manhattan) and any appellate court from any thereof (collectively, “*New York Courts*”), in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents or the transactions relating hereto or thereto, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such Federal (to the extent permitted by law) or New York State court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or any of the other Loan Documents in the courts of any jurisdiction, except that each of the Loan Parties agrees that it will not bring any such action or proceeding in any court other than New York Courts (it being acknowledged and agreed by the parties hereto that any other forum would be inconvenient and inappropriate in view of the fact that more of the Lenders who would be affected by any such action or proceeding have contacts with the State of New York than any other jurisdiction).
- (2) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 10.16. Confidentiality. Each of the Lenders and each of the Agents agrees (and agrees to cause each of its Related Parties) to use all information provided to it by or on behalf of the Borrower or its Restricted Subsidiaries under the Loan Documents or otherwise in connection with the Acquisition or the Transactions solely for the purposes of the transactions contemplated by this Agreement and the other Loan Documents and shall not publish, disclose or otherwise divulge such information (other than information that

- (1) has become generally available to the public other than as a result of a disclosure by such Person or its Related Parties;
- (2) has been independently developed by such Lender or the Administrative Agent without violating this Section 10.16 or relying on such information; or
- (3) was available to such Lender or the Administrative Agent from a third party having, to such Person's knowledge, no obligations of confidentiality to the Borrower or any other Loan Party);

and shall not reveal the same other than to its directors, trustees, officers, employees and advisors with a need to know or to any Person that approves or administers the Term Loans on behalf of such Lender or any numbering, administration or settlement service providers (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16 and, with respect to its directors, trustees, officers, employees and advisors, to the extent within its control, such Lender or Agent, as applicable, will be responsible for any such Person's non-compliance with this Section 10.16), except:

- (a) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, in which case such Person agrees, to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure or, if not practicable prior to disclosure and not prohibited by law, promptly after disclosure;
- (b) as part of normal reporting or review procedures to, or examinations by, Governmental Authorities or any bank accountants or bank regulatory authority exercising examination or regulatory authority, in which case (except with respect to any audit or examination conducted by any such bank accountant or bank regulatory authority) such Person agrees, to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure or, if not practicable prior to disclosure and not prohibited by law, promptly after disclosure;
- (c) to its parent companies, Affiliates or auditors (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16 and, to the extent within its control, such Lender or Agent will be responsible for any such Person's non-compliance with this Section 10.16);
- (d) in order to enforce its rights under any Loan Document in a legal proceeding;

- 
- (e) to any pledgee or assignee under Section 10.04(5) or any other prospective assignee of, or prospective Participant in, any of its rights under this Agreement (so long as such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16);
  - (f) to any direct or indirect contractual counterparty in Hedge Agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 10.16);
  - (g) with the prior written consent of the Borrower; and
  - (h) to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake to preserve the confidentiality of any confidential information relating to the Loan Parties received by it from such Person.

Notwithstanding the foregoing, no such information shall be disclosed to a Disqualified Institution that constitutes a Disqualified Institution at the time of such disclosure without the Borrower's prior written consent.

SECTION 10.17. Platform; Borrower Materials. The Borrower hereby acknowledges that (1) the Administrative Agent or the Arrangers will make available to the Lenders materials or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**"), and (2) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "**Public Lender**"). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that

- (a) all the Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "**PUBLIC**" shall appear prominently on the first page thereof;
- (b) by marking Borrower Materials "**PUBLIC**," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers and the Lenders to treat the Borrower Materials as either publicly available information or not material information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws;
- (c) all Borrower Materials marked "**PUBLIC**" are permitted to be made available through a portion of the Platform designated "**Public Investor**;" and
- (d) the Administrative Agent and the Arrangers shall be entitled to treat the Borrower Materials that are not marked "**PUBLIC**" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

Notwithstanding the foregoing, the following Borrower Materials shall be deemed to be marked "PUBLIC" unless the Borrower notifies the Administrative Agent that any such document contains MNPI: (1) the Loan Documents, (2) any notification of changes in the terms of the Term Loans, (3) any notification of the identity of Disqualified Institutions and (4) all information delivered pursuant to clauses (1), (2) and (3) of Section 5.04.

SECTION 10.18. [Reserved].

SECTION 10.19. USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act 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, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act.

SECTION 10.20. Intercreditor Agreements.

- (1) The parties hereto acknowledge and agree that any provision of any Loan Document to the contrary notwithstanding, prior to the discharge in full of all ABL Claims, the Loan Parties shall not be required to act or refrain from acting under any Loan Document with respect to the ABL Priority Collateral in any manner that would result in a "Default" or "Event of Default" (as defined in any ABL Loan Document) under the terms and provisions of the ABL Loan Documents.
- (2) Each Secured Party:
  - (a) consents to the subordination of Liens provided for in the Closing Date Intercreditor Agreement;
  - (b) agrees that it will be bound by and will take no actions contrary to the provisions of the Closing Date Intercreditor Agreement; and
  - (c) authorizes and instructs the Administrative Agent to enter into the Closing Date Intercreditor Agreement as Term Loan Agent and on behalf of such Lender.

The foregoing provisions are intended as an inducement to the lenders under the ABL Credit Agreement to extend credit and such lenders are intended third party beneficiaries of such provisions and the provisions of the Closing Date Intercreditor Agreement.

- (3) Further, each Secured Party:
  - (a) authorizes and instructs the Administrative Agent to enter into any Pari Passu Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement each in the form attached hereto or in such other form as may be satisfactory to the Administrative Agent and agrees that it will be bound by and will take no actions contrary to the provisions of any such Pari Passu Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement;

- 
- (b) agrees that the Administrative Agent may from time to time enter into a modification of the Closing Date Intercreditor Agreement, any Pari Passu Intercreditor Agreement or any Junior Lien Intercreditor Agreement, as the case may be, so long as the Administrative Agent reasonably determines that such modification is consistent with the terms of this Agreement and agrees that it will be bound by and will take no actions contrary to any such Intercreditor Agreement (as so modified); and
  - (c) pursuant to the express terms of the Intercreditor Agreements, in the event of any conflict or inconsistency between the provisions of the Intercreditor Agreements and this Agreement, the provisions of the Intercreditor Agreements shall govern and control.

SECTION 10.21. 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: (1) (a) the arranging and other services regarding this Agreement provided by the Agents, the Lenders and the Arrangers are arm's-length commercial transactions between the Borrower, on the one hand, and the Agents and the Arrangers, on the other hand; (b) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent they 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; (2) (a) each Agent, each Lender and each Arranger each 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 a financial advisor, agent or fiduciary for the Borrower or any other Person and (b) none of the Agents or Arrangers 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 (3) the Agents, the Arrangers 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 none of the Agents or any Arranger has any obligation to disclose any of such interests to the Borrower or any of its Affiliates. The Borrower agrees that it will not assert any claim against any Agent, Arranger or their respective Affiliates based on an alleged breach of fiduciary duty by such party in connection with this Agreement and the transactions contemplated hereby.

SECTION 10.22. Private-Side Information Contacts. 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 Investor**" 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 information that is not made available through the "**Public Investor**" portion of the Platform and that may contain MNPI with respect to the Borrower, any of its Affiliates, their respective Subsidiaries or their respective securities for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (1) other Lenders may have availed themselves of such information and (2) neither the Borrower nor the Administrative Agent has (a) any responsibility for such

Public Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Loan Documents and (b) any duty to disclose such information to such Public Lender or to use such information on behalf of such Public Lender, and shall not be liable for the failure to so disclose or use, such information.

SECTION 10.23. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (1) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and
- (2) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (a) a reduction in full or in part or cancellation of any such liability;
  - (b) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
  - (c) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

---

**IN WITNESS WHEREOF** , the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**AMNEAL PHARMACEUTICALS LLC** , as the Borrower

By: /s/ Chintu Patel

Name: Chintu Patel

Title: President

[Signature Page to Term Loan Credit Agreement]

---

**JPMORGAN CHASE BANK, N.A.** , as a Lender,  
Administrative Agent and Collateral Agent

By: /s/ James A. Knight  
Name: James A. Knight  
Title: Executive Director

[Signature Page to Term Loan Credit Agreement]

\$500,000,000

REVOLVING CREDIT AGREEMENT,

dated as of May 4, 2018,

among

AMNEAL PHARMACEUTICALS LLC,  
as the Borrower,

THE LENDERS PARTY HERETO,

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent and Collateral Agent,

JPMORGAN CHASE BANK, N.A.,  
BANK OF AMERICA, N.A. and  
RBC CAPITAL MARKETS,  
as Bookrunners and Arrangers,

BANK OF AMERICA, N.A. and  
ROYAL BANK OF CANADA,  
as Co-Syndication Agents

and

BANK OF THE WEST, CAPITAL ONE, N.A., GOLDMAN SACHS BANK USA,  
SUNTRUST BANK AND WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Co-Documentation Agents

---

---

---

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I Definitions	1
SECTION 1.01 Defined Terms	1
SECTION 1.02 Terms Generally	80
SECTION 1.03 Accounting Terms; GAAP; Fair Market Value	80
SECTION 1.04 Effectuation of Transfers	81
SECTION 1.05 Currencies	81
SECTION 1.06 Required Financial Statements	81
SECTION 1.07 Certifications	81
SECTION 1.08 Pro Forma Calculations	82
SECTION 1.09 LCA Election	83
ARTICLE II The Credits	84
SECTION 2.01 Commitments	84
SECTION 2.02 Loans and Borrowings	86
SECTION 2.03 Requests for Borrowings	87
SECTION 2.04 [Reserved]	88
SECTION 2.05 Letters of Credit	88
SECTION 2.06 Funding of Borrowings	97
SECTION 2.07 Interest Elections	98
SECTION 2.08 Termination and Reduction of Commitments	99
SECTION 2.09 Promise to Pay; Evidence of Debt	100
SECTION 2.10 Optional Repayment of Loans	100
SECTION 2.11 Mandatory Repayment of Loans	101
SECTION 2.12 Fees	101
SECTION 2.13 Interest	102
SECTION 2.14 Alternate Rate of Interest	103
SECTION 2.15 Increased Costs	105
SECTION 2.16 Break Funding Payments	106
SECTION 2.17 Taxes	106
SECTION 2.18 Payments Generally; <i>Pro Rata</i> Treatment; Sharing of Set-offs	110
SECTION 2.19 Mitigation Obligations; Replacement of Lenders	114
SECTION 2.20 Illegality	115
SECTION 2.21 Incremental Facilities	116
SECTION 2.22 Refinancing Amendments	118
SECTION 2.23 Extensions of Loans and Revolving Commitments	119
SECTION 2.24 Defaulting Lenders	122
ARTICLE III Representations and Warranties	124
SECTION 3.01 Organization; Powers	125

SECTION 3.02	Authorization; No Contravention	125
SECTION 3.03	Enforceability	125
SECTION 3.04	Governmental Approvals	126
SECTION 3.05	Title to Properties; Liens	126
SECTION 3.06	Subsidiaries	126
SECTION 3.07	Litigation; Compliance with Laws	127
SECTION 3.08	Federal Reserve Regulations	128
SECTION 3.09	Investment Company Act	128
SECTION 3.10	Use of Proceeds	128
SECTION 3.11	Tax Returns	128
SECTION 3.12	No Material Misstatements	129
SECTION 3.13	Environmental Matters	129
SECTION 3.14	Security Documents	130
SECTION 3.15	Location of Real Property and Leased Premises	130
SECTION 3.16	Solvency	131
SECTION 3.17	Financial Statements; No Material Adverse Effect	131
SECTION 3.18	Insurance	132
SECTION 3.19	USA PATRIOT Act; Anti-Corruption; Sanctions	132
SECTION 3.20	Intellectual Property Rights; Licenses, Etc.	133
SECTION 3.21	Employee Benefit Plans	134
SECTION 3.22	Labor Matters	134
SECTION 3.23	Borrowing Base Certificate	134
ARTICLE IV Conditions of Lending		134
SECTION 4.01	Closing Date Conditions Precedent	134
SECTION 4.02	All Credit Events After the Closing Date	137
ARTICLE V Affirmative Covenants		137
SECTION 5.01	Existence; Businesses and Properties	138
SECTION 5.02	Insurance	138
SECTION 5.03	Taxes	139
SECTION 5.04	Financial Statements, Reports, etc.	139
SECTION 5.05	Litigation and Other Notices	143
SECTION 5.06	Compliance with Laws	144
SECTION 5.07	Maintaining Records; Access to Properties and Inspections	144
SECTION 5.08	Use of Proceeds	146
SECTION 5.09	Compliance with Environmental Laws	146
SECTION 5.10	Further Assurances; Additional Security	146
SECTION 5.11	Cash Management Systems; Application of Proceeds of Accounts	148
SECTION 5.12	Post-Closing Matters	150
ARTICLE VI Negative Covenants		150

SECTION 6.01	Indebtedness	151
SECTION 6.02	Liens	157
SECTION 6.03	[Reserved]	162
SECTION 6.04	Investments, Loans and Advances	162
SECTION 6.05	Fundamental Changes	168
SECTION 6.06	Dispositions	169
SECTION 6.07	Restricted Payments	173
SECTION 6.08	Transactions with Affiliates	177
SECTION 6.09	Business of the Borrower and its Subsidiaries	179
SECTION 6.10	Burdensome Agreements	180
SECTION 6.11	Limitation on Payments and Modifications of Certain Indebtedness; Amendments of Certain Documents	182
SECTION 6.12	Use of Proceeds	184
SECTION 6.13	Financial Performance Covenant	184
ARTICLE VII [Reserved]		184
ARTICLE VIII Events of Default		184
SECTION 8.01	Events of Default	184
SECTION 8.02	Right to Cure	188
ARTICLE IX The Agents		189
SECTION 9.01	Appointment	189
SECTION 9.02	Delegation of Duties	190
SECTION 9.03	Exculpatory Provisions	191
SECTION 9.04	Reliance by Administrative Agent	192
SECTION 9.05	Notice of Default	193
SECTION 9.06	Non-Reliance on Agents and Other Lenders	193
SECTION 9.07	Indemnification	193
SECTION 9.08	Agent in Its Individual Capacity	194
SECTION 9.09	Successor Agent	194
SECTION 9.10	Arrangers; Co-Syndication Agents; Co-Documentation Agents	195
SECTION 9.11	Collateral and Guaranty Matters	195
SECTION 9.12	Certain ERISA Matters	198
ARTICLE X Miscellaneous		200
SECTION 10.01	Notices; Communications	200
SECTION 10.02	Survival of Agreement	202
SECTION 10.03	Binding Effect	202
SECTION 10.04	Successors and Assigns	202
SECTION 10.05	Expenses; Indemnity	208
SECTION 10.06	Right of Set-off	211
SECTION 10.07	Applicable Law	212

---

SECTION 10.08	Waivers; Amendment	212
SECTION 10.09	Interest Rate Limitation	216
SECTION 10.10	Entire Agreement	217
SECTION 10.11	WAIVER OF JURY TRIAL	217
SECTION 10.12	Severability	217
SECTION 10.13	Counterparts	217
SECTION 10.14	Headings	217
SECTION 10.15	Jurisdiction; Consent to Service of Process	217
SECTION 10.16	Confidentiality	218
SECTION 10.17	Platform; Borrower Materials	220
SECTION 10.18	[Reserved]	220
SECTION 10.19	USA PATRIOT Act Notice	220
SECTION 10.20	Intercreditor Agreements	221
SECTION 10.21	No Advisory or Fiduciary Responsibility	221
SECTION 10.22	Private-Side Information Contacts	222
SECTION 10.23	Acknowledgement and Consent to Bail-In of EEA Financial Institutions	222
SECTION 10.24	Incorporation by Reference	223

---

Exhibits and Schedules

Exhibit A	Form of Assignment and Acceptance
Exhibit B	Form of Borrowing Base Certificate
Exhibit C	Form of Solvency Certificate
Exhibit D-1	Form of Borrowing Request
Exhibit D-2	Form of Letter of Credit Request
Exhibit E	Form of Interest Election Request
Exhibit F	[Reserved]
Exhibit G	U.S. Tax Compliance Certificate
Exhibit H	Form of Junior Lien Intercreditor Agreement
Exhibit I	Form of Note
Exhibit J	FILO Intercreditor Provisions
Schedule 1.01(1)	Existing Letters of Credit
Schedule 1.01(2)	Collateral Locations
Schedule 2.01	Commitments
Schedule 3.06	Subsidiaries
Schedule 3.11	Taxes
Schedule 3.13	Environmental Matters
Schedule 3.15(1)	Owned Material Real Property
Schedule 3.15(2)	Leased Material Real Property
Schedule 3.18	Insurance
Schedule 5.12	Post-Closing Matters
Schedule 6.04	Investments
Schedule 6.08	Transactions with Affiliates
Schedule 6.10	Burdensome Agreements
Schedule 10.01	Notice Information

REVOLVING CREDIT AGREEMENT, dated as of May 4, 2018 (as amended, amended and restated, supplemented or otherwise modified from time to time, this “*Agreement*”), by and among AMNEAL PHARMACEUTICALS LLC, a Delaware limited liability company (the “*Borrower*”), the Lenders party hereto from time to time and JPMORGAN CHASE BANK, N.A. (“*JPM*”), as administrative agent (in such capacity, and as further defined in Section 1.01, the “*Administrative Agent*”), and as collateral agent (in such capacity, and as further defined in Section 1.01, the “*Collateral Agent*”).

#### RECITALS

- (1) Pursuant to the Business Combination Agreement, dated as of October 17, 2017 (such agreement, including all exhibits and schedules thereto, each as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “*Acquisition Agreement*”), by and among Impax (as defined herein), Atlas Holdings, Inc., a Delaware corporation which on the Closing Date will change its name to Amneal Pharmaceuticals, Inc. (“*Amneal Inc.*”), and the Borrower, Amneal Inc. will directly or indirectly (a) acquire (the “*Acquisition*”) all of the Capital Stock of Impax and (b) contribute (the “*Contribution*”) all of the Capital Stock of Impax to the Borrower.
- (2) In connection with the consummation of the Acquisition, (a) the Lenders have agreed to extend credit to the Borrower in the form of Revolving Loans and Letters of Credit in an aggregate principal amount not to exceed \$500.0 million, (b) certain financial institutions have agreed to extend credit to the Borrower in the form of term loans under the Term Loan Credit Agreement (as defined herein) in an aggregate principal amount of \$2,700.0 million and (c) the proceeds of the Loans borrowed on the Closing Date under this Agreement and the Initial Term Loans (as defined in the Term Loan Credit Agreement, the “*Initial Term Loans*”) will be applied on the Closing Date to (i) consummate the Acquisition, the Closing Date Refinancing and the other Transactions (including the Specified Tender Offer, which shall be consummated with the portion of the Initial Term Loans deposited into the Escrow Account (as defined in the Term Loan Credit Agreement)) and (ii) pay the Transaction Costs (as defined herein).

#### AGREEMENT

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

#### ARTICLE I

##### *Definitions*

SECTION 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“*ABL Priority Collateral*” means “*ABL Priority Collateral*” as defined in the Closing Date Intercreditor Agreement.

“*ABR*” means, for any day, a fluctuating rate *per annum* equal to the highest of:

- 
- (1) the NYFRB Rate in effect on such day plus  $\frac{1}{2}$  of 1%;
  - (2) the Prime Rate in effect on such day;
  - (3) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; *provided* that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day; and
  - (4) 1.00% per annum.

Any change in the ABR due to a change in the NYFRB Rate, the Prime Rate or the Adjusted LIBO Rate will be effective from and including the effective date of such change in the NYFRB Rate, the Prime Rate or the Adjusted LIBO Rate, as the case may be. If the ABR is being used as an alternate rate of interest pursuant to Section 2.11 hereof, then the ABR shall be the greater of clauses (1), (2) and (4) above and shall be determined without reference to clause (3) above. For the avoidance of doubt, if the ABR as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**ABR Borrowing**” means a Borrowing comprised of ABR Loans.

“**ABR Loan**” means any Loan bearing interest at a rate determined by reference to the ABR.

“**ABR Revolving Facility Borrowing**” means a Borrowing comprised of ABR Revolving Loans.

“**ABR Revolving Loan**” means any Revolving Loan bearing interest at a rate determined by reference to the ABR.

“**Acceptable Appraiser**” means (a) Hilco Valuation Services, LLC or (b) any other experienced and reputable appraiser reasonably acceptable to the Borrower and the Administrative Agent.

“**Account**” means, with respect to a Person, any of such Person’s now owned and hereafter acquired or arising accounts (as defined in the UCC), including, whether or not constituting “accounts” (as defined in the UCC), any rights to payment for the sale or lease of goods or Inventory or rendition of services, whether or not they have been earned by performance or arising out of the use of a credit or charge card or information contained on or used with such card (and whether same is an “Account” or “General Intangible” as defined in the UCC).

“**Acquisition**” has the meaning assigned to such term in the recitals hereto.

“**Acquisition Agreement**” has the meaning assigned to such term in the recitals hereto.

“**Acquisition Documents**” means the collective reference to the Acquisition Agreement, all exhibits and schedules thereto and all agreements expressly contemplated thereby, each as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“**Additional Lender**” means the banks, financial institutions and other institutional lenders and investors (other than natural persons and any Disqualified Institution) that become Lenders in connection with Incremental Commitments or Refinancing Term Loans; *provided* that the Administrative Agent shall have consented (such consent not to be unreasonably withheld, conditioned or delayed) to any Additional Lender to the extent its consent would be required under Section 10.04 for an assignment of Term Loans to such Additional Lender.

“**Adjusted LIBO Rate**” means, with respect to any Eurocurrency Revolving Facility Borrowing for any Interest Period, an interest rate *per annum* (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“**Administrative Agent**” means JPM, in its capacity as administrative agent for itself and the Lenders hereunder, and any duly appointed successor in such capacity.

“**Administrative Agent Fees**” has the meaning assigned to such term in Section 2.12(3).

“**Administrative Questionnaire**” means a customary Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Affiliate**” means, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. No Person (other than the Borrower or any Subsidiary of the Borrower) in whom a Receivables Subsidiary makes an Investment in connection with a Qualified Receivables Financing will be deemed to be an Affiliate of the Borrower or any of its Subsidiaries solely by reason of such Investment.

“**Agency Fee Letter**” means the Agency Fee Letter, dated November 6, 2017, by and among the Borrower, JPM, BANA and MLPFSI, as amended and in effect from time to time and including any joinders thereto.

“**Agents**” means the Administrative Agent and the Collateral Agent, in their respective capacities as such.

“**Agreement**” has the meaning assigned to such term in the introductory paragraph hereof.

“**Amneal Holdings**” means Amneal Holdings, LLC, a Delaware limited liability company.

“**Amneal Inc.**” has the meaning assigned to such term in the recitals hereto.

“*Annual Financial Statements*” has the meaning assigned to such term in Section 5.04(1).

“*Anti-Corruption Laws*” shall mean all laws, rules, and regulations of any jurisdiction applicable to the Borrower or the Restricted Subsidiaries from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, and other similar legislation in any other jurisdictions (as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced).

“*Applicable Commitment Fee Percentage*” means a percentage per annum equal to (1) initially, 0.375% and (2) after September 30, 2018, the percentages per annum determined in accordance with the grid set forth below, based on Average Historical Excess Availability for the most recent fiscal quarter ending on the date prior to the first day of each fiscal quarter of the Borrower:

<u>Level</u>	<u>Average Historical Excess Availability</u>	<u>Commitment Fee Percentage</u>
I	Greater than 50% of the Line Cap	0.375%
II	Less than or equal to 50% of the Line Cap	0.25%

For purposes of the foregoing, each change in the Applicable Commitment Fee Percentage resulting from a change in Average Historical Excess Availability shall be effective during the period commencing on and including the first day of each fiscal quarter of the Borrower and ending on the last day of such fiscal quarter, it being understood and agreed that, for purposes of determining the Applicable Commitment Fee Percentage on the first day of any fiscal quarter of the Borrower, the Average Historical Excess Availability during the most recently ended fiscal quarter of the Borrower shall be used.

“*Applicable Margin*” means, as of the Closing Date, (1) for ABR Loans, 0.50%, and (2) for Eurocurrency Revolving Loans, 1.50 % and, after September 30, 2018, the percentages per annum determined in accordance with the pricing grid set forth below, based on Average Historical Excess Availability for the most recent fiscal quarter ending on the date prior to the first day of each fiscal quarter of the Borrower:

<u>Pricing Level</u>	<u>Average Historical Excess Availability</u>	<u>Applicable Margin for Eurocurrency Revolving Loans</u>	<u>Applicable Margin for ABR Loans</u>
I	Greater than or equal to 66.7% of the Line Cap	1.25%	0.25%
II	Less than 66.7% of the Line Cap but greater than or equal to 33.3% of the Line Cap	1.50%	0.50%
III	Less than 33.3% of the Line Cap	1.75%	0.75%

For purposes of the foregoing, each change in the Applicable Margin resulting from a change in Average Historical Excess Availability shall be effective during the period commencing on and including the first day of each fiscal quarter of the Borrower and ending on the last day of such fiscal quarter, it being understood and agreed that, for purposes of determining the Applicable Margin on the first day of any fiscal quarter of the Borrower, the Average Historical Excess Availability during the most recently ended fiscal quarter of the Borrower shall be used.

“**Approved Fund**” means, with respect to any Lender, any fund that is administered, advised or managed by:

- (a) such Lender;
- (b) any Affiliate of such Lender; or
- (c) any entity or an Affiliate of an entity that administers, advises or manages such Lender.

“**Arranger**” means each of JPM, BANA and RBC.

“**Arranger Fee Letter**” means the Amended and Restated Fee Letter, dated November 6, 2017, by and among the Borrower, JPM, BANA, MLPFSI and RBC, as amended and in effect from time to time and including any joinders thereto.

“**Asset Sale**” means any Casualty Event, or any sale, transfer or other disposition (including any Sale Leaseback Transaction) to any Person of any asset or assets of the Borrower or any Restricted Subsidiary, other than any disposition of any Securitization Assets.

“**Assignee**” has the meaning assigned to such term in Section 10.04(2).

“**Assignment and Acceptance**” means an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent and the Borrower (if required by Section 10.04), substantially in the form of Exhibit A or such other form that is approved by the Administrative Agent and reasonably satisfactory to the Borrower.

“**Attributable Indebtedness**” means, on any date, in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“**Availability Period**” means the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Revolving Facility Commitments.

“**Available Unused Commitment**” means, with respect to a Lender at any time, an amount equal to the amount by which (1) the Revolving Facility Commitment of such Lender at such time exceeds (2) the aggregate Revolving Facility Credit Exposure of such Lender at such time.

---

“ **Average Historical Excess Availability** ” means, for any period, the average daily Excess Availability for such period.

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

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

“ **BANA** ” means Bank of America, N.A.

“ **Blocked Account** ” has the meaning assigned to such term in Section 5.11.

“ **Below Threshold Asset Sale Proceeds** ” means the cash proceeds of Asset Sales involving aggregate consideration of \$25.0 million or less.

“ **Beneficial Owner** ” has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act. The terms “ **Beneficially Owns** ” and “ **Beneficially Owned** ” have a corresponding meaning.

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

“ **Board of Directors** ” means, as to any Person, the board of directors, board of managers or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity, and the term “ **directors** ” means members of the Board of Directors.

“ **Borrower** ” has the meaning assigned to such term in the recitals to this Agreement.

“ **Borrower Materials** ” has the meaning assigned to such term in Section 10.17(1).

“ **Borrowing** ” means a group of Loans of a single Type made on a single date and, in the case of Eurocurrency Revolving Loans, as to which a single Interest Period is in effect.

“ **Borrowing Base** ” means, at any time, the sum of:

- (1) 85% of the Eligible Accounts held by the Loan Parties; *plus*

- 
- (2) the lesser of:
- (a) 70% of the Eligible Inventory held by the Loan Parties valued at Cost on a first-in, first-out basis; and
  - (b) 85% of the Net Orderly Liquidation Value of Eligible Inventory held by the Loan Parties valued at the lower of Cost or market on a first-in, first-out basis; *plus*
- (3) 100% of all Eligible Cash held by the Loan Parties; *less*
- (4) Reserves in effect at such time;

*provided*, that notwithstanding anything to the contrary herein or in any other Loan Document, from the Closing Date until the Initial Borrowing Base Date, the Borrowing Base will be deemed to be \$350 million for all purposes of this Agreement and the other Loan Documents.

“**Borrowing Base Certificate**” means a certificate, signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit B (or another form acceptable to the Administrative Agent and the Borrower) setting forth the calculation of the Borrowing Base, including a calculation of each component thereof (including, to the extent the Borrower has received notice of any such Reserve from the Administrative Agent, any of the Reserves included in such calculation), all in such detail as is reasonably satisfactory to the Administrative Agent. All calculations of the Borrowing Base in connection with the preparation of any Borrowing Base Certificate will be made by the Borrower and certified to the Administrative Agent.

“**Borrowing Minimum**” means \$500,000 in the case of ABR Borrowings and \$1,000,000 in the case of Eurocurrency Revolving Facility Borrowings.

“**Borrowing Multiple**” means \$100,000 in the case of ABR Borrowings and Eurocurrency Revolving Facility Borrowings.

“**Borrowing Request**” means a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit D-1.

“**Budget**” has the meaning assigned to such term in Section 5.04(5).

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close; *provided* that when used in connection with a Eurocurrency Revolving Loan, the term “**Business Day**” also excludes any day on which banks are not open for dealings in deposits in the London interbank market.

“**Capital Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capital Leases) incurred by the Borrower and the Restricted Subsidiaries during such period that, in accordance with GAAP, are or should be included in “additions to property, plant or equipment” or similar items reflected in the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries for such period; *provided* that Capital Expenditures will not include:

- 
- (1) expenditures to the extent they are made with (a) Equity Interests of any Parent Entity or (b) proceeds of the issuance of Equity Interests (other than Disqualified Stock) of, or a cash capital contribution to, the Borrower after the Closing Date;
  - (2) expenditures with proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Borrower and its Restricted Subsidiaries;
  - (3) interest capitalized during such period;
  - (4) expenditures that are accounted for as capital expenditures of such Person and that actually are paid for by a third party (excluding the Borrower and any Restricted Subsidiary) and for which none of the Borrower or any Restricted Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other Person (whether before, during or after such period);
  - (5) the book value of any asset owned by the Borrower or any Restricted Subsidiary prior to or during such period to the extent that such book value is included as a Capital Expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period; *provided* that any expenditure necessary in order to permit such asset to be reused will be included as a Capital Expenditure during the period that such expenditure is actually made;
  - (6) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (a) used or surplus equipment traded in at the time of such purchase or (b) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business;
  - (7) Investments in respect of any Permitted Acquisitions;
  - (8) the Acquisition; or
  - (9) the purchase of property, plant or equipment to the extent purchased with the proceeds of Asset Sales that are not applied to prepay loans pursuant to Section 2.08 of the Term Loan Credit Agreement.

“ **Capital Lease Obligations** ” means, with respect to any Person, at the time any determination thereof is to be made, the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP (excluding the footnotes thereto) and, for purposes hereof, the amount of such obligations at any time will be the capitalized amount thereof at such time determined in accordance with GAAP.

---

“**Capital Leases**” means all leases that have been or are required to be, in accordance with GAAP as in effect on the Closing Date, recorded as capitalized leases; *provided* that for all purposes hereunder the amount of obligations under any Capital Lease shall be the amount thereof accounted for as a liability in accordance with GAAP as in effect on the Closing Date.

“**Capital Stock**” means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“**Captive Insurance Subsidiary**” means any Subsidiary that is subject to regulation as an insurance company (or any Subsidiary thereof).

“**Cash Dominion Period**” means the period commencing upon the occurrence of, and continuing during the continuation of, a Liquidity Condition or any Designated Event of Default. Once commenced, a Cash Dominion Period will continue until such Liquidity Condition or Designated Event of Default has been cured or waived or is no longer continuing, as applicable.

“**Cash Equivalents**” means:

- (1) Dollars, Canadian dollars, Japanese yen, pounds sterling, euros or the national currency of any participating member of the European Union or, in the case of any Non-U.S. Subsidiary, any local currencies held by it from time to time in the ordinary course of business and not for speculation;
- (2) direct obligations of the United States of America, the United Kingdom or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America, the United Kingdom or any member of the European Union or any agency thereof, in each case, with maturities not exceeding two years;
- (3) time deposits, eurodollar time deposits, certificates of deposit and money market deposits, in each case, with maturities not exceeding one year from the date of acquisition thereof, demand deposits, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any commercial bank having capital, surplus and undivided profits of not less than \$250.0 million (or the foreign currency equivalent thereof);

- (4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (6) below entered into with a bank meeting the qualifications described in clause (3) above;
- (5) commercial paper or variable or fixed rate notes maturing not more than one year after the date of acquisition issued by a corporation rated at least “P-1” by Moody’s or “A-1” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
- (6) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, having one of the two highest rating categories obtainable from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
- (7) Indebtedness issued by Persons with a rating of at least “A 2” by Moody’s or “A” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case, with maturities not exceeding one year from the date of acquisition, and marketable short-term money market and similar securities having a rating of at least “P-2” or “A-2” from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
- (8) Investments in money market funds with average maturities of 12 months or less from the date of acquisition that are rated “Aaa3” by Moody’s and “AAA” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
- (9) instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above customarily utilized in the countries where any such Restricted Subsidiary is located or in which such Investment is made;
- (10) shares of mutual funds whose investment guidelines restrict 95% of such funds’ investments to those satisfying the provisions of clauses (1) through (9) above; and
- (11) solely with respect to any Captive Insurance Subsidiary, any investment that such Captive Insurance Subsidiary is not prohibited to make in accordance with applicable law.

“**Cash Management Bank**” means any provider of Cash Management Services that, at the time such Cash Management Obligations were entered into or, if entered into prior to the Closing Date, on the Closing Date, was the Administrative Agent, a Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be the Administrative Agent, a Lender or an Affiliate of the foregoing.

“**Cash Management Obligations**” means obligations owed by the Borrower or any Restricted Subsidiary to any Cash Management Bank in respect of or in connection with Cash Management Services and designated by the Cash Management Bank and the Borrower in writing to the Administrative Agent as “Cash Management Obligations” under this Agreement (but only if such obligations have not been designated as “Cash Management Obligations” under the Term Loan Credit Agreement).

---

“**Cash Management Services**” means any treasury, depository, pooling, netting, overdraft, stored value card, purchase card (including so called “procurement card” or “P-card”), debit card, credit card, cash management and similar services and any automated clearing house transfer of funds.

“**Casualty Event**” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“**Certain Funds Provisions**” has the meaning given to such term in the Commitment Letter.

A “**Change in Control**” will be deemed to occur if:

- (1) at any time a “change of control” (or comparable event) occurs under the Term Loan Credit Agreement or the documentation governing any Permitted Refinancing Indebtedness in respect of the foregoing, in each case, if any Indebtedness is outstanding under such agreement; or
- (2) any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, but excluding any employee benefit plan of such Person and its subsidiaries and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the Permitted Holders, acquires, directly or indirectly, Beneficial Ownership of Equity Interests representing more than 35% of the aggregate ordinary voting power (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested) represented by the issued and outstanding Equity Interests of Amneal Inc. and the percentage of the aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Amneal Inc. Beneficially Owned, directly or indirectly, in the aggregate by the Permitted Holders, taken together (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested) unless, in the case of this clause (2), the Permitted Holders have the right or the ability by voting power, contract or otherwise to elect or designate for election a majority of the board of directors of Amneal Inc.; or
- (3) Amneal Inc. fails to Control the Borrower.

“**Change in Law**” means:

- (1) the adoption of any law, rule or regulation after the Closing Date;
- (2) any change in law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date; or

(3) compliance by any Lender (or, for purposes of Section 2.15(2), by any lending office of such Lender or by such Lender's holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority, made or issued after the Closing Date; *provided* that, notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives promulgated thereunder or issued in connection therewith and (b) 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 of America or foreign regulatory authorities, in each case pursuant to Basel III, in each case will be deemed to be a "Change in Law," regardless of the date enacted, adopted, promulgated or issued.

" **Charges** " has the meaning assigned to such term in Section 10.09.

" **Closing Date** " means May 4, 2018.

" **Closing Date EBITDA** " means \$619,791,601.

" **Closing Date First Lien Net Leverage Ratio** " means 4.20 to 1.00.

" **Closing Date Intercreditor Agreement** " means the ABL / Term Loan Intercreditor Agreement, dated as of the Closing Date, by and among the Administrative Agent, the Collateral Agent and JPM, as administrative agent and collateral agent under the Term Loan Credit Agreement, and acknowledged by the Loan Parties, as amended, restated, amended and restated, supplemented or otherwise modified from time to time pursuant to the terms hereof and thereof.

" **Closing Date Refinancing** " means the repayment of the debt and termination of the commitments under the Existing Credit Facilities and release of all Liens and security interests related thereto.

" **Closing Date Total Net Leverage Ratio** " means 4.20 to 1.00.

" **Co-Documentation Agents** " means Bank of the West, Capital One N.A., Goldman Sachs Bank USA, Suntrust Bank and Wells Fargo Bank, National Association.

" **Co-Syndication Agents** " means Bank of America, N.A. and Royal Bank of Canada.

" **Code** " means the Internal Revenue Code of 1986, as amended.

" **Collateral** " means the " *Collateral* " as defined in the Collateral Agreement and also includes all other property that is subject to any Lien in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to any Security Document; *provided* that, for the avoidance of doubt, the Collateral will not include any Excluded Assets.

“**Collateral Access Agreement**” means a landlord waiver or other agreement, in a form as shall be reasonably satisfactory to the Collateral Agent, between the Collateral Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of any premises where any Collateral is located, as such landlord waiver or other agreement may be amended, restated, or otherwise modified from time to time.

“**Collateral Agent**” means JPM, in its capacity as Collateral Agent for itself and the other Secured Parties, and any duly appointed successor in that capacity.

“**Collateral Agreement**” means the ABL Guarantee and Collateral Agreement dated as of the Closing Date, among the Loan Parties party thereto and the Collateral Agent, as amended, amended and restated, supplemented or otherwise modified from time to time.

“**Collateral Test Triggering Event**” means any date on which Specified Excess Availability has been less than the greater of (A) \$37.5 million and (B) 15% of the Line Cap for five (5) consecutive Business Days.

“**Commitment Fee**” has the meaning assigned to such term in Section 2.12(1).

“**Commitment**” means (1) with respect to each Lender, such Lender’s Revolving Facility Commitment and (2) with respect to any Issuing Bank, its Letter of Credit Commitment. On the Closing Date, the aggregate amount of Commitments is \$500.0 million.

“**Commitment Letter**” means that certain Amended and Restated Commitment Letter, dated as of November 6, 2017, by and among the Borrower, JPM, BANA, MLPFSI and RBC and including any joinders thereto.

“**Consolidated Amortization Expense**” means, with respect to any Person for any Test Period, the amortization expense of such Person and its Restricted Subsidiaries for such Test Period, including the amortization of deferred financing fees or costs for such Test Period, determined on a consolidated basis in accordance with GAAP.

“**Consolidated Cash Interest Expense**” means, with respect to any Person and its Restricted Subsidiaries (on a consolidated basis) for any Test Period, the sum of: (1) cash consolidated interest expense (less cash interest income) for such period plus (2) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock made during such period.

“**Consolidated Debt**” means, as of any date of determination, the sum (without duplication) of the aggregate principal amount of all Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date consisting of Indebtedness for borrowed money, unreimbursed obligations in respect of drawn letters of credit (to the extent not cash collateralized), Capital Lease Obligations, Indebtedness obligations evidenced by bonds, debentures, notes or similar instruments and obligations with respect to Disqualified Stock, determined on a consolidated basis in accordance with GAAP (but excluding the effects of the application of purchase accounting in connection with the Transactions, any Permitted Acquisition or any other investment permitted hereunder), based upon the most recent fiscal quarter for which Required Financial Statements have been or are required to have been delivered; *provided*, that Consolidated Debt will include any Convertible Indebtedness to the extent of the aggregate principal amount thereof; *provided, further*, that Consolidated Debt shall not include any Indebtedness in respect of:

- 
- (1) any Qualified Receivables Transaction;
  - (2) any letter of credit, except to the extent of unreimbursed obligations in respect of drawn letters of credit (*provided* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Debt until three business days after such amount is drawn (it being understood that any borrowing, whether automatic or otherwise, to fund such reimbursement shall be counted)); or
  - (3) obligations under Hedge Agreements.

“**Consolidated Depreciation Expense**” means, with respect to any Person for any Test Period, the depreciation expense of such Person and its Restricted Subsidiaries for such Test Period, determined on a consolidated basis in accordance with GAAP.

“**Consolidated EBITDA**” means, with respect to any Person for any Test Period, Consolidated Net Income of such Person and its Restricted Subsidiaries for such Test Period, adjusted by:

- (1) adding thereto, in each case, only to the extent deducted (and not added back) in determining such Consolidated Net Income and without duplication:
  - (a) Consolidated Interest Expense for such Test Period;
  - (b) Consolidated Amortization Expense for such Test Period;
  - (c) Consolidated Depreciation Expense for such Test Period;
  - (d) Consolidated Tax Expense for such Test Period;
  - (e) the amount of any restructuring, severance, relocation, consolidation, integration, remediation or similar items or reserves in such Test Period (whether or not characterized as such in accordance with GAAP), including items or reserves incurred or taken in connection with (i) Permitted Acquisitions and other Permitted Investments after the Closing Date and (ii) severance and the consolidation or closing of any facilities after the Closing Date;
  - (f) the amount of costs relating to signing, retention and completion bonuses, relocation expenses, recruiting expenses, costs and expenses incurred in connection with any strategic or new initiatives, transition costs, consolidation and closing costs for facilities, business optimization expenses and new systems design and implementation costs;

- 
- (g) the amount of “run-rate” cost savings, operating expense reductions and synergies related to the Transactions, any Specified Transaction or any other restructuring, cost saving initiative or other initiative that are projected by such Person in good faith to result from actions taken, committed to be taken or expected to be taken no later than 24 months after the end of such Test Period (which amounts will be determined by such Person in good faith and calculated on a Pro Forma Basis as though such amounts had been realized on the first day of such Test Period), net of the amount of actual benefits realized during such Test Period from such actions; *provided*, that the amounts added back pursuant to this clause (g) shall not exceed 25% of Consolidated EBITDA after giving effect to this clause (g);
  - (h) any costs or expenses incurred in such Test Period pursuant to or in connection with or resulting from any management equity plan, profits interest or stock option plan or any other management or employee benefit plan or agreement or any post-employment benefit plans or agreements or any grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other similar rights or any stock subscription, stockholders or partnership agreement;
  - (i) any net loss from disposed, abandoned, closed or discontinued operations;
  - (j) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any Test Period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (2) below for any previous Test Period and not added back;
  - (k) any non-cash charges or expenses reducing Consolidated Net Income for such Test Period (provided that if any such non-cash item represents an accrual or reserve for potential cash items in any future Test Period, (i) such Person may determine not to add back such non-cash item in the current Test Period and (ii) to the extent such Person does decide to add back such non-cash item, the cash payment in respect thereof in such future Test Period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior Test Period);
  - (l) all charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Equity Interests held by officers or employees of such Person and all losses, charges and expenses related to payments made to holders of options or other derivative Equity Interests in the common equity of such Person or any direct or indirect parent thereof in connection with, or as a result of, any distribution being made to equity holders of such Person or any direct or indirect parent thereof, which payments are being made to compensate such option holders as though they were equity holders at the time of, and entitled to share in, such distribution;
  - (m) the amount of any expenses paid on behalf of any member of the board of directors or reimbursable to such member of the board of directors;

- 
- (n) all judgments, liabilities, obligations, damages of any kind, including liquidated damages, settlement amounts, losses, fines, costs, fees, expenses (including reasonable attorneys' fees and disbursements), penalties and interest and other charges or expenses in connection with any lawsuit or other proceeding against such Person and its Subsidiaries; provided, that the amounts added back pursuant to this clause (n) shall not exceed 15% of Consolidated EBITDA prior to giving effect to this clause (n);
  - (o) losses or discounts on any sale of receivables, Securitization Assets and related assets in connection with any Qualified Receivables Transaction;
  - (p) earn-outs and contingent consideration obligations (including to the extent accounted for as bonuses and other compensation), payments in respect of dissenting shares, and purchase price adjustments, made by such Person during such Test Period, in each case, in connection with an investment or acquisition permitted hereunder;
  - (q) the amount of any contingent payments in connection with the licensing of Intellectual Property Rights or other assets;
  - (r) any extraordinary, non-recurring or unusual costs items; and
  - (s) other adjustments consistent with Regulation S-X; and

(2) subtracting therefrom, in each case only to the extent (and in the same proportion) included or added in determining such Consolidated Net Income and without duplication:

- (a) the aggregate amount of all non-cash items increasing Consolidated Net Income (other than (i) the accrual of revenue or recording of receivables in the ordinary course of business and (ii) the reversal of any accrual of a reserve referred to in the parenthetical in clause (1)(k) of this definition (other than any such reversal that results from a cash payment subtracted from Consolidated EBITDA)) for such Test Period;
- (b) any extraordinary, non-recurring or unusual gains; and
- (c) any net income from disposed, abandoned, closed or discontinued operations.

Notwithstanding the foregoing, Consolidated EBITDA of the Borrower (i) for the fiscal quarter ended March 31, 2017, shall be deemed to be \$124,962,967, (ii) for the fiscal quarter ended June 30, 2017, shall be deemed to be \$146,611,301, (iii) for the fiscal quarter ended September 30, 2017, shall be deemed to be \$179,033,361, and (iv) for the fiscal quarter ended December 31, 2017, shall be deemed to be \$169,183,972, as such amounts may be adjusted pursuant to Pro Forma adjustments permitted by this Agreement.

“ **Consolidated First Lien Net Debt** ” means, as of any date, the Loans, the Initial Term Loans and any other Consolidated Debt outstanding as of such date that is secured on a *pari passu* basis with the Liens that secure the Initial Term Loans, *minus* all Unrestricted Cash as of such date in an aggregate amount not to exceed \$150,000,000, in each case, determined based upon the most recent fiscal quarter for which Required Financial Statements have been or are required to have been delivered; *provided* that for purposes of calculating the amount of Consolidated First Lien Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness.

“ **Consolidated Interest Expense** ” means, with respect to any Person for any Test Period, the total consolidated interest expense of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, *including* , without duplication:

- (1) imputed interest on Capital Lease Obligations and Attributable Indebtedness of such Person and its Restricted Subsidiaries for such Test Period;
- (2) commissions, discounts and other fees, charges and expenses owed by such Person and its Restricted Subsidiaries with respect to letters of credit securing financial obligations, bankers’ acceptance financing and receivables financings for such Test Period;
- (3) pay-in-kind interest payments, amortization and write-offs of deferred financing fees, debt issuance costs, debt discount, or premium, commissions and other financing fees and expenses (including expensing of any bridge, commitment or other financing fees) incurred by such Person and its Restricted Subsidiaries for such Test Period including net costs under Hedge Agreements dealing with interest rates and any commitment fees payable thereunder and all discounts, commissions, fees and other similar charges associated with any Qualified Receivables Transaction;
- (4) cash contributions to any employee stock ownership plan or similar trust made by such Person and its Restricted Subsidiaries to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than such Person or a wholly-owned Subsidiary) in connection with Indebtedness incurred by such plan or trust for such Test Period;
- (5) all interest paid or payable with respect to discontinued operations of such Person and its Restricted Subsidiaries for such Test Period;
- (6) the interest portion of any deferred payment obligations of such Person and its Restricted Subsidiaries for such Test Period; and
- (7) all interest on any Indebtedness of such Person and its Restricted Subsidiaries that is (a) Indebtedness of others secured by any Lien on property owned or acquired by such Person or its Subsidiaries, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such property or (b) contingent obligations of such Person or its Subsidiaries in respect of Indebtedness;

*provided* that Consolidated Interest Expense shall be calculated after giving effect to Hedge Agreements related to interest rates (including associated costs), but excluding unrealized gains and losses with respect to such Hedge Agreements; *provided further* that when determining Consolidated Interest Expense in respect of any Test Period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of such Test Period. For purposes of this definition, interest on Capital Lease Obligations will be deemed to accrue at the interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Capital Lease Obligations in accordance with GAAP.

“**Consolidated Net Income**” means, with respect to any Person for any Test Period, the Net Income of such Person and its Restricted Subsidiaries determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded from such consolidated net income (to the extent otherwise included therein), without duplication:

- (1) the Net Income for such Test Period of any Person that is not a Subsidiary, or that is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; provided that the Borrower’s or any Restricted Subsidiary’s equity in the Net Income of such Person shall be included in the Consolidated Net Income of the Borrower for such Test Period up to the aggregate amount of dividends or distributions or other payments in respect of such equity that are actually paid in cash (or to the extent converted into cash) by such Person to the Borrower or a Restricted Subsidiary, in each case, in such Test Period, to the extent not already included therein;
- (2) [Reserved];
- (3) any gain (or loss), together with any related provisions for taxes on any such gain (or the tax effect of any such loss), realized by such Person or any of its Restricted Subsidiaries during such Test Period upon any asset sale or other disposition of any Equity Interests of any Person (other than any dispositions in the ordinary course of business) by such Person or any of its Restricted Subsidiaries;
- (4) gains and losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such Test Period;
- (5) earnings (or losses), including any impairment charge, resulting from any reappraisal, revaluation or write-up (or write-down) of assets during such Test Period;
- (6) (a) unrealized gains and losses with respect to Hedge Agreements for such Test Period pursuant to the application of Accounting Standards Codification 815 (Derivatives and Hedging) and (b) any after-tax effect of income (or losses) for such Test Period that result from the early extinguishment of (i) Indebtedness, (ii) obligations under any Hedge Agreements or (iii) other derivative instruments;
- (7) any extraordinary, non-recurring or unusual gain (or extraordinary, non-recurring or unusual loss), together with any related provision for taxes on any such gain (or the tax effect of any such loss), recorded or recognized by such Person or any of its Restricted Subsidiaries during such Test Period;

- 
- (8) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such Test Period;
  - (9) any after-tax gains (or losses) on disposal of disposed, abandoned or discontinued operations for such Test Period;
  - (10) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) in the inventory, property and equipment, software, goodwill, other intangible assets, in-process research and development, deferred revenue, debt and unfavorable or favorable lease line items in such Person's consolidated financial statements pursuant to GAAP for such Test Period resulting from the application of purchase accounting in relation to the Transactions or any acquisition consummated prior to the Closing Date and any Permitted Acquisition or other investment or the amortization or write-off of any amounts thereof, net of taxes, for such Test Period;
  - (11) any non-cash compensation charge or expense (including any deferred non-cash compensation expense) for such Test Period, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights and any cash charges or expenses associated with the rollover, acceleration or payout of Equity Interests by, or to, management of the such Person or any of its Restricted Subsidiaries in connection with the Transactions;
  - (12) (a) Transaction Costs incurred during such Test Period (including, for the avoidance of doubt, any charges, costs or expenses pursuant to or in connection with or resulting from any Existing Notes LM Transaction or Specified Tender Offer) and (b) any fees and expenses incurred during such Test Period, or any amortization thereof for such Test Period, in connection with any acquisition (other than the Transactions), investment, disposition, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt or equity instrument (in each case, including any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed) and any charges or non-recurring costs incurred during such Test Period as a result of any such transaction;
  - (13) any expenses, charges or losses for such Test Period that are covered by indemnification or other reimbursement provisions in connection with any investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days); and

(14) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses for such Test Period with respect to liability or casualty events or business interruption.

“ **Consolidated Tax Expense** ” means, with respect to any Person for any Test Period, taxes based on gross receipts, income, profits or capital, franchise, excise or similar taxes, and foreign withholding taxes, of such Person and its Restricted Subsidiaries for such Test Period, including (1) penalties and interest related thereto and (2) tax distributions made to any direct or indirect holders of Equity Interests of such Person in respect of any such taxes.

“ **Consolidated Total Assets** ” means, as of any date, the total assets of the Borrower and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“ **Consolidated Total Net Debt** ” means, as of any date, the Consolidated Debt outstanding as of such date *minus* all Unrestricted Cash as of such date in an aggregate amount not to exceed \$150,000,000, in each case, determined based upon the most recent financial statements available internally as of the date of determination; *provided* that for purposes of calculating the Consolidated Total Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness.

“ **continuing** ” means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

“ **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.

“ **Contribution** ” has the meaning assigned to such term in the recitals hereto.

“ **Contribution Indebtedness** ” means Indebtedness in an aggregate outstanding principal amount not to exceed an amount equal to 100% of the net cash proceeds and the fair market value of property (other than cash) received by the Borrower from Permitted Equity Issuances or as a contribution to its common equity capital, in each case, after the Closing Date and on or prior to the date of such incurrence (other than Excluded Contributions, Cure Amounts and sales of Equity Interests to the Borrower or any of its Subsidiaries) that are Not Otherwise Applied.

“ **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 ownership of voting securities, by contract or otherwise, and the terms “ **Controlling** ” and “ **Controlled** ” will have correlative meanings.

“ **Control Agreement** ” has the meaning assigned to such term in the Collateral Agreement.

“ **Convertible Indebtedness** ” means (1) the Impax Convertible Notes and (2) any Indebtedness of a Loan Party (which may be Guaranteed by other Loan Parties) permitted to be incurred hereunder that is either (a) convertible into common Capital Stock of the Borrower or of any direct or indirect parent thereof (or other applicable securities or property following a merger event or other change of the common Capital Stock of the Borrower) (and cash in lieu of fractional shares) and/or cash (in an amount determined by reference to the price of such common Capital Stock or such other securities) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common Capital Stock of the Borrower or of any direct or indirect parent thereof and/or cash (in an amount determined by reference to the price of such common Capital Stock).

“ **Cost** ” means the calculated cost of purchases, based upon the Borrower’s accounting practices as reflected in the most recent Annual Financial Statements, which practices are consistent with the methodology used in the most recent appraisal delivered in connection with this Agreement prior to the Closing Date.

“ **Covenant Trigger Event** ” means that Specified Excess Availability is less than either (a) the greater of (i) \$25.0 million and (ii) 10.0% of the Line Cap then in effect for two (2) consecutive Business Days or (b) the greater of (i) \$18.75 million and (ii) 7.5% of the Line Cap then in effect at any time. Once commenced, a Covenant Trigger Event will be deemed to be continuing until such time as Specified Excess Availability equals or exceeds such amount, as reflected in a Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 5.04(9), for 20 consecutive days.

“ **Credit Agreement Refinanced Debt** ” has the meaning assigned to it in the definition of “ *Credit Agreement Refinancing Indebtedness* ”.

“ **Credit Agreement Refinancing Indebtedness** ” means secured or unsecured Indebtedness of the Borrower in the form of term loans or notes; *provided that*:

- (1) such Indebtedness is incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace or refinance, in whole or part, Indebtedness (“ **Credit Agreement Refinanced Debt** ”) that is either Loans or other Credit Agreement Refinancing Indebtedness;
- (2) such Indebtedness is in an original aggregate principal amount not greater than the principal amount of the Credit Agreement Refinanced Debt ( *plus* (a) the amount of unpaid, accrued or capitalized interest, penalties, premiums (including tender premiums), defeasance costs and other similar amounts payable with respect thereto and (b) underwriting discounts, fees, commissions, costs, expenses and other similar amounts payable with respect to such Credit Agreement Refinancing Indebtedness);
- (3) (a) the Weighted Average Life to Maturity of such Indebtedness is equal to or longer than the remaining Weighted Average Life to Maturity of the Credit Agreement Refinanced Debt, and (b) the final maturity date of such Credit Agreement Refinancing Indebtedness may not be earlier than the Latest Maturity Date;

- 
- (4) such Indebtedness may participate on a *pro rata* basis or on a less than *pro rata* basis (but not on a greater than *pro rata* basis) in any mandatory prepayments hereunder on the same basis as any Refinancing Term Loans;
  - (5) such Indebtedness will rank *pari passu* or junior in right of payment to the Credit Agreement Refinanced Debt;
  - (6) such Indebtedness is not secured by any assets or property of the Borrower or any Restricted Subsidiary that does not constitute Collateral (subject to customary exceptions for cash collateral in favor of an agent, letter of credit issuer or similar “fronting” lender);
  - (7) such Indebtedness is not guaranteed by any Person other than a Guarantor;
  - (8) if such Indebtedness is secured:
    - (a) such Indebtedness shall be secured on a junior basis to the Revolving Facility Claims, except in the case of Credit Agreement Refinancing Indebtedness constituting Refinancing Term Loans (which shall be secured on a *pari passu* basis with any other outstanding Refinancing Term Loans);
    - (b) the security agreements relating to such Indebtedness are substantially similar to or the same as the applicable Security Documents (as determined in good faith by a Responsible Officer of the Borrower); and
    - (c) except in the case of Credit Agreement Refinancing Indebtedness constituting Refinancing Term Loans, a Debt Representative, acting on behalf of the holders of such Indebtedness, will become party to or otherwise subject to the provisions of a Junior Lien Intercreditor Agreement and/or, if applicable, the Closing Date Intercreditor Agreement; *provided* that, to the extent such Indebtedness constitutes Refinancing Term Loans, it shall be subject to the relative priorities and intercreditor provisions as described in Section 2.22(1); and
  - (9) the terms and conditions of such Indebtedness (a) are substantially identical to, or, taken as a whole, no more favorable to the lenders or holders providing such Indebtedness than, those applicable to such Credit Agreement Refinanced Debt (except for covenants applicable only to periods after the Latest Maturity Date at the time of incurrence) and (b) solely to the extent that any terms and conditions applicable to any such Credit Agreement Refinanced Debt are not substantially the same as, or are materially more restrictive on the Borrower and the Restricted Subsidiaries than, those then applicable to the Credit Agreement Refinanced Debt, shall otherwise reflect customary market terms and conditions, including with respect to high yield debt securities to the extent applicable, at the time of such incurrence of such Credit Agreement Refinancing Indebtedness ( *provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least four (4) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to the incurrence of such Credit Agreement Refinancing Indebtedness, together with a reasonably detailed description of the material covenants and events of default of such Credit Agreement Refinancing Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in

good faith that such terms and conditions satisfy the requirement of this clause (9) shall be conclusive evidence that such Indebtedness satisfies this clause (9) unless the Administrative Agent notifies the Borrower within such four (4) Business Day (or shorter) period that it disagrees with such determination (including a description of the basis upon which it disagrees)); provided that this clause (9) will not apply to (v) terms addressed in the preceding clauses (1) through (8), (w) interest rate, rate floors, fees, funding discounts and other pricing terms, (x) redemption, prepayment or other premiums, or (y) optional prepayment or redemption terms; *provided further* that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof).

Credit Agreement Refinancing Indebtedness will include any Registered Equivalent Notes issued in exchange therefor.

“ **Credit Event** ” has the meaning assigned to such term in Article IV.

“ **Cure Amount** ” has the meaning assigned to such term in Section 8.02.

“ **Cure Right** ” has the meaning assigned to such term in Section 8.02.

“ **Customs Broker Agreement** ” means an agreement, in form reasonably satisfactory to the Collateral Agent, in which the customs broker or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Collateral Agent and agrees, upon notice from the Collateral Agent, to hold and dispose of such Inventory solely as directed by the Collateral Agent.

“ **DDA** ” means any checking or other demand deposit account maintained by the Loan Parties in the United States.

“ **Debt Representative** ” means, with respect to any Junior Lien Debt, the lenders or other holders of such Indebtedness or the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“ **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 and affecting the rights of creditors generally.

“ **Default** ” means any event or condition which, but for the giving of notice, lapse of time or both, would constitute an Event of Default.

---

“ **Defaulting Lender** ” means any Lender that:

- (1) has refused (without retraction) or failed to (a) fund its portion of any Borrowing, or (b) pay to any Agent, any Issuing Bank or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due;
- (2) has notified the Borrower, any Agent or any Issuing Bank that it does not intend to comply with its funding obligations under any Loan Document, or has made a public statement to that effect;
- (3) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations under any Loan Document ( *provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (3) upon receipt of such written confirmation by the Administrative Agent and the Borrower); or
- (4) has, or has a direct or indirect parent company that has:
  - (a) become insolvent or the subject of a proceeding under any voluntary or involuntary case under any Debtor Relief Law,
  - (b) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or
  - (c) become the subject of a Bail-In Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (1) through (4) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Borrower, each Issuing Bank and each Lender.

“ **Designated Event of Default** ” means any Event of Default under Section 8.01(2), Section 8.01(3), Section 8.01(4) (solely with respect to a default under Section 5.04(9), Section 5.11 or Section 6.13), Section 8.01(8) or Section 8.01(9).

“**Designated Non-Cash Consideration**” means the fair market value of non-cash consideration received by the Borrower or any Restricted Subsidiary in connection with an Asset Sale that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-Cash Consideration.

“**Discharge of ABL Revolving Claims**” has the meaning assigned to the term “Discharge of ABL Claims” in the Closing Date Intercreditor Agreement, except that, solely for purposes of this definition, the principal amount of any Refinancing Term Loans and any interest, fees, attorneys’ fees, costs, expenses, indemnities and other Obligations relating thereto do not constitute “ABL Claims” (as defined in the Closing Date Intercreditor Agreement).

“**Disinterested Director**” means, with respect to any Person and transaction, a member of the Board of Directors of such Person who does not have any material direct or indirect financial interest in or with respect to such transaction.

“**Disposition**” or “**Dispose**” means the sale, transfer, license, lease or other disposition (excluding Liens, but including any sale or issuance of Equity Interests in a Restricted Subsidiary and any sale leaseback transactions of a Loan Party) of any property by any Person, 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.

“**Disqualified Institution**” means:

- (1) those entities identified by or on behalf of the Borrower in writing to the Administrative Agent, from time to time prior to or after the completion of general syndication, as competitors of the Borrower or its Subsidiaries or Impax or its Subsidiaries;
- (2) those banks, financial institutions, other institutional lenders and other persons identified in writing by or on behalf of the Borrower or Impax to the Arrangers from time to time prior to October 17, 2017;
- (3) those banks, financial institutions, other institutional lenders and other persons identified in writing by or on behalf of the Borrower to the Arrangers after October 17, 2017 if such designation is reasonably acceptable to the Arrangers; and
- (4) any clearly identifiable (solely on the basis of the similarity of its name or as identified in writing by or on behalf of the Borrower) Affiliate of the entities described in the preceding clauses (1), (2) and (3) (other than, with respect to this clause (4), any bona fide Debt Fund Affiliates thereof).

Notwithstanding the foregoing, each Loan Party and the Lenders acknowledge and agree that (i) the Administrative Agent will not have any responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Institution and the Administrative Agent will have no liability with respect to or arising out of any assignment or participation of Term Loans to a Disqualified Institution and (ii) any written notice of a Disqualified Institution shall be deemed not delivered and not effective unless delivered by or on behalf of the Borrower to the Administrative Agent by email to JPMDQ\_Contact@jpmorgan.com and shall only become effective, as of and following, two (2) Business Days after such delivery.

---

“ **Disqualified Stock** ” means, with respect to any Person, any Equity Interests of such Person that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is redeemable or exchangeable at the option of the holder thereof), or upon the happening of any event or condition:

- (1) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale are subject to the prior Payment in Full and the termination of the Commitments);
- (2) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part;
- (3) provides for the scheduled payments of dividends in cash; or
- (4) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is 91 days after the earlier of:
  - (a) the Latest Maturity Date at the time of issuance; and
  - (b) the date on which the Term Loans and all other Obligations (other than Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) are Paid in Full and the Commitments are terminated and any outstanding Letters of Credit are expired, terminated or cash collateralized on terms reasonably satisfactory to the applicable Issuing Bank(s);

*provided* that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; *provided, further*, that if such Equity Interests are issued pursuant to any plan for the benefit of any future, current or former officers, directors, managers, employees, consultants or independent contractors of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof, or their respective estates, heirs, family members, spouses, former spouses, successors, executors, administrators, trustees, legatees or distributees, such Equity Interests will not constitute Disqualified Stock solely because they may be required to be repurchased by the Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of any such Person’s termination, death or disability; and *provided, further*, that any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of any Equity Interests that is not Disqualified Stock will not be deemed to be Disqualified Stock. For the avoidance of doubt, any Convertible Indebtedness or any Permitted Convertible Indebtedness Call Transaction will not be deemed to be Disqualified Stock.

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

---

“ **EEA Financial Institution** ” means:

- (1) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority;
- (2) any entity established in an EEA Member Country which is a parent of an institution described in clause (1) of this definition; or
- (3) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (1) or (2) of this definition and is subject to consolidated supervision with its parent.

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

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

“ **Dominion Account** ” has the meaning assigned to such term in Section 5.11.

“ **Eligible Accounts** ” means, at any time, all Accounts of any Loan Party that constitute proceeds from the sale or disposition of Inventory in the ordinary course of business and that are reflected in the most recent Borrowing Base Certificate, except any Account with respect to which any of the exclusionary criteria set forth below applies. No Account will be an Eligible Account if:

- (1) Past Due / Extended : such Account are not paid within the earlier of sixty (60) days following its due date or more than (a) one hundred (120) days in respect of Accounts for which any of Cardinal, AmerisourceBergen, Walgreens, McKesson or any of their respective Affiliates is the Account debtor or (b) one hundred (100) days in respect of Accounts (other than Accounts for which Cardinal, AmerisourceBergen, Walgreens, McKesson or any of their respective Affiliates is the Account debtor), in the case of the foregoing clauses (a) and (b), following its original invoice date; *provided* that, in calculating delinquent portions of Accounts under this clause (1), only such delinquent portions will be excluded;
- (2) Non-U.S./Canadian Accounts : unless otherwise agreed by the Administrative Agent or such Account is backed by a letter of credit reasonably acceptable to the Administrative Agent, such Account is the obligation of an Account debtor that (i) does not maintain its chief executive office in the United States, Canada or any political subdivision of any thereof or (ii) is not organized under the applicable laws of the United States or political subdivision thereof or the District of Columbia or Canada or any political subdivision thereof;

- 
- (3) Other Liens : such Account is (a) not owned by a Loan Party, (b) not subject to the valid, perfected and (subject to Liens having priority by operation of applicable Law) first priority Lien of the Collateral Agent as to such Account or (c) is subject to any other Lien of any other Person, other than (i) Liens in favor of any Agent pursuant to any Loan Document, (ii) Liens permitted under Section 6.02(9), 6.02(10), 6.02(11), 6.02(12), 6.02(13), 6.02(17), 6.02(18), 6.02(22), 6.02(24) or 6.02(29) (including any Liens permitted under Section 6.02(40) with respect to the foregoing) or Permitted Liens arising by operation of law, in each case that do not have priority over the Liens that secure the Revolving Facility Claims or (iii) (x) Permitted Liens securing Indebtedness permitted under Section 6.01(1) which Liens do not have priority over the Liens that secure the Revolving Facility Claims, (y) Permitted Liens securing Ratio Debt, Indebtedness permitted under Section 6.01(2) and Indebtedness incurred pursuant to Section 6.01(11), 6.01(19), 6.01(21) or 6.01(28) (and in each case, any Permitted Refinancing Indebtedness thereof permitted under Section 6.01) and (z) Liens permitted under Section 6.02(14), 6.02(19), 6.02(20), 6.02(25), 6.02(28), 6.02(30), 6.02(31), 6.02(32), 6.02(33), 6.02(36)(a), 6.02(39) or 6.02(42) (including any Liens permitted under Section 6.02(40) with respect to the foregoing), which Liens, in the case of each of the foregoing clauses (y) and (z), are secured on a junior basis to the Liens that secure the Revolving Facility Claims;
- (4) Not Bona Fide : Accounts that are not true and correct statements of bona fide indebtedness incurred in the amount of such Account by the applicable Account debtor;
- (5) Disputed Accounts : such Account is disputed, or a claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback has been asserted with respect thereto by the applicable Account debtor (but only to the extent of such dispute, claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback);
- (6) Bankruptcy : such Account is owed by an Account debtor that is subject to a bankruptcy proceeding of the type specified in Section 8.01(8) or (9) or that is liquidating, dissolving or winding up its affairs or otherwise deemed not creditworthy by the Administrative Agent in its Reasonable Credit Judgment; *provided* that (i) the Administrative Agent may, in its sole discretion, include Accounts from Account debtors subject to such proceedings if and to the extent that such Accounts are fully covered by credit insurance, letters of credit or other sufficient third-party credit support, or are otherwise deemed by the Administrative Agent not to pose an unreasonable risk of non-collectability;
- (7) Judgments, Notes or Chattel Paper : such Account is evidenced by Chattel Paper or an Instrument (each as defined in the Collateral Agreement) of any kind, or has been reduced to judgment;
- (8) Cross Aged Accounts : such Account is the obligation of an Account debtor if fifty percent (50%) or more of the Dollar amount of all Accounts owing by that Account debtor are ineligible under the other criteria set forth in this definition;
- (9) Government Accounts : such Account is the obligation of an Account debtor that is the United States government or a political subdivision thereof, or any state, county or municipality or department, agency or instrumentality thereof unless Administrative Agent, in its sole discretion, has agreed to the contrary in writing, or the applicable Loan Party has complied with respect to such obligation with the Federal Assignment of Claims Act of 1940, or any applicable state, county or municipal law restricting the assignment thereof with respect to such obligation;

- 
- (10) Contra Accounts : such Account to the extent the Borrower or any subsidiary thereof is liable for goods sold or services rendered by the applicable Account debtor, but only to the extent of the potential offset;
  - (11) Inter-Company/Affiliate Accounts : such Account arises from a sale to any Affiliate of any Loan Party or any employee, officer or director of the Borrower or any Subsidiary or any of their respective Affiliates or to any entity that has any common officer or director with any Loan Party; *provided* that the foregoing shall not apply to Accounts arising from sales (which sales are on terms and conditions not less favorable to the applicable Loan Party than would reasonably be obtained by such Loan Party in a comparable arm's length transaction with a Person other than an Affiliate of a Loan Party) to any Affiliates (other than the Borrower and its Subsidiaries) that are portfolio companies of the Investors;
  - (12) Unbilled Accounts : an invoice with respect to such Account has not been sent to the applicable Account debtor;
  - (13) Progress Billing : such Account (i) as to which a Loan Party is not able to bring suit or otherwise enforce its remedies against the applicable Account debtor through judicial process or (ii) if the Account represents a progress billing consisting of an invoice for goods sold or used or services rendered pursuant to a contract under which the Account debtor's obligation to pay that invoice is subject to a Loan Party's completion of further performance under such contract or is subject to the equitable lien of a surety bond issuer;
  - (14) Bill and Hold; C.O.D. : such Account arises with respect to goods that are sold on a bill-and-hold or cash-on-delivery basis;
  - (15) Non-Acceptable Alternative Currency : unless otherwise agreed by the Administrative Agent or such Account is backed by a letter of credit reasonably acceptable to the Administrative Agent, such Account is payable in any currency other than Dollars;
  - (16) Conditional Sale : such Account arises with respect to goods that are placed on consignment, guaranteed sale or other terms by reason of which the payment by the applicable Account debtor is conditional;
  - (17) Non-Ordinary Course Sales : such Account does not arise from the sale of goods or the performance of services by a Loan Party in the ordinary course of business;
  - (18) Consumer Sales : such Account arises with respect to goods that are sold by any party directly to individual consumers;
  - (19) Reserves; Rebates; Etc. : such Account to the extent a Loan Party has reserved for credits to be applied against the balance of such Account, but only to the extent of such potential credits, including without limitation any rebates, billbacks, chargebacks, redistribution fees, service level fees, miscellaneous fees and administrative fees;

- 
- (20) Concentration Risk (Cardinal, AmerisourceBergen, Walgreens and McKesson): with respect to Accounts for which any of Cardinal, AmerisourceBergen, Walgreens, McKesson or any of their respective Affiliates is the Account debtor (and solely to the extent that the respective long-term credit rating of Cardinal, AmerisourceBergen, Walgreens or McKesson, as applicable, is at least “BB” (“B+” in the case of Walgreens) from S&P and at least “Ba2” (“B1” in the case of Walgreens) from Moody’s), Accounts of such Account debtor, to the extent that such Accounts, together with all other Accounts owing by the respective Account debtor and its Affiliates, exceed thirty percent (30%) of all Eligible Accounts; *provided* that only such portion of such Accounts in excess of thirty percent (30%) of all Eligible Accounts will be excluded; *provided* further that if any of Cardinal, AmerisourceBergen, Walgreens or McKesson does not have at least the long-term credit rating set forth herein, then the limitation set forth in clause (21) of this definition shall be applicable to such Account debtor; or
- (21) Concentration Risk (Other Account Debtors): to the extent such Account (other than Accounts for which Cardinal, AmerisourceBergen, Walgreens, McKesson or any of their respective Affiliates is the Account debtor and only if the long-term credit rating of Cardinal, AmerisourceBergen, Walgreens or McKesson, as applicable, is at least “BB” (“B+” in the case of Walgreens) from S&P and at least “Ba2” (“B1” in the case of Walgreens) from Moody’s), together with all other Accounts owing by such Account debtor and its Affiliates as of any date of determination, exceed twenty percent (20%) of all Eligible Accounts; *provided* that only such portion of such Accounts in excess of twenty percent (20%) of all Eligible Accounts will be excluded.

If any Account at any time ceases to be an Eligible Account, then such Account will promptly be excluded from the calculation of the Borrowing Base; *provided* that if any Account ceases to be an Eligible Account because of the adjustment of or imposition of new exclusionary criteria pursuant to the succeeding paragraph, the Administrative Agent will not require exclusion of such Account from the Borrowing Base until 5 Business Days following the date on which the Administrative Agent gives notice to the Borrower of such ineligibility; *provided* that upon such notice, the Borrower shall not be permitted to borrow any Loans or have any Letters of Credit issued so as to exceed the Line Cap after giving effect to such adjustment or imposition of new exclusionary criteria.

The Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the exclusionary criteria set forth above and to establish new criteria, in each case, in its Reasonable Credit Judgment (based on an analysis of material facts or events first occurring, or first discovered by the Administrative Agent, after the Closing Date), subject to the necessary approvals set forth in Section 10.08 in the case of adjustments or new criteria which have the effect of making more credit available than would have been available based upon the criteria in effect on the Closing Date.

“**Eligible Cash**” means Unrestricted Cash of a Loan Party held in a segregated deposit account or securities account that is cash denominated in Dollars and either (a) maintained with the Collateral Agent, for the benefit of the Secured Parties, as security for the Obligations or (b) if not maintained with the Collateral Agent, maintained with a Lender and subject to a Control Agreement; *provided* that in no event shall any cash held in any Excluded Account be included in Eligible Cash.

“**Eligible Inventory**” means all Inventory owned by any Loan Party reflected in the most recent Borrowing Base Certificate, except any Inventory with respect to which any of the exclusionary criteria set forth below applies. No item of Inventory will be Eligible Inventory if such item:

- (1) Unperfected: is not subject to a first priority (subject to any Permitted Liens arising by operation of law) perfected Lien in favor of the Collateral Agent as to such Inventory;
- (2) Other Liens: is (a) not owned by a Loan Party or (b) is subject to any Lien of any Person, other than (i) Liens in favor of any Agent pursuant to any Loan Document, (ii) Liens permitted under Section 6.02(9), 6.02(10), 6.02(11), 6.02(12), 6.02(19), or 6.02(24) (including any Liens permitted under Section 6.02(40) with respect to the foregoing) or Permitted Liens arising by operation of law, in each case, that do not have priority over the Liens that secure the Revolving Facility Claims or (iii) (x) Permitted Liens securing Indebtedness permitted under Section 6.01(1) which Liens do not have priority over the Liens that secure the Revolving Facility Claims, (y) Permitted Liens securing Ratio Debt, Indebtedness permitted under Section 6.01(2) and Indebtedness incurred pursuant to Section 6.01(11), 6.01(15)(b), 6.01(19), 6.01(21), 6.01(28) or 6.01(30) (and in each case, any Permitted Refinancing Indebtedness thereof permitted under Section 6.01) and (z) Liens permitted under Section 6.02(13), 6.02(22), 6.02(28), 6.02(30), 6.02(31), 6.02(32), 6.02(33), 6.02(36)(b), 6.02(36)(c), 6.02(36)(d) or 6.02(42) (including any Liens permitted under Section 6.02(40) with respect to the foregoing), which Liens, in the case of each of the foregoing clauses (y) and (z), are secured on a junior basis to the Liens that secure the Revolving Facility Claims;
- (3) Obsolete/Expired: is damaged, excess, obsolete, unsalable (including if such item of Inventory has not been approved by the FDA), shopworn, seconds, discontinued, work in process, recalled or expired or will expire within six months or less or otherwise fully reserved in accordance with normal operating practices;
- (4) Not Owned: is not owned by one or more Loan Parties;
- (5) Consignment: is the subject of a consignment by any Loan Party as consignor;
- (6) Off-Site: is not located in a public third-party warehouse or on premises owned, leased or rented by a Loan Party and, in each case, set forth in Schedule 1.01(2) (as such schedule may be amended or supplemented from time to time);
- (7) Leased Location: is located at any location leased by the Borrower or any Subsidiary, unless either (i) the lessor has delivered to the Collateral Agent a Collateral Access Agreement as to such location or (ii) a Reserve for rent, charges, and other amounts due or to become due with respect to such location has been established by the Administrative Agent in its Reasonable Credit Judgment;

- 
- (8) Bailees / Warehousemen : is located in any third-party warehouse or is in the possession of a bailee and is not evidenced by a Document (as defined in Article 9 of the UCC), unless either (i) a reasonably satisfactory bailee letter has been delivered to the Administrative Agent with respect thereto or (ii) an appropriate Reserve for rent, charges, and other amounts due or to become due with respect to such location has been established by the Administrative Agent in its Reasonable Credit Judgment;
- (9) Mortgage : is located at an owned location subject to a mortgage in favor of a lender other than the Collateral Agent, unless either (i) a reasonably satisfactory mortgagee waiver has been delivered to the Administrative Agent with respect thereto or (ii) an appropriate Reserve for rent, charges, and other amounts due or to become due with respect to such location has been established by the Administrative Agent in its Reasonable Credit Judgment;
- (10) Non-U.S. / In-Transit : is not located in the U.S. or is in-transit, except that Inventory in-transit will not be deemed ineligible under this clause (10) if:
- (a) it is in-transit between U.S. locations of Loan Parties; or
  - (b) (A) it has been paid for in advance of shipment, (B) legal ownership thereof has passed to the applicable Loan Party (or is retained by the applicable Loan Party) as evidenced by customary documents of title, (C) the Collateral Agent has control over the documents of title which evidence ownership of the subject Inventory (including, if requested by the Collateral Agent, by the delivery of a Customs Broker Agreement) and (D) it is insured to the reasonable satisfaction of the Collateral Agent;
- (11) Packaging / Shipping Materials; Tooling; Display : consists of packaging or shipping materials, manufacturing supplies, tooling or replacement parts or display items;
- (12) Customized : contains or bears any licensing, trademark, trade name or copyright licensed to any Loan Party by any Person (other than any Subsidiary) that would require the consent of a third party for the sale or disposition of such Inventory (which consent has not been paid) unless the Collateral Agent is reasonably satisfied that it may sell or otherwise dispose of such Inventory without (a) infringing the rights of such licensor, (b) violating any contract with such licensor, or (c) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement relating thereto;
- (13) Uninsured : such Inventory is not insured in accordance with Section 5.02 hereof;
- (14) Negotiable Bill of Sale : such Inventory is covered by a negotiable document of title for which, promptly upon reasonable written request by the Administrative Agent, the Borrower fails to deliver such document to the Administrative Agent with all necessary endorsements, free and clear of all Liens except Liens in favor of the Collateral Agent;
- (15) Not Ordinary Course : such Inventory (other than raw materials) that is not of a type held for sale in the ordinary course of business of a Loan Party;

(16) Returns: consists of goods which have been returned by the buyer; or

(17) Permitted Acquisitions: is acquired in connection with a Permitted Acquisition to the extent the Administrative Agent has not received a Report in respect of such Inventory showing results reasonably satisfactory to the Administrative Agent.

If any Inventory at any time ceases to be Eligible Inventory, such Inventory will promptly be excluded from the calculation of the Borrowing Base; *provided*, *however*, that if any Inventory ceases to be Eligible Inventory because of the adjustment of or imposition of new exclusionary criteria pursuant to the succeeding paragraph, the Administrative Agent will not require exclusion of such Inventory from the Borrowing Base until 5 Business Days following the date on which the Administrative Agent gives notice to the Borrower of such ineligibility; *provided* that upon such notice, the Borrower shall not be permitted to borrow any Loans or have any Letters of Credit issued so as to exceed the Line Cap after giving effect to such adjustment or imposition of new exclusionary criteria.

The Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the exclusionary criteria set forth above and to establish new criteria, in each case, its Reasonable Credit Judgment (based on an analysis of material facts or events first occurring, or first discovered by the Administrative Agent, after the Closing Date), subject to the necessary approvals set forth in Section 10.08 in the case of adjustments or new criteria which have the effect of making more credit available than would be available based upon the criteria in effect on the Closing Date.

“**Environment**” means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources such as flora and fauna.

“**Environmental Laws**” means all applicable laws (including common law), statutes, rules, regulations, codes, ordinances, orders, binding agreements and final, binding decrees or judgments, in each case, promulgated or entered into by or with any Governmental Authority, relating in any way to the Environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to the environment or exposure to Hazardous Materials).

“**Equity Interests**” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock, any Convertible Indebtedness and any Permitted Warrant Transaction).

“**Equivalent Percentage**” means, as of any date of determination, with respect to any Dollar amount, the percentage of TTM Consolidated EBITDA of the Borrower for the four quarters ended December 31, 2017 that such Dollar amount represents, rounded to the nearest one tenth of 1%. For purposes of calculating Equivalent Percentage, TTM Consolidated EBITDA of the Borrower for the four quarters ended December 31, 2017 will be deemed to be the Closing Date EBITDA.

---

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time, and any final regulations promulgated and the rulings issued thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with the Borrower or any of its Subsidiaries, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“**ERISA Event**” means:

- (1) a Reportable Event, or the requirements of Section 4043(b) of ERISA apply, with respect to a Plan;
- (2) a withdrawal by the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations by the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower or the Borrower, any ERISA Affiliate that is treated as a termination under Section 4062(e) of ERISA;
- (3) a complete or partial withdrawal by the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, any ERISA Affiliate from a Multiemployer Plan, receipt of written notification by the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, any ERISA Affiliate concerning the imposition of Withdrawal Liability or written notification that a Multiemployer Plan is, or is expected to be, insolvent or endangered or in critical status within the meaning of Section 305 of ERISA;
- (4) the provision by a Plan administrator or the PBGC of notice of intent to terminate a Plan, to appoint a trustee to administer a Plan, the treatment of a Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA or the commencement of proceedings by the PBGC to terminate a Plan or Multiemployer Plan;
- (5) the incurrence by the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan, other than for the payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA;
- (6) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Plan;
- (7) the imposition of a lien under Section 303(k) of ERISA with respect to any Plan; and
- (8) a determination that any Plan is in “at risk” status (within the meaning of Section 303 of ERISA).

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

---

“**Eurocurrency Revolving Facility Borrowing**” means a Borrowing comprised of Eurocurrency Revolving Loans.

“**Eurocurrency Revolving Loan**” means any Revolving Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“**Event of Default**” has the meaning assigned to such term in Section 8.01.

“**Excess Availability**” means, at any time, (a) the Line Cap at such time *minus* (b) the Revolving Facility Credit Exposure at such time.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Excluded Accounts**” means any DDA, securities account, commodity account or any other deposit account of any Loan Party or Restricted Subsidiary (and all Cash, Cash Equivalents and other securities or investments credited thereto or deposited therein):

- (1) that is a zero balance account, disbursement account or imprest account;
- (2) that does not have an individual daily balance in excess of \$500,000, or in the aggregate with each other account described in this clause (2), in excess of \$5,000,000;
- (3) the balance of which is swept at the end of each Business Day into a deposit account, securities account or commodity account that is in the name of the Collateral Agent or subject to a Control Agreement in favor of the Collateral Agent, so long as such daily sweep is not terminated or modified (other than to provide that the balance in such deposit account, securities account or commodity account is swept into another deposit account, securities account or commodity account subject to a Control Agreement in favor of the Collateral Agent) without the consent of the Collateral Agent;
- (4) that is a Trust Account;
- (5) that holds Term Priority Collateral or the proceeds thereof, so long as all amounts on deposit therein constitute Term Priority Collateral; or
- (6) to the extent that it is cash collateral for letters of credit (other than Letters of Credit) to the extent permitted hereunder.

“**Excluded Assets**” means “*Excluded Assets*” as defined in the Collateral Agreement.

“**Excluded Contributions**” means, as of any date, the aggregate amount of the net cash proceeds and Cash Equivalents, together with the aggregate fair market value of other assets that are used or useful in a business permitted under Section 6.08, received by the Borrower after the Closing Date from:

- (1) contributions to its common equity capital; or

- 
- (2) the sale of Capital Stock of the Borrower;

in each case, designated as Excluded Contributions pursuant to a certificate of a Responsible Officer of the Borrower on the date such contribution is made or such Capital Stock is sold, less the aggregate amount of Investments made pursuant to Section 6.04(29) and Restricted Payments made pursuant to Section 6.07(12), in each case prior to such date and Not Otherwise Applied; *provided* that the proceeds of Disqualified Stock and Cure Amounts will not be treated as Excluded Contributions.

“ *Excluded Equity Interests* ” means “ *Excluded Equity Interests* ” as defined in the Collateral Agreement.

“ *Excluded Subsidiary* ” means any:

- (1) Immaterial Subsidiary;
- (2) Subsidiary that is not a Wholly Owned Subsidiary of the Borrower or a Subsidiary Loan Party;
- (3) Unrestricted Subsidiary;
- (4) Non-U.S. Subsidiary;
- (5) direct or indirect U.S. Subsidiary of a Non-U.S. Subsidiary;
- (6) FSHCO;
- (7) Subsidiary that is prohibited or restricted by applicable Law or by a binding contractual obligation (including any Contractual Obligation) existing on the Closing Date or at the time of the acquisition or creation of such Subsidiary (and not incurred in contemplation of such acquisition or creation) from providing a Guarantee or if such Guarantee would require consent, approval, license or authorization of or from a Governmental Authority or a third party (other than a Loan Party or a controlled Affiliate of a Loan Party);
- (8) special purpose securitization vehicle (or similar entity) including any Receivables Subsidiary or like special purpose entity;
- (9) Subsidiary that is a not-for-profit organization;
- (10) Captive Insurance Subsidiary;
- (11) Subsidiary with respect to which, in the reasonable judgment of the Borrower in consultation with the Administrative Agent, the providing of a Guarantee would result in material adverse tax consequences as reasonably determined by the Borrower in consultation with the Administrative Agent; and
- (12) Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent, in consultation with the Borrower, the cost or other consequences (including any adverse tax consequences) of providing a Guarantee would be excessive in view of the benefits to be obtained by the Lenders therefrom;

*provided* that the Borrower, in its sole discretion, may cause any Subsidiary that otherwise qualifies as an “Excluded Subsidiary” to become a “Guarantor” in accordance with the definition thereof and thereafter such Subsidiary will not constitute an “Excluded Subsidiary” unless and until the Borrower elects otherwise.

“**Excluded Taxes**” means, with respect to any Recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder:

- (1) Taxes imposed on or measured by its net income (however denominated) or franchise Taxes imposed in lieu of net income Taxes, in each case, (a) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (b) that are Other Connection Taxes;
- (2) any branch profits Tax or any similar Tax that is imposed by any jurisdiction described in clause (1) above;
- (3) any U.S. withholding Tax (including any backup withholding Tax) that is in effect and would apply to amounts payable hereunder to or for the account of a Recipient under the law applicable at the time such Recipient becomes a party to this Agreement (or in the case of a Lender, under the law applicable at the time such Lender changes its lending office), except to the extent that the Recipient’s assignor (if any), at the time of assignment (or such Lender immediately before it changed its lending office), was entitled to receive additional amounts from the Loan Party with respect to any U.S. withholding Tax pursuant to Section 2.14(1) or Section 2.14(3);
- (4) Taxes that are attributable to such Lender’s or Administrative Agent’s failure to comply with Section 2.14(5) or Section 2.14(6); and
- (5) any withholding Taxes imposed under FATCA.

“**Exclusive License**” means, with respect to any drug or pharmaceutical product, any license to develop, commercialize, sell, market and promote such drug or pharmaceutical product and which provides for exclusive rights to develop, use, commercialize, sell, market, import and promote such drug or product within the United States; *provided* that an “Exclusive License” shall not include:

- (1) any license solely to distribute any such drug or product on an exclusive basis within any particular geographic region or territory,
- (2) any licenses, which may be exclusive, solely to manufacture any such drug or product, and
- (3) any license to manufacture, use, offer for sale or sell any authorized generic version of such drug or product; and “**Exclusively License**” shall have the correlative meaning.

“ **Executive Order** ” has the meaning assigned to such term in Section 3.19(3)(a).

“ **Existing Credit Facilities** ” means:

- (1) that certain Revolving Credit Agreement, dated as of November 1, 2013 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time) by, among others, the Borrower and Healthcare Financial Solutions, LLC (as successor in interest to General Electric Capital Corporation), as agent;
- (2) that certain Credit Agreement dated as of November 1, 2013 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time) by, among others, the Borrower and Healthcare Financial Solutions, LLC (as successor in interest to General Electric Capital Corporation), as agent; and
- (3) those certain credit facilities of Impax and its Subsidiaries with respect to which the Acquisition Agreement requires the delivery of a payoff letter.

“ **Existing Letters of Credit** ” means those Letters of Credit described on Schedule 1.01(1) hereto.

“ **Existing Notes LM Transactions** ” means a consent solicitation to holders of the Impax Convertible Notes, pursuant to which Impax shall solicit consents to make certain amendments to the Impax Indenture such that the Acquisition and the transaction contemplated in the Acquisition Agreement would not result in a default or event of default under the Impax Indenture in exchange for monetary consideration (including an offer (on terms to be agreed) to purchase the Impax Convertible Notes at a price equal to, if coupled with any consent fee included therein, par) or other changes to the Impax Indenture for the benefit of holders of Impax Convertible Notes.

“ **Extended Commitments** ” means the Revolving Facility Commitments or other commitments to make Extended Loans held by any Extending Lenders.

“ **Extended Loans** ” means the Loans made pursuant to Extended Commitments.

“ **Extending Lenders** ” means each Lender accepting an Extension Offer.

“ **Extension** ” has the meaning assigned to such term in Section 2.23(1).

“ **Extension Amendment** ” has the meaning assigned to such term in Section 2.23(2).

“ **Extension Offer** ” has the meaning assigned to such term in Section 2.23(1).

“ **Factoring Transaction** ” means any transaction or series of transactions that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or such Restricted Subsidiary may sell, convey, assign or otherwise transfer Securitization Assets (which may include a backup or precautionary grant of security interest in such Securitization Assets so sold, conveyed, assigned or otherwise transferred or purported to be so sold, conveyed, assigned or otherwise transferred) to any Person other than a Receivables Subsidiary.

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

“**FDA**” means the United States Food and Drug Administration and any successor thereto.

“**Federal Funds Effective Rate**” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, provided that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

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

“**Fee Letters**” means the Agency Fee Letter and the Arranger Fee Letter.

“**Fees**” means the Administrative Agent Fees and all other fees set forth in the Fee Letters payable to a Lender, the Administrative Agent or any Arranger, in each case, with respect to the Revolving Facility.

“**FILO Intercreditor Provisions**” means the provisions set forth on Exhibit J.

“**Financial Officer**” means, with respect to any Person, the chief financial officer, principal accounting officer, director of financial services, treasurer, assistant treasurer or controller of such Person or other similar officer or Person performing similar functions of such Person, designated in writing by or on behalf of the Borrower to the Administrative Agent from time to time. Any document delivered hereunder that is signed by a Financial Officer of a Loan Party will be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership or other action on the part of such Loan Party and such Financial Officer will be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a “Financial Officer” shall refer to a Financial Officer of the Borrower.

“**Financial Performance Covenant**” means the covenant set forth in Section 6.13.

“**First Lien Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (1) Consolidated First Lien Net Debt outstanding as of the last day of such Test Period to (2) Consolidated EBITDA of the Borrower for such Test Period.

---

“ **Fixed Charge Coverage Ratio** ” means, as of any date, the ratio of:

- (1) (a) Consolidated EBITDA of the Borrower for the most recent Test Period, *minus* (b) cash taxes and other tax distributions paid in cash during such period, *minus* (c) cash Capital Expenditures of the Borrower or any Restricted Subsidiary for such period to the extent not financed with the proceeds of Funded Debt (it being understood that Capital Expenditures funded with proceeds of revolving loans (including the Loans) will not be deemed to be “financed with the proceeds of Funded Debt” for the purpose of this clause (c)), to
- (2) Fixed Charges of the Borrower for such Test Period.

“ **Fixed Charges** ” means, for any period, the sum of the following for such period:

- (1) Consolidated Cash Interest Expense of the Borrower for such period, *plus*
- (2) all scheduled principal amortization payments that were paid or payable in cash during such period with respect to Indebtedness for borrowed money of the Borrower and the Restricted Subsidiaries, including payments in respect of Capital Leases but excluding payments with respect to intercompany Indebtedness.

“ **Foreign Lender** ” means any Lender or Issuing Bank that is organized under the laws of a jurisdiction other than the United States of America. For purposes of this definition, the United States of America, each state thereof and the District of Columbia will be deemed to constitute a single jurisdiction.

“ **Fronting Exposure** ” means, at any time there is a Defaulting Lender, with respect to the Issuing Bank, such Defaulting Lender’s Revolving Facility Percentage of the outstanding Revolving L/C Exposure, other than Revolving L/C Exposure as to which such Defaulting Lender’s participation obligation has been reallocated to non-Defaulting Lenders or cash collateralized in accordance with the terms hereof.

“ **FSHCO** ” means any direct or indirect U.S. Subsidiary that has no material assets other than Equity Interests (or Equity Interests and Indebtedness) in one or more Non-U.S. Subsidiaries or other FSHCOs.

“ **Funded Debt** ” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date.

“ **GAAP** ” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies).

Notwithstanding anything to the contrary above or in the definition of Capital Lease Obligations or Capital Expenditures, in the event of a change under GAAP (or the application thereof) requiring any leases to be capitalized that are not required to be capitalized as of the Closing Date, only those leases that would result or would have resulted in Capital Lease Obligations or Capital Expenditures on the Closing Date (assuming for purposes hereof that they were in existence on the Closing Date) will be considered capital leases and all calculations under this Agreement will be made in accordance therewith.

“**Governmental Authority**” means any federal, state, local or foreign court or governmental agency, authority, instrumentality, regulatory or legislative body, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Guarantee**” of or by any Person (the “guarantor”) means:

- (1) any obligation, contingent or otherwise, of the guarantor 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 the guarantor, direct or indirect:
  - (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligations;
  - (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof;
  - (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation;
  - (d) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part); or
  - (e) as an account party in respect of any letter of credit, bank guarantee or other letter of credit guaranty issued to support such Indebtedness or other obligation; or
- (2) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other Person, whether or not such Indebtedness or other obligation is assumed by the guarantor;

---

*provided*, that the term “Guarantee” will not include endorsements for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness).

The amount of any Guarantee will be deemed to be an amount equal to the stated or determinable amount of the related primary Indebtedness 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.

“**Guarantor**” means (1) each Subsidiary Loan Party and (2) each Parent Entity or Restricted Subsidiary that the Borrower may elect in its sole discretion, from time to time, upon written notice to the Administrative Agent, to cause to Guarantee the Obligations (including by executing a supplement to the Collateral Agreement in substantially the form attached thereto), until such date that the Borrower has informed the Administrative Agent that it elects not to have such Person Guarantee the Obligations.

“**Hazardous Materials**” means all pollutants, contaminants, wastes, chemicals, materials, substances and constituents that are defined, listed or regulated under Environmental Law as hazardous or toxic, or words of similar import, or the Release or exposure to which would reasonably be expected to give rise to liability under any Environmental Law, including explosive or radioactive substances, petroleum or petroleum byproducts or distillates, friable asbestos or friable asbestos-containing materials, polychlorinated biphenyls or radon gas.

“**Health Care Laws**” means any Laws applicable to the research, development, manufacture, distribution, marketing, storage, transportation, use and sale of products controlled by the Borrower or any of the Subsidiaries, including without limitation the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the civil monetary penalty laws (42 U.S.C. § 1320a-7a), the federal Food, Drug & Cosmetic Act (21 U.S.C. §§ 301 et seq.), the federal Controlled Substances Act (21 U.S.C. § 801 et seq.), HIPAA, the Medicaid Drug Rebate Program (42 U.S.C. § 1396r-8), Medicare average sales price reporting (42 U.S.C. § 1395w-3a), the Public Health Service Act (42 U.S.C. § 256b), the federal TRICARE program (10 U.S.C. §1071 et seq.), the VA Federal Supply Schedule (38 U.S.C. § 8126), and the regulations promulgated pursuant to such laws, each as amended from time to time.

“**Hedge Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, not entered into for speculative purposes; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by any future, current or former officers, directors, managers, employees, consultants or independent contractors of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof will be a Hedge Agreement. Notwithstanding the foregoing, agreements relating to any Permitted Convertible Indebtedness Call Transaction (and the obligations and transactions relating thereto) will not constitute a Hedge Agreement.

“**IFRS**” means International Financial Reporting Standards and applicable accounting requirements set by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants, or any successor to either such board, or the SEC, as the case may be), as in effect from time to time.

“**Immaterial Subsidiary**” means, as of any date, any Subsidiary that (i) did not, as of the last day of the most recent fiscal quarter for which Required Financial Statements have been delivered, have assets with a value in excess of 5.0% of the Consolidated Total Assets or revenues representing in excess of 5.0% of total revenues of the Borrower and the Restricted Subsidiaries for the period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a consolidated basis in accordance with GAAP; and (ii) taken together with all Immaterial Subsidiaries as of the last day of the most recent fiscal quarter of the Borrower for which Required Financial Statements have been delivered, did not have assets with a value in excess of 10.0% of Consolidated Total Assets or revenues representing in excess of 10.0% of total revenues of the Borrower and the Restricted Subsidiaries on a consolidated basis for such four-quarter period.

“**Impacted Interest Period**” has the meaning assigned to it in the definition of “**LIBO Rate**”.

“**Impax**” means (1) prior to the Impax Conversion, Impax Laboratories, Inc., a Delaware corporation, and (2) after the consummation of the Impax Conversion, Impax Laboratories, LLC, a Delaware limited liability company.

“**Impax Conversion**” means the conversion of Impax Laboratories, Inc., a Delaware corporation, into Impax Laboratories, LLC, a Delaware limited liability company.

“**Impax Convertible Notes**” means those certain 2.00% Convertible Senior Notes due 2022 in an aggregate principal amount not to exceed \$600 million, issued pursuant to the Impax Indenture.

“**Impax Indenture**” means the Indenture dated as of June 30, 2015 between Impax and Wilmington Trust, National Association (the “**Trustee**”), as amended and supplemented by the First Supplemental Indenture, dated as of November 6, 2017 between Impax and the Trustee, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“**Impax Merger**” means the merger of K2 Merger Sub Corporation, a Delaware corporation, with and into Impax, with Impax surviving such merger.

“**Impax Transactions**” means the Impax Merger and the Impax Conversion.

---

“**Increased Reporting Period**” means each period beginning on the date that Excess Availability shall have been less than the greater of (x) \$75.0 million and (y) 30% of the Line Cap, for five (5) consecutive Business Days, and ending on the date Excess Availability shall have been at least the greater of (x) \$75.0 million and (y) 30% of the Line Cap for thirty (30) consecutive calendar days.

“**Incremental Commitment**” has the meaning assigned to such term in Section 2.21(1).

“**Incremental Equivalent Term Debt**” has the meaning assigned to such term in the Term Loan Credit Agreement.

“**Incremental Facility**” has the meaning assigned to such term in Section 2.21(1).

“**Incremental Facility Amendment**” has the meaning assigned to such term in Section 2.21(5).

“**Incremental Lender**” has the meaning assigned to such term in Section 2.21(4).

“**Indebtedness**” means, with respect to any Person, without duplication:

- (1) all obligations of such Person for borrowed money;
- (2) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
- (3) all obligations of such Person under conditional sale or title retention agreements relating to property or assets purchased by such Person;
- (4) all obligations of such Person issued or assumed as the deferred purchase price of property or services, to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP;
- (5) all Capital Lease Obligations of such Person;
- (6) all net payments that such Person would have to make in the event of an early termination, on the date Indebtedness of such Person is being determined, in respect of outstanding Hedge Agreements;
- (7) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and bank guarantees;
- (8) the principal component of all obligations of such Person in respect of bankers’ acceptances;
- (9) all Guarantees by such Person of Indebtedness described in clauses (1) through (8) above; and

(10) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock);

*provided* that Indebtedness will not include:

- (a) trade payables, accrued expenses (including for payroll and other liabilities) and intercompany liabilities arising in the ordinary course of business;
- (b) prepaid or deferred revenue arising in the ordinary course of business;
- (c) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset; or
- (d) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP.

The Indebtedness of any Person (i) will include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof and (ii) in the case of Restricted Subsidiaries that are not Loan Parties, will exclude loans and advances made by Loan Parties having a term not exceeding 364 days (inclusive of any roll over or extensions of terms) and made in the ordinary course of business (such loans and advances, “*Short Term Advances*”). The amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“*Indemnified Taxes*” means (1) all 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 (2) to the extent not otherwise described in clause (1), Other Taxes.

“*Indemnitee*” has the meaning assigned to such term in Section 10.05(2).

“*Independent Financial Advisor*” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged and that is independent of the Borrower and its Affiliates.

“*Initial Borrowing Base Date*” means the date that is 90 days after the Closing Date (or such earlier date as the Borrower may elect after delivery of a reasonably satisfactory field examination and inventory appraisal to the Administrative Agent or such later date as may be agreed to by the Administrative Agent in its sole discretion).

“*Initial Term Loans*” has the meaning assigned to such term in the introductory paragraph hereof.

“*Intellectual Property Rights*” has the meaning assigned to such term in Section 3.20(1).

“**Intercreditor Agreement**” means the Closing Date Intercreditor Agreement or a Junior Lien Intercreditor Agreement that may be executed from time to time, as applicable.

“**Interest Election Request**” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.07 and substantially in the form of Exhibit E.

“**Interest Payment Date**” means (1) with respect to any Eurocurrency Revolving Loan, the last Business Day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurocurrency Revolving Facility Borrowing with an Interest Period of more than three months’ duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months’ duration been applicable to such Borrowing and (2) with respect to any ABR Loan, the first Business Day after the end of each fiscal quarter of the Borrower commencing with the first Business Day after the end of the fiscal quarter of the Borrower ending on June 30, 2018.

“**Interest Period**” means, as to any Eurocurrency Revolving Facility Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one, two, three or six months thereafter (or, if agreed by all applicable Lenders, 12 months or a shorter period), as the Borrower may elect, or the date any Eurocurrency Revolving Facility Borrowing is converted to an ABR Borrowing in accordance with Section 2.07 or repaid or prepaid in accordance with Section 2.09, 2.10 or 2.11; *provided* that:

- (1) if any Interest Period would end on a day other than a Business Day, such Interest Period will be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period will end on the next preceding Business Day;
- (2) any Interest Period 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) will end on the last Business Day of the calendar month at the end of such Interest Period;
- (3) no Interest Period will extend beyond the applicable Maturity Date; and
- (4) interest will accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

“**Inventory**” means, with respect to a Person, all of such Person’s now owned and hereafter acquired inventory (as defined in the UCC), goods and merchandise, wherever located, in each case, to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work-in-process, finished goods (including embedded software), other materials, parts and supplies of any kind, nature or description that are used or consumed in such Person’s business or used in connection with the packing, shipping, advertising, selling, or finishing of such goods, merchandise and other property, all documents of title or other documents representing the foregoing.

“ **Interpolated Rate** ” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent in its reasonable discretion (which such determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time.

“ **Investment** ” has the meaning assigned to such term in Section 6.04.

“ **Investment Grade Rating** ” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P (or reasonably equivalent ratings of another internationally recognized rating agency).

“ **Investment Grade Securities** ” means:

- (1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);
- (2) securities that have an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Borrower and its Restricted Subsidiaries;
- (3) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition; and
- (4) investments in any fund that invests at least 95.0% of its assets in investments of the type described in clauses (1) and (2) above which fund may also hold immaterial amounts of cash pending investment or distribution.

“ **Investors** ” means, collectively:

- (1) all direct and indirect members of Amneal Holdings as of the Closing Date after giving effect to the Transactions;
- (2) B.U. Patel, Tushar Patel, Chirag Patel, Chintu Patel and/or their respective spouses, in their individual capacities and as direct or indirect owners, beneficiaries, officers, directors, trustees or managers of any Permitted Family Entities,
- (3) all immediate and extended family members of B.U. Patel, Tushar Patel, Chirag Patel, Chintu Patel and/or their respective spouses and the respective estates, heirs, family members, spouses, former spouses, executors, administrators, trustees, legatees or distributees of any of the foregoing, in each case, who have been cleared by the Administrative Agent under its standard and customary “Know Your Customer” policies, and

---

(4) any Permitted Family Entities who have been cleared by the Administrative Agent under its standard and customary “Know Your Customer” policies.

“**Issuing Bank**” means JPM, RBC and each other Lender designated as an Issuing Bank pursuant to Section 2.05(12), in each case, in its capacity as an issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.05(10); provided that RBC, in its capacity as an Issuing Bank hereunder, shall only be required to issue standby Letters of Credit. An Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” will include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“**Issuing Bank Fees**” has the meaning assigned to such term in Section 2.12(2)(b).

“**Joint Venture**” means (1) any Person which would constitute an “equity method investee” of the Borrower or any of the Restricted Subsidiaries and (2) any Person in whom the Borrower or any of the Restricted Subsidiaries beneficially owns any Equity Interest that is not a Restricted Subsidiary (other than an Unrestricted Subsidiary).

“**JPM**” has the meaning assigned to such term in the introductory paragraph hereof.

“**Junior Financing**” means any Indebtedness permitted to be incurred hereunder that is contractually subordinated in right of payment to the Obligations or secured by Liens that are contractually subordinated to the Liens securing the Obligations or any Permitted Refinancing Indebtedness in respect of any of the foregoing (excluding, for the avoidance of doubt, the Initial Term Loans and any Indebtedness secured on a *pari passu* basis with the Liens that secure the Initial Term Loans); *provided* that any Convertible Indebtedness will not constitute Junior Financing.

“**Junior Financing Documentation**” means the definitive documentation governing any Junior Financing.

“**Junior Lien Debt**” means any Indebtedness that is secured on a junior basis to the Liens that secure the Revolving Facility Claims (excluding, for the avoidance of doubt, the Initial Term Loans and any Indebtedness secured on a *pari passu* basis with the Liens that secure the Initial Term Loans).

“**Junior Lien Intercreditor Agreement**” means a “junior lien” intercreditor agreement substantially in the form attached hereto as Exhibit H (as the same may be modified in a manner satisfactory to the Administrative Agent, the applicable Debt Representative and the Borrower), or another lien subordination arrangement satisfactory to the Administrative Agent, the applicable Debt Representative and the Borrower. Upon the request of the Borrower, the Administrative Agent and Collateral Agent will execute and deliver a Junior Lien Intercreditor Agreement with one or more Debt Representatives (and acknowledged by the Loan Parties) for Indebtedness permitted hereunder that is permitted to be secured on a junior basis to the Revolving Facility.

---

“ **Latest Maturity Date** ” means, as of any date of determination, the latest Maturity Date of the Revolving Facility Commitments, any Extended Commitments or any Refinancing Term Loans in effect on such date.

“ **Laws** ” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, 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.

“ **L/C Amount** ” has the meaning assigned to such term in the definition of Revolving L/C Exposure.

“ **L/C Disbursement** ” means a payment or disbursement made by an Issuing Bank pursuant to a Letter of Credit.

“ **L/C Participation Fee** ” has the meaning assigned such term in Section 2.12(2)(a).

“ **LCA Election** ” has the meaning assigned to such term in Section 1.09.

“ **LCA Test Date** ” has the meaning assigned to such term in Section 1.09.

“ **Lender** ” means each financial institution listed on Schedule 2.01 (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 10.04), as well as any Person that becomes a Lender hereunder pursuant to Section 10.04 and any Additional Lender.

“ **lending office** ” means, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Loans.

“ **Letter of Credit** ” has the meaning assigned to such term pursuant to Section 2.05.

“ **Letter of Credit Commitment** ” means, with respect to each Issuing Bank, the commitment of such Issuing Bank to issue Letters of Credit pursuant to Section 2.05.

“ **Letter of Credit Request** ” shall mean a request by the Borrower substantially in the form of Exhibit D-2 (or such other form as may be agreed between the Borrower and the Administrative Agent).

“ **Letter of Credit Sublimit** ” means the aggregate Letter of Credit Commitments of the Issuing Banks, in an amount not to exceed \$25.0 million.

“ **LIBO Rate** ” means, with respect to any Eurocurrency Revolving Facility Borrowing for any Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; *provided* that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “ **Impacted Interest Period** ”) then the LIBO Rate shall be the Interpolated Rate.

“**LIBO Screen Rate**” means, for any day and time, with respect to any Eurocurrency Revolving Facility Borrowing for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion); *provided* that if the LIBO Screen Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“**Lien**” means, with respect to any asset (1) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset; or (2) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset; *provided* that in no event will an operating lease or an agreement to sell be deemed to constitute a Lien.

“**Limited Condition Transaction**” means any transaction permitted hereunder by the Borrower or one or more Restricted Subsidiaries the consummation of which is not conditioned on the availability of, or on obtaining, third party financing.

“**Line Cap**” means, at any time, the lesser of (1) the aggregate Revolving Facility Commitments at such time and (2) the Borrowing Base then in effect.

“**Liquidity Condition**” means and will exist during the period from (1) the date on which Excess Availability has been less than the greater of (a) \$25 million and (b) 10.0% of the Line Cap then in effect, in either case, for five (5) consecutive Business Days, to (2) the date on which Excess Availability has been equal to or greater than the greater of (a) \$25 million and (b) 10.0% of the Line Cap then in effect, in either case, for 30 consecutive calendar days.

“**LLC Agreement**” means that certain Third Amended and Restated Limited Liability Company Agreement of Amneal Pharmaceuticals LLC, dated as of the Closing Date, as such agreement may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance herewith and therewith.

“**Loan Accounts**” means the loan accounts established on the books of the Administrative Agent.

“**Loan Documents**” means this Agreement, the Security Documents, the Closing Date Intercreditor Agreement, any Junior Lien Intercreditor Agreement, any Note and, solely for the purposes of Sections 3.01, 3.02, and 8.01(3) hereof, the Fee Letters.

“**Loan Parties**” means the Borrower and the Guarantors.

“**Loans**” means the Revolving Loans and any other loans and advances of any kind made by the Administrative Agent or any Lender pursuant to this Agreement (including, for the avoidance of doubt, any Protective Advances and Overadvances).

“**Management Group**” means the group consisting of the directors, executive officers and other management personnel of the Borrower and the Restricted Subsidiaries on the Closing Date or any Parent Entity, or their respective estates, heirs, family members, spouses, former spouses, executors, administrators, trustees, legatees or distributees.

“**Margin Stock**” has the meaning assigned to such term in Regulation U.

“**Material Adverse Effect**” means a material adverse effect on:

- (1) the business, financial condition or results of operations, in each case, of the Borrower and the Restricted Subsidiaries (taken as a whole);
- (2) the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the Loan Documents; or
- (3) the rights and remedies of the Administrative Agent and the Lenders (taken as a whole) under the Loan Documents.

“**Material Indebtedness**” means Indebtedness (other than the Loans and any Indebtedness held exclusively by Subsidiaries) of the Borrower or any Restricted Subsidiary in an aggregate outstanding principal amount exceeding the Threshold Amount.

“**Material Restricted Subsidiary**” means any Material Subsidiary that is a Restricted Subsidiary.

“**Material Subsidiary**” means any Subsidiary other than an Immaterial Subsidiary.

“**Maturity Date**” means, as the context may require:

- (1) with respect to Revolving Facility Commitments existing on the Closing Date and Loans and Letters of Credit in respect thereof, May 4, 2023;
- (2) with respect to any Refinancing Term Loans, the final maturity date specified therefor in the applicable Refinancing Amendment; and
- (3) with respect to any Extended Commitments and Loans and Letters of Credit in respect thereof, the final maturity date specified therefor in the applicable Extension Amendment.

“**Maximum Rate**” has the meaning assigned to such term in Section 10.09.

“**Minority Investment**” means any Person other than a Subsidiary in which the Borrower or any Restricted Subsidiary owns any Equity Interests.

“**MLPFSI**” means Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“**MNPI**” means any material Nonpublic Information regarding the Borrower, any of its Affiliates and their respective Subsidiaries that has not been disclosed to the Lenders generally (other than Lenders who elect not to receive such information). For purposes of this definition “material Nonpublic Information” means Nonpublic Information that would reasonably be expected to be material to a decision by any Lender to assign or acquire any Term Loans or to enter into any of the transactions contemplated thereby.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Multemployer Plan**” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower or any Restricted Subsidiary or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

“**Net Cash Proceeds**” means, with respect to the sale, incurrence or issuance of any Indebtedness by the Borrower or any Restricted Subsidiary, the excess, if any of:

- (a) the sum of the cash and Cash Equivalents received by the Borrower and its Restricted Subsidiaries in connection with such incurrence or issuance *over*
- (b) taxes paid or payable as a result thereof, fees (including investment banking fees, attorneys’ fees, accountants’ fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses, incurred by the Borrower and its Restricted Subsidiaries in connection with such sale, incurrence or issuance.

“**Net Income**” means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

“**Net Orderly Liquidation Value**” means, with respect to Eligible Inventory, the net appraised liquidation value thereof (expressed as a percentage of the Cost of such Inventory) as determined from time to time by an Acceptable Appraiser in accordance with Section 5.07.

“**New York Courts**” has the meaning assigned to such term in Section 10.15.

“**Non-Consenting Lender**” has the meaning assigned to such term in Section 2.19(3).

“**Non-Loan Party**” means any Subsidiary of the Borrower that is not a Loan Party.

“**Non-U.S. Subsidiary**” means any Subsidiary that not a U.S. Subsidiary.

“**Not Otherwise Applied**” means, with reference to the amount of any net cash proceeds or fair market value of other assets received from Permitted Equity Issuances or capital contributions that is proposed to be applied to a particular use or transaction, that such amount was not previously applied in determining the permissibility of a transaction under this Agreement (including, for the avoidance of doubt, any Cure Amounts and any Excluded Contributions) where such permissibility was (or may have been) contingent on the receipt or availability of such amount.

“**Note**” means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit I hereto or otherwise in form and substance reasonably acceptable to the Administrative Agent and the Borrower, evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the Loans made by such Lender.

“**NYFRB**” means the Federal Reserve Bank of New York.

“**NYFRB Rate**” means, for any day, the Federal Funds Effective Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); *provided* that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; *provided, further*, that if any of the aforesaid rates as so determined be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**Obligations**” means all amounts owing to any Agent, any Issuing Bank or any Lender, any Qualified Counterparty pursuant to the terms of this Agreement, any other Loan Document or any Specified Hedge Agreement and all Cash Management Obligations owing to any Cash Management Bank, including all interest and expenses accrued or accruing (or that would, absent the commencement of an insolvency or liquidation proceeding, accrue) after the commencement by or against any Loan Party or other Restricted Subsidiary of any proceeding under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law naming such Loan Party as the debtor in such proceeding, in accordance with and at the rate specified in this Agreement, whether or not the claim for such interest or expense is allowed or allowable as a claim in such proceeding.

“**Organizational Documents**” means,

- (1) 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);
- (2) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); and
- (3) 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 Document).

“ **Other Taxes** ” means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

“ **Overadvance** ” has the meaning assigned to such term in Section 2.01(2).

“ **Paragraph IV Certification Notice** ” means the notice of certification required by 21 U.S.C. § 355(b)(3) or 21 U.S.C. § 355(j)(2)(B).

“ **Paragraph IV Proceeding** ” means an infringement Proceeding filed pursuant to 35 U.S.C. § 271(e)(2) with respect to a product controlled by the Borrower or any of the Subsidiaries.

“ **Parent Entity** ” means any direct or indirect parent of the Borrower.

“ **Participant** ” has the meaning assigned to such term in Section 10.04(4)(a).

“ **Participant Register** ” has the meaning assigned to such term in Section 10.04(4).

“ **Payment Conditions** ” means, and will be deemed to be satisfied with respect to any particular action as to which the satisfaction of the Payment Conditions is being determined if, after giving effect to the taking of such action, (1) no Designated Event of Default has occurred and is continuing immediately prior or after giving effect thereto, (2) Specified Excess Availability for each day in the 30-day period prior to such action and on the date of such proposed action would exceed the greater of (a) 12.5% of the Line Cap then in effect and (b) \$31.25 million, in any such case, on a Pro Forma Basis, and (3) the Fixed Charge Coverage Ratio as of the end of the most recent Test Period would be at least 1.0 to 1.0 on a Pro Forma Basis giving effect to the subject action; *provided* that compliance with the Fixed Charge Coverage Ratio will not be required if after giving effect to the taking of such action, Specified Excess Availability would exceed the greater of (i) 17.5% of the Line Cap then in effect and (ii) \$43.75 million, on a Pro Forma Basis.

“ **Payment in Full** ” means the payment in full of the Obligations (other than Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted), the expiration, termination or cash collateralization (on terms reasonably satisfactory to the applicable Issuing Bank) of all Letters of Credit and the termination of all commitments hereunder and “ **Paid in Full** ” has a correlative meaning.

“**Payment Office**” means the office of the Administrative Agent located at 10 S. Dearborn St., L2 floor, Chicago, IL 60603 or such other office as the Administrative Agent may designate to the Borrower and the Lenders from time to time.

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA, or any successor thereto.

“**Perfection Certificate**” means the Perfection Certificate with respect to the Loan Parties in a form substantially similar to that delivered on the Closing Date.

“**Permit**” means any license, franchise, approval, authorization or clearances issued by a Governmental Authority and required for the conduct of its business of the Borrower or its Restricted Subsidiaries as currently conducted.

“**Permitted Acquisition**” means any acquisition of all or substantially all the assets of, or a majority of the Equity Interests in, or merger, consolidation or amalgamation with, a Person or any acquisition of assets constituting a business unit, line of business, division or facility of another Person or any Exclusive License (or any subsequent investment made in a Person, division or line of business previously acquired in a Permitted Acquisition), in each case if (1) no Event of Default is continuing (or in the case of a Limited Condition Transaction, no Specified Event of Default is continuing) immediately prior to making such Investment or would result therefrom; and (2) immediately after giving effect thereto, the Borrower is in compliance with Sections 5.10 and 6.09.

“**Permitted Additional Indebtedness**” means Indebtedness of the Borrower or any Restricted Subsidiary in the form of term loans or notes; *provided* that:

- (1) any Permitted Additional Indebtedness shall not mature, or have scheduled amortization, prior to the date that is 91 days after the Latest Maturity Date of the Loans at the time of incurrence thereof; *provided* that this clause (1) shall not apply to the incurrence of any such Indebtedness constituting a bridge facility to the incurrence of any other Indebtedness, so long as the Indebtedness into which such bridge facility is to be converted or exchanged satisfies the requirements of this clause (1) and such conversion or exchange is subject only to conditions customary for similar conversions or exchanges;
- (2) if such Permitted Additional Indebtedness is incurred by a Loan Party, it is not guaranteed by any Person other than a Loan Party;
- (3) if such Permitted Additional Indebtedness incurred by a Loan Party is secured it shall be Junior Lien Debt or secured on a *pari passu* basis with the Liens securing the Initial Term Loans and:
  - (i) such Indebtedness is not secured by any assets or property that does not constitute Collateral (subject to customary exceptions for cash collateral in favor of an agent, letter of credit issuer or similar “fronting” lender); and

- 
- (ii) the security agreements relating to such assets or property are substantially similar to or the same as the applicable Collateral Documents (as determined in good faith by a Responsible Officer of the Borrower);
- (4) if such Permitted Additional Indebtedness is secured, the holders of such Permitted Additional Indebtedness or a Debt Representative acting on behalf of the holders of such Permitted Additional Indebtedness has become party to or is otherwise subject to the provisions of an Intercreditor Agreement (as such Intercreditor Agreement may be amended in a manner reasonably acceptable to the Administrative Agent, such Debt Representative and the Borrower), which results in such holders or Debt Representative having rights to share in the Collateral on a junior lien basis; and
- (5) the terms and conditions of such Indebtedness (a) are substantially identical to, or, taken as a whole, no more favorable to the lenders or holders providing such Indebtedness than, those applicable to the Loans (except for covenants applicable only to periods after the Latest Maturity Date of the Loans at the time of incurrence) and (b) solely to the extent that any terms and conditions applicable to any such Indebtedness are not substantially the same as, or are materially more restrictive on the Borrower and the Restricted Subsidiaries than, those then applicable to the Loans, shall otherwise reflect customary market terms and conditions, including with respect to high yield debt securities to the extent applicable, at the time of such incurrence of such Indebtedness ( *provided* that a certificate of a Responsible Officer delivered to the Administrative Agent in good faith at least four (4) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material covenants and events of default of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (5) shall be conclusive evidence that such Indebtedness satisfies this clause (5) unless the Administrative Agent notifies the Borrower within such four (4) Business Day (or shorter) period that it disagrees with such determination (including a description of the basis upon which it disagrees)); provided that this clause (5) will not apply to (v) terms addressed in the preceding clauses (1) through (4), (w) interest rate, rate floors, fees, funding discounts and other pricing terms, (x) redemption, prepayment or other premiums, or (y) optional prepayment or redemption terms; *provided further* that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof).

“ **Permitted Amendment** ” means any Incremental Facility Amendment, Refinancing Amendment or Extension Amendment.

“ **Permitted Bond Hedge Transaction** ” means any call or capped call option (or substantively equivalent derivative transaction) on the Borrower’s common Capital Stock or the common Capital Stock of any direct or indirect parent of the Borrower (or other securities or property following a merger event or other change of the common Capital Stock of Borrower or

such parent) purchased by the Borrower or any direct or indirect parent thereof in connection with the issuance of any Convertible Indebtedness; *provided*, that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Borrower from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction. For the avoidance of doubt, those certain bond hedge transactions entered into on June 25, 2015 and June 26, 2015 with Royal Bank of Canada, as amended or modified, constitute Permitted Bond Hedge Transactions.

“ **Permitted Convertible Indebtedness Call Transaction** ” means any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction.

“ **Permitted Cure Securities** ” means any Capital Stock of the Borrower other than Disqualified Stock.

“ **Permitted Debt** ” has the meaning assigned thereto in Section 6.01.

“ **Permitted Equity Issuances** ” means any sale or issuance of any Qualified Equity Interests of the Borrower or any direct or indirect parent of the Borrower.

“ **Permitted Family Entity** ” means any Person in which any combination of B.U. Patel, Tushar Patel, Chirag Patel, Chintu Patel, their respective spouses, any immediate or extended family member of the foregoing, the respective estates, heirs, family members, and/or the spouses, former spouses, executors, administrators, trustees, legatees or distributees of any of the foregoing (1) are the direct or indirect owners, beneficiaries (whether income, fixed or contingent), officers, directors, trustees or managers and, in each case, are entitled to all of the economic rights and interests in such Person, or (2) Control such Person.

“ **Permitted Holders** ” means each of:

- (1) the Investors;
- (2) any member of the Management Group (or any controlled Affiliate thereof);
- (3) any group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of which Persons described in the foregoing clauses (1) or (2) are members; *provided* that, without giving effect to the existence of such group or any other group, the Persons described in clauses (1) and (2), collectively, Beneficially Own Equity Interests representing 50% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Amneal Inc. (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested) then held by such group; and
- (4) any Permitted Parent.

“ **Permitted Investment** ” has the meaning assigned to such term in Section 6.04.

---

“ **Permitted Investor** ” means:

- (1) each Investor;
- (2) each of their respective Affiliates and investment managers;
- (3) any fund or account managed by any of the Persons described in clause (1) or (2) of this definition;
- (4) any employee benefit plan of the Borrower or any of its Subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan; and
- (5) investment vehicles of members of management of the Borrower that invest in, acquire or trade commercial loans but excluding natural persons.

“ **Permitted Junior Secured Refinancing Debt** ” means any Credit Agreement Refinancing Indebtedness that is secured on a junior basis to the Loans.

“ **Permitted Liens** ” has the meaning assigned to such term in Section 6.02.

“ **Permitted Parent** ” means any Parent Entity for so long as it is Controlled by one or more Persons that are Permitted Holders pursuant to clause (1), (2) or (3) of the definition thereof.

“ **Permitted Refinancing Indebtedness** ” means any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, “ **Refinance** ”) the Indebtedness being Refinanced (the “ **Refinanced Debt** ”); *provided* that:

- (1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Refinanced Debt ( *plus* unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses) and any existing commitments unutilized thereunder being terminated in connection with such Refinancing;
- (2) other than with respect to a Refinancing of Indebtedness initially incurred pursuant to Section 6.01(3) (other than the Impax Convertible Notes) or Section 6.01(4), the final maturity date of such Permitted Refinancing Indebtedness is equal to or later than the final maturity date of the Refinanced Debt and the Weighted Average Life to Maturity of the Permitted Refinancing Indebtedness is greater than or equal to the Weighted Average Life to Maturity of the Refinanced Debt;
- (3) if the Refinanced Debt constitutes Junior Financing:
  - (a) such Permitted Refinancing Indebtedness is (i) unsecured or (ii) Junior Lien Debt that is permitted hereunder at the time of incurrence;

- 
- (b) to the extent such Refinanced Debt is subordinated in right of payment to any Obligations under this Agreement, such Permitted Refinancing Indebtedness is subordinated in right of payment to such Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Refinanced Debt; and
- (c) such Permitted Refinancing Indebtedness has the same obligors as the Refinanced Debt (unless any such additional obligors are also Loan Parties);
- (4) (i) to the extent such Refinanced Debt is secured by Liens, such Permitted Refinancing Indebtedness is either unsecured or is not secured by any Liens that do not secure such Refinanced Debt, (ii) to the extent such Refinanced Debt is secured by Liens that are subordinated to the Liens securing the Obligations, such Permitted Refinancing Indebtedness is secured by Liens that are subordinated to the Liens securing the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Refinanced Debt and (iii) to the extent such Refinanced Debt is unsecured, such Permitted Refinancing Indebtedness is unsecured; *provided* that, with respect to a refinancing of the Term Loan Obligations, the Liens, if any, securing such Permitted Refinancing Indebtedness will be on terms not materially less favorable to the Lenders than those contained in the documentation governing the Term Loan Credit Agreement, as determined in good faith by a Responsible Officer of the Borrower;
- (5) the terms and conditions of such Permitted Refinancing Indebtedness (a) are substantially identical to, or, taken as a whole, not more favorable to the lenders or holders providing such Permitted Refinancing Indebtedness than, those applicable to such Refinanced Debt (except for covenants applicable only to periods after the Latest Maturity Date of the Loans at the time of incurrence) and (b) solely to the extent that any terms and conditions applicable to any such Permitted Refinancing Indebtedness are not substantially the same as, or are materially more restrictive on the Borrower and the Restricted Subsidiaries than, those then applicable to the Refinanced Debt, shall otherwise reflect customary market terms and conditions at the time of such incurrence, including with respect to high yield debt securities to the extent applicable (*provided* that a certificate of a Responsible Officer delivered to the Administrative Agent in good faith at least four (4) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to the incurrence of such Permitted Refinancing Indebtedness, together with a reasonably detailed description of the material covenants and events of default of such Permitted Refinancing Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (5) shall be conclusive evidence that such Permitted Refinancing Indebtedness satisfies this clause (5) unless the Administrative Agent notifies the Borrower within such four (4) Business Day (or shorter) period that it disagrees with such determination (including a description of the basis upon which it disagrees)); *provided, further* that this clause (5) will not apply to (w) terms addressed in the other clauses of this “Permitted Refinancing Indebtedness” definition, (x) interest rate, rate floors, fees, funding discounts and other pricing terms, (y) redemption, prepayment or other premiums or (z) optional prepayment or redemption terms; and

- (6) to the extent such Refinanced Debt is Permitted Junior Secured Refinancing Debt, such Permitted Refinancing Indebtedness is secured only by assets that constitute Collateral and pursuant to one or more security agreements permitted by and subject to any applicable Intercreditor Agreements (as such Intercreditor Agreements may be amended in a manner reasonably acceptable to the Administrative Agent, the applicable Debt Representatives and the Borrower); and
- (7) to the extent such Refinanced Debt is (a) Ratio Debt, such Permitted Refinancing Indebtedness shall be required to satisfy the requirements of clauses (2)–(4) of the definition of “Permitted Additional Indebtedness” as if such Permitted Refinancing Indebtedness were also Permitted Additional Indebtedness or (b) Refinancing Term Loans, such Permitted Refinancing Indebtedness shall be subject to the FILO Intercreditor Provisions.

Indebtedness constituting Permitted Refinancing Indebtedness will not cease to constitute Permitted Refinancing Indebtedness solely as a result of the subsequent extension of the Latest Maturity Date after the date of original incurrence thereof.

“**Permitted Warrant Transaction**” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on the Borrower’s common Capital Stock or the common Capital Stock of any direct or indirect parent of the Borrower (or other securities or property following a merger event or other change of the common Capital Stock of Borrower or such parent) and/or cash (in an amount determined by reference to the price of such common Capital Stock) sold by the Borrower or any direct or indirect parent thereof substantially concurrently with any purchase by the Borrower of a related Permitted Bond Hedge Transaction. For the avoidance of doubt, those certain warrant transactions entered into on June 25, 2015 and June 26, 2015 with Royal Bank of Canada, as amended or modified, constitute Permitted Warrant Transactions.

“**Person**” means any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, government, individual or family trust, Governmental Authority or other entity of whatever nature.

“**PIPE Investment**” means the redemption by certain existing equityholders of the Borrower of a portion of their equity interests in the Borrower in exchange for shares of common stock in Amneal Inc., and the sale of such shares in a private transaction to certain institutional investors including TPG Improv Holdings, L.P. and funds affiliated with Fidelity Management & Research Company pursuant to the Share Purchase Agreement, dated as of October 17, 2017, between Amneal Holdings and the purchasers party thereto.

“**PIPE Registration Statement**” means the registration statement of Amneal, Inc. (f/k/a Atlas Holdings, Inc.) on Form S-1 filed with the SEC on March 7, 2018.

“**Plan**” means any “employee pension benefit plan” as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) that is (1) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA; and (2) either (a) sponsored or maintained (at the time of determination or at any time within the five years prior thereto) by the Borrower or any of its Subsidiaries or any ERISA Affiliate or (b) in respect of which the Borrower or any of its Subsidiaries or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

---

“ **Platform** ” has the meaning assigned to such term in Section 10.17(1).

“ **Pledged Collateral** ” means “ **Pledged Collateral** ” as defined in the Collateral Agreement.

“ **Prime Rate** ” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“ **Pro Forma Basis** ”, “ **Pro Forma** ” and “ **Pro Forma Effect** ” mean, with respect to compliance with any test or covenant or calculation hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.08.

“ **Products in Development** ” means drug products that, as of the Closing Date, (a) are in development or (b) the Borrower or any of the Subsidiaries does not yet sell, offer for sale, import, promote, market, distribute or otherwise commercialize.

“ **Projections** ” means all projections (including financial estimates, financial models, forecasts, other financial projections and other forward-looking information) furnished to the Lenders or the Administrative Agent by or on behalf of the Borrower, Impax or any of their respective Subsidiaries on or prior to the Closing Date.

“ **Protective Advances** ” has the meaning assigned to such term in Section 2.01(3).

“ **Public Company Costs** ” means costs relating to compliance with the Sarbanes-Oxley Act of 2002, as amended (or similar Laws in any other applicable jurisdiction), and other expenses arising out of or incidental to the Borrower’s (or any Parent Entity’s) status as a public reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act (or similar Laws in any other applicable jurisdiction), the rules of national securities exchange companies with listed equity securities, directors’ compensation, fees and expense reimbursement, shareholder meetings and reports to shareholders, directors’ and officers’ insurance and other executive costs, legal and other professional fees, and listing fees relating to the foregoing.

“ **Public Lender** ” has the meaning assigned to such term in Section 10.17(2).

---

“**Qualified Counterparty**” means any counterparty to any Specified Hedge Agreement that, at the time such Specified Hedge Agreement was entered into or, if later, on the Closing Date, was an Agent, an Arranger, a Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be an Agent, an Arranger, a Lender or an Affiliate of the foregoing.

“**Qualified Equity Interests**” means any Equity Interests other than Disqualified Stock.

“**Qualified Receivables Factoring**” means any Factoring Transaction that meets the following conditions:

- (1) such Factoring Transaction is non-recourse to, and does not obligate, the Borrower or any Restricted Subsidiary, or their respective properties or assets (other than Securitization Assets) in any way other than pursuant to Standard Securitization Undertakings;
- (2) the Board of Directors of the Borrower has determined in good faith that such Qualified Receivables Factoring (including financing terms, covenants, termination events and other provisions) is, in the aggregate, economically fair and reasonable to the Borrower and the Restricted Subsidiaries;
- (3) all sales, conveyances, assignments and/or contributions of Securitization Assets by the Borrower or any Restricted Subsidiary are made at fair market value (as determined in good faith by the Borrower), and
- (4) such Factoring Transaction (including financing terms, covenants, termination events (if any) and other provisions thereof) are market terms at the time such Factoring Transaction is first entered into (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings.

The grant of a security interest (other than a precautionary grant) in any Securitization Assets of the Borrower or any of its Restricted Subsidiaries to secure any Indebtedness shall not be deemed a Qualified Receivables Factoring.

“**Qualified Receivables Financing**” means any Receivables Financing that meets the following conditions:

- (1) the Board of Directors of the Borrower has determined in good faith that such Qualified Receivables Financing (including financing terms, covenants, termination events and other provisions) is, in the aggregate, economically fair and reasonable to the Borrower and the Restricted Subsidiaries;
- (2) all sales, conveyances, assignments or contributions of Securitization Assets by the Borrower or any Restricted Subsidiary to the Receivables Subsidiary are made at fair market value; and
- (3) the financing terms, covenants, termination events and other provisions thereof are market terms at the time such Receivables Financing is first entered into (as determined in good faith by a Responsible Officer of the Borrower) and may include Standard Securitization Undertakings.

The grant of a security interest (other than a precautionary grant) in any Securitization Assets of the Borrower or any Restricted Subsidiary (other than a Receivables Subsidiary) to secure any Indebtedness will not be deemed a Qualified Receivables Financing.

“**Qualified Receivables Transaction**” means a Qualified Receivables Factoring or a Qualified Receivables Financing.

“**Quarterly Financial Statements**” has the meaning assigned to such term in Section 5.04(2).

“**Ratio Amount**” means an aggregate principal amount that, after giving Pro Forma effect to the incurrence thereof, in accordance with Section 1.08, would not result in:

- (1) with respect to Ratio Debt to be secured on a *pari passu* basis with the Initial Term Loans, the First Lien Net Leverage Ratio for the applicable Test Period being greater than (a) the Closing Date First Lien Net Leverage Ratio or (b) the First Lien Net Leverage Ratio immediately prior to such incurrence;
- (2) with respect to any Ratio Debt to be secured on a junior basis to the Initial Term Loans, the Total Net Leverage Ratio for the applicable Test Period being greater than (a) the Closing Date Total Net Leverage Ratio or (b) the Total Net Leverage Ratio immediately prior to such incurrence; and
- (3) with respect to any Ratio Debt that is unsecured (or not secured by Collateral), the Total Net Leverage Ratio for the applicable Test Period being greater than 6.00 to 1.00.

“**Ratio Debt**” has the meaning assigned to such term in Section 6.01.

“**Ratio Debt Cap**” means, as of the date of measurement, the sum of (1) \$100 million (less the aggregate principal amount of all Indebtedness incurred prior to such date in reliance on this clause (1)) and (2) the Ratio Amount.

“**RBC**” means Royal Bank of Canada.

“**Real Property**” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by any Loan Party, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“**Reasonable Credit Judgment**” means reasonable credit judgment (from the perspective of an asset-based lender) exercised in good faith in accordance with customary business practices for comparable asset-based lending transactions based upon its consideration of any factor that it reasonably believes:

- (1) could materially adversely affect the quantity, quality, mix or value of Collateral (including any applicable Laws that may inhibit collection of a receivable), the enforceability or priority of the Administrative Agent's or Collateral Agent's liens thereon, or the amount that the Administrative Agent, the Collateral Agent, the Lenders or the Issuing Banks could receive in liquidation of any Collateral;
- (2) in the case of any collateral report or financial information delivered by any Loan Party, such collateral report or financial information is incomplete, inaccurate or misleading in any material respect; or
- (3) creates an Event of Default.

In exercising such judgment, the Administrative Agent may consider any factors that could materially increase the credit risk of lending to the Borrower on the security of the Collateral. Any Reserve established or modified by the Administrative Agent shall have a reasonable relationship to circumstances, conditions, events or contingencies which are the basis for such Reserve, as reasonably determined, without duplication, by the Administrative Agent in good faith; *provided* that circumstances, conditions, events or contingencies existing or arising prior to the Initial Borrowing Base Date and, in each case, disclosed in writing in any field examination or appraisal delivered to the ABL Administrative Agent in connection herewith or otherwise known to the Administrative Agent, in either case, prior to the Initial Borrowing Base Date, shall not be the basis for any establishment of any Reserves after the Initial Borrowing Base Date, unless such circumstances, conditions, events or contingencies shall have changed in a material respect since the Initial Borrowing Base Date.

“**Receivables Financing**” means any transaction or series of transactions that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or any Restricted Subsidiaries may sell, assign, contribute, convey or otherwise transfer Securitization Assets to (1) a Receivables Subsidiary (in the case of a transfer by the Borrower or any Restricted Subsidiary that is not a Receivables Subsidiary) or (2) any other Person (in the case of a transfer by a Receivables Subsidiary) and, in either case, may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries.

“**Receivables Repurchase Obligation**” means any obligation of a seller of Securitization Assets in a Qualified Receivables Transaction to repurchase Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a Securitization Asset or portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

“**Receivables Subsidiary**” means a Wholly Owned Subsidiary of the Borrower (or another Person formed solely for the purposes of engaging in a Qualified Receivables Financing with the Borrower or any Restricted Subsidiary and to which the Borrower or any Restricted Subsidiary transfers Securitization Assets) which engages in no activities other than in connection with the financing of Securitization Assets of the Borrower or its Subsidiaries, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Borrower (as provided below) as a Receivables Subsidiary and:

- 
- (1) no portion of the Indebtedness or any other obligations (contingent or otherwise):
    - (a) is guaranteed by the Borrower or any Restricted Subsidiary (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings);
    - (b) is recourse to or obligates the Borrower or any Restricted Subsidiary in any way other than pursuant to Standard Securitization Undertakings; or
    - (c) subjects any property or asset of the Borrower or any Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;
  - (2) with which neither the Borrower nor any Restricted Subsidiary has any material contract, agreement, arrangement or understanding other than on terms which the Borrower reasonably believes to be no less favorable to the Borrower or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower, other than with respect to Standard Securitization Undertakings; and
  - (3) to which neither the Borrower nor any other Restricted Subsidiary has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results.

Any such designation by the Board of Directors of the Borrower will be evidenced to the Administrative Agent by filing with the Administrative Agent a certified copy of the resolution of the Board of Directors of the Borrower giving effect to such designation and a certificate of a Responsible Officer of the Borrower certifying that such designation complied with the foregoing conditions.

“**Recipient**” means the Administrative Agent and any Lender, as applicable.

“**Refinance**” has the meaning assigned to such term in the definition of “*Permitted Refinancing Indebtedness*,” and the terms “**Refinanced**” and “**Refinancing**” will have correlative meanings.

“**Refinanced Debt**” has the meaning assigned to such term in the definition of “*Permitted Refinancing Indebtedness*”.

“**Refinancing Amendment**” means an amendment, in accordance with the terms of Section 2.22, to this Agreement and, as necessary, each other Loan Document (which may, at the option of the Administrative Agent and the Borrower, be in the form of an amendment and restatement of this Agreement or such other Loan Document, as applicable) executed by each of (1) the Borrower; (2) the Administrative Agent; and (3) with respect to an amendment (or an amendment and restatement) of this Agreement, each Lender that agrees to provide any portion of the Refinancing Term Loans in accordance with Section 2.22.

“**Refinancing Term Lender**” means each Lender that holds an Refinancing Term Loan.

“ **Refinancing Term Loan Commitment** ” means, with respect to each Refinancing Term Lender, the commitment of such Refinancing Term Lender to make Refinancing Term Loans as set forth in the applicable Refinancing Amendment.

“ **Refinancing Term Loans** ” has the meaning assigned to such term in Section 2.22(1).

“ **Register** ” has the meaning assigned to such term in Section 10.04(2)(d).

“ **Registered Equivalent Notes** ” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees and collateral provisions) issued by the same issuer in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“ **Regulation U** ” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“ **Regulation X** ” means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“ **Reinvestment Deferred Amount** ” has the meaning assigned to such term in the Term Loan Credit Agreement.

“ **Related Parties** ” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“ **Release** ” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating in, into, upon, onto or through the Environment.

“ **Report** ” means reports prepared by the Administrative Agent, the Collateral Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the Loan Parties’ assets from information furnished by or on behalf of the Loan Parties, after the Administrative Agent or Collateral Agent has exercised its rights of inspection pursuant to this Agreement, which Report may be distributed to the Lenders by the Administrative Agent, subject to the provisions of Section 10.16.

“ **Reportable Event** ” means any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30 day notice period referred to in Section 4043(c) of ERISA has been waived, with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code).

“ **Required Financial Statements** ” has the meaning assigned to such term in Section 5.04(2).

---

“ **Required Lenders** ” means, at any time (1) prior to the Discharge of ABL Claims, the Required Revolving Lenders and (2) after the Discharge of ABL Claims, the Required Term Lenders.

“ **Required Revolving Lenders** ” means, at any time, Lenders having (1) Revolving Facility Credit Exposure and (2) Available Unused Commitments that, taken together, represent more than 50.0% of the sum of (a) all Revolving Facility Credit Exposure and (b) the total Available Unused Commitments at such time. The Revolving Facility Credit Exposure and Available Unused Commitments of any Defaulting Lender will be disregarded in determining the Required Revolving Lenders; *provided* that subject to the Borrower’s right to replace Defaulting Lenders as set forth herein:

- (a) the Commitment of any Defaulting Lender may not be increased or extended, or the maturity of any of its Loans may not be extended, the rate of interest on any of its Loans may not be reduced and the principal amount of any of its Loans may not be forgiven, in each case without the consent of such Defaulting Lender (it being understood that waivers or other modifications of any conditions precedent, covenants, mandatory prepayments, mandatory Commitment reductions, Defaults or Events of Default shall not constitute an increase or extension of any Commitment, a reduction of the rate of interest on any Loan or a forgiveness of the principal amount of any Loan); and
- (b) any amendment, waiver or consent requiring the consent of all the Lenders or each affected Lender pursuant to clauses (i) through (vii) of Section 10.08(2) that by its terms affects any Defaulting Lender more adversely than the other affected Lenders shall require the consent of such Defaulting Lender.

“ **Required Term Lenders** ” means, at any time, Refinancing Term Lenders having Refinancing Term Loans outstanding that, taken together, represent more than 50.0% of the sum of all Refinancing Term Loans outstanding at such time. The Refinancing Term Loans of any Defaulting Lender will be disregarded in determining the Required Term Lenders; *provided* that, subject to the Borrower’s right to replace Defaulting Lenders as set forth herein:

- (a) the Commitment of any Defaulting Lender may not be increased or extended, or the maturity of any of its Loans may not be extended, the rate of interest on any of its Loans may not be reduced and the principal amount of any of its Loans may not be forgiven, in each case without the consent of such Defaulting Lender (it being understood that waivers or other modifications of any conditions precedent, covenants, mandatory prepayments, mandatory Commitment reductions, Defaults or Events of Default shall not constitute an increase or extension of any Commitment, a reduction of the rate of interest on any Loan or a forgiveness of the principal amount of any Loan); and
- (b) any amendment, waiver or consent requiring the consent of all the Lenders or each affected Lender pursuant to clauses (i) through (vii) of Section 10.08(2) that by its terms affects any Defaulting Lender more adversely than the other affected Lenders shall require the consent of such Defaulting Lender.

“ **Reserves** ” means, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves (including banking services reserves, landlord lien reserves, customer credit liabilities reserves, customer deposits reserves, reserves for Obligations under Specified Hedge Agreements and reserves against Eligible Accounts, Eligible Inventory and Eligible Cash) that the Administrative Agent from time to time determines in its Reasonable Credit Judgment as being appropriate to reflect:

- (1) the impediments to the Administrative Agent’s ability to realize upon the Collateral included in the Borrowing Base in accordance with the Loan Documents;
- (2) claims and liabilities that will need to be satisfied, or will dilute the amounts received by holders of Loans, in connection with the realization upon such Collateral; or
- (3) criteria, events, conditions, contingencies or risks that adversely affect any component of the Borrowing Base, the Collateral included therein or the validity or enforceability of the Loan Documents or any material remedies of the Administrative Agent, the Collateral Agent, each Issuing Bank and each Lender under the Loan Documents with respect to such Collateral.

The establishment or increase of any Reserve will be limited to the exercise by the Administrative Agent of Reasonable Credit Judgment, upon at least five (5) Business Days’ prior written notice to the Borrower (which notice will include a reasonably detailed description of the Reserve being established); *provided* that upon such notice, the Borrower will not be permitted to borrow so as to exceed the Borrowing Base after giving effect to such new or modified Reserves. During such five (5) Business Day period, the Administrative Agent will, if requested, discuss any such new or modified Reserve with the Borrower, and the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such new or modified Reserve no longer exists or exists in a manner that would result in the establishment of a lower Reserve, in each case, in a manner and to the extent reasonably satisfactory to the Administrative Agent. Notwithstanding anything to the contrary herein:

- (a) the amount of any such Reserve will have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve,
- (b) no Reserves will be duplicative of other reserves or items that are otherwise addressed, excluded or already accounted for through eligibility criteria (including collection/advance rates) and
- (c) no reserves shall be imposed on the first five percent (5%) of dilution of Eligible Accounts and thereafter no dilution reserve shall exceed one percent (1%) for each incremental whole percentage in dilution over five percent (5%), *provided* that dilution reserves may reflect fractional percentages in dilution.

“ **Responsible Officer** ” means, with respect to any Loan Party, the chief executive officer, president, vice president, secretary, assistant secretary or any Financial Officer of such Loan Party or other similar officer or Person performing similar functions of a Loan Party and, as to any document delivered on the Closing Date, any secretary or assistant secretary of a Loan Party, designated in writing by or on behalf of the Borrower to the Administrative Agent from

time to time. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party will be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer will be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a "Responsible Officer" shall refer to a Responsible Officer of the Borrower.

"**Restricted Payment**" means any (1) dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any of its Restricted Subsidiaries (other than dividends or other distributions on Equity Interests payable solely by the issuance of additional Equity Interests (other than Disqualified Stock) of the Person paying such dividends or distributions) and (2) payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of (a) the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any Equity Interest of the Borrower or any of the Restricted Subsidiaries or (b) any return of capital to the Borrower's equityholders, partners or members (or the equivalent Persons thereof); *provided* that (i) cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from any future, current or former officers, directors, managers, employees, consultants and independent contractors of the Borrower, any Restricted Subsidiary or any direct or indirect parent thereof, or their respective estates, heirs, family members, spouses, former spouses, successors, executors, administrators, trustees, legatees or distributees in connection with a repurchase of Equity Interests of the Borrower or such parent entity and (ii) any payment(s) of principal (not in excess of the stated principal amount thereof), interest, fees, reimbursement obligations, charges, costs, expenses, indemnities and other amounts in respect of Convertible Indebtedness, in each case will not constitute a Restricted Payment; *provided further* that notwithstanding anything herein to the contrary, any payment in cash included in the settlement amount due upon conversion in excess of the stated principal amount of any Convertible Indebtedness shall constitute a Restricted Payment for all purposes hereunder.

"**Restricted Subsidiary**" means any Subsidiary of a Person other than an Unrestricted Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Restricted Subsidiaries will mean Restricted Subsidiaries of the Borrower.

"**Revolving Facility**" means the Revolving Facility Commitments (including any Incremental Commitments) and the extensions of credit made hereunder by the Revolving Lenders.

"**Revolving Facility Borrowing**" means a Borrowing comprised of Revolving Loans.

"**Revolving Facility Claims**" has the meaning assigned to the term "ABL Claims" in the Closing Date Intercreditor Agreement, but assuming, solely for purposes of this definition, that the principal amount of any Refinancing Term Loans and any interest, fees, attorneys' fees, costs, expenses, indemnities and other Obligations relating thereto do not constitute "ABL Claims".

“ **Revolving Facility Commitment** ” means, with respect to a Lender, the commitment of such Lender to make Revolving Loans pursuant to Section 2.01, expressed as an amount representing the maximum aggregate permitted amount of such Lender’s Revolving Facility Credit Exposure hereunder, as such commitment may be (1) reduced from time to time pursuant to Section 2.08, (2) reduced or increased from time to time pursuant to assignments by or to such Lender under Section 10.04 or (3) increased from time to time under Section 2.21. The initial amount of each Lender’s Revolving Facility Commitment is set forth on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender has assumed its Revolving Facility Commitment, as applicable. The initial aggregate amount of the Lenders’ Revolving Facility Commitments is \$500.0 million.

“ **Revolving Facility Credit Exposure** ” means, at any time, the sum of:

- (1) the aggregate principal amount of the Revolving Loans outstanding at such time; and
- (2) the Revolving L/C Exposure at such time.

The Revolving Facility Credit Exposure of any Revolving Lender at any time will be, subject to adjustment as expressly provided in Section 2.24, the product of (a) such Revolving Lender’s Revolving Facility Percentage and (b) the aggregate Revolving Facility Credit Exposure of all Revolving Lenders, collectively, at such time.

“ **Revolving Facility Percentage** ” means, with respect to any Revolving Lender, the percentage of the total Revolving Facility Commitments represented by such Lender’s Revolving Facility Commitment. If the Revolving Facility Commitments have terminated or expired, the Revolving Facility Percentages will be determined based upon the Revolving Facility Commitments most recently in effect, giving effect to any assignments pursuant to Section 10.04.

“ **Revolving L/C Exposure** ” means at any time the sum of (1) the aggregate undrawn face amount of all Letters of Credit outstanding at such time (the “ **L/C Amount** ”) and (2) the aggregate principal amount of all L/C Disbursements that have not yet been reimbursed or which have not been paid through a Revolving Loan at such time. The Revolving L/C Exposure of any Revolving Lender at any time will mean its Revolving Facility Percentage of the aggregate Revolving L/C Exposure at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the International Standard Practices, International Chamber of Commerce No. 590, such Letter of Credit will be deemed to be “outstanding” in the amount so remaining available to be drawn. Unless otherwise specified herein, the amount of a Letter of Credit at any time will be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided* that, with respect to any Letter of Credit that by its terms or the terms of any document related thereto provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit will be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time; *provided further* that, with respect to any Letter of Credit that by its terms or the terms of any document related thereto provides for one or more automatic decreases in the stated amount thereof, the amount of such Letter of Credit will be deemed to be the maximum stated amount of such Letter of Credit as in effect at such time.

---

“**Revolving Lender**” means each Lender with a Revolving Facility Commitment or outstanding Revolving Facility Credit Exposure.

“**Revolving Loans**” has the meaning assigned to such term in Section 2.01(1) and will include any Overadvances and Protective Advances.

“**RP Payment Conditions**” means, and will be deemed to be satisfied with respect to any particular action as to which the satisfaction of the RP Payment Conditions is being determined if, after giving effect to the taking of such action, (1) no Designated Event of Default has occurred and is continuing immediately prior or after giving effect thereto, (2) Specified Excess Availability for each day in the 30-day period prior to such action and on the date of such proposed action would exceed the greater of (a) 15% of the Line Cap then in effect and (b) \$37.5 million, in any such case, on a Pro Forma Basis, and (3) the Fixed Charge Coverage Ratio as of the end of the most recent Test Period would be at least 1.0 to 1.0 on a Pro Forma Basis giving effect to the subject action; *provided* that compliance with the Fixed Charge Coverage Ratio will not be required if after giving effect to the taking of such action, Specified Excess Availability would exceed the greater of (i) 20% of the Line Cap then in effect and (ii) \$50 million, on a Pro Forma Basis.

“**S&P**” means Standard & Poor’s Ratings Services or any successor entity thereto.

“**Sale Leaseback Transaction**” means a sale leaseback transaction with respect to all or any portion of any real property owned by the Borrower or any Restricted Subsidiary.

“**Sanctioned Country**” shall mean, at any time, a country, region or territory that is subject to comprehensive Sanctions (at the time of the Agreement, the Crimea region of Ukraine, Cuba, Iran, North Korea and Syria).

“**Sanctioned Person**” shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or by the United Nations Security Council, the European Union, any EU member state, Her Majesty’s Treasury of the United Kingdom, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person.

“**Sanctions**” shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom.

“**SEC**” means the Securities and Exchange Commission or any successor thereto.

“**Secured Parties**” means the collective reference to the “Secured Parties” as defined in the Collateral Agreement.

---

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Securitization Assets**” means accounts receivable, royalty or other revenue streams, other rights to payment, including with respect to rights of payment pursuant to the terms of Joint Ventures (in each case, whether now existing or arising in the future), and any assets related thereto, including all collateral securing any of the foregoing, all contracts and all guarantees or other obligations in respect of any of the foregoing, proceeds of any of the foregoing and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with non-recourse, asset securitization or factoring transactions and any Hedge Agreements entered into by the Borrower or any such Restricted Subsidiary in connection with such assets subject to a Qualified Receivables Transaction.

“**Security Documents**” means the Collateral Agreement and each of the security agreements and other instruments and documents executed and delivered by any Loan Party pursuant thereto or pursuant to Section 5.10.

“**Short Term Advances**” has the meaning assigned to such term in the definition of “Indebtedness”.

“**Similar Business**” means any business, the majority of whose revenues are derived from (1) business or activities conducted by the Borrower and its Restricted Subsidiaries on the Closing Date, (2) any business that is a natural outgrowth or reasonable extension, development or expansion of any such business or any business similar, reasonably related, incidental, complementary or ancillary to any of the foregoing or (3) any business that in the Borrower’s good faith business judgment constitutes a reasonable diversification of businesses conducted by the Borrower and its Restricted Subsidiaries.

“**Specified Acquisition Agreement Representations**” means such of the representations and warranties made by or with respect to Impax and its Subsidiaries in the Acquisition Agreement as are material to the interests of the Lenders, but only to the extent that the Borrower (or its Affiliates) have the right (taking into account any applicable cure provisions) to terminate its (or their) obligations under the Acquisition Agreement as a result of a breach of such representations in the Acquisition Agreement or the failure of an Acquisition Agreement Representation to be true and correct results in a failure of a condition precedent to the Borrower’s (or its affiliates’) obligations to consummate the Acquisition in the Acquisition Agreement.

“**Specified Event of Default**” means any Event of Default under Section 8.01(2), 8.01(3), 8.01(8) or 8.01(9).

“**Specified Excess Availability**” shall mean the sum of (i) Excess Availability and (ii) the amount by which the Borrowing Base at such time exceeds the Revolving Facility Commitments, up to an amount not to exceed 2.5% of Revolving Facility Commitments.

“**Specified Hedge Agreement**” means any Hedge Agreement entered into or assumed between or among the Borrower or any Restricted Subsidiary and any Qualified Counterparty and designated by the Qualified Counterparty and the Borrower in writing to the Administrative Agent as a “Specified Hedge Agreement” under this Agreement (but only if such Hedge Agreement has not been designated as a “Specified Hedge Agreement” under the Term Loan Credit Agreement).

---

“*Specified Hedge Obligations*” means all amounts owing to any Qualified Counterparty under any Specified Hedge Agreement.

“*Specified IP Subsidiary*” means a wholly-owned Restricted Subsidiary of the Borrower that:

- (1) owns no assets other than Transferred IP and cash or Cash Equivalents necessary to support the business set forth in clause (2) of this definition;
- (2) conducts no business other than the licensing, development, promotion, marketing, and supply of the Transferred IP; and
- (3) is prohibited from incurring any Indebtedness and/or Liens under its Organizational Documents.

“*Specified Representations*” means the representations and warranties of the Borrower set forth in the following sections of this Agreement:

- (1) Section 3.01(1) and (4) (but solely with respect to its organizational existence and organizational power and authority as to the execution, delivery and performance of this Agreement, the Collateral Agreement and any applicable Intellectual Property Security Agreements (as defined in the Collateral Agreement) and the extensions of credit hereunder);
- (2) Section 3.02(1) (but solely with respect to its authorization of this Agreement, the Collateral Agreement and any applicable Intellectual Property Security Agreements (as defined in the Collateral Agreement));
- (3) Section 3.02(2)(c) (but solely with respect to non-conflict of its entry into and performance of this Agreement and the other Loan Documents with its certificate or article of incorporation or other applicable Organizational Document);
- (4) Section 3.03 (but solely with respect to this Agreement, the Collateral Agreement and any applicable Intellectual Property Security Agreements (as defined in the Collateral Agreement));
- (5) Section 3.08(2) (but solely with respect to use of proceeds on the Closing Date);
- (6) Section 3.09;
- (7) Section 3.14(1) (but solely with respect to the creation, validity, attachment and perfection of the Liens granted by it in the Collateral on the Closing Date (subject to Permitted Liens and subject to the Certain Funds Provisions));

(8) Section 3.16; and

(9) Section 3.19.

“**Specified Tender Offer**” means the offer to be commenced by Impax on or following the Closing Date to holders to repurchase for cash all of the outstanding Impax Convertible Notes, or any portion thereof, pursuant to Section 4.10 of the Impax Indenture.

“**Specified Transaction**” means any Investment that results in a Person becoming a Restricted Subsidiary, any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary, any Permitted Acquisition, any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower, any Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person or a facility or any parcels of or interests (including leasehold interests) in real property and all improvements and fixtures thereon or any Disposition of a business unit, line of business or division of a facility or any parcels of or interests (including leasehold interests) in real property and all improvements and fixtures thereon (including any buyout or conversion of an operating lease to a capital lease) of the Borrower or a Restricted Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise, or any incurrence or repayment of Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), Restricted Payment or Incremental Facility that by the terms of this Agreement requires such test to be calculated on a “Pro Forma Basis” or after giving “Pro Forma Effect.”

“**Standard Securitization Undertakings**” means representations, warranties, covenants, indemnities and Guarantees of performance entered into by the Borrower or any Restricted Subsidiary of the Borrower that a Responsible Officer of the Borrower has determined in good faith to be customary in a Receivables Financing including those relating to the servicing of the assets of a Receivables Subsidiary, it being understood that any Receivables Repurchase Obligation will be deemed to be a Standard Securitization Undertaking.

“**Standby Letter of Credit**” has the meaning assigned to such term in Section 2.05(1).

“**Statutory Reserve Rate**” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Federal Reserve Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D). Such reserve percentage shall include those imposed pursuant to Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“**Subagent**” has the meaning assigned to such term in Section 9.02.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which (1) Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company or other entity are at the time owned by such Person; or (2) more than 50.0% of the Equity Interests are at the time owned by such Person. Unless otherwise indicated in this Agreement, all references to Subsidiaries will mean Subsidiaries of the Borrower.

“**Subsidiary Loan Parties**” means: (1) each Wholly Owned U.S. Subsidiary of the Borrower on the Closing Date (other than any Excluded Subsidiary) and (2) each Wholly Owned U.S. Subsidiary (other than any Excluded Subsidiary) of the Borrower that becomes, or is required pursuant to Section 5.10 to become, a party to the Collateral Agreement after the Closing Date.

“**Supermajority Lenders**” means, as of any date of determination, Lenders that would constitute the Required Revolving Lenders if the percentage “50.0%” contained in the definition thereof were changed to “66-2/3%”.

“**Swap Termination Value**” means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (1) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (2) for any date prior to the date referenced in clause (1), the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

“**Tax Receivable Agreement**” means the Tax Receivable Agreement, dated as of the Closing Date, among Amneal Inc., the Borrower, and the other parties from time to time party thereto, as amended, amended and restated, supplemented or otherwise modified from time to time in any manner that is not materially adverse to the interests of the Administrative Agent or the Lenders.

“**Taxes**” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding) or similar charges imposed by any Governmental Authority and any and all interest and penalties related thereto.

“**Term Agent**” means JPM, as administrative agent and collateral agent under the Term Loan Credit Agreement, and its successors and assigns in such capacities.

“**Term Incremental Amount**” means an aggregate principal amount that, after giving Pro Forma effect to the incurrence thereof, in accordance with Section 1.08, would not result in:

- (1) with respect to Indebtedness to be secured on a *pari passu* basis with the Initial Term Loans, the First Lien Net Leverage Ratio for the applicable Test Period being greater than (a) the Closing Date First Lien Net Leverage Ratio or (b) the First Lien Net Leverage Ratio immediately prior to such incurrence;

- 
- (2) with respect to Indebtedness to be secured on a junior basis to the Initial Term Loans, the Total Net Leverage Ratio for the applicable Test Period being greater than (a) the Closing Date Total Net Leverage Ratio or (b) the Total Net Leverage Ratio immediately prior to such incurrence; and
- (3) with respect to Indebtedness that is unsecured, the Total Net Leverage Ratio for the applicable Test Period being greater than 6.00 to 1.00.

“ **Term Loan Claims** ” means the “ *Term Loan Claims* ” as defined in the Closing Date Intercreditor Agreement.

“ **Term Loan Credit Agreement** ” means the Term Loan Credit Agreement, dated as of the Closing Date, among the Borrower, the lenders party thereto and JPM, as administrative agent and collateral agent, initially in respect of \$2,700.0 million of term loans made available on the Closing Date, as such document may be amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

“ **Term Loan Credit Agreement Refinancing Indebtedness** ” means “ *Credit Agreement Refinancing Indebtedness* ” as defined in the Term Loan Credit Agreement.

“ **Term Loan Documents** ” means the Term Loan Credit Agreement and the other “Loan Documents” under and as defined in the Term Loan Credit Agreement, as each such document may be amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

“ **Term Loan Obligations** ” means the “ *Obligations* ” as defined in the Term Loan Credit Agreement.

“ **Term Loan Security Documents** ” means the “ *Security Documents* ” as defined in the Term Loan Credit Agreement.

“ **Term Priority Collateral** ” means “ *Term Loan Priority Collateral* ” as defined in the Closing Date Intercreditor Agreement.

“ **Test Period** ” means, at any time, (1) with respect to the Borrower, the four consecutive fiscal quarters of the Borrower most recently ended (in each case taken as one accounting period) for which the Required Financial Statements have been or are required to be delivered pursuant to Section 5.04(1) or 5.04(2) and (2) in the case of any Person other than the Borrower, the period of four consecutive fiscal quarters most closely corresponding to the period set forth in clause (1).

“ **Threshold Amount** ” means the greater of (1) \$80 million and (2) 12.5% of TTM Consolidated EBITDA as of the applicable date of determination.

“ **Total Net Leverage Ratio** ” means, with respect to any Test Period, the ratio of (a) Consolidated Total Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA of the Borrower for such Test Period.

“ **Trade Letter of Credit** ” has the meaning assigned to such term in Section 2.05(1).

“ **Transaction Costs** ” means all fees, costs and expenses related to the Transactions.

“ **Transaction Documents** ” means the Acquisition Documents, the Loan Documents and the Term Loan Documents.

“ **Transactions** ” means, collectively, the transactions to occur pursuant to the Transaction Documents, including:

- (1) the consummation of the Acquisition;
- (2) the consummation of the Contribution;
- (3) the execution and delivery of the Loan Documents, the creation of the Liens pursuant to the Security Documents and the initial borrowings hereunder;
- (4) the execution and delivery of the Term Loan Documents, the creation of the Liens pursuant to the Term Loan Security Documents and the initial borrowings under the Term Loan Credit Agreement;
- (5) the Closing Date Refinancing;
- (6) the undertaking of one or more Existing Notes LM Transactions or Specified Tender Offers;
- (7) the PIPE Investment;
- (8) the Impax Transactions; and
- (9) the payment of all Transaction Costs.

“ **Transferred IP** ” has the meaning assigned to such term in Section 6.04(30)(b).

“ **TTM Consolidated EBITDA** ” means, as of any date of determination, the Consolidated EBITDA of the Borrower on a Pro Forma Basis for the four consecutive fiscal quarters most recently ended prior to such date for which financial statements have been furnished or are required to have been furnished to the Lenders hereunder (or, in the case of a determination date that occurs prior to the first such delivery, for the four consecutive fiscal quarters ended as of December 31, 2017).

“ **Trust Account** ” means any accounts or trusts used solely to hold Trust Funds.

---

“ **Trust Funds** ” means cash, Cash Equivalents or other assets comprised of:

- (1) funds used for payroll and payroll taxes, wages and other employee benefit payments to or for the benefit of such Loan Party’s or any of its Restricted Subsidiaries’ employees;
- (2) all taxes required to be collected, remitted or withheld (including federal and state withholding taxes (including the employer’s share thereof)); or
- (3) any other funds which the Borrower or any of its Restricted Subsidiaries holds in trust or as an escrow or fiduciary for another person which is not a Restricted Subsidiary of the Borrower.

“ **Type** ” means, when used in respect of any Loan or Borrowing, the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes of this definition, the term “Rate” means Adjusted LIBO Rate or ABR, as applicable.

“ **U.S. Subsidiary** ” means any Subsidiary of the Borrower that is organized under the laws of the United States or any political subdivision thereof, and “ **U.S. Subsidiaries** ” means any two or more of them. Unless otherwise indicated in this Agreement, all references to U.S. Subsidiaries will mean U.S. Subsidiaries of the Borrower.

“ **U.S. Tax Compliance Certificate** ” has the meaning specified in Section 2.17(5).

“ **Uniform Commercial Code** ” or “ **UCC** ” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“ **Unrestricted Cash** ” means, as of any date, all cash and Cash Equivalents of the Borrower or any of its Restricted Subsidiaries as of such date that would not appear as “restricted” on the Required Financial Statements (unless such appearance is related to a restriction in favor of any Agent for the benefit of the Secured Parties or an agent under the Term Loan Credit Agreement for the benefit of the secured parties thereunder), determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“ **Unrestricted Subsidiary** ” means (1) each Receivables Subsidiary and (2) any Subsidiary of the Borrower designated by the Borrower as an Unrestricted Subsidiary hereunder by written notice to the Administrative Agent; *provided* that the Borrower will only be permitted to so designate a new Unrestricted Subsidiary after the Closing Date or subsequently re-designate any such Unrestricted Subsidiary as a Restricted Subsidiary (by written notice to the Administrative Agent) if (a) no Designated Event of Default has occurred and is continuing or would result therefrom and (b) the Borrower is in Pro Forma compliance with the Payment Conditions.

---

The designation of any Restricted Subsidiary as an Unrestricted Subsidiary will constitute an Investment for purposes of Section 6.04 at the date of designation in an amount equal to the fair market value of the Borrower's or its Restricted Subsidiary's (as applicable) Investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary will constitute the incurrence at the time of designation of any Indebtedness and Liens of such Subsidiary existing at such time and a return on any Investment by the Borrower in Unrestricted Subsidiaries in an amount equal to the fair market value at the date of such designation of the Borrower's or its Restricted Subsidiary's (as applicable) Investment in such Subsidiary. Except as expressly set forth in this paragraph, no Investment will be deemed to exist or have been made, and no Indebtedness or Liens shall be deemed to have occurred, solely by virtue of a Subsidiary becoming an Excluded Subsidiary.

“ **USA PATRIOT Act** ” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“ **Weighted Average Life to Maturity** ” means, when applied to any Indebtedness as of any date, the number of years obtained by dividing (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal (excluding nominal amortization), including payment at final maturity, in respect thereof by (b) the number of years (calculated to the nearest 1/12) that will elapse between such date and the making of such payment; by (2) the then outstanding principal amount of such Indebtedness.

“ **Wholly Owned Subsidiary** ” means, with respect to any Person, a Subsidiary of such Person, all of the Equity Interests of which (other than directors' qualifying shares or nominee or other similar shares required pursuant to applicable law) are owned by such Person or another Wholly Owned Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Wholly Owned Subsidiaries will mean Wholly Owned Subsidiaries of the Borrower.

“ **Wholly Owned U.S. Subsidiary** ” means, with respect to any Person, a U.S. Subsidiary of such Person that is a Wholly Owned Subsidiary. Unless otherwise indicated in this Agreement, all references to Wholly Owned U.S. Subsidiaries will mean Wholly Owned U.S. Subsidiaries of the Borrower.

“ **Withdrawal Liability** ” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

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

SECTION 1.02 Terms Generally. The definitions set forth or referred to in Section 1.01 will apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine and neuter forms. Unless the context requires otherwise:

- (1) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation;”
- (2) 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;”
- (3) the word “will” will be construed to have the same meaning and effect as the word “shall;”
- (4) the word “incur” will be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” will have correlative meanings);
- (5) the word “or” will be construed to mean “and/or;”
- (6) any reference to any Person will be construed to include such Person’s legal successors and permitted assigns; and
- (7) the words “asset” and “property” will be construed to have the same meaning and effect.

All references herein to Articles, Sections, Exhibits and Schedules will be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context otherwise requires. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document or organizational document of the Loan Parties means such document as amended, restated, amended and restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document). Any reference to any law will include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation means, unless otherwise specified, such law or regulation as amended, modified or supplemented from time to time. Whenever this Agreement refers to the “knowledge” of Impax or any Loan Party, such reference will be construed to mean the knowledge of the chief executive officer, president, chief financial officer, treasurer or controller of such Person.

SECTION 1.03 Accounting Terms; GAAP; Fair Market Value. Except as otherwise expressly provided herein, all terms of an accounting or financial nature will be construed in accordance with GAAP, as in effect from time to time; *provided* that, notwithstanding anything to the contrary herein, all accounting or financial terms used herein will be construed, and all financial computations pursuant hereto will be made, without giving effect to any election under Statement of Financial Accounting Standards Board Accounting Standards Codification 825-10 (or any other Statement of Financial Accounting Standards Board Accounting Standards Codification having a similar effect) to value any

Indebtedness or other liabilities of the Borrower or any Subsidiary at “fair value,” as defined therein. In the event that any Accounting Change (as defined below) occurs and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then upon the written request of the Borrower or the Administrative Agent (acting upon the request of the Required Lenders), the Borrower, the Administrative Agent and the Lenders will enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating the Borrower’s financial condition will be the same after such Accounting Change as if such Accounting Change had not occurred; *provided* that, until so amended, calculation of financial covenants, standards or terms in this Agreement will be computed in accordance with GAAP in effect prior to such Accounting Change until the effective date of such amendment. “**Accounting Change**” means (1) any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or (2) any change in the application of GAAP by the Borrower (including through the adoption of IFRS). All determinations of fair market value under a Loan Document will be made by a Responsible Officer of the Borrower in good faith and if such determination is supported by an opinion of an Independent Financial Advisor, such determination will be conclusive for all purposes under the Loan Documents or related to the Obligations.

SECTION 1.04 Effectuation of Transfers. Each of the representations and warranties of the Borrower contained in this Agreement (and all corresponding definitions) is made after giving effect to the Transactions, unless the context otherwise requires.

SECTION 1.05 Currencies. Unless otherwise specifically set forth in this Agreement, monetary amounts are in Dollars. Notwithstanding anything to the contrary herein, no Default or Event of Default will arise as a result of any limitation or threshold set forth in Dollars being exceeded solely as a result of changes in currency exchange rates.

SECTION 1.06 Required Financial Statements. With respect to the determination of the First Lien Net Leverage Ratio, the Total Net Leverage Ratio, the Fixed Charge Coverage Ratio or any other financial ratio or under any other applicable provision of the Loan Documents (including the definition of Immaterial Subsidiary) made on or prior to the date on which Required Financial Statements have been delivered for March 31, 2018, such calculation will be determined for the period of four consecutive fiscal quarters ended December 31, 2017, and calculated on a Pro Forma Basis.

SECTION 1.07 Certifications. Any certificate or other writing required hereunder or under any other Loan Document to be certified by any officer or other authorized representative (including any Responsible Officer) of any Person will be deemed to be executed and delivered by such officer, other authorized representative or Responsible Officer solely in such individual’s capacity as an officer, other authorized representative or Responsible Officer of such Person and not in such officer’s or other authorized representative’s individual capacity and without any personal liability.

SECTION 1.08 Pro Forma Calculations.

- (1) Notwithstanding anything to the contrary herein, financial ratios shall be calculated in the manner prescribed by this Section 1.08; *provided* that, notwithstanding anything to the contrary in clauses (2), (3) or (4) of this Section 1.08, when calculating any financial ratio for purposes of (a) determining Applicable Margins and pricing grid step-downs, (b) calculations of mandatory prepayments, (c) determining compliance with any financial covenant (including any financial covenant under this Agreement) and (d) any provisions related to the foregoing, the events described in this Section 1.08 that occurred subsequent to the end of the applicable Test Period shall not be given pro forma effect.
- (2) For purposes of calculating the First Lien Net Leverage Ratio, the Total Net Leverage Ratio, the Fixed Charge Coverage Ratio or any other financial ratio, Specified Transactions (and the incurrence or repayment of any Indebtedness in connection therewith) that have been made (a) during the applicable Test Period or (b) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.08 then the financial ratios shall be calculated to give pro forma effect thereto in accordance with this Section 1.08.
- (3) Whenever pro forma effect is to be given to a Specified Transaction, the pro forma calculations shall be made in good faith by a Responsible Officer and may include, for the avoidance of doubt, the amount of cost savings, operating expense reductions and, synergies projected by the Borrower in good faith to be realized as a result of specified actions taken, committed to be taken or expected to be taken (calculated on a pro forma basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such Test Period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period but, for the avoidance of doubt, subject to the limitations set forth in clause (g) of the definition of “Consolidated EBITDA” set forth herein) relating to such Specified Transaction, net of the amount of actual benefits realized during such period from such actions (such cost savings and synergies, “Specified Transaction Adjustments”); *provided*, that
  - (a) such Specified Transaction Adjustments are reasonably identifiable and quantifiable in the good faith judgment of a Responsible Officer of the Borrower,
  - (b) such actions are taken, committed to be taken or reasonably anticipated to be taken no later than twenty four (24) months after the date of such Specified Transaction, and

- 
- (c) no amounts shall be added pursuant to this clause (3) to the extent duplicative of any amounts that are otherwise added back in calculating Consolidated EBITDA, whether through a pro forma adjustment or otherwise, with respect to such period.
- (4) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of a financial covenant (in each case, other than Indebtedness incurred or repaid under any revolving credit facility (including, for the avoidance of doubt, the Revolving Facility) in the ordinary course of business for working capital purposes), (a) during the applicable Test Period or (b) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then each financial ratio shall be calculated giving pro forma effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period.

SECTION 1.09 LCA Election. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, when (1) calculating any applicable ratio in connection with incurrence of Indebtedness (other than the making of any Revolving Loans or the issuance of any Letters of Credit), the creation of Liens, the making of any disposition, the making of an Investment, the designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or the repayment of Indebtedness or (2) determining compliance with any provision of this Agreement which requires that no Default or Event of Default has occurred, is continuing or would result therefrom, in each case of the preceding clauses (1) and (2) in connection with a Limited Condition Transaction, the date of determination of such ratio and determination of whether any Default or Event of Default has occurred, is continuing or would result therefrom shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCA Election**"), be deemed to be the date the definitive agreements for such Limited Condition Transaction are entered into (the "**LCA Test Date**"). If on a Pro Forma Basis after giving effect to such Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof), with such ratios and other provisions being calculated as if such Limited Condition Transaction or other transactions had occurred at the beginning of the most recent Test Period ending prior to the LCA Test Date for which financial statements are available, the Borrower could have taken such action on the relevant LCA Test Date in compliance with the applicable ratios or other provisions, such ratios or provisions shall be deemed to have been complied with, unless a Specified Event of Default shall be continuing on the date such Limited Condition Transaction is consummated. For the avoidance of doubt, (a) if any of such ratios or other provisions are exceeded or breached as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA) or other provisions at or prior to the consummation of the relevant Limited Condition Transaction, such ratios and other provisions will not be deemed to have been exceeded or breached solely for purposes of determining whether the Limited Condition Transaction is permitted hereunder and (b) such ratios and compliance with such conditions shall not be tested at the time of consummation of such Limited Condition Transaction or related Specified Transactions, unless on such date a Specified Event of Default shall be continuing. If the Borrower has made an LCA Election for any Limited Condition Transaction, then in connection with any subsequent

calculation of any ratio or basket availability (other than for the purposes of determining actual compliance (and not Pro Forma compliance or compliance on a Pro Forma Basis) with the Financial Performance Covenant upon the occurrence and during the continuance of a Covenant Trigger Event) with respect to any other Specified Transaction on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any such ratio or basket shall be calculated on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated. Notwithstanding anything in this Agreement or any Loan Document to the contrary, if the Borrower or any Restricted Subsidiary (i) incurs Indebtedness, creates Liens, makes dispositions, makes investments, makes Restricted Payments, designates any Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or repays any Indebtedness in connection with any Limited Condition Transaction under a ratio-based basket and (ii) incurs Indebtedness, creates Liens, makes dispositions, makes Investments, makes Restricted Payments, designates any Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or repays any Indebtedness in connection with such Limited Condition Transaction under a non-ratio-based basket (which shall occur within five Business Days of the events in the preceding clause (i) above), then the applicable ratio will be calculated with respect to any such action under the applicable ratio-based basket without regard to any such action under such non-ratio-based basket made in connection with such Limited Condition Transaction.

## ARTICLE II

### *The Credits*

SECTION 2.01 Commitments. Subject to the terms and conditions set forth herein:

(1) Revolving Loans.

- (a) Each Lender severally (and not jointly) agrees to make loans (“*Revolving Loans*”) to the Borrower in Dollars from time to time during the Availability Period in amounts not to exceed such Lender’s Revolving Facility Percentage of the Borrowing Base, and in an aggregate principal amount that will not result in (i) such Lender’s Revolving Facility Credit Exposure exceeding such Lender’s Revolving Facility Commitment or (ii) the total Revolving Facility Credit Exposure exceeding the total Revolving Facility Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.
- (b) Notwithstanding the foregoing, on the Closing Date only the following Revolving Loans will be made available:
  - (i) Revolving Loans in an amount not exceed \$100.0 million for working capital related purposes; *plus*

- 
- (ii) Revolving Loans in an amount to replace or backstop the Existing Letters of Credit and refinance any existing revolving credit facilities of the Borrower, Impax or their respective subsidiaries;
- (2) Overadvances. Insofar as the Borrower may request and the Administrative Agent may be willing in its sole discretion (but with absolutely no obligation) to
- (i) make Revolving Loans to the Borrower, on behalf of the Revolving Lenders, at a time when the Revolving Facility Credit Exposure exceeds, or would exceed with the making of any such Revolving Loan, the Borrowing Base (any such Loan being herein referred to individually as an “*Overadvance*”) or
- (ii) deem the amount of Revolving Loans outstanding that are in excess of the Borrowing Base to be Overadvances, and the Administrative Agent will enter such Overadvances as debits in the applicable Loan Account. All Overadvances shall be ABR Loans, will be repaid on demand, will be secured by the Collateral and will bear interest as provided in this Agreement for ABR Revolving Loans generally. Any Overadvance made pursuant to the terms hereof will be made to the Borrower by all Lenders ratably in accordance with their respective Revolving Facility Percentages. Overadvances in the aggregate amount of \$10.0 million or less may, unless a Default or Event of Default has occurred and is continuing, be made in the sole discretion of the Administrative Agent; *provided* that the Required Revolving Lenders may at any time revoke the Administrative Agent’s authorization to make future Overadvances; *provided* that no existing Overadvances will be subject to such revocation and any such revocation must be in writing and will become effective prospectively upon the Administrative Agent’s receipt thereof. Overadvances in an aggregate amount of more than \$10.0 million but less than \$25.0 million may, unless a Default or Event of Default has occurred and is continuing, be made with the consent of the Required Revolving Lenders. Overadvances in an aggregate amount of \$25.0 million or more and Overadvances to be made after the occurrence and during the continuation of a Default or Event of Default will require the consent of all Revolving Lenders. No Overadvance shall result in a Default due to Borrower’s failure to comply with Section 2.01 for so long as such Overadvance remains outstanding in accordance with the terms of this Section 2.01(2), but solely with respect to the amount of such Overadvance. The making of an Overadvance on any one occasion shall not obligate the Administrative Agent to make any Overadvance on any other occasion. The foregoing notwithstanding, in no event, unless otherwise consented to by all Revolving Lenders will:
- (a) any Overadvances be outstanding for more than 90 consecutive days;
- (b) the Administrative Agent or Lenders make any additional Overadvances unless 30 days or more have expired since the last date on which any Overadvances were outstanding; or
- (c) will the Administrative Agent make Revolving Loans on behalf of Lenders under this Section 2.01(2) to the extent such Revolving Loans would cause a Lender’s share of the Revolving Facility Credit Exposure to exceed such Lender’s Revolving Facility Commitment or cause the aggregate Revolving Facility Commitments to be exceeded.

- (3) Protective Advances. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent, in its sole, discretion (but with absolutely no obligation), may make Revolving Loans to the Borrower on behalf of all Lenders, so long as the aggregate amount of such Revolving Loans will not exceed 5.0% of the Borrowing Base, if the Administrative Agent, in its Reasonable Credit Judgment, deems that such Revolving Loans are necessary or desirable to:
- (a) preserve or protect all or any portion of the Collateral;
  - (b) enhance the likelihood or maximize the amount of repayment of the Loans and the other Obligations; or
  - (c) pay any other amount chargeable to or required to be paid by the Borrower pursuant to this Agreement including payments of reimbursable expenses and other sums payable under the Loan Documents (such Revolving Loans, “ *Protective Advances* ”);

*provided* that (i) in no event will the Revolving Facility Credit Exposure exceed the aggregate Revolving Facility Commitments and (ii) the Required Revolving Lenders under the Revolving Facility may at any time revoke the Administrative Agent’s authorization to make future Protective Advances; *provided, further*, that any such revocation must be in writing and will become effective prospectively upon the Administrative Agent’s receipt thereof and existing Protective Advances will not be subject to thereto.

Each applicable Lender will be obligated to advance to the Borrower its Revolving Facility Percentage of each Protective Advance made in accordance with this Section 2.01(3). If Protective Advances are made in accordance with the preceding sentence, then all Revolving Lenders will be bound to make, or permit to remain outstanding, such Protective Advances based upon their Revolving Facility Percentages in accordance with the terms of this Agreement. All Protective Advances will be repaid by the Borrower on demand, will be secured by the Collateral and will bear interest as provided in this Agreement for Revolving Loans generally. All Protective Advances shall be ABR Loans, will be repaid on demand, will be secured by the Collateral and will bear interest as provided in this Agreement for ABR Revolving Loans generally. At any time that there is Excess Availability and the conditions precedent set forth in Section 4.02 have been satisfied, the Administrative Agent may request the Revolving Lenders to make a Revolving Loan to repay a Protective Advance.

#### SECTION 2.02 Loans and Borrowings.

- (1) Each Loan will be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it will not relieve any other Lender of its obligations hereunder; *provided* that the Commitments of the Lenders are several and no Lender will be responsible for any other Lender’s failure to make Loans as required.

- 
- (2) Subject to Section 2.14, each Borrowing will be comprised entirely of ABR Loans or Eurocurrency Revolving Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any ABR Loan or Eurocurrency Revolving Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option will not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement and such Lender will not be entitled to any amounts payable under Section 2.15 or 2.17 solely in respect of increased costs resulting from such exercise and existing at the time of such exercise.
  - (3) At the commencement of each Interest Period for any Eurocurrency Revolving Facility Borrowing, such Borrowing will be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum. At the time that each ABR Revolving Facility Borrowing is made, such Borrowing will be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum; *provided* that an ABR Revolving Facility Borrowing may be in an aggregate amount that is equal to the entire unused available balance of the Revolving Facility Commitments or that is required to finance the reimbursement of an L/C Disbursement as contemplated by Section 2.05(5). Borrowings of more than one Type may be outstanding at the same time; *provided* that there will not at any time be more than ten Eurocurrency Revolving Facility Borrowings outstanding.
  - (4) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03 Requests for Borrowings.

- (1) To request a Revolving Facility Borrowing, (a) with respect to any initial ABR Borrowing on the Closing Date, the Borrower will deliver to the Administrative Agent a Borrowing Request not later than 2:00 p.m., New York City time, one Business Day before the anticipated Closing Date (or at such later date or time as the Administrative Agent may agree), requesting that the Lenders make the Loans on the Closing Date; *provided* that such Borrowing Request may be conditioned upon occurrence of the Closing Date and (b) with respect to any other Borrowing, the Borrower will notify the Administrative Agent of such request by telephone, if arrangements for doing so have been approved by the Administrative Agent, (i) in the case of a Eurocurrency Revolving Facility Borrowing, not later than 2:00 p.m., New York City time, three Business Days before the date of the proposed Borrowing or (ii) in the case of an ABR Borrowing, not later than 1:00 p.m., New York City time, on the date of the proposed Borrowing (or in each case, at such later date or time as the Administrative Agent may agree). Each such telephonic Borrowing Request will be irrevocable and will be confirmed promptly by hand delivery, facsimile or e mail to the Administrative Agent of a written Borrowing Request substantially in the form of Exhibit D-1 and signed by the Borrower.

- 
- (2) Each such telephonic and written Borrowing Request will specify the following information in compliance with Section 2.02:
- (a) the aggregate amount of the requested Borrowing, which amount will not exceed Excess Availability;
  - (b) the date of such Borrowing, which will be a Business Day;
  - (c) whether such Borrowing is to be an ABR Borrowing or a Eurocurrency Revolving Facility Borrowing;
  - (d) in the case of a Eurocurrency Revolving Facility Borrowing, the initial Interest Period to be applicable thereto, which will be a period contemplated by the definition of the term “Interest Period;”
  - (e) if the Borrowing Base contains Eligible Cash, the amount of Eligible Cash as of the close of business on the Business Day prior to the date such Borrowing Request is delivered; and
  - (f) the location and number of the Borrower’s account to which funds are to be disbursed.
- (3) Disbursement. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of each Loan requested pursuant to this Section 2.03. The proceeds of each Revolving Loan requested under this Section 2.03 will be disbursed by the Administrative Agent in immediately available funds and in the same form as received from the Lenders, in the case of a borrowing on the Closing Date permitted under Section 2.01(1), in accordance with the terms of the written disbursement letter from the Borrower and, in the case of each Borrowing after the Closing Date, by wire transfer to such bank account as may be agreed upon by the Borrower and the Administrative Agent, from time to time or elsewhere if pursuant to a written direction from the Borrower. If at any time any Loan is funded in excess of the amount requested by the Borrower, the Borrower agrees to repay the excess to the Administrative Agent immediately upon notice thereof to the Borrower from the Administrative Agent.
- (4) If no election as to the Type of Revolving Facility Borrowing is specified, then the requested Revolving Facility Borrowing will be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurocurrency Revolving Facility Borrowing, then the Borrower will be deemed to have selected an Interest Period of one month’s duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent will advise the Lenders of the details thereof and of the amount of each such Lender’s Loan to be made as part of the requested Borrowing.

SECTION 2.04 [Reserved].

SECTION 2.05 Letters of Credit.

- (1) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of (a) trade letters of credit in Dollars in support of trade obligations of the Borrower or any Subsidiary Loan Party incurred in the ordinary course of business (such letters of credit issued for such purposes, “*Trade Letters of Credit*”) and (b) standby

letters of credit in Dollars issued for any other lawful purposes of the Borrower or any Subsidiary Loan Party (such letters of credit issued for such purposes, “*Standby Letters of Credit*”) for its own account or for the account of any Subsidiary in a form reasonably acceptable to the applicable Issuing Bank, at any time and from time to time during the Availability Period and prior to the date that is five (5) Business Days prior to the Maturity Date. “*Letters of Credit*” will include Trade Letters of Credit and Standby Letters of Credit and the Existing Letters of Credit. Each Existing Letter of Credit will be deemed to have been issued under this Section 2.05 on the Closing Date. The Borrower unconditionally and irrevocably agrees that, in connection with any Letter of Credit issued for the support of any Subsidiary’s obligations as provided in the first sentence of this paragraph, the Borrower will be fully responsible for the reimbursement of L/C Disbursements in accordance with the terms hereof, the payment of interest thereon and the payment of fees due under Section 2.12(2) to the same extent as if it were the sole account party in respect of such Letter of Credit (the Borrower hereby irrevocably waiving to the fullest extent permitted by law any defenses (other than payment or performance) that might otherwise be available to it as a guarantor or surety of the obligations of such Subsidiary that is an account party in respect of any such Letter of Credit).

(2) Notice of Issuance, Amendment, Renewal, Extension.

- (a) To request the issuance of a Letter of Credit (or the amendment, extension, reinstatement or renewal (other than an automatic extension in accordance with paragraph (3) of this Section 2.05) of an outstanding Letter of Credit), the Borrower will deliver by hand or facsimile (or transmit by e-mail, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent no later than three Business Days in advance of the requested date of issuance, amendment or extension (or such shorter period as the Administrative Agent and the Issuing Bank in their sole discretion may agree) a Letter of Credit Request requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, extended, reinstated or renewed, and specifying the date of issuance, amendment, extension, reinstatement or renewal (which will be a Business Day), the date on which such Letter of Credit is to expire (which will comply with paragraph (3) of this Section 2.05), the amount of such Letter of Credit, the name and address of the beneficiary thereof, whether such Letter of Credit constitutes a Standby Letter of Credit or a Trade Letter of Credit, and such other information as is necessary to issue, amend, extend, reinstate or renew such Letter of Credit. If requested by the applicable Issuing Bank, the Borrower will also submit a letter of credit application on such Issuing Bank’s standard form in connection with any request for a Letter of Credit. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, an Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement will control. A Letter of Credit will be issued, amended, extended, reinstated or renewed only if (and upon issuance, amendment, extension, reinstatement or renewal of each Letter of Credit the Borrower will be deemed to represent and warrant that), after giving effect to such issuance, amendment, extension, reinstatement or renewal:

- 
- (i) the Revolving L/C Exposure will not exceed the Letter of Credit Sublimit; and
  - (ii) the Revolving Facility Credit Exposure will not exceed the Line Cap.
- (b) Notwithstanding anything to the contrary contained herein, the Issuing Bank will not issue (or be obligated to issue) any Letter of Credit if:
- (i) the proceeds of such Letter of Credit would be made available to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of country-wide or territory-wide Sanctions or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement;
  - (ii) any order, judgment or decree of any Governmental Authority or arbitrator by its terms purports to enjoin or restrain the Issuing Bank from issuing such Letter of Credit;
  - (iii) any applicable Law or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank prohibits or shall request that the Issuing Bank refrain from the issuance of letters of credit generally;
  - (iv) such Letter of Credit imposes upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date;
  - (v) such Letter of Credit imposes upon the Issuing Bank any unreimbursed loss, cost or expense that was not applicable on the Closing Date and that the Issuing Bank in good faith deems material to it;
  - (vi) the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally; or
  - (vii) any Lender is at such time a Defaulting Lender, unless the Issuing Bank has entered into arrangements, including the delivery of cash collateral in accordance herewith in an amount to be agreed between the Borrower and each applicable Issuing Bank (but in any event not to exceed 105%) of the outstanding amount of the applicable Letters of Credit, reasonably satisfactory to such Issuing Bank with the Borrower or such Lender to eliminate such Issuing Bank's actual or potential Fronting Exposure (after giving effect to Section 2.24(1)) with respect to such Defaulting Lender arising from either such Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Obligations as to which such Issuing Bank has actual or potential Fronting Exposure.

(3) Expiration Date.

(a) Each Standby Letter of Credit will expire at or prior to the close of business on the earlier of (i) the date one year (unless otherwise agreed upon by the Administrative Agent and the Issuing Bank in their sole discretion) after the date of issuance of such Standby Letter of Credit (or, in the case of any extension of the expiration date thereof (whether automatic or by amendment), one year (unless otherwise agreed upon by the Administrative Agent and the Issuing Bank in their sole discretion) after such extension) and (ii) the date that is five Business Days prior to the Maturity Date; *provided* that any Standby Letter of Credit with a one-year tenor may provide for the automatic extension thereof for additional one-year periods (which will in no event extend beyond the date referred to in the preceding clause (ii)) so long as such Standby Letter of Credit permits the Issuing Bank to prevent any such extension at least once in each 12-month period (commencing with the date of issuance of such Standby Letter of Credit) by giving prior notice to the beneficiary thereof within a time period during such 12-month period to be agreed upon at the time such Standby Letter of Credit is issued; *provided, further*, that if the Issuing Bank and the Administrative Agent each consent in their sole discretion, the expiration date of any Standby Letter of Credit may extend beyond the date referred to in clause (ii) above if cash collateralized or backstopped pursuant to arrangements reasonably acceptable to the relevant Issuing Bank; and, *provided, further*, that (A) if any such Standby Letter of Credit is issued after the date that is 30 days prior to the Maturity Date, the Borrower will, upon the request of the applicable Issuing Bank, provide cash collateral pursuant to documentation reasonably satisfactory to the Administrative Agent and the relevant Issuing Bank in an amount equal to 103% of the face amount of each such Standby Letter of Credit on or prior to such date of issuance (or such later date as the Administrative Agent and the Issuing Bank may agree) and (B) each Revolving Lender's participation in any undrawn Letter of Credit that is outstanding on the Maturity Date will terminate on the Maturity Date.

(b) Each Trade Letter of Credit will expire on the earlier of (A) 180 days after such Trade Letter of Credit's date of issuance or (B) the date that is five Business Days prior to the Maturity Date.

(4) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount or extending the expiration date thereof) and without any further action on the part of the applicable Issuing Bank or the Revolving Lenders, such Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Revolving Lender's Revolving Facility Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, its Revolving Facility Percentage of each L/C Disbursement made

by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (5) of this Section 2.05, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and will not be affected by any circumstance whatsoever, including any amendment, extension, reinstatement or renewal of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or reduction or termination of the Commitments, and that each such payment will be made without any offset, abatement, withholding or reduction whatsoever. Each Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Lender's Revolving Facility Percentage of the aggregate amount available to be drawn under such Letter of Credit at each time such Lender's Commitment is amended pursuant to this Agreement.

(5) Reimbursement.

- (a) If the applicable Issuing Bank makes any L/C Disbursement in respect of a Letter of Credit, the Borrower will reimburse such L/C Disbursement by paying to the Administrative Agent an amount equal to such L/C Disbursement not later than 2:00 p.m., New York City time, on the first Business Day after the Borrower receives notice under paragraph (8) of this Section 2.05 of such L/C Disbursement (or the second Business Day, if such notice is received after 12:00 noon, New York City time), together with accrued interest thereon from the date of such L/C Disbursement at the rate applicable to ABR Loans; *provided* that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with an ABR Revolving Facility Borrowing in an equivalent amount and, to the extent so financed, the Borrower's obligations to make such payment will be discharged and replaced by the resulting ABR Revolving Facility Borrowing.
- (b) If the Borrower fails to reimburse any L/C Disbursement when due, then the Administrative Agent will promptly notify the applicable Issuing Bank and each other Revolving Lender of the applicable L/C Disbursement, the payment then due from the Borrower in respect thereof and, in the case of a Revolving Lender, such Lender's Revolving Facility Percentage thereof. Promptly following receipt of such notice, each Revolving Lender will pay to the Administrative Agent its Revolving Facility Percentage of the payment then due from the Borrower in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 will apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders), and the Administrative Agent will promptly pay to the applicable Issuing Bank the amounts so received by it from the Revolving Lenders. Any payment made by a Revolving Lender pursuant to this paragraph (5) to reimburse an Issuing Bank for any L/C Disbursement (other than the funding of an ABR Revolving Loan as contemplated above) will not constitute a Loan and will not relieve the Borrower of its obligations to reimburse such L/C Disbursement.

- 
- (c) Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to paragraph (5)(a), the Administrative Agent will distribute such payment to the applicable Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to paragraph (5)(b) to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear.
- (6) Obligations Absolute. The obligations of the Borrower to reimburse L/C Disbursements as provided in paragraph (5) of this Section 2.05 will be absolute, unconditional and irrevocable, and will be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of:
- (a) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein or herein;
  - (b) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect;
  - (c) any payment by the applicable Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit; or
  - (d) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.05, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder.
- (7) Limited Liability. None of the Administrative Agent, the Lenders, any Issuing Bank, or any of their Related Parties, will have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit by the respective Issuing Bank or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, or any consequence arising from causes beyond the control of such Issuing Bank, the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; or any of the circumstances referred to in clauses (a), (b) or (c) of Section 2.05(6); *provided* that the foregoing will not be construed to excuse the applicable Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive, damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable Law) suffered by the Borrower that are determined by a final and binding decision of a court of competent jurisdiction to have been caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in

the absence of gross negligence, bad faith or willful misconduct on the part of the applicable Issuing Bank, such Issuing Bank will be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the applicable Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

- (8) Disbursement Procedures. The applicable Issuing Bank will, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank will promptly notify the Administrative Agent and the Borrower in writing (or by telephone confirmed by facsimile or e-mail) of any such demand for payment under a Letter of Credit and whether such Issuing Bank has made or will make an L/C Disbursement thereunder; *provided* that any failure to give or delay in giving such notice will not relieve the Borrower of its obligations to reimburse such Issuing Bank and/or the Revolving Lenders with respect to any such L/C Disbursement.
- (9) Interim Interest. If an Issuing Bank for any Letter of Credit makes any L/C Disbursement, then, unless the Borrower reimburses such L/C Disbursement in full on the date such L/C Disbursement is made, the unpaid amount thereof will bear interest, for each day from and including the date such L/C Disbursement is made to but excluding the date that the Borrower reimburses such L/C Disbursement, at the rate per annum then applicable to ABR Revolving Loans and such interest shall be due and payable on the date when such reimbursement is made; *provided* that, if such L/C Disbursement is not reimbursed by the Borrower when due pursuant to paragraph (5) of this Section 2.05, then Section 2.13(3) will apply. Interest accrued pursuant to this paragraph will be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (5) of this Section 2.05 to reimburse such Issuing Bank will be for the account of such Revolving Lender to the extent of such payment.
- (10) Replacement of an Issuing Bank. An Issuing Bank may be replaced at any time by written agreement between the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent will notify the Lenders of any such replacement of an Issuing Bank. At the time any such replacement becomes effective, the Borrower will pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12. From and after the effective date of any such replacement, (a) the successor Issuing Bank will have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued by it thereafter and (b) references herein to the term "Issuing Bank" will be deemed to include such successor or any previous Issuing Bank, or such successor and all previous Issuing Banks, as the context will require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank will remain a party hereto and will continue to have all the rights and obligations of such Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement but will not be required to issue additional Letters of Credit.

- (11) Cash Collateralization. If any Event of Default occurs and is continuing, (a) in the case of an Event of Default described in Section 8.01(8) or (9), on the Business Day, or (b) in the case of any other Event of Default, on the third Business Day, in each case, following the date on which the Borrower receives notice from the Administrative Agent demanding the deposit of cash collateral pursuant to this paragraph (11), the Borrower will deposit in an account with or at the direction of the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders, an amount in cash to be agreed between the Borrower and each applicable Issuing Bank (but in any event not to exceed 105% of the Revolving L/C Exposure as of such date); *provided* that upon the occurrence of any Event of Default with respect to the Borrower described in Section 8.01(8) or (9), the obligation to deposit such cash collateral will become effective immediately, and such deposit will become immediately due and payable, without demand or other notice of any kind. Each such deposit pursuant to this paragraph will be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent will have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments will be made at the option and sole discretion of (i) for so long as an Event of Default is continuing, the Administrative Agent and (ii) at any other time, the Borrower, in each case, in Cash Equivalents and at the risk and expense of the Borrower, such deposits will not bear interest. Interest or profits, if any, on such investments will accumulate in such account. Moneys in such account will be applied by the Administrative Agent to reimburse each Issuing Bank for L/C Disbursements for which such Issuing Bank has not been reimbursed and, to the extent not so applied, will be held for the satisfaction of the reimbursement obligations of the Borrower for the Revolving L/C Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of the Required Lenders, be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) will be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.
- (12) Additional Issuing Banks. From time to time, the Borrower may, by notice to the Administrative Agent, designate any Lender (in addition to JPM and RBC) to act as an Issuing Bank; *provided* that such Lender agrees in its sole discretion to act as such and such Lender is reasonably satisfactory to the Administrative Agent as an Issuing Bank (such consent not to be unreasonably withheld, delayed or conditioned). Each such additional Issuing Bank will execute a counterpart of this Agreement and will thereafter be an Issuing Bank hereunder for all purposes. The Borrower may, in its sole discretion, request a Letter of Credit issuance from any Issuing Bank.

- (13) Reporting. Unless otherwise requested by the Administrative Agent, each Issuing Bank will (a) provide to the Administrative Agent copies of any notice received from the Borrower pursuant to Section 2.05(2) no later than the next Business Day after receipt thereof and (b) report in writing to the Administrative Agent as follows:
- (i) periodic activity (for such period or recurrent periods as shall be requested by the Administrative Agent) in respect of Letters of Credit issued by such Issuing Bank, including all issuances, extensions, amendments and renewals, all expirations and cancelations and all disbursements and reimbursements;
  - (ii) reasonably prior to each Business Day on which such Issuing Bank expects to issue, amend or extend any Letter of Credit, the date of such issuance, amendment or extension, and the aggregate face amount of the Letters of Credit to be issued, amended or extended by it and outstanding after giving effect to such issuance, amendment or extension occurred (and whether the amount thereof changed), and the Issuing Bank will be permitted to issue, amend or extend such Letter of Credit if the Administrative Agent will not have advised the Issuing Bank that such issuance, amendment or extension would not be in conformity with the requirements of this Agreement;
  - (iii) on each Business Day on which such Issuing Bank makes any L/C Disbursement, the date of such L/C Disbursement and the amount of such L/C Disbursement;
  - (iv) on any Business Day on which the Borrower fails to reimburse an L/C Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and the amount of such L/C Disbursement; and
  - (v) on any other Business Day, such other information with respect to the outstanding Letters of Credit issued by such Issuing Bank as the Administrative Agent reasonably requests, including but not limited to prompt verification of such information as may be requested by the Administrative Agent.

Unless the Administrative Agent otherwise agrees, the failure of any Issuing Bank (other than the Administrative Agent or any affiliate thereof acting as an Issuing Bank) to comply with the provisions of this clause (13) with respect to any letter of credit will result in such letter of credit not being deemed a "Letter of Credit" hereunder and under the other Loan Documents.

- (14) Reallocation. If the Maturity Date in respect of any tranche of Revolving Facility Commitments occurs prior to the expiration of any Letter of Credit, then (i) if one or more other tranches of Revolving Facility Commitments in respect of which the Maturity Date shall not have occurred are then in effect, such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Lenders to purchase participations therein and to make Revolving Loans and

payments in respect thereof pursuant to Section 2.05(5)) under (and ratably participated in by Lenders pursuant to) the Revolving Facility Commitments in respect of such non-terminating tranches up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Revolving Facility Commitments thereunder at such time (it being understood that no partial face amount of any Letter of Credit may be reallocated); *provided*, in no event shall such reallocation cause a Lender's share of the Revolving Facility Commitment to exceed such Lender's Commitment, and (ii) to the extent not reallocated pursuant to the immediately preceding clause (i), the Borrower shall cash collateralize any such Letter of Credit in accordance with Section 2.05(11). If, for any reason, such cash collateral is not provided or reallocation does not occur, the Revolving Lenders under the maturing tranche shall continue to be responsible for their participating interests in the Letters of Credit. Except to the extent of reallocations of participations pursuant to clause (i) of the second preceding sentence, the occurrence of a Maturity Date with respect to a given tranche of Revolving Facility Commitments shall have no effect upon (and shall not diminish) the percentage participations of the Revolving Lenders in any Letter of Credit issued before such Maturity Date. Commencing with the Maturity Date of any tranche of Revolving Facility Commitments, the sublimit for Letters of Credit shall be agreed with the Lenders under the extended tranches.

SECTION 2.06 Funding of Borrowings.

- (1) Each Lender will make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 10:00 a.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders; *provided* that same-day ABR Loans will be made by each Lender on the proposed date thereof by wire transfer of immediately available funds by 3:00 p.m., New York City time. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower as specified in the applicable Borrowing Request; *provided* that ABR Revolving Loans made to finance the reimbursement of an L/C Disbursement and reimbursements as provided in Section 2.05(5) will be remitted by the Administrative Agent to the applicable Issuing Bank.
- (2) Unless the Administrative Agent has received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (1) of this Section 2.06 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent at (a) in the case of such Lender, the greater of (i) the Federal Funds Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (b) in the case of the Borrower, the interest rate applicable to ABR Loans at such time. If such Lender pays such amount to the Administrative Agent then such amount will constitute such Lender's Loan included in such Borrowing.

SECTION 2.07 Interest Elections.

- (1) Each Borrowing initially will be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Revolving Facility Borrowing, will have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurocurrency Revolving Facility Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.07. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion will be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion will be considered a separate Borrowing.
- (2) To make an election pursuant to this Section 2.07 following the Closing Date, the Borrower will notify the Administrative Agent of such election by telephone (a) in the case of an election to convert to or continue a Eurocurrency Revolving Facility Borrowing, not later than 2:00 p.m., New York City time, three Business Days before the date of such election or (b) in the case of an election to convert to or continue an ABR Borrowing, not later than 1:00 p.m., New York City time, on such election date (which shall be a Business Day) (or in each case at such later date or time as the Administrative Agent may agree). Each such telephonic Interest Election Request will be confirmed promptly by hand delivery, facsimile transmission or e-mail to the Administrative Agent of a written Interest Election Request substantially in the form of Exhibit E and signed by the Borrower.
- (3) (a) Each telephonic and written Interest Election Request will be irrevocable and will specify the following information:
  - (i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below will be specified for each resulting Borrowing);
  - (ii) the effective date of the election made pursuant to such Interest Election Request, which will be a Business Day;
  - (iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Revolving Facility Borrowing; and
  - (iv) if the resulting Borrowing is a Eurocurrency Revolving Facility Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which will be a period contemplated by the definition of "Interest Period."

- 
- (b) If any such Interest Election Request requests a Eurocurrency Revolving Facility Borrowing but does not specify an Interest Period, then the Borrower will be deemed to have selected a Eurocurrency Revolving Facility Borrowing having an Interest Period of one month's duration.
- (4) Promptly following receipt of an Interest Election Request, the Administrative Agent will advise each applicable Lender of the details thereof and of such Lender's portion of each resulting Borrowing.
- (5) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Revolving Facility Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period, such Borrowing will be automatically converted into or continued as an ABR Borrowing.
- (6) Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing, (a) no outstanding Borrowing may be converted to or continued as a Eurocurrency Revolving Facility Borrowing and (b) unless repaid, each Eurocurrency Revolving Facility Borrowing will be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.08 Termination and Reduction of Commitments.

- (1) Unless previously terminated, the Commitments will terminate on the Maturity Date.
- (2) The Borrower may at any time terminate, or from time to time reduce, the Revolving Facility Commitments; *provided* that (i) each reduction of the Revolving Facility Commitments will be in an amount that is an integral multiple of \$500,000 and not less than \$1.0 million (or, if less, the remaining amount of the applicable Revolving Facility Commitments) and (ii) the Borrower will not terminate or reduce the Revolving Facility Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the Revolving Facility Credit Exposure would exceed the lesser of the total Revolving Facility Commitments and the Borrowing Base.
- (3) The Borrower will notify the Administrative Agent of any election to terminate or reduce the Revolving Facility Commitments under paragraph (2) of this Section 2.08 at least three Business Days prior to the date of such termination or reduction, specifying such election and the date thereof (or at such later date or time as the Administrative Agent may agree). Promptly following receipt of any notice, the Administrative Agent will advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.08 will be irrevocable; *provided* that a notice of termination of the Revolving Facility Commitments delivered by the Borrower may state that such notice is revocable or conditioned upon the effectiveness of other credit facilities or a specified transaction, in which case such notice may be revoked or extended by the Borrower (by notice to the Administrative Agent on or prior to the specified termination date). Any termination or reduction of the Commitments will be permanent. Each reduction of the Commitments will be made ratably among the Lenders in accordance with their respective Commitments.

SECTION 2.09 Promise to Pay; Evidence of Debt.

- (1) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date.
- (2) Any Lender may request that Loans made by it be evidenced by a Note. In such event, the Borrower will prepare, execute and deliver to such Lender a Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent and reasonably acceptable to the Borrower.
- (3) The Administrative Agent will maintain accounts in which it will record (a) the amount of each Loan to the Borrower made hereunder, the Type thereof and the Interest Period (if any) applicable thereto, (b) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (c) any amount received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof. The entries made in the accounts maintained pursuant to this paragraph (3) will be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of the Administrative Agent to maintain such accounts or any error therein will not in any manner affect the obligations of the Borrower to repay the Obligations in accordance with the terms of this Agreement.

SECTION 2.10 Optional Repayment of Loans.

- (1) The Borrower will have the right at any time and from time to time to repay any Loan in whole or in part, without premium or penalty (but subject to Section 2.16), in an aggregate principal amount, (a) in the case of Eurocurrency Revolving Loans, that is an integral multiple of \$100,000 and not less than \$1.0 million, and (b) in the case of ABR Loans, that is an integral multiple of \$100,000 and not less than \$500,000, or, in each case, if less, the amount outstanding; *provided* that no portion of the principal of any Refinancing Term Loans may be prepaid prior to the Discharge of ABL Revolving Claims unless such prepayment is permitted under Section 6.11(1).
- (2) Prior to any repayment of any Revolving Loans, the Borrower will select the Borrowing or Borrowings to be repaid and will notify the Administrative Agent by telephone (confirmed by hand delivery, facsimile transmission or e-mail) of such selection not later than 2:00 p.m., New York City time, (a) in the case of an ABR Borrowing, one Business Day before the anticipated date of such repayment and (b) in the case of a Eurocurrency Revolving Facility Borrowing, three Business Days before the anticipated date of such repayment (or in each case, at such later date or time as the Administrative Agent may agree). Each repayment of a Borrowing will be applied to the Revolving Loans included in the repaid Borrowing such that each Revolving Lender receives its ratable share of such repayment (based upon the respective Revolving Facility Credit Exposures of the Revolving Lenders at the time of such repayment). Repayments of Eurocurrency Revolving Facility Borrowings will be accompanied by accrued interest on the amount repaid, together with any amounts due under Section 2.16.

SECTION 2.11 Mandatory Repayment of Loans.

- (1) Except for Overadvances permitted under Section 2.01, in the event the aggregate amount of the Revolving Facility Credit Exposure exceeds the Line Cap at such time, then the Borrower will within three (3) Business Days repay outstanding Revolving Loans, and, if there remains an excess after paying all Revolving Loans, cash collateralize Letters of Credit (in accordance with Section 2.05(11)) in an aggregate amount equal to such excess, in each case with no reduction in commitments.
- (2) In the event and on such occasion as the Revolving L/C Exposure exceeds the Letter of Credit Sublimit, the Borrower will within three (3) Business Days deposit cash collateral (in accordance with Section 2.05(11)) in an amount equal to such excess.
- (3) Upon the occurrence and during the continuance of a Cash Dominion Period, all amounts in the Dominion Account shall be applied by the Administrative Agent pursuant to Section 5.11(2).

SECTION 2.12 Fees.

- (1) The Borrower agrees to pay to the Administrative Agent, for the account of each Revolving Lender (other than any Defaulting Lender), a commitment fee (a “**Commitment Fee**”) on the average daily amount of the Available Unused Commitment of such Lender, which shall accrue at a rate per annum equal to the Applicable Commitment Fee Percentage during the period from and including the Closing Date to but excluding the earlier of the Maturity Date and any date on which the Commitments of all the Lenders are otherwise terminated as provided herein. Accrued Commitment Fees will be payable in arrears on the first (1<sup>st</sup>) Business Day after the end of each fiscal quarter of the Borrower, commencing with the fiscal quarter of the Borrower ending on June 30, 2018 and on each Maturity Date and any date on which the Commitments of all the Lenders are terminated as provided herein. All Commitment Fees will be computed on the basis of the actual number of days elapsed (including the first day but excluding the last day) in a year of 360 days.
- (2) The Borrower agrees to pay to:
  - (a) the Administrative Agent for the account of each Revolving Lender (other than any Defaulting Lender, it being understood that at any time the Issuing Bank has Fronting Exposure to such Defaulting Lender, the L/C Participation Fee with respect to such Fronting Exposure will be payable to the Issuing Bank for its own account), a fee with respect to its participation in each outstanding Letter of Credit (an “**L/C Participation Fee**”) on the daily aggregate L/C Amount, which shall accrue at a rate per annum equal to the Applicable Margin for Eurocurrency Revolving Loans during the period from and including the Closing Date to but excluding the earlier of the Maturity Date and any date on which the

Commitments of all the Lenders are otherwise terminated as provided herein. Accrued L/C Participation Fees will be payable in arrears on the first (1<sup>st</sup>) Business Day after the end of each fiscal quarter of the Borrower, commencing with the fiscal quarter of the Borrower ending on June 30, 2018 and on each Maturity Date and any date on which the Commitments of all the Lenders are terminated as provided herein.

- (b) each Issuing Bank, for its own account, (i) a fronting fee with respect to each Letter of Credit issued by such Issuing Bank at a rate per annum equal to the percentage separately agreed upon between the Borrower and such Issuing Bank (such rate per annum not to exceed 0.125%) on the daily L/C Amount with respect to such Letter of Credit, during the period from and including the date of issuance or extension (as applicable) of such Letter of Credit and to but excluding the date of termination of such Letter of Credit and (ii) such Issuing Bank's customary issuance fees and customary documentary and processing fees and charges (collectively, "**Issuing Bank Fees**"). All L/C Participation Fees and Issuing Bank Fees that are payable in Dollars on a per annum basis will be computed on the basis of the actual number of days elapsed (including the first day but excluding the last day) in a year of 360 days. Issuing Bank Fees accrued will be payable in arrears on the first (1<sup>st</sup>) Business Day after the end of each fiscal quarter of the Borrower, commencing with the fiscal quarter of the Borrower ending on June 30, 2018 and on each Maturity Date and any date on which the Commitments of all the Lenders are terminated as provided herein.
- (3) The Borrower agrees to pay to the Administrative Agent, for its own account, the "Agency Fee" in respect of the Revolving Facility set forth in the Agency Fee Letter at the times and on the terms specified therein or in such other amounts and at such other times as may be separately agreed in writing by the Administrative Agent and the Borrower from time to time (the "**Administrative Agent Fees**").
- (4) All Fees will be paid on the dates due and payable, in immediately available funds, to the Administrative Agent at the Payment Office for distribution, if and as appropriate, among the Lenders, except that Issuing Bank Fees will be paid directly to the applicable Issuing Banks. Once paid, none of the Fees will be refundable under any circumstances (except as expressly agreed between the Borrower and the Administrative Agent, including pursuant to the Agency Fee Letter).

#### SECTION 2.13 Interest.

- (1) The Loans comprising each ABR Borrowing will bear interest at the ABR *plus* the Applicable Margin.
- (2) The Loans comprising each Eurocurrency Revolving Facility Borrowing will bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing *plus* the Applicable Margin.

- 
- (3) Following the occurrence and during the continuation of a Specified Event of Default, the Borrower will pay interest on overdue amounts hereunder at a rate per annum equal to (a) in the case of overdue principal of, or interest on, any Loan, 2.0% *plus* the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.13 or (b) in the case of any other overdue amount, 2.0% *plus* the rate applicable to ABR Loans as provided in clause (1) of this Section 2.13.
- (4) Accrued interest on each Loan will be payable by the Borrower in arrears (a) on each Interest Payment Date for such Loan; (b) on the applicable Maturity Date; and (c) upon termination of the Revolving Facility Commitments; *provided that*:
- (i) interest accrued pursuant to paragraph (3) of this Section 2.13 will be payable on demand;
  - (ii) in the event of any repayment or prepayment of any Loan (other than a repayment of an ABR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment or prepayment; and
  - (iii) in the event of any conversion of any Eurocurrency Revolving Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan will be payable on the effective date of such conversion.
- (5) All interest hereunder will be computed on the basis of a year of 360 days, except that interest computed by reference to the ABR at times when the ABR is based on the prime rate will be computed on the basis of a year of 365 days (or 366 days in a leap year), and, in each case, will be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable ABR, Adjusted LIBO Rate or LIBO Rate will be determined by the Administrative Agent, and such determination will be conclusive absent manifest error.

SECTION 2.14 Alternate Rate of Interest.

- (1) If prior to the commencement of any Interest Period for a Eurocurrency Revolving Facility Borrowing:
- (a) the Administrative Agent determines (which determination will be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including because the LIBO Screen Rate is not available or published on a current basis), for such Interest Period; or
  - (b) the Administrative Agent is advised by the Required Revolving Lenders and the Required Term Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

---

then the Administrative Agent will give notice thereof to the Borrower and the Lenders by telephone, facsimile transmission or e-mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (a) any Interest Election Request that requests the conversion of any applicable Borrowing to, or continuation of any such Borrowing as, a Eurocurrency Revolving Facility Borrowing will be ineffective and such Borrowing will be converted to or continued as on the last day of the Interest Period applicable thereto an ABR Borrowing, and (b) if any Borrowing Request requests a Eurocurrency Revolving Facility Borrowing, such Borrowing will be made as an ABR Borrowing.

- (2) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (1)(a) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (1)(a) have not arisen but the supervisor for the administrator of the LIBO Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Screen Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment (or amendment and restatement) to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Rate); *provided* that, if such alternate rate of interest as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 10.08, such amendment (or amendment and restatement) shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Revolving Lenders or the Required Term Lenders (as applicable) stating that such Required Revolving Lenders or Required Term Lenders (as applicable) object to such amendment (or amendment and restatement); *provided* that any such objection will only be effective with respect to the Revolving Loans or the Refinancing Term Loans (as applicable). Until an alternate rate of interest shall be determined in accordance with this clause (2) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 2.11(2), only to the extent the LIBO Screen Rate for such Interest Period is not available or published at such time on a current basis), (x) any Interest Election Request that requests the conversion of any applicable Borrowing to, or continuation of any such Borrowing as, a Eurocurrency Revolving Facility Borrowing will be ineffective and (y) if any Borrowing Request requests a Eurocurrency Revolving Facility Borrowing, such Borrowing shall be made as an ABR Borrowing; *provided* that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement

SECTION 2.15 Increased Costs.

- (1) If any Change in Law:
  - (a) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or Issuing Bank;
  - (b) imposes on any Lender or Issuing Bank or the London interbank market any other condition (other than Taxes) affecting this Agreement or Eurocurrency Revolving Loans made by such Lender or any Letter of Credit or participation therein; or
  - (c) subjects any Recipient to any Taxes (other than (i) Indemnified Taxes and (ii) Excluded Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining any Eurocurrency Revolving Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank, as applicable, for such additional costs incurred or reduction suffered.

- (2) If any Lender or Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.
- (3) A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as applicable, as specified in paragraph (1) or (2) of this Section 2.15 will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender or Issuing Bank, as applicable, the amount shown as due on any such certificate within ten days after receipt thereof.

- 
- (4) Promptly after any Lender or any Issuing Bank has determined that it will make a request for increased compensation pursuant to this Section 2.15, such Lender or Issuing Bank will notify the Borrower thereof. Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section 2.15 will not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; *provided* that the Borrower will not be required to compensate a Lender or an Issuing Bank pursuant to this Section 2.15 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or Issuing Bank, as applicable, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefor; *provided, further*, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above will be extended to include the period of retroactive effect thereof.

SECTION 2.16 Break Funding Payments. Except as otherwise set forth herein, the Borrower will compensate each Lender for the actual out-of-pocket loss, cost and expense (excluding loss of anticipated profits) attributable to the following events:

- (1) the payment of any principal of any Eurocurrency Revolving Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default);
- (2) the conversion of any Eurocurrency Revolving Loan other than on the last day of the Interest Period applicable thereto;
- (3) the failure to borrow, convert, continue or prepay any Eurocurrency Revolving Loan on the date specified in any notice delivered pursuant hereto; or
- (4) the assignment of any Eurocurrency Revolving Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19.

A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.16 will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

SECTION 2.17 Taxes.

- (1) Any and all payments by or on account of any obligation of any Loan Party hereunder will be made free and clear of and without deduction for any Indemnified Taxes; *provided* that if a Loan Party is required to deduct any Indemnified Taxes from such payments, then (a) the sum payable will be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.17) the Administrative Agent or any Lender, as applicable, receives an amount equal to the amount it would have received had no such deductions been made; (b) such Loan Party will make such deductions; and (c) such Loan Party will timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

- 
- (2) In addition, the Loan Parties will pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.
- (3) Each Loan Party will, jointly and severally, indemnify the Administrative Agent and each Lender, within ten days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Administrative Agent or such Lender (other than as a result of the Administrative Agent's or any Lender's gross negligence or willful misconduct) on or with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Loan Party by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, will be conclusive absent manifest error.
- (4) As soon as practicable after any payment of Indemnified Taxes by a Loan Party to a Governmental Authority, such Loan Party will deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.
- (5)
- (a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document will 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 Lender, if reasonably requested by the Borrower or the Administrative Agent, will 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 Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.17(5)(b), 2.17(5)(c) and 2.17(6) below) will not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.
- (b) Without limiting the effect of Section 2.17(5)(a) above, each Foreign Lender will deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two original copies of whichever of the following is applicable:

- 
- (i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States of America is a party, (A) with respect to payments of interest under any Loan Document, executed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any subsequent versions thereof or successors thereto) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (B) with respect to any other applicable payments under any Loan Document, Internal Revenue Service Form W-8BEN or W-8BEN-E 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) duly completed copies of Internal Revenue Service Form W-8ECI (or any subsequent versions thereof or successors thereto);
  - (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (A) a certificate substantially in the form of the applicable Exhibit G to the effect that such Foreign Lender is not (1) a “bank” within the meaning of Section 881(c)(3)(A) of the Code; (2) a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3) or Section 881(c)(3)(B) of the Code; or (3) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “***U.S. Tax Compliance Certificate***”) and (B) duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any subsequent versions thereof or successors thereto);
  - (iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of Internal Revenue Service Form W-8IMY, accompanied by Internal Revenue Service Form W-8ECI, Internal Revenue Service Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, Internal Revenue Service Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner; or
  - (v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States 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.

In addition, in each of the foregoing circumstances, each Foreign Lender will deliver such forms, if legally entitled to deliver such forms, promptly upon the obsolescence, expiration or invalidity of any form previously delivered by such Foreign Lender. Each Foreign Lender will promptly notify the Borrower and the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the United States of America or other taxing authorities for such purpose). In addition, each Lender that is not a Foreign Lender will deliver to the Borrower and the Administrative Agent two copies of Internal Revenue Service Form W-9 (or any subsequent versions thereof or successors thereto) on or before the date such Lender becomes a party and upon the expiration of any form previously delivered by such Lender. Notwithstanding any other provision of this paragraph, a Lender will not be required to deliver any form pursuant to this paragraph (5) that such Lender is not legally able to deliver;

- (c) JPM in its capacity as the Administrative Agent (and any Person succeeding the Administrative Agent upon assignment or succession under Section 9.09, if applicable) will also deliver, to the Borrower, on or prior to the execution and delivery of this Agreement, (i) two duly completed copies of Internal Revenue Service form W-9 with respect to any amounts payable to JPM for its own account (or other withholding certification as appropriate) and (ii) if applicable, two duly completed copies of Internal Revenue Service Form W-8IMY certifying that it is a "U.S. branch" and that the payments it receives for the account of others are not effectively connected with the conduct of its trade or business in the United States and that it is using such form as evidence of its agreement with the Borrower to be treated as a United States person with respect to such payments, with the effect that the Borrower can make payments to JPM (acting as the Administrative Agent) without deduction or withholding of any taxes imposed by the United States.
- (6) If a payment made to a Recipient under any Loan Document would be subject to a 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 will 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 (6), "FATCA" will include any amendments made to FATCA after the date of this Agreement.

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

- 
- (7) If the Administrative Agent or any Lender determines, in its sole discretion, exercised in good faith, that it has received a refund (including a credit in lieu of a refund) of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.17, it will pay over reasonably promptly such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.17 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent or such Lender in good faith, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to such Loan Party (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent, such Issuing Bank or such Lender is required to repay such refund to such Governmental Authority. This Section 2.17(7) will not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems, in good faith, to be confidential) to the Loan Parties or any other Person.
  - (8) Each party's obligations under this Section 2.17 will 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 obligations under any Loan Document.
  - (9) For purposes of this Section 2.17, the term "applicable law" includes FATCA and the term "Lender" includes any Issuing Bank.

SECTION 2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

- (1) Unless otherwise specified, the Borrower will make each payment required to be made by it hereunder (whether of principal, interest, fees, reimbursement of L/C Disbursements or otherwise) prior to 2:00 p.m., New York City time, at the Payment Office, except payments to be made directly to the applicable Issuing Bank as expressly provided herein and except that (unless the Borrower, the Administrative Agent and the applicable Persons otherwise agree) payments pursuant to Sections 2.15, 2.16, 2.17 and 10.05 will be made directly to the Persons entitled thereto, on the date when due. All payments shall be in immediately available funds, without condition or deduction for any defense, recoupment, set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. The Administrative Agent will distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof and will make settlements with the Lenders with respect to other payments at the times and in the manner provided in this Agreement. Except as otherwise provided herein, if any

payment hereunder is due on a day that is not a Business Day, the date for payment will be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon will be payable for the period of such extension. Any payment required to be made by the Administrative Agent hereunder will be deemed to have been made by the time required if the Administrative Agent, at or before such time, has taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

- (2) [Reserved].
- (3) Except as otherwise provided in this Agreement, if (a) at any time insufficient funds are received by and available to the Administrative Agent from the Borrower to pay fully all amounts of principal, unreimbursed L/C Disbursements, interest and fees and other Obligations then due from the Borrower hereunder or (b) at any time during a Cash Dominion Period (including in connection with any termination of the Revolving Facility Commitments pursuant to Section 8.01) and the Administrative Agent or the Collateral Agent receives proceeds of Collateral, such funds will be applied,
- (i) *first*, toward payment of any expenses, fees and indemnities due to the Agents and each Issuing Bank hereunder;
  - (ii) *second*, toward payment of interest and fees then due from the Borrower hereunder with respect to any Revolving Facility Credit Exposure, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;
  - (iii) *third*, toward payment of unreimbursed L/C Disbursements, Protective Advances and Overadvances then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal, unreimbursed L/C Disbursements, Protective Advances and Overadvances then due to such parties;
  - (iv) *fourth*, toward payment of other principal then due from the Borrower hereunder with respect to any Revolving Facility Credit Exposure, ratably among the parties entitled thereto in accordance with the amounts of such principal then due to such parties;
  - (v) *fifth*, if an Event of Default has occurred and is continuing, to cash collateralize Letters of Credit issued for the account of the Borrower or any Subsidiary in accordance with Section 2.05(11);
  - (vi) *sixth*, to pay any other Obligations (excluding any (x) Obligations with respect to Refinancing Term Loans, (y) Cash Management Obligations or (z) Specified Hedge Obligations) ratably among the parties thereto in accordance with such amounts so owed them;

- 
- (vii) *seventh* , to payment of obligations pursuant to Specified Hedge Agreements then due from the Borrower or any Subsidiary Loan Party, ratably among the parties entitled thereto in accordance with the amounts of obligations under such Specified Hedge Agreements then due to such parties;
  - (viii) *eighth* , to payment of Cash Management Obligations of the Borrower or any Subsidiary Loan Party then due from the Borrower or such Subsidiary Loan Party, ratably among the parties entitled thereto in accordance with the amounts of such Cash Management Obligations then due to such parties;
  - (ix) *ninth* , to payment of all other Obligations (other than those relating to Refinancing Term Loans) of the Borrower then due and payable, ratably among the parties entitled thereto in accordance with the amounts of such Obligations then due to such parties;
  - (x) *tenth* , toward payment of interest then due from the Borrower hereunder with respect to the Refinancing Term Loans, ratably among the parties entitled thereto in accordance with the amounts of interest then due to such parties;
  - (xi) *eleventh* , toward payment of principal then due from the Borrower hereunder with respect to the Refinancing Term Loans, ratably among the parties entitled thereto in accordance with the amounts of such principal then due to such parties; and
  - (xii) *twelfth* , to payment of all other Obligations of the Borrower then due and payable with respect to the Refinancing Term Loans, ratably among the parties entitled thereto in accordance with the amounts of such Obligations then due to such parties;

*provided* that the application of such proceeds at all times will be subject to the application of proceeds provisions contained in any applicable Intercreditor Agreement.

- (4) Except as otherwise provided in this Agreement and subject to express priorities set forth in Section 2.18(3) above, if any Lender, by exercising any right of set-off or counterclaim or otherwise, obtains payment in respect of any principal of or interest on any of its Revolving Loans or participations in L/C Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in L/C Disbursements and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Revolving Loans and participations in L/C Disbursements of other Lenders to the extent necessary so that the benefit of all such payments will be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in L/C Disbursements; *provided* that (a) if any such

---

participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest, and (b) the provisions of this paragraph (4) will not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans or participations in L/C Disbursements to any assignee or participant other than to the Borrower or any other Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (4) apply). The Borrower 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 the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

- (5) Subject to the priorities set forth in Section 2.18(3) above, if any Lender, by exercising any right of set-off or counterclaim or otherwise, obtains payment in respect of any principal of or interest on any of its Refinancing Term Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Refinancing Term Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Refinancing Term Loans of other Lenders to the extent necessary so that the benefit of all such payments will be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Refinancing Term Loans; *provided* that (a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest, and (b) the provisions of this paragraph (5) will not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Refinancing Term Loans to any assignee or participant other than to the Borrower or any other Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (5) apply). The Borrower 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 the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.
- (6) Unless the Administrative Agent has received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the applicable Issuing Bank 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 or the applicable Issuing Bank, as applicable, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as applicable, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank

---

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.

- (7) If any Lender fails to make any payment required to be made by it pursuant to Section 2.05(4) or (5), 2.06(2) or 2.18(6), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.19 Mitigation Obligations: Replacement of Lenders.

- (1) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender will use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or assign its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the reasonable judgment of such Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as applicable, in the future and (b) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.
- (2) If any Lender requests compensation under Section 2.15 or is a Defaulting Lender, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, 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 Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that assumes such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (a) the Borrower shall have received the prior written consent of the Administrative Agent and the Issuing Bank, which consent shall not unreasonably be withheld, to the extent the consent of such Person would be required under Section 10.04 for an assignment of Loans or Commitments to such Person, (b) such Lender has received payment of an amount equal to the outstanding principal of its Loans and funded participations in L/C Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and (c) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. No action by or consent of the Defaulting Lender will be necessary in connection with such removal or assignment. In connection with any such assignment, the Borrower, the Administrative Agent, the Defaulting Lender and the replacement Lender will otherwise comply with Section 10.04; provided that if such Defaulting

---

Lender does not comply with Section 10.04 within three Business Days after the Administrative Agent's or the Borrower's request, compliance with Section 10.04 will not be required to effect such assignment. Nothing in this Section 2.19 will be deemed to prejudice any rights that the Borrower may have against any Lender that is a Defaulting Lender.

- (3) If any Lender (such Lender, a “*Non-Consenting Lender*”) has failed to consent to a proposed amendment, waiver, discharge or termination that, pursuant to the terms of Section 10.08, requires the consent of such Lender and with respect to which the Required Lenders have granted their consent, then the Borrower will have the right (unless such Non-Consenting Lender grants such consent) at its sole expense, to replace such Non-Consenting Lender by deeming such Non-Consenting Lender to have assigned its Loans and its Commitments hereunder to one or more assignees reasonably acceptable to the Administrative Agent and the Issuing Bank to the extent the consent of such Person would be required under Section 10.04 for an assignment of Loans or Commitments to such Person; *provided* that (a) all Obligations of the Borrower owing to such Non-Consenting Lender (including accrued Fees and any amounts due under Section 2.15, 2.16 or 2.17) being removed or replaced will be paid in full to such Non-Consenting Lender concurrently with such assignment and (b) such Non-Consenting Lender will have received payment of an amount equal to the principal amount thereof *plus* accrued and unpaid interest thereon. No action by or consent of the Non-Consenting Lender will be necessary in connection with such removal or assignment, which will be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment, the Borrower, the Administrative Agent, such Non-Consenting Lender and the replacement Lender will otherwise comply with Section 10.04; *provided* that if such Non-Consenting Lender does not comply with Section 10.04 within three Business Days after the Administrative Agent's or the Borrower's request therefor, compliance with Section 10.04 will not be required to effect such assignment.

SECTION 2.20 Illegality. If any Lender reasonably determines that any change in law has made it unlawful, or if any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable lending office to make or maintain any Eurocurrency Revolving Loans, then, upon notice thereof by such Lender to the Borrower through the Administrative Agent, any obligations of such Lender to make or continue Eurocurrency Revolving Loans or to convert ABR Borrowings to Eurocurrency Revolving Facility Borrowings will be suspended 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, the Borrower will upon demand from such Lender (with a copy to the Administrative Agent), either convert all Eurocurrency Revolving Facility Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Revolving Facility Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrower will also pay accrued interest on the amount so prepaid or converted.

SECTION 2.21 Incremental Facilities.

- (1) Notice. At any time and from time to time, on one or more occasions, subject to the terms and conditions set forth herein, the Borrower may, by notice to the Administrative Agent, increase the Revolving Facility Commitments (each such increase, an “**Incremental Revolving Facility Increase**” or “**Incremental Facility**”, and such additional Revolving Facility Commitments, the “**Incremental Commitments**”).
- (2) Ranking. Any Incremental Commitments will (a) rank *pari passu* in right of payment with the Revolving Facility Claims and (b) be secured by the Collateral on a *pari passu* basis with the Revolving Facility Claims.
- (3) Size. The principal amount of commitments in respect of Incremental Revolving Facility Increases received pursuant to this Section 2.21 will not exceed, in the aggregate, an amount equal to \$200,000,000.

Each Incremental Revolving Facility Increase received pursuant to this Section 2.21 will be in an integral multiple of \$1.0 million and in a minimum aggregate principal amount of \$10.0 million (or such lesser minimum amount approved by the Administrative Agent); *provided* that such amount may be less than such minimum amount or integral multiple amount without the Administrative Agent’s consent if such amount represents all of the remaining availability in respect of Incremental Revolving Facility Increases available pursuant to this Section 2.21 at such time.

- (4) Incremental Lenders. Incremental Facilities may be provided by any existing Lender (it being understood that no existing Lender will have an obligation to provide any Incremental Facility), or any Additional Lender (collectively, the “**Incremental Lenders**”); *provided* that the Administrative Agent and each Issuing Bank at the time of effectiveness of such Incremental Facility shall have consented (such consent not to be unreasonably withheld, delayed or conditioned) to any Additional Lender’s provision of such Incremental Facility if such consent by such Person would be required under Section 10.04 for an assignment of Commitments or Loans to such Additional Lender. The existing Lenders will not have any right to participate in any arrangement of, and will not have any right of first refusal or other right to provide all or any portion of, any Incremental Facility except to the extent the Borrower and the arrangers thereof, if any, in their discretion, choose to invite or include any such existing Lender (which may or may not apply to all existing Lenders and may or may not be pro rata among existing Lenders). Final allocations in respect of any Incremental Facilities will be made by the Borrower together with the arrangers thereof, if any, in their discretion, in accordance with this Section 2.21.
- (5) Incremental Facility Amendments: Use of Proceeds. Each Incremental Facility will become effective pursuant to an amendment (which may, at the option of the Administrative Agent and the Borrower, be in the form of an amendment and restatement) (each, an “**Incremental Facility Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, the Administrative Agent and, with respect to any amendment (or amendment and restatement) of this Agreement, each Incremental Lender providing such Incremental Facility. Incremental Facility Amendments 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 and the Borrower, to effect the provisions of this Section 2.21. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Incremental Facility Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Facility Amendment, this Agreement and the other Loan Documents, as applicable, will be deemed amended (or amended and restated) to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Facility evidenced thereby. This Section 2.21 shall supersede any provisions in Section 2.18 or 10.08 to the contrary. The Borrower and its Restricted Subsidiaries may use the proceeds of the Incremental Facility for any purpose not prohibited by this Agreement.

- (6) Conditions. The initial availability of any Incremental Facility will be subject solely to the following conditions, subject, for the avoidance of doubt, to Section 1.09, measured on the date of the initial incurrence under (or, as applicable, pursuant to Section 1.09, receipt of commitments with respect to) any such Incremental Facility:
- (a) no Event of Default shall have occurred and be continuing on the date such Incremental Facility is incurred or would exist immediately after giving effect thereto; *provided* that the condition set forth in this clause (a) may be waived or not required (other than with respect to any Specified Event of Default) by the Persons providing such Incremental Facility in connection with a Permitted Acquisition or other Investment permitted hereunder;
  - (b) the representations and warranties in the Loan Documents will be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be accurate in all respects) immediately prior to, and immediately after giving effect to, the incurrence of such Incremental Facility; *provided* that the condition set forth in this clause (b) may be waived or not required (other than with respect to the Specified Representations) in connection with a Permitted Acquisition or other Investment permitted hereunder; and
  - (c) such other conditions (if any) as may be required by the Incremental Lenders providing such Incremental Facility, unless such other conditions are waived by such Incremental Lenders.
- (7) Terms. Any Incremental Facility will be on the terms set forth in the Loan Documents, as amended by the applicable Incremental Facility Amendment; *provided* that (a) any Incremental Commitments will (x) rank *pari passu* in right of payment with the Revolving Facility Claims (y) be secured by Collateral on a *pari passu* basis with the Revolving Facility Claims and (z) be on terms and pursuant to documentation applicable to the Revolving Facility Commitments and will form a part of the existing Revolving Facility; *provided* that Applicable Margin and Applicable Commitment Fees, in each case, applicable to Revolving Facility Commitments and the Revolving Loans may be increased without the consent of any Lender, in connection with the incurrence of any Incremental Commitments such that the Applicable Margin and the Applicable

Commitment Fee Percentage of the Revolving Facility Commitments are identical to those of any Incremental Commitments; *provided, further*, that any commitment, arrangement, upfront or similar fees for such Incremental Commitments will be as determined by a Responsible Officer of the Borrower and the lenders providing such Incremental Commitments and (b) no Incremental Commitments may mature prior to the Maturity Date with respect to the Revolving Facility Commitments existing on the Closing Date.

- (8) Reallocation. Upon each Incremental Revolving Facility Increase in accordance with this Section 2.21:
- (a) each Revolving Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each Incremental Lender providing a portion of such increase, and each such Incremental Lender will automatically and without further act be deemed to have assumed a portion of such Revolving Lender's participations hereunder in outstanding Letters of Credit such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding participations hereunder in Letters of Credit held by each Revolving Lender will equal the percentage of the aggregate Revolving Facility Commitments of all Lenders represented by such Lender's Revolving Facility Commitment; and
  - (b) the Administrative Agent may, in consultation with the Borrower, take any and all actions as may be reasonably necessary to ensure that, after giving effect to such Lender's Incremental Commitments, the percentage of the aggregate Revolving Facility Commitments held by each Lender (including each such Incremental Lender) will equal the percentage of the aggregate Revolving Facility Commitments of all Lenders represented by such Lender's Revolving Facility Commitment, which may be accomplished, at the discretion of the Administrative Agent following consultation with the Borrower, by:
    - (i) requiring any outstanding Loans to be prepaid with the proceeds of a new Borrowing;
    - (ii) causing non-increasing Lenders to assign portions of their outstanding Loans to Incremental Revolving Lenders; or
    - (iii) a combination of the foregoing.

SECTION 2.22 Refinancing Amendments.

- (1) Refinancing Term Loans. At any time after the Closing Date, the Borrower may obtain from any Lender or any Additional Lender, at its election, Credit Agreement Refinancing Indebtedness in the form of term loans under a new term loan facility hereunder ("**Refinancing Term Loans**") pursuant to a Refinancing Amendment. All Refinancing Term Loans shall be secured on a pari passu basis with the Revolving Facility Claims; *provided* that (a) any payments in respect thereof shall be subordinated as required by this Agreement, including (without limitation) as set forth in Section 2.18(3) and (b) such Refinancing Term Loans shall be subject to the FILO Intercreditor Provisions.

- 
- (2) Refinancing Amendments. The effectiveness of any Refinancing Amendment will be subject only to the satisfaction on the date thereof of such of the conditions as may be requested by the providers of the Refinancing Term Loans. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement will be deemed amended (or amended and restated, as applicable) to the extent (but only to the extent) necessary to reflect the existence and terms of the Refinancing Term Loans incurred pursuant thereto (including any amendments necessary to treat the term loans subject thereto as Refinancing Term Loans).
  - (3) Required Consents. Any Refinancing Amendment may, without the consent of any Person other than the Administrative Agent, the Borrower and the Lenders or Additional Lenders providing the applicable Refinancing Term Loans, effect such amendments (or amendments and restatements) to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.22. This Section 2.22 supersedes any provisions in Section 10.08 to the contrary. The transactions contemplated by this Section 2.22 will not require the consent of any other Lender or any other Person, and the requirements of any provision of this Agreement (including Sections 2.11 and 2.18) or any other Loan Document that may otherwise prohibit any transaction contemplated by this Section 2.22 will not apply to any of the transactions effected pursuant to this Section 2.22.
  - (4) Providers of Refinancing Term Loans. Refinancing Term Loans may be provided by any existing Lender (it being understood that no existing Lender shall have an obligation to make all or any portion of any Refinancing Term Loan) or by any Additional Lender. It is understood that any Lender approached to provide all or a portion of Refinancing Term Loans may elect or decline, in its sole discretion, to provide such Refinancing Term Loans (it being understood that there is no obligation to approach any existing Lenders to provide any Refinancing Term Loans).

SECTION 2.23 Extensions of Loans and Revolving Commitments.

- (1) Extension Offers. Pursuant to one or more offers (each, an “*Extension Offer*”) made from time to time by the Borrower to all Lenders of Revolving Loans or all Refinancing Term Lenders (and with respect to any Extension Offer each Lender may, in its sole discretion, choose whether to accept or reject such Extension Offer), with a like Maturity Date, the Borrower may extend the Maturity Date of each such Lender’s Loans or Revolving Facility Commitments and otherwise modify the terms of such Loans or Revolving Facility Commitments pursuant to the terms of the relevant Extension Offer, including by increasing the interest rate or fees payable in respect to such Revolving Facility Commitments (each, an “*Extension*, ” and each group of Loans or Revolving Facility Commitments so extended, as well as the original Loans or Revolving Facility Commitments not so extended, being a “*tranche*”). Each Extension Offer will specify

the minimum amount of Revolving Facility Commitments with respect to which an Extension Offer may be accepted, which will be an integral multiple of \$1.0 million and an aggregate principal amount that is not less than \$10.0 million (or (a) if less, the aggregate principal amount of such Revolving Facility Commitments or (b) such lesser minimum amount as is approved by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed), and will be made on a *pro rata* basis to all Lenders having Revolving Facility Commitments with a like Maturity Date. If the aggregate outstanding principal amount of Loans and Revolving Facility Commitments (calculated on the face amount thereof) in respect of which Lenders have accepted an Extension Offer exceeds the maximum aggregate principal amount of Loans and Revolving Facility Commitments offered to be extended pursuant to an Extension Offer, then the Loans and Revolving Facility Commitments of such Lenders will be extended ratably up to such maximum amount based on the Revolving Facility Commitments of or the principal amounts (but not to exceed actual holdings of record) with respect to which the Lenders that have accepted such Extension Offer. There is no requirement that any Extension Offer or Extension Amendment (defined as follows) be subject to any “most favored nation” pricing provisions. The terms of an Extension Offer will be determined by the Borrower and an Extension Offer may contain one or more conditions to its effectiveness, including that a minimum amount of Loans or Revolving Facility Commitments or any or all applicable tranches be tendered.

- (2) Extension Amendments. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents (which may, at the option of the Administrative Agent and the Borrower, be in the form of an amendment and restatement of this Agreement or such Loan Document, as applicable) (an “**Extension Amendment**”) with the Borrower as may be necessary in order to establish new tranches in respect of Extended Commitments (and related Extended Loans) and such amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new tranches, in each case, on terms consistent with this Section 2.23. This Section 2.23 supersedes any provisions in Section 2.18 or 10.08 to the contrary. Except as otherwise set forth in an Extension Offer, there will be no conditions to the effectiveness of an Extension Amendment. Extensions will not constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.
- (3) Terms of Extension Offers and Extension Amendments. The terms of any Extended Commitments (and related Extended Loans) will be set forth in an Extension Offer and as agreed between the Borrower and the Extending Lenders accepting such Extension Offer; *provided* that:
  - (a) the final maturity date of such Extended Loans will be no earlier than the Latest Maturity Date applicable to the Revolving Loans or Revolving Facility Commitments subject to such Extension Offer;
  - (b) any Extended Loans or Revolving Facility Commitments may participate on a pro rata basis or less than pro rata basis (but not greater than a pro rata basis) in mandatory prepayments of Loans or mandatory terminations of Revolving Facility Commitments;

- 
- (c) such Extended Loans or Revolving Facility Commitments are not secured by any assets or property that does not constitute Collateral;
  - (d) such Extended Loans or Revolving Facility Commitments are not guaranteed by any Person other than a Subsidiary Loan Party; and
  - (e) the other terms and conditions applicable to the Extended Loans or Extended Commitments are (i) substantially identical to, or, taken as a whole, no more favorable to the lenders or holders providing such Extended Loans or Extended Commitments than those applicable to the Revolving Loans or Revolving Facility Commitments subject to such Extension Offer (except for covenants applicable only to periods after the Latest Maturity Date of the Revolving Loans or Revolving Facility Commitments subject to such Extension Offer) (*provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least four (4) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to the incurrence of such Extended Loans or Extended Commitments together with a reasonably detailed description of the material covenants and event of default of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (d) shall be conclusive evidence that such Indebtedness satisfies this clause (d) unless the Administrative Agent notifies the Borrower within such four (4) Business Day (or shorter) period that it disagrees with such determination (including a description of the basis upon which it disagrees)); *provided* that this clause (d) will not apply to (v) terms addressed in the preceding clauses (a) through (c), (x) interest rate, rate floors, fees, funding discounts and other pricing terms, (y) redemption, prepayment or other premiums, or (z) optional prepayment or redemption terms.

Any Extended Term Loans will constitute a separate tranche of Term Loans from the Term Loans held by Lenders that did not accept the applicable Extension Offer and such Extended Term Loans shall also be subject to the requirements set forth in Section 2.22 with regards to the terms and conditions applicable to Refinancing Term Loans.

- (4) Required Consents. No consent of any Lender or any other Person will be required to effectuate any Extension, other than the consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned), the Borrower and each Extending Lender participating in such Extension with respect to one or more of its Loans or Revolving Facility Commitments. The transactions contemplated by this Section 2.23 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Loans or Extended Commitments on such terms as may be set forth in the relevant Extension Offer) will not require the consent of any other Lender or any other Person, and the requirements of any provision of this Agreement (including Sections 2.18 and 10.08) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.23 will not apply to any of the transactions effected pursuant to this Section 2.23.

SECTION 2.24 Defaulting Lenders.

- (1) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:
- (a) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement is restricted as set forth in Section 10.08.
  - (b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), will be applied at such time or times as may be determined by the Administrative Agent as follows:
    - (i) *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder;
    - (ii) *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to any Issuing Bank hereunder;
    - (iii) *third*, if so determined by the Administrative Agent or requested by the Issuing Bank, to be held as cash collateral for future funding obligations of such Defaulting Lender of any participation in any Letter of Credit;
    - (iv) *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent;
    - (v) *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Revolving Loans under this Agreement;
    - (vi) *sixth*, to the payment of any amounts owing to the Lenders or the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the Issuing Banks against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement;
    - (vii) *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Loan Parties as a result of any judgment of a court of competent jurisdiction obtained by the Loan Parties against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and

(viii) *eight* , to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

*provided* that if such payment is a payment of the principal amount of any Loans or L/C Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, such payment will be applied solely to pay the Loans of, and L/C Disbursements owed to, all non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Disbursements owed to, such Defaulting Lender. Any payments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 2.24(1)(b) will be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

- (c) Certain Fees. Such Defaulting Lender (i) will not be entitled to receive any Commitment Fee pursuant to Section 2.12(1) or otherwise for any period during which that Lender is a Defaulting Lender (and the Borrower will not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender) and (ii) will not be entitled to receive any L/C Participation Fee pursuant to Section 2.12(2) or otherwise for any period during which that Lender is a Defaulting Lender (although the Borrower will be required to pay any such L/C Participation Fee that otherwise would have been required to have been paid to such Defaulting Lender to the non-Defaulting Lenders or Issuing Banks, in accordance with (and to the extent of) any reallocation of Fronting Exposure to non-Defaulting Lenders or as may be retained by the Issuing Bank as cash collateral in accordance herewith, as the case may be).
- (d) Reallocation of Applicable Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 2.05, the “*Revolving Facility Percentage*” of each non-Defaulting Lender will be computed without giving effect to the Commitment of such Defaulting Lender; *provided*, that, each such reallocation will be given effect only to the extent such that the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit will not exceed the positive difference, if any, of (i) the Revolving Facility Commitment of such non-Defaulting Lender *minus* (ii) the aggregate outstanding amount of the Revolving Loans of such Defaulting Lender.
- (e) Elimination of Remaining Fronting Exposure. At any time that there exists a Defaulting Lender and the reallocation described in clause (d) above cannot, or can only partially, be effected, promptly upon the request of the Administrative Agent or any Issuing Bank, the Borrower will (without prejudice to any right or remedy available to it hereunder or under law) deliver cash collateral in an amount to be agreed between the Borrower and each applicable Issuing Bank, but no greater than 105% of the outstanding amount of the applicable Letters of

---

Credit to the Administrative Agent in accordance with the procedures set forth in Section 2.05(11) in an amount sufficient to cover all Fronting Exposure of the Revolving Facility L/C Exposure (after giving effect to Section 2.24(1)(d)) which will be held as security for the reimbursement obligations of the Borrower with respect to the Revolving Facility L/C Exposure.

- (2) **Defaulting Lender Cure**. If the Borrower, the Administrative Agent and the Issuing Banks agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral), such Lender will, to the extent applicable, purchase that portion of outstanding Revolving Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded participations in Letters of Credit to be held on a *pro rata* basis by the Lenders in accordance with their Revolving Facility Percentages (without giving effect to Section 2.24(1)(d)), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; and *provided, further*, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.
- (3) **Termination of Defaulting Lender**. The Borrower may terminate the unused amount of the Commitment of any Lender that is a Defaulting Lender upon not less than three Business Days' prior notice to the Administrative Agent (which shall promptly notify the Lenders thereof), and in such event the provisions of Section 2.24(1)(b) will apply to all amounts thereafter paid by the Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); *provided* that such termination shall not be deemed to be a waiver or release of any claims any Loan Party, any Agent, any Issuing Bank or any Lender may have against such Defaulting Lender.

### ARTICLE III

#### ***Representations and Warranties***

To induce the Lenders to make any extension of credit hereunder on or after the Closing Date, the Borrower, with respect to itself and each of the Restricted Subsidiaries, represents and warrants (i) on the Closing Date solely to the extent set forth in Section 4.01(12) and (ii) thereafter, on the date of any Borrowing or any other extension of credit hereunder to the extent otherwise required hereunder (and subject, for the avoidance of doubt, to Section 1.09), each of the following to each Agent and to each of the Lenders:

SECTION 3.01 Organization; Powers. The Borrower and each Loan Party:

- (1) is a Person duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (to the extent such status or an analogous concept applies to such an organization or in such jurisdiction);
- (2) has all requisite corporate or other organizational power and authority to own its property and assets and to carry on its business as now conducted;
- (3) is qualified to do business in each jurisdiction where such qualification is required, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect; and
- (4) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents to which it is a party and each other agreement or instrument contemplated thereby to which it is a party.

SECTION 3.02 Authorization; No Contravention.

- (1) The execution, delivery and performance by the Loan Parties of each of the Loan Documents to which it is a party have been duly authorized by all necessary corporate or other organizational action.
- (2) The execution, delivery and performance by each Loan Party of each Loan Document to which such Loan Party is a party and the consummation of the Transactions will not:
  - (a) result in a breach or contravention of, or the creation of any Lien (other than any Liens created by the Loan Documents and Permitted Lien) upon the property or assets of such Loan Party or any of the Restricted Subsidiaries under (i) any Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or the properties or assets of such Loan Party or any of its Restricted Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property or assets is subject;
  - (b) violate applicable Law; or
  - (c) contravene the terms of its Organizational Documents;

except with respect to clauses (a) and (b) of this Section 3.02(2) as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.03 Enforceability. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to:

- (1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws (including Debtor Relief Laws) affecting creditors' rights generally;

- 
- (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);
  - (3) implied covenants of good faith and fair dealing; and
  - (4) any foreign laws, rules and regulations as they relate to pledges of Equity Interests in Non-U.S. Subsidiaries.

SECTION 3.04 Governmental Approvals. No material action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for:

- (1) filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties;
- (2) filings which may be required under Environmental Laws;
- (3) filings as may be required under the Exchange Act and applicable stock exchange rules in connection therewith;
- (4) such as have been made or obtained and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Security Documents);
- (5) such actions, consents, approvals, registrations or filings the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect.

SECTION 3.05 Title to Properties; Liens. Each of the Borrower and the Subsidiary Loan Parties has valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all of its Real Properties and valid title to its personal property and assets, in each case, except for Permitted Liens or defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes, in each case, except where the failure to have such title, interest or easement would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

SECTION 3.06 Subsidiaries. Schedule 3.06 sets forth as of the Closing Date and after giving effect to the Transactions, the name and jurisdiction of incorporation, formation or organization of the Borrower and each Restricted Subsidiary and, as to each Restricted Subsidiary, the percentage of each class of Equity Interests owned by the Borrower or by any other Subsidiary of the Borrower.

SECTION 3.07 Litigation; Compliance with Laws.

- (1) There are no actions, suits or proceedings, or, to the knowledge of the Borrower, investigations at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any Restricted Subsidiary or any business, property or rights (including any studies, tests or preclinical or clinical trials) of any such Person (excluding any actions, suits or proceedings arising under or relating to any Environmental Laws, which are subject to Section 3.13, but including in respect of any Health Care Law), in each case, which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.
- (2) To the knowledge of the Borrower, none of the Borrower, any Restricted Subsidiary or their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval, or any building permit, but excluding any Environmental Laws, which are subject to Section 3.13) or any restriction of record or agreement affecting any property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.
- (3) Each of the Borrower and its Restricted Subsidiaries have, and they and their products are in conformance with, all authorizations, approvals, licenses, permits, certificates, or exemptions required by the FDA or other Governmental Authority under the Healthcare Laws (the “**Healthcare Permits**”) to conduct their businesses as currently conducted or as reasonably anticipated, except where a failure to have or conform with such Healthcare Permits would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Neither the Borrower nor its Restricted Subsidiaries have received any written notice from the FDA or any other Governmental Authority that it is considering materially limiting, suspending, or revoking any Healthcare Permit (nor, to the knowledge of the Borrower, are any such actions threatened). The Borrower and its Restricted Subsidiaries have made all material notifications, modifications, submissions, and reports required to be made to the FDA or any other Governmental Authority under the Healthcare Permits and Healthcare Laws, and to the knowledge of the Borrower, all such notifications, modifications, submissions, or reports were true, complete, and correct in all material respects.
- (4) In the past two years: (i) all products manufactured, tested, investigated, marketed, sold or distributed by or on behalf of the Borrower and its Restricted Subsidiaries have been and are in compliance in all material respects with all applicable Healthcare Laws and any other applicable Laws; (ii) neither the Borrower nor its Restricted Subsidiaries have received any written warning letter or other written notice regarding a material violation of any Healthcare Laws, nor are they subject to any continuing material obligation arising under any warning letter or other notice of material violation of any Healthcare Laws; and (iii) except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, no product manufactured, marketed, sold or distributed by or on behalf of the Borrower and its Restricted Subsidiaries has been seized, withdrawn, recalled, subject to a detention order, safety alert or suspension by the FDA or other Governmental Authority and, to the knowledge of the Borrower, there are no facts or circumstances (including pending or threatened proceedings) reasonably likely to cause any of the foregoing.

- 
- (5) Neither the Borrower nor its Restricted Subsidiaries nor, to the knowledge of the Borrower, any of their respective officers, directors, employees, agents or contractors have been excluded or debarred from any federal healthcare program (including without limitation Medicare or Medicaid).

SECTION 3.08 Federal Reserve Regulations.

- (1) None of the Borrower or any Restricted Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.
- (2) No part of the proceeds of any Loan or Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund Indebtedness originally incurred for such purpose or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

SECTION 3.09 Investment Company Act. None of the Borrower or any Subsidiary Loan Party is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.10 Use of Proceeds. The Borrower shall use the proceeds of the Revolving Loans, and may request the issuance of Letters of Credit, for working capital and other general corporate purposes (including for capital expenditures, Permitted Investments, Restricted Payments and the repayment or refinancing of Indebtedness, in each case to the extent not prohibited hereunder and any other uses not prohibited by the Loan Documents).

SECTION 3.11 Tax Returns. Except as set forth on Schedule 3.11:

- (1) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of the Borrower and the Restricted Subsidiaries has filed or caused to be filed all federal, state, local and non-U.S. Tax returns required to have been filed by it; and
- (2) Each of the Borrower and the Restricted Subsidiaries has timely paid or caused to be timely paid (a) all Taxes shown to be due and payable by it on the returns referred to in clause (1) of this Section 3.11 and (b) all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes due) with respect to all periods or portions thereof ending on or before the Closing Date, which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, in each case except Taxes or assessments that are being contested in good faith by appropriate proceedings and for which, if applicable, the Borrower or any Restricted Subsidiary (as the case may be) has set aside on its books adequate reserves in accordance with GAAP.

SECTION 3.12 No Material Misstatements.

- (1) All written factual information and written factual data (other than the Projections, estimates and information of a general economic or industry specific nature) concerning the Borrower or any Restricted Subsidiary that has been made available to the Administrative Agent or the Lenders, directly or indirectly, by or on behalf of the Borrower or any Restricted Subsidiary in connection with the Transactions, when taken as a whole and after giving effect to all supplements and updates provided thereto, is correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made.
- (2) The Projections that have been made available to the Administrative Agent or the Lenders by or on behalf of the Borrower in connection with the Transactions, when taken as a whole, have been prepared in good faith based upon assumptions that are believed by the Borrower to be reasonable at the time made and at the time delivered to the Administrative Agent or the Lenders, it being understood by the Administrative Agent and the Lenders that:
  - (a) the Projections are merely a prediction as to future events and are not to be viewed as facts;
  - (b) the Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower or Impax;
  - (c) no assurance can be given that any particular Projections will be realized; and
  - (d) actual results may differ and such differences may be material.

SECTION 3.13 Environmental Matters. Except as set forth on Schedule 3.13 or as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

- (1) each of the Borrower and the Restricted Subsidiaries is in compliance with all Environmental Laws (including having obtained and complied with all permits, licenses and other approvals required under any Environmental Law for the operation of its business);
- (2) none of the Borrower or any Restricted Subsidiary has received notice of or is subject to any pending, or to the Borrower's knowledge, threatened action, suit or proceeding alleging a violation of, or liability under, any Environmental Law that remains outstanding or unresolved;
- (3) to the Borrower's knowledge, no Hazardous Material is located at, on or under any property currently or formerly owned, operated or leased by the Borrower or any Restricted Subsidiary and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by the Borrower or any Restricted Subsidiary and transported to or Released at any location which, in each case, described in this clause (3), would reasonably be expected to result in liability to the Borrower or any Restricted Subsidiary; and

- 
- (4) there are no agreements in which the Borrower or any Restricted Subsidiary has expressly assumed or undertaken responsibility for any known or reasonably anticipated liability or obligation of any other Person arising under or relating to Environmental Laws or Hazardous Materials.

SECTION 3.14 Security Documents.

- (1) Except as otherwise contemplated hereunder or under any other Loan Documents, the Collateral Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) legal and valid Liens on the Collateral described therein; and when financing statements in appropriate form are filed in the offices specified on Schedule III to the Collateral Agreement, a short form grant of security interest in Intellectual Property Rights (in substantially the form of Exhibit II to the Collateral Agreement (for trademarks), Exhibit III to the Collateral Agreement (for patents) or Exhibit IV to the Collateral Agreement (for copyrights)) is properly filed in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, and the Pledged Collateral described in the Collateral Agreement is delivered to the Collateral Agent, the Liens on the Collateral granted pursuant to the Collateral Agreement will constitute fully perfected Liens on all right, title and interest of the grantors in such Collateral in which (and to the extent) a security interest can be perfected under Article 9 of the Uniform Commercial Code, in each case prior to and superior in right of the Lien of any other Person (subject to Permitted Liens).
- (2) Notwithstanding anything herein (including this Section 3.14) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty (a) as to the effects of perfection or non-perfection, the priority or enforceability of any pledge of or security interest in any Excluded Assets or (b) as to the effects of perfection or non-perfection, the priority or enforceability of any pledge of or security interest in any Equity Interests of any Non-U.S. Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign law.

SECTION 3.15 Location of Real Property and Leased Premises.

- (1) Schedule 3.15(1) correctly identifies, in all material respects, as of the Closing Date, all material Real Property owned in fee by the Loan Parties. As of the Closing Date, the Loan Parties own in fee all the Real Property set forth as being owned by them on Schedule 3.15(1).
- (2) Schedule 3.15(2) lists correctly in all material respects, as of the Closing Date, all material Real Property leased by any Loan Party and the addresses thereof. As of the Closing Date, the Loan Parties have in all material respects valid leases in all material Real Property set forth as being leased by them on Schedule 3.15(2).

SECTION 3.16 Solvency. On the Closing Date, after giving effect to the consummation of the Transactions, including the Borrowing of the Loans hereunder, if applicable, and after giving effect to the application of the proceeds of such Loans, if applicable:

- (1) the fair value of the assets of the Borrower and its Restricted Subsidiaries, on a consolidated basis, exceeds their debts and liabilities (subordinated, contingent or otherwise), on a consolidated basis;
- (2) the present fair saleable value of the property of the Borrower and its Restricted Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities (subordinated, contingent or otherwise), on a consolidated basis, as such debts and other liabilities become absolute and matured;
- (3) the Borrower and its Restricted Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities (subordinated, contingent or otherwise), on a consolidated basis, as such liabilities become absolute and matured; and
- (4) the Borrower and its Restricted Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

For purposes of this Section 3.16, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

SECTION 3.17 Financial Statements; No Material Adverse Effect.

- (1) The consolidated balance sheets of the Borrower and its consolidated subsidiaries and of Impax and its consolidated subsidiaries as at December 31, 2017, and related statements of operations and cash flows of the Borrower and its consolidated subsidiaries and Impax and its consolidated set forth in the PIPE Registration Statement fairly present in all material respects the financial condition of each of the Borrower and Impax, as applicable, and their respective Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.
- (2) The unaudited *pro forma* condensed combined financial information and explanatory notes of Amneal Inc. set forth in the PIPE Registration Statement, prepared after giving effect to the Transactions as if the Transactions had occurred on December 31, 2017 (in the case of such balance sheet) or at the beginning of such period (in the case of the statement of operations), copies of which have heretofore been furnished to the Administrative Agent, have been prepared in good faith, based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a *pro forma* basis the estimated financial position of Amneal Inc. and its Subsidiaries as of December 31, 2017 and their estimated results of operations for the period covered thereby.

- 
- (3) Since December 31, 2017, there has been no event that has had, or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.
  - (4) The forecasts of consolidated balance sheets and income statements of the Borrower and its Subsidiaries which have been furnished to the Administrative Agent prior to the Closing Date, when taken as a whole, have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time furnished, it being understood that (i) no forecasts are to be viewed as facts, (ii) any forecasts are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower, Impax and their respective Subsidiaries and Affiliates, (iii) no assurance can be given that any particular forecasts will be realized and (iv) actual results may differ and such differences may be material.

SECTION 3.18 Insurance. Schedule 3.18 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of the Borrower or any Restricted Subsidiary as of the Closing Date. As of such date, such insurance is in full force and effect.

SECTION 3.19 USA PATRIOT Act; Anti-Corruption; Sanctions.

- (1) To the extent applicable, each of the Borrower and the Restricted Subsidiaries is in compliance, in all material respects, with the USA PATRIOT Act.
- (2) No part of the proceeds of the Loans will be used by the Borrower or any of the Restricted Subsidiaries, directly or indirectly, (i) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of Anti-Corruption Laws, or (ii) in any manner that would result in the violation of any applicable Sanctions.
- (3) None of the Borrower or any Restricted Subsidiary, nor any of their respective directors or officers, nor, to the knowledge of the Borrower or any Restricted Subsidiary, any of their respective agents and employees, is any of the following:
  - (a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the “*Executive Order*”);
  - (b) a Person owned or Controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
  - (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any laws with respect to terrorism or money laundering;
  - (d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

---

(e) a Sanctioned Person.

- (4) The Borrower and the Restricted Subsidiaries, and their respective officers and directors, and, to the knowledge of the Borrower or any Restricted Subsidiary, their respective employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects and are not knowingly engaged in any activity that could reasonably be expected to result in the Borrower or any Restricted Subsidiary being designated as a Sanctioned Person.
- (5) The Borrower has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance in all material respects by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 3.20 Intellectual Property Rights; Licenses, Etc. Except as would not reasonably be expected to have a Material Adverse Effect:

- (1) the Borrower and each Restricted Subsidiary owns, or possesses the right to use, all of the patents, patent rights, inventions, know-how, trademarks, service marks, trade names, copyrights or mask works, domain names, trade secrets and other intellectual property rights (collectively, “**Intellectual Property Rights**”) that are reasonably necessary for the operation of their respective businesses (provided the foregoing shall not be construed as a warranty with respect to non-infringement of third party intellectual property rights);
- (2) to the knowledge of the Borrower or any Restricted Subsidiary, neither the Borrower nor any of the Restricted Subsidiaries nor any Intellectual Property Rights, product, process, method, substance, part or other material now made, used, employed, sold or offered for sale by the Borrower or the Restricted Subsidiaries, nor the business of the Borrower or any of the Restricted Subsidiaries is infringing upon, misappropriating or otherwise violating Intellectual Property Rights of any Person, but excluding any (i) infringement of any Intellectual Property Rights caused by the filing of any abbreviated new drug application for a product filed with the FDA pursuant to §505(j) of the United States Federal Food, Drug, and Cosmetic Act, as amended from time to time (the “FFDCA”) or by the filing of any new drug application for a product filed with the FDA pursuant to §505(b)(2) of the FFDCA and (ii) infringement of any Intellectual Property Rights alleged pursuant to a Paragraph IV Proceeding for which a Paragraph IV Certification Notice has been made; and
- (3) no claim or litigation (including any cease and desist letters) regarding any of the foregoing in (1) or (2) is pending or, to the knowledge of the Borrower, threatened. The representations set forth in Section 3.20(2) and this Section 3.20(3) are the only representations given by the Borrower (including on behalf of its Restricted Subsidiaries) with respect to non-infringement of Intellectual Property Rights.

SECTION 3.21 Employee Benefit Plans. Except as would not reasonably be expected to have a Material Adverse Effect, the Borrower and each of its ERISA Affiliates are in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, would reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, the present value of all accumulated benefit obligations under all Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plans, in the aggregate.

SECTION 3.22 Labor Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (1) there are no strikes or other labor disputes against any of the Borrower or its Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened and (2) hours worked by and payment made based on hours worked to employees of each of the Borrower or its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with wage and hour matters.

SECTION 3.23 Borrowing Base Certificate. At the time of delivery of each Borrowing Base Certificate, assuming that any eligibility criteria that requires the approval or satisfaction of the Administrative Agent has been approved by or is satisfactory to the Administrative Agent, each material Account reflected therein as eligible for inclusion in the Borrowing Base is an Eligible Account, the material Inventory reflected therein as eligible for inclusion in the Borrowing Base constitutes Eligible Inventory and the cash and Cash Equivalents reflected therein as eligible for inclusion in the Borrowing Base constitute Eligible Cash.

#### ARTICLE IV

##### *Conditions of Lending*

SECTION 4.01 Closing Date Conditions Precedent. The obligations of (a) the Lenders to make Loans and (b) any Issuing Bank to issue Letters of Credit or amend, extend, reinstate or renew Letters of Credit hereunder (each, a “*Credit Event*”) is subject solely to the satisfaction or waiver by the Administrative Agent, of the following conditions precedent:

- (1) Loan Documents. The Administrative Agent shall have received (a) this Agreement duly executed and delivered by a Responsible Officer of the Borrower, (b) the Collateral Agreement duly executed and delivered by a Responsible Officer of the Borrower and its Restricted Subsidiaries that are Subsidiary Loan Parties (including the related short form grants of security interest in Intellectual Property Rights duly executed and delivered by a Responsible Officer of each applicable Loan Party) and (c) an acknowledgment to the Closing Date Intercreditor Agreement duly executed and delivered by a Responsible Officer of the Borrower and its Restricted Subsidiaries that are Subsidiary Loan Parties.
- (2) Borrowing Request. On or prior to the Closing Date, the Administrative Agent shall have received a Borrowing Request.

- 
- (3) Acquisition Transactions. Prior to or substantially concurrently with the initial extension of credit hereunder on the Closing Date:
- (a) the Acquisition will be consummated pursuant to the Acquisition Agreement, and no provision thereof shall have been amended, modified or waived, and no consent shall have been given thereunder, in each case in any manner materially adverse to the interests of the Lenders without the prior written consent of the Arrangers (it being understood and agreed that any modification, amendment, consent or waiver of the definition of “Impax Material Adverse Effect” contained in the Acquisition Agreement as in effect on October 17, 2017 shall be deemed to be materially adverse to the interests of the Lenders); and
  - (b) the Closing Date Refinancing will be consummated.
- (4) Fees. Payment of all (a) Fees required to be paid on the Closing Date pursuant to the Fee Letters and (b) reasonable (and reasonably documented) out-of-pocket expenses required to be paid on the Closing Date pursuant to the Commitment Letter, in each case to the extent invoiced in reasonable detail at least three (3) Business Days prior to the Closing Date (except as otherwise reasonably agreed by the Borrower).
- (5) Solvency Certificate. The Administrative Agent shall have received a solvency certificate substantially in the form attached hereto as Exhibit C.
- (6) Closing Date Certificates. The Administrative Agent shall have received such certificates of good standing from the applicable secretary of state (or other similar Governmental Authority) of the jurisdiction of organization of the Borrower and its Restricted Subsidiaries that are Subsidiary Loan Parties as of the Closing Date, customary resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of the Borrower and its Restricted Subsidiaries that are Subsidiary Loan Parties as of the Closing Date evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which it is a party or is to be a party on the Closing Date, the Organizational Documents of each such Loan Party and, in the case of the Borrower including certification by a Responsible Officer of the Borrower that the conditions specified in clauses (3), (9) and (12) of this Section 4.01 have been or substantially concurrent with the initial extension of credit hereunder on the Closing Date will be satisfied;
- (7) Legal Opinions. The Administrative Agent shall have received a customary legal opinion of Latham & Watkins LLP, special counsel to the Loan Parties.
- (8) Pledged Equity Interests. Except as otherwise agreed by the Administrative Agent, the Borrower shall have confirmed to the Administrative Agent that prior to or substantially concurrently with the initial extension of credit hereunder on the Closing Date, the Term Agent shall have received (a) to the extent delivered to the Borrower pursuant to the terms of the Closing Date Refinancing and constituting Collateral, the certificates representing the Equity Interests (if such Equity Interests are certificated) of the Borrower

---

and its Wholly Owned U.S. Subsidiaries that are Material Subsidiaries and (b) to the extent delivered to the Borrower pursuant to the terms of the Acquisition Agreement and constituting Collateral, the certificates representing the Equity Interests (if such Equity Interests are certificated) of Impax and its Wholly Owned U.S. Subsidiaries that are Material Subsidiaries, in each case to the extent such Equity Interests are required to be pledged pursuant to the Collateral Agreement, together with a customary stock power for each such certificate executed in blank.

- (9) No Material Adverse Effect. Since the date of the Acquisition Agreement, there shall not have been any change, effect, event, circumstance, occurrence or state of facts that has had or would reasonably be expected to have, individually or in the aggregate, an Impax Material Adverse Effect (as defined in the Acquisition Agreement as in effect on October 17, 2017).
- (10) Registration Statement. The Registration Statement (as defined in the Acquisition Agreement as of October 17, 2017) shall have been declared effective under the Securities Act (as defined in the Acquisition Agreement as of October 17, 2017).
- (11) Know Your Customer and Other Required Information. All outstanding documentation and other information about the Loan Parties required under applicable “know your customer” and anti-money laundering rules and regulations, as has been reasonably requested in writing by the Administrative Agent at least ten (10) Business Days prior to the Closing Date, will be provided not later than the date that is two (2) Business Days prior to the Closing Date.
- (12) Representations and Warranties. Subject to the Certain Funds Provisions, the Specified Acquisition Agreement Representations and Specified Representations will be true and correct in all material respects; *provided* that the failure of a Specified Acquisition Agreement Representation to be true and correct will not result in a failure of a condition precedent under this Article IV unless such failure results in a failure of a condition precedent to the Borrower’s (or its Affiliates’) obligation to consummate the Acquisition pursuant to the terms of the Acquisition Agreement or such failure gives the Borrower the right (taking into account any applicable cure provisions) to terminate its obligations under the Acquisition Agreement.

There are no conditions, implied or otherwise, to the making of the initial extension of credit on the Closing Date other than as set forth in the preceding clauses (1) through (12) and upon satisfaction or waiver by the Administrative Agent of such conditions the initial Credit Extension on the Closing Date, if any, will be made by the Lenders. 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 written notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

SECTION 4.02 All Credit Events After the Closing Date. Except as set forth in Section 2.21(6), 2.22(2) and 2.23(2) and subject to Section 1.09, each Credit Event after the Closing Date is subject solely to the satisfaction or waiver of the following conditions precedent:

- (1) The Administrative Agent shall have received, in the case of a Borrowing, a Borrowing Request as required by Section 2.03 (or a Borrowing Request shall have been deemed given in accordance with Section 2.03(4)) or, in the case of the issuance of a Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance of such Letter of Credit (and if requested by such Issuing Bank, a letter of credit application) as required by Section 2.05(2).
- (2) The representations and warranties set forth in the Loan Documents will be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such date, as applicable, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties will be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date).
- (3) At the time of and immediately after any Borrowing or issuance, amendment, extension or renewal of a Letter of Credit (other than an amendment, extension not beyond the Maturity Date, or renewal of a Letter of Credit without any increase in the stated amount thereof), as applicable, no Default or Event of Default shall have occurred and be continuing or would result therefrom.
- (4) At the time after such Borrowing or issuance, amendment, extension or renewal of a Letter of Credit, as applicable, the sum of, without duplication, of Revolving Loans, unreimbursed drawings under Letters of Credit and the face amount of undrawn amount of outstanding Letters of Credit does not exceed the Line Cap.

Each such Credit Event occurring after the Closing Date will be deemed to constitute a representation and warranty by the Borrower on the date of such Credit Event as to the matters specified in paragraphs (2), (3) and (4) of this Section 4.02.

There are no conditions, implied or otherwise, to the making of Loans after the Closing Date other than as set forth in the preceding clauses (1) through (4) of Section 4.02 and upon satisfaction or waiver of such conditions Loans will be made by the Lenders and any applicable Letters of Credit will be issued, amended, extended or renewed.

## ARTICLE V

### *Affirmative Covenants*

The Borrower covenants and agrees with each Lender that so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations have been Paid in Full, unless the Required Lenders otherwise consent in writing, the Borrower will, and will cause each Restricted Subsidiary, to:

SECTION 5.01 Existence, Businesses and Properties.

- (1) Preserve, renew and keep in full force and effect its legal existence under the Laws of the jurisdiction of its incorporation or organization, except:
  - (a) in the case of a Restricted Subsidiary, where the failure to do so would not reasonably be expected to have a Material Adverse Effect; or
  - (b) in connection with a transaction permitted under Section 6.05.
- (2) (a) Do or cause to be done all things reasonably necessary to lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, Intellectual Property Rights, licenses and rights with respect thereto material to the normal conduct of its business (including the Permits) and (b) maintain and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition (ordinary wear and tear and casualty or condemnation excepted), in each case, except:
  - (i) as expressly permitted by this Agreement;
  - (ii) such as may expire, be abandoned or lapse in the ordinary course of business; or
  - (iii) where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.02 Insurance.

- (1) Maintain, with insurance companies that the Borrower reasonably believes in good faith to be financially sound and reputable at the time the relevant coverage is placed or renewed, or with a Captive Insurance Subsidiary, insurance (including property, casualty and general liability) in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) and against such risks as are customarily maintained by similarly situated Persons engaged in the same or similar businesses operating in the same or similar locations, and cause, as is appropriate and customary and, with respect to jurisdictions outside of the United States, to the extent available and customary in such jurisdictions, the Collateral Agent (a) to be listed as an additional insured on liability policies or (b) in the case of property and casualty policies, contain a loss payable clause or endorsement listing the Collateral Agent as a co-loss payee thereon. The Borrower will furnish to the Administrative Agent or Collateral Agent, upon reasonable written request, information in reasonable detail as to the insurance so maintained. Notwithstanding the foregoing, it is understood and agreed that no Loan Party will be required to maintain flood insurance unless any material Real Property owned by it is required to be so insured pursuant to the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1968, and the regulations promulgated thereunder, because such material Real Property is located in an area which has been identified by the Secretary of Housing and Urban Development as a "special flood hazard area."

- 
- (2) Use commercially reasonable efforts upon the Administrative Agent's reasonable written request to: (a) if insurance is procured from insurance companies, obtain certificates and endorsements reasonably acceptable to the Administrative Agent with respect to property and casualty insurance; (b) cause each property and casualty insurance policy referred to in this Section 5.02 and procured from an insurance company to provide that it shall not be cancelled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than 10 days' prior written notice thereof by the insurer to the Administrative Agent (giving the Administrative Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than 30 days' prior written notice thereof by the insurer to the Administrative Agent; and (c) promptly deliver to the Administrative Agent a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Administrative Agent, including an insurance binder) together with evidence reasonably satisfactory to the Administrative Agent of payment of the premium therefor.

SECTION 5.03 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, pay and discharge promptly when due and payable all Taxes imposed upon it or its income or profits or in respect of its property, before the same becomes delinquent or in default; *provided* that such payment and discharge will not be required with respect to any Tax if (1) the validity or amount thereof is being contested in good faith by appropriate proceedings and (2) the Borrower or any affected Restricted Subsidiary, as applicable, has set aside on its books reserves in accordance with GAAP with respect thereto.

SECTION 5.04 Financial Statements, Reports, etc.. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders):

- (1) within 90 days following the end of each fiscal year, commencing with the fiscal year ended December 31, 2018, a consolidated balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of the Borrower and the Restricted Subsidiaries as of the close of such fiscal year and the consolidated results of its operations during such fiscal year and, in each case, commencing with the fiscal year ending December 31, 2019, setting forth in comparative form the corresponding figures for the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners' equity will be prepared in accordance with GAAP, audited by any independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants (which opinion shall not be subject to any "going concern" statement, explanatory note or like qualification or exception (other than a "going concern" statement, explanatory note or like qualification or exception relating to an anticipated, but not actual, financial covenant default or an upcoming maturity date) (the applicable financial statements delivered pursuant to this clause (1) being the "**Annual Financial Statements**");

- 
- (2) for the first three fiscal quarters of each fiscal year, commencing with the fiscal quarter ended March 31, 2018,
- (a) within 71 days following the Closing Date, for the fiscal quarter ending March 31, 2018, (i) (A) a consolidated balance sheet for the Borrower and its Restricted Subsidiaries (excluding, for the avoidance of doubt, Impax and its subsidiaries) as of the close of such fiscal quarter and (B) the consolidated results of its operations and cash flows for the Borrower and its Restricted Subsidiaries (excluding, for the avoidance of doubt, Impax and its subsidiaries) during such fiscal quarter and the then-elapsed portion of the fiscal year and (ii) (A) a consolidated balance sheet for Impax and its Restricted Subsidiaries (excluding, for the avoidance of doubt, the Borrower and its subsidiaries), as of the close of such fiscal quarter and (B) the consolidated results of operations and cash flows for Impax and its Restricted Subsidiaries (excluding, for the avoidance of doubt, the Borrower and its subsidiaries) during such fiscal quarter and the then-elapsed portion of the fiscal year;
  - (b) for the fiscal quarter ending June 30, 2018, within 45 days of such fiscal quarter end,
    - (i) (A) a consolidated balance sheet for the Borrower and its Restricted Subsidiaries as of the close of such fiscal quarter and (B) the consolidated statement of operations and cash flows for the Borrower and its Restricted Subsidiaries (which will include Impax and its Restricted Subsidiaries for the period from the Closing Date to such fiscal quarter end) during such fiscal quarter and the then-elapsed portion of the fiscal year; and
    - (ii) an unaudited pro forma condensed combined statement of operations for the Borrower and its Restricted Subsidiaries (which will include Impax and its Restricted Subsidiaries) during such fiscal quarter (which pro forma financial statements will be certified by a Responsible Officer of the Borrower on behalf of the Borrower as having been prepared in good faith, based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a pro forma basis the estimated results of operations of the Borrower and its Restricted Subsidiaries during such fiscal quarter end); and
  - (c) for each such fiscal quarter thereafter, within 45 days of such fiscal quarter end, (A) a consolidated balance sheet for the Borrower and the Restricted Subsidiaries as of the close of such fiscal quarter and (B) the consolidated results of operations and cash flows for the Borrower and the Restricted Subsidiaries during such fiscal quarter and the then-elapsed portion of the fiscal year and, commencing with the fiscal quarter ending September 30, 2019, setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year,

in each case (other than the preceding clause (ii)), certified by a Responsible Officer of the Borrower on behalf of the Borrower as fairly presenting, in all material respects, the financial position and results of operations of the Borrower and the Restricted Subsidiaries (or Impax and its Restricted Subsidiaries, as applicable) on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes (the applicable financial statements delivered pursuant to this clause (2) being the “*Quarterly Financial Statements*” and, together with the Annual Financial Statements, the “*Required Financial Statements*”).

- (3) no later than five (5) days after the delivery of any Required Financial Statements, a certificate of a Financial Officer of the Borrower:
  - (a) certifying that no Default or Event of Default has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;
  - (b) upon the occurrence and during the continuance of a Covenant Trigger Event, setting forth in reasonable detail calculations of the Fixed Charge Coverage Ratio for the most recent period of four consecutive fiscal quarters as of the close of the fiscal year or fiscal quarter, as applicable;
  - (c) certifying a list of all Immaterial Subsidiaries, that each Subsidiary set forth on such list individually qualifies as an Immaterial Subsidiary and that all such Subsidiaries in the aggregate do not exceed the limitation set forth in clause (ii) of the definition of the term “Immaterial Subsidiary;” and
  - (d) certifying a list of all Unrestricted Subsidiaries at such time and that each Subsidiary set forth on such list qualifies as an Unrestricted Subsidiary;
- (4) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials publicly filed by the Borrower or any Restricted Subsidiary with the SEC or, after an initial public offering, distributed to its stockholders generally, as applicable, and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any Loan Document;
- (5) within 60 days following the end of each fiscal year, commencing with the fiscal year ending December 31, 2018, a consolidated annual budget for such fiscal year in the form customarily prepared by the Borrower (the “*Budget*”), which Budget will in each case be accompanied by the statement of a Financial Officer of the Borrower on behalf of the Borrower to the effect that the Budget is based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof; *provided* that no Budget will be required to be delivered with respect to the fiscal year ending December 31, 2018;
- (6) upon the reasonable written request of the Collateral Agent, concurrently with the delivery of the Annual Financial Statements, an updated Perfection Certificate (or, to the extent such request relates to specified information contained in the Perfection Certificate, such information) reflecting all changes since the date of the information most recently received pursuant to this paragraph (6) or Section 5.10, as applicable;

- 
- (7) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of the Borrower or any Restricted Subsidiary, in each case, as the Administrative Agent may reasonably request (for itself or on behalf of any Lender) in writing;
  - (8) promptly upon reasonable written request by the Administrative Agent (so long as the following are obtainable using commercially reasonable measures), copies of any documents described in Section 101(k)(1) of ERISA that the Borrower or any of its ERISA Affiliates may request with respect to any Multiemployer Plan; *provided* that if the Borrower or any of its ERISA Affiliates has not requested such documents from the administrator or sponsor of the applicable Multiemployer Plan, the Borrower or the applicable ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof; and
  - (9) a Borrowing Base Certificate from the Borrower on the Initial Borrowing Base Date and, thereafter, as soon as available but in any event on or before the 20th day after the end of each calendar month (or, if such date is not a Business Day, the next succeeding Business Day) (or on a more frequent basis at the discretion of the Borrower; provided that once a more frequent basis is elected it must be continued for no less than 30 days after the date of such election), with such supplemental information and supporting materials as the Administrative Agent may reasonably request and with supplemental information regarding the amount of Eligible Cash held with institutions other than the Administrative Agent being provided to the Administrative Agent on a bi-weekly basis (or, at any time that no Loans are then outstanding and the aggregate stated amounts of all then-outstanding Letters of Credit is less than \$10 million, on a monthly basis); provided, that after the occurrence and during the continuance of an Increased Reporting Period, the Borrower shall be required to deliver a Borrowing Base Certificate on a weekly basis. Notwithstanding the foregoing, the Administrative Agent may not require the Borrower to deliver a Borrowing Base Certificate more frequently than weekly, and in the case of such weekly reporting the Borrowing Base Certificate will be due on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day) calculated as of the close of business on Saturday of the immediately preceding calendar week.

Anything to the contrary notwithstanding, the obligations in clauses (1) and (2) of this Section 5.04 may be satisfied with respect to financial information of the Borrower and the Restricted Subsidiaries by furnishing (1) the applicable financial statements of any Parent Entity or (2) the Borrower's (or any such other Parent Entity's), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that with respect to each of the foregoing clauses (1) and (2) (a) to the extent such information relates to a Parent Entity, such information is accompanied by consolidating information (which need not be audited) that explains in reasonable detail the differences between the information relating to such Parent Entity, on the one hand, and the information relating to the Borrower and the Restricted Subsidiaries on a standalone basis, on the other hand, and (b) to the extent such information is in lieu of information required to be provided under Section 5.04(1), such materials are prepared in accordance with GAAP and accompanied by a report and opinion of any independent public

accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants (which opinion shall not be subject to any “going concern” statement, explanatory note or like qualification or exception (other than a “going concern” statement, explanatory note or like qualification or exception relating to an anticipated, but not actual, financial covenant default or an upcoming maturity date). The obligations in clauses (1) and (2) of this Section 5.04 may be satisfied by delivery of financial information of the Borrower and its Subsidiaries so long as such financial statements include a reasonably detailed presentation (which need not be audited), either on the face of the financial statements or in the footnotes thereto, of the financial condition and results of operations of the Borrower and the Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Borrower.

Documents required to be delivered pursuant to this Section 5.04 may be delivered electronically in accordance with Section 10.01(5).

SECTION 5.05 Litigation and Other Notices. Furnish to the Administrative Agent (which will promptly thereafter furnish to the Lenders) written notice of the following promptly after any Responsible Officer of the Borrower obtains actual knowledge thereof:

- (1) any Default or Event of Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;
- (2) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, or any material development in, any action, suit, litigation, investigation, administrative action or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against the Borrower or any of the Restricted Subsidiaries, as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect, or which alleges (and as to which an adverse determination against the Borrower or any of the Restricted Subsidiaries is reasonably likely to result in) material violations of Healthcare Laws;
- (3) the occurrence of any ERISA Event that, together with all other ERISA Events that have occurred, would reasonably be expected to have a Material Adverse Effect;
- (4) any material change in accounting policies or financial reporting practices by any Loan Party with respect to the Borrower’s Accounts and Inventory or which otherwise could reasonably be expected to affect the calculation of the Borrowing Base or Reserves;
- (5) the Borrower’s receipt of any: (i) written notice from the FDA or other Governmental Authority that it is limiting, suspending, adversely modifying or revoking any Healthcare Permit that could reasonably be expected to have a Material Adverse Effect; (ii) a written warning letter from the FDA; or (iii) other written notice from the FDA or other Governmental Authority that any product manufactured, marketed, developed, sold or distributed by or on behalf of the Borrower and its Restricted Subsidiaries is subject to, or proceedings have been commenced seeking, the material seizure, withdrawal, recall, suspension or detention by the FDA or other Governmental Authority; and

- 
- (6) any seizure, detention, suspension or recall of, or any voluntary withdrawal or recall of, or any response or commitment to the FDA or any Governmental Authority to withdraw or recall, any product manufactured, marketed, developed, sold or distributed by or on behalf of the Borrower and its Subsidiaries which could reasonably be expected to have a Material Adverse Effect.

SECTION 5.06 Compliance with Laws. Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property and assets (including ERISA and Health Care Laws), except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; *provided* that this Section 5.06 will not apply to Environmental Laws, which are the subject of Section 5.09, or laws related to Taxes, which are the subject of Section 5.03. The Borrower will, and will cause each of its Subsidiaries to, maintain in effect and enforce policies and procedures reasonably designed to ensure compliance by the Borrower, its Subsidiaries and the respective directors, officers, employees and agents of the foregoing with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.07 Maintaining Records; Access to Properties and Inspections ; Appraisals.

- (1) Permit any Persons designated by the Administrative Agent to visit and inspect the financial records and the properties of the Borrower or any Restricted Subsidiary at reasonable times, upon reasonable prior written notice from the Administrative Agent to the Borrower, and as often as reasonably requested, to make extracts from and copies of such financial records, and permit any Persons designated by the Administrative Agent, upon reasonable prior written notice from the Administrative Agent to the Borrower, to discuss the affairs, finances and condition of the Borrower or any Restricted Subsidiary with the officers thereof and independent accountants therefor (subject to such accountant's policies and procedures); *provided* that the Administrative Agent may not exercise such rights more often than two times during any calendar year unless an Event of Default is continuing and only one such time will be at the Borrower's expense; and *provided, further*, that when an Event of Default is continuing, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent accountants.
- (2) Upon the Administrative Agent's written request, the Loan Parties will permit any Person designated by the Administrative Agent to conduct, at the Borrower's expense, one (1) field examination in any calendar year (with one (1) additional field examination at the expense of the Lenders or the Administrative Agent in such calendar year), in each case at reasonable business times and upon reasonable prior notice to the Borrower; *provided, however*, that notwithstanding the foregoing, (a) at any time on or after a Collateral Test Triggering Event, any Person designated by the Administrative Agent may carry out, at

---

the Borrower's expense, two (2) such field examinations in such calendar year, and (b) at any time during the continuation of a Designated Event of Default, any Person designated by the Administrative Agent may carry out, at the Borrower's expense, such field examinations as frequently as determined by the Administrative Agent in its Reasonable Credit Judgment. The Loan Parties will reasonably cooperate with the Administrative Agent and such Persons in the conduct of such field examinations.

- (3) Upon the Administrative Agent's written request, the Loan Parties will permit any Acceptable Appraiser designated by the Administrative Agent to conduct, at the Borrower's expense, one (1) inventory appraisal of the Collateral in any calendar year (and one (1) additional inventory appraisal of the Collateral at the expense of the Lenders or the Administrative Agent in such calendar year), in each case at reasonable business times and upon reasonable prior notice to the Borrower; *provided, however*, that notwithstanding the foregoing limitations (a) at any time on or after a Collateral Test Triggering Event, an Acceptable Appraiser designated by the Administrative Agent may carry out, upon the Administrative Agent's written request and at the Borrower's expense, two (2) such inventory appraisals in such calendar year, and (b) at any time during the continuation of a Designated Event of Default, an Acceptable Appraiser designated by the Administrative Agent may carry out, upon the Administrative Agent's written request and at the Borrower's expense, such inventory appraisals as frequently as determined by the Administrative Agent in its Reasonable Credit Judgment. The Loan Parties will reasonably cooperate with the Administrative Agent and such Acceptable Appraiser in the conduct of such appraisals. In addition, the Loan Parties will have the right (but not the obligation), at their expense, at any time and from time to time to provide the Administrative Agent with additional appraisals or updates thereof of any or all of the Collateral from any Acceptable Appraiser prepared in a form and on a basis reasonably satisfactory to the Administrative Agent, in which case such appraisals or updates shall be used in connection with the determination of the Net Orderly Liquidation Value and the calculation of the Borrowing Base hereunder. With respect to each appraisal made pursuant to this Section 5.07(3) after the Closing Date, (i) the Administrative Agent and the Loan Parties will each be given a reasonable amount of time to review and comment on a draft form of the appraisal prior to its finalization and (ii) any adjustments to the Net Orderly Liquidation Value or the Borrowing Base hereunder as a result of such appraisal shall be reflected in the Borrowing Base Certificate delivered immediately succeeding such appraisal.
- (4) Notwithstanding anything to the contrary in this Agreement (including Sections 5.04(7), 5.05 and 5.07) or any other Loan Document, none of the Loan Parties or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter with any Disqualified Institution or other competitor to the Borrower or any of its Subsidiaries or that (1) constitutes non-financial trade secrets or non-financial proprietary information, (2) in respect of which disclosure is prohibited by law or any binding agreement, (3) is subject to attorney-client or similar privilege or constitutes attorney work product or (4) creates an unreasonably excessive expense or burden on the Borrower or any of its Subsidiaries.

SECTION 5.08 Use of Proceeds. Use the proceeds of the Revolving Loans and request issuance of Letters of Credit solely for working capital and other general corporate purposes (including for capital expenditures, Permitted Investments, Restricted Payments and the repayment or refinancing of Indebtedness, in each case to the extent not prohibited hereunder, and any other uses not prohibited by the Loan Documents).

SECTION 5.09 Compliance with Environmental Laws. Comply, and make reasonable efforts to cause all lessees and other Persons occupying its fee-owned Real Properties to comply, with all Environmental Laws applicable to its operations and properties, and obtain and renew all material authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws, except, in each case, to the extent the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.10 Further Assurances: Additional Security.

- (1) If (a) a Restricted Subsidiary (other than an Excluded Subsidiary) of the Borrower is formed or acquired after the Closing Date or (b) an Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, within 120 days after the date such Restricted Subsidiary is formed or acquired or such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, as applicable (or such longer period as the Collateral Agent agrees), the Borrower will or will cause such Restricted Subsidiary to:
- (i) deliver a joinder to the Collateral Agreement, substantially in the form specified therein or in such other form as is acceptable to such Restricted Subsidiary, the Borrower and the Administrative Agent, duly executed on behalf of such Restricted Subsidiary;
  - (ii) to the extent required by and subject to the exceptions set forth in this Section 5.10 or the Security Documents, pledge the outstanding Equity Interests (other than Excluded Equity Interests) owned by such Restricted Subsidiary, and cause each Loan Party owning any Equity Interests issued by such Restricted Subsidiary to pledge such outstanding Equity Interests (other than Excluded Equity Interests), and deliver all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof);
  - (iii) to the extent required by and subject to the exceptions set forth in this Section 5.10 or the Security Documents, deliver to the Collateral Agent (or a designated bailee thereof) Uniform Commercial Code financing statements with respect to such Restricted Subsidiary and such other documents reasonably requested by the Collateral Agent to create the Liens intended to be created under the Security Documents and perfect such Liens to the extent required by the Security Documents; and

- 
- (iv) except as otherwise contemplated by this Section 5.10 or any Security Document or as otherwise agreed by the Collateral Agent, obtain all consents and approvals required to be obtained by it in connection with (A) the execution and delivery of all Security Documents (or supplements thereto) to which it is a party and the granting by it of the Liens thereunder and (B) the performance of its obligations thereunder.
- (2) Furnish to the Collateral Agent within 20 calendar days of such event (or such later date as the Collateral Agent may agree in its sole discretion) written notice of any change in any Loan Party's:
- (a) legal name;
  - (b) type of organization;
  - (c) location (determined as provided in UCC Section 9-307); or
  - (d) jurisdiction of organization;

except, in the case of each of the foregoing clauses (a) through (c), in connection with the Impax Conversion.

The Borrower will not effect or permit any such change unless all filings have been made, or will be made within any statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest, for the benefit of the applicable Secured Parties, in all Collateral held by such Loan Party.

- (3) Execute any and all other documents, financing statements, agreements and instruments, and take all such other actions (including the filing and recording of financing statements and other documents), not described in the preceding clauses (1) and (2) and that may be required under any applicable law, or that the Collateral Agent may reasonably request in writing to the Borrower, to satisfy the requirements set forth in this Section 5.10 and in the Security Documents with respect to the creation and perfection of the Liens on the Collateral in favor of the Collateral Agent, for the benefit of the Secured Parties, contemplated herein and in the Security Documents and to cause such requirement to be and remain satisfied, all at the expense of the Borrower, and provide to the Collateral Agent, from time to time upon Collateral Agent's reasonable written request, evidence as to the perfection and priority of the Liens created by the Security Documents (subject to Permitted Liens).
- (4) Notwithstanding anything to the contrary,
- (a) the other provisions of this Section 5.10 need not be satisfied with respect to any Excluded Assets or Excluded Equity Interests or any exclusions and carve-outs from the security or perfection requirements, as applicable, set forth in the Collateral Agreement or other applicable Security Document;

- 
- (b) neither the Borrower nor the other Loan Parties will be required to grant a security interest in any asset or perfect a security interest in any Collateral to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by a Responsible Officer of the Borrower and the Administrative Agent (or with respect to matters relating primarily to the Term Priority Collateral, the Borrower and the Term Agent); and
  - (c) (i) no actions will be required (A) outside of the United States in order to create or perfect any security interest in any assets located outside of the United States, (B) in any non-United States jurisdiction or (C) under the laws of any non-United States jurisdiction to create any security interests or to perfect or make enforceable any security interests, and (ii) no non-United States law security or pledge agreements, non-United States law mortgages or deeds or non-United States intellectual property filings or other agreements or documents governed under the laws of any non-United States jurisdiction or non-United States searches will be required.

SECTION 5.11 Cash Management Systems; Application of Proceeds of Accounts.

- (1) As soon as practicable and in any event within 120 days after the Closing Date (or such longer period as may be consented to by the Administrative Agent in its reasonable discretion):
  - (a) enter into Control Agreements in form reasonably satisfactory to the Administrative Agent, with the Collateral Agent and any bank with which the Borrower or any Subsidiary Loan Party maintains a DDA (other than any Excluded Account) (a “**Blocked Account**”) covering each such Blocked Account maintained with such bank; *provided* that if the applicable Loan Party shall not have entered into a Control Agreement with respect to any such DDA (other than any Excluded Account) within such 120 day period (or such later date as the Administrative Agent shall reasonably agree), such DDA shall be closed and all funds therein transferred to a Deposit Account at the Administrative Agent, an Affiliate of the Administrative Agent, or another financial institution that has executed a Control Agreement; and
  - (b) ensure that all cash, checks, proceeds of collections of Accounts and other amounts received by or on behalf of the Borrower or any Subsidiary Loan Party are deposited promptly upon receipt in accordance with historical practices into a DDA maintained in the name of the Borrower or such Subsidiary Loan Party.

Notwithstanding anything herein to the contrary, the provisions of Section 5.11(1)(a) will not apply to any deposit account that is acquired by a Loan Party in connection with a Permitted Acquisition or other Investment permitted under this Agreement prior to the date that is 120 days (or such later date as may be consented to by the Administrative Agent in its reasonable discretion) following the date of such Permitted Acquisition or other Investment, and the

balances held in such deposit accounts at the date of such Permitted Acquisition or other Investment shall not be counted toward the amount set forth in clause (1) of the definition of “Excluded Account” until the end of such 120 day period (or later period, if applicable; *provided* that if the applicable Loan Party shall not have entered into a Control Agreement with respect to any such deposit account (other than any Excluded Account) within such 120 day period (or such later date as the Administrative Agent shall reasonably agree), all funds therein will be transferred to a Deposit Account at the Administrative Agent, an Affiliate of the Administrative Agent, or another financial institution that has executed a Control Agreement).

(2) Each such Control Agreement will require, during a Cash Dominion Period and upon receipt by the Borrower of written notice thereof by the Administrative Agent, an ACH or wire transfer no less frequently than once per Business Day of all available cash balances and cash receipts, including the then contents or then entire ledger balance of each Blocked Account net of such minimum balance (not to exceed \$100,000 per account), if any, required by the bank at which such Blocked Account is maintained to an account specified by the Administrative Agent (which account will be established with, and at all times under the sole dominion of and subject to the control of, the Collateral Agent) (the “*Dominion Account*”). All collected amounts received in the Dominion Account shall be distributed and applied on a daily basis to the repayment of all Loans outstanding under this Agreement and to the payment of all other Obligations then due and owing pursuant to the waterfall set forth in Section 2.18(3); *provided* that amounts applied pursuant to subclauses (iv) and (v) thereof will be applied:

- (a) first, to ABR loans;
- (b) second, to Eurocurrency Revolving Loans; and
- (c) third, to the cash collateralization of Letters of Credit;

with any excess, unless an Event of Default shall have occurred and be continuing, to be remitted to the Borrower.

(3) At any time after the occurrence and during the continuance of a Cash Dominion Period as to which the Administrative Agent has notified the Borrower, any cash or Cash Equivalents owned by the Borrower or any Subsidiary Loan Party are deposited to any account, held or invested in any manner, otherwise than in a Blocked Account subject to a Control Agreement (or a DDA which is swept daily to such Blocked Account), the Administrative Agent will be entitled to require the Borrower or any Subsidiary Loan Party to close such account and have all funds therein transferred to a Blocked Account;

*provided* that the foregoing will not apply to cash or Cash Equivalents constituting Term Priority Collateral required to be deposited in a blocked account in favor of the lenders under the Term Loan Credit Agreement pursuant to the terms of the Term Loan Credit Agreement; *provided, further*, that the foregoing will not apply to cash or Cash Equivalents deposited, held or invested in any of the following:

- (a) any Excluded Account; or

- 
- (b) de minimis cash or cash equivalents from time to time inadvertently misapplied by the Borrower or any Restricted Subsidiary.
- (4) The Loan Parties may close DDAs or Blocked Accounts and/or open new DDAs or Blocked Accounts, subject to the execution and delivery to the Administrative Agent of a Control Agreement within one hundred twenty (120) days (or such later date as the Administrative Agent may agree) of opening any new DDA or Blocked Account, which Control Agreement (for the avoidance of doubt) will be subject to the first sentence of Section 5.11(2); *provided* that such new DDA or Blocked Account shall not be permitted to be funded until a Control Agreement in respect of such new DDA or Blocked Account has been executed and delivered to the Administrative Agent; *provided, further*, that the Loan Parties may close DDAs or Blocked Accounts or open new DDAs that are Excluded Accounts without executing or delivering any Control Agreement.
- (5) Anything to the contrary notwithstanding, so long as (i) no Event of Default has occurred and is continuing and (ii) no Cash Dominion Period is then in effect, the Loan Parties will have full and complete access to, and may direct the manner of disposition of, funds in the Blocked Accounts.
- (6) Any amounts held or received in the Dominion Account (including all interest and other earnings with respect thereto, if any) at any time (i) after this Agreement and the Commitments have been terminated and the Obligations have been Paid in Full and all Letters of Credit have expired, terminated or been cash collateralized on terms satisfactory to the applicable Issuing Bank or (ii) when all Events of Default have been cured and no Cash Dominion Period is then in effect, in each case will be remitted to the Loan Parties as the Borrower may direct.

SECTION 5.12 Post-Closing Matters. Deliver to Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, the items described on Schedule 5.12 hereof on or before the dates specified with respect to such items on Schedule 5.12 (or, in each case, such later date as may be agreed to by Administrative Agent in its reasonable discretion or, with respect to matters relating primarily to the Term Priority Collateral, in the reasonable discretion of the Term Agent). All representations and warranties contained in this Agreement and the other Loan Documents will be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described on Schedule 5.12 within the time periods specified thereon, rather than as elsewhere provided in any of the Loan Documents).

## ARTICLE VI

### *Negative Covenants*

The Borrower covenants and agrees with each Lender that, so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations have been Paid in Full, unless the Required Lenders otherwise consent in writing, it will not and will not permit any Restricted Subsidiary to:

SECTION 6.01 Indebtedness. Issue, incur or assume any Indebtedness; *provided* that the Borrower and the Restricted Subsidiaries may issue, incur or assume Permitted Additional Indebtedness so long as immediately after giving effect to the issuance, incurrence or assumption of such Permitted Additional Indebtedness, the aggregate outstanding principal amount of such Permitted Additional Indebtedness does not exceed the Ratio Debt Cap (“*Ratio Debt*”).

The foregoing limitation will not apply to (collectively, “*Permitted Debt*”):

- (1) (a) Indebtedness created under the Loan Documents (including Indebtedness created under Incremental Facilities, Refinancing Term Loans and Extended Commitments), (b) Specified Hedge Obligations and (c) Credit Agreement Refinancing Indebtedness;
- (2) (a) Indebtedness incurred pursuant to the Term Loan Credit Agreement (including all Incremental Term Loans, Refinancing Term Loans and Extended Term Loans, in each case, as defined in the Term Loan Credit Agreement); (b) any Incremental Equivalent Term Debt; (c) Specified Hedge Obligations (as defined in the Term Loan Credit Agreement); and (d) Term Loan Credit Agreement Refinancing Indebtedness; *provided* that the aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (2) (and any successive Permitted Refinancing Indebtedness thereof), as of the date any such Indebtedness is incurred, does not exceed the sum of:
  - (i) \$2,700.0 million; *plus*
  - (ii) Closing Date EBITDA; *plus*
  - (iii) the Term Incremental Amount;

*provided* that:

(A) if the Borrower incurs any Indebtedness under the preceding clause (ii) on the same date that it incurs Indebtedness under the preceding clause (iii), then the Term Incremental Amount will be calculated without regard to any incurrence of Indebtedness under the preceding clause (ii);

(B) unless the Borrower elects otherwise, any Incremental Term Loans or Incremental Equivalent Term Debt will be deemed incurred first as Term Incremental Amount to the extent permitted, with any balance incurred under the preceding clause (ii); and

(C) the Borrower may classify, and may later reclassify, any Incremental Term Loans or Incremental Equivalent Term Debt as incurred as, and in reliance on, the preceding clause (ii), the Term Incremental Amount, or both, on the date of incurrence or thereafter, to the extent permitted on the date of classification (or the date of any such reclassification);

- 
- (3) Indebtedness existing on the Closing Date (other than Indebtedness described in clause (1) or (2) above), including the Impax Convertible Notes;
  - (4) any (a) Attributable Indebtedness relating to any transactions and (b) Capital Lease Obligations and other Indebtedness with respect to mortgage financings and purchase money Indebtedness to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets and Indebtedness arising from the conversion of the obligations of the Borrower or any Restricted Subsidiary under or pursuant to any “synthetic lease” transactions to on-balance sheet Indebtedness of the Borrower or such Restricted Subsidiary, in an aggregate outstanding principal amount incurred pursuant to this clause (4), including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (4) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (i) \$160.0 million and (ii) an amount equal to the Equivalent Percentage of the amount in the preceding clause (i) multiplied by TTM Consolidated EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination, in each case determined as of the time of incurrence; *provided* that such Indebtedness is incurred within 270 days after the purchase, lease, construction, installation, repair or improvement of the property that is the subject of such Indebtedness; *provided further* that for the purposes of determining compliance with this Section 6.01(4), Attributable Indebtedness and Capital Lease Obligations will not be deemed to arise from any Sale Leaseback Transaction that is originally treated under GAAP as an operating lease at the time such Sale Leaseback Transaction is consummated but is subsequently treated under GAAP as a capital lease;
  - (5) Indebtedness (including obligations in respect of letters of credit or bank Guarantees, bankers’ acceptances or similar instruments) in respect of workers’ compensation, health, disability or other employee benefits (whether to current or former employees) or property, casualty or liability insurance or self-insurance in respect of such items, or other Indebtedness with respect to reimbursement-type obligations regarding workers’ compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance;
  - (6) Indebtedness constituting indemnification obligations, earn-outs, milestones, royalties, adjustment of purchase or acquisition price or similar obligations, in each case, incurred or assumed in connection with the Transactions, a commercial or license agreement, any Permitted Investment or the disposition of any business, assets or Restricted Subsidiaries not prohibited by this Agreement;
  - (7) intercompany Indebtedness between or among the Borrower and the Restricted Subsidiaries to the extent such Indebtedness is not prohibited by Section 6.04 (without regard to Section 6.04(14));
  - (8) Indebtedness pursuant to Hedge Agreements;

- 
- (9) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion Guarantees and similar obligations and instruments, in each case, provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;
- (10) Guarantees of Indebtedness permitted to be incurred under this Agreement to the extent such Guarantees are not prohibited by the provisions of Section 6.04 (without regard to Section 6.04(14)); *provided* that, if the Indebtedness being guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Obligations on terms at least as favorable to the Lenders;
- (11) Indebtedness
- (a) of any Person that becomes a Restricted Subsidiary after the Closing Date pursuant to a Permitted Investment, which Indebtedness is (i) existing at the time such Person becomes a Restricted Subsidiary, (ii) not incurred in contemplation of such Person becoming a Restricted Subsidiary and (iii) non-recourse to the Borrower or any other Restricted Subsidiary (other than any Person that becomes a Subsidiary in connection with the foregoing and its Subsidiaries);
- (b) issued, incurred or assumed in connection with any Permitted Investment so long as (i) in the case of any such issued or incurred Indebtedness, immediately after giving effect to such issuance or incurrence, such Indebtedness would be permitted to be incurred as Ratio Debt and (ii) in the case of any such assumed Indebtedness, such Indebtedness was not incurred in anticipation of such Permitted Investment;
- provided* that the outstanding principal amount of such Indebtedness issued, incurred or assumed by Restricted Subsidiaries that are not Guarantors pursuant to this clause (11)(b) does not exceed the greater of (A) \$125.0 million and (B) an amount equal to the Equivalent Percentage of the amount set forth in clause (A) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of incurrence; and
- (c) all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to the preceding clauses (11)(a) and (11)(b) (and any successive Permitted Refinancing Indebtedness);
- (12) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;
- (13) Indebtedness (a) supported by a Letter of Credit, in a principal amount not in excess of the stated amount of such Letter of Credit, (b) in respect of letters of credit in an aggregate face amount at any time outstanding not to exceed the greater of (i) \$25.0 million and (ii) an amount equal to the Equivalent Percentage of the amount in the preceding clause (i) multiplied by TTM Consolidated EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination, in each case determined as of the time of incurrence, and (c) in respect of letters of credit that are cash collateralized;

- 
- (14) Contribution Indebtedness;
- (15) Indebtedness consisting of (a) the financing of insurance premiums or (b) take or pay obligations contained in supply arrangements, in each case, in the ordinary course of business;
- (16) Indebtedness incurred in connection with a Qualified Receivables Transaction that is not recourse (except for Standard Securitization Undertakings) to the Borrower or any Restricted Subsidiary other than a Receivables Subsidiary in an aggregate principal amount not to exceed \$50.0 million, measured at any time, with respect to a Qualified Receivables Financing, by the aggregate amount of such Indebtedness under such Qualified Receivables Financing that was incurred during the term of this Agreement, whether or not such Indebtedness remains outstanding at such time, and with respect to a Qualified Receivables Factoring, by the aggregate amount of such Indebtedness under such Qualified Receivables Factoring that was incurred during the term of this Agreement and remains outstanding at such time;
- (17) Cash Management Obligations and other Indebtedness in respect of Cash Management Services, and netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements entered into in the ordinary course of business;
- (18) Indebtedness issued to any future, current or former officers, directors, managers, employees, consultants and independent contractors of the Borrower or any Restricted Subsidiary or any direct or indirect parent thereof, or their respective estates, heirs, family members, spouses, former spouses, executors, administrators, trustees, legatees or distributees, in each case to finance the purchase or redemption of Equity Interests of the Borrower (or any Parent Entity) permitted by Section 6.07;
- (19) Indebtedness incurred on behalf of, or representing Guarantees of Indebtedness of, joint ventures in an aggregate outstanding principal amount of such Indebtedness, together with any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (19) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) \$50.0 million and (b) an amount equal to the Equivalent Percentage of the amount set forth in clause (a) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of incurrence;
- (20) [Reserved];
- (21) Indebtedness of any Non-U.S. Subsidiaries or Non-Loan Parties (a) in an aggregate outstanding principal amount, together with any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (21) (and any successive Permitted Refinancing Indebtedness), not exceed the greater of (i) \$100.0 million and (ii) an amount equal to the Equivalent Percentage of the amount set forth in clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of incurrence and (b) consisting of working capital or other local lines of credit that are not secured by any Collateral and non-recourse to the Loan Parties;

- 
- (22) obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services so long as such obligations are incurred in the ordinary course of business and not in connection with the borrowing of money;
  - (23) Indebtedness representing deferred compensation or other similar arrangements incurred by the Borrower or any Restricted Subsidiary (a) in the ordinary course of business or (b) in connection with the Transactions or any Permitted Investment;
  - (24) any Permitted Refinancing Indebtedness incurred to Refinance Incremental Equivalent Term Debt or Indebtedness incurred under clauses (2), (3), (4), (11), (13)(b), (14), (19), (21), this clause (24) or clause (28) of this Section 6.01;
  - (25) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;
  - (26) Indebtedness incurred by the Borrower or any Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange, warehouse receipts or similar facilities or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business;
  - (27) any Permitted Convertible Indebtedness Call Transaction entered into in connection with any Convertible Indebtedness otherwise permitted to be incurred under this Section 6.01;
  - (28) additional Indebtedness in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant this clause (28) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) \$225.0 million and (b) an amount equal to the Equivalent Percentage of the amount set forth in clause (a) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of incurrence
  - (29) unsecured Indebtedness of the Borrower or any Restricted Subsidiary so long as (a) immediately after giving Pro Forma Effect to the incurrence of such Indebtedness the Payment Conditions are satisfied and (b) the final maturity date of such Indebtedness is no earlier than the Latest Maturity Date, and any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (29) (and any successive Permitted Refinancing Indebtedness); and
  - (30) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (29) above.

For purposes of determining compliance with this Section 6.01, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Permitted Debt or is entitled to be incurred (in whole or in part) as Ratio Debt, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this covenant at the time of incurrence or at such later time (as applicable); *provided* that all Indebtedness outstanding under the Loan Documents and the Term Loan Credit Agreement and any Permitted Refinancing thereof will be deemed to have been incurred in reliance on the exception in clauses (1) and (2), respectively, of the definition of “Permitted Debt” and shall not be permitted to be reclassified pursuant to this paragraph. All unsecured Permitted Debt originally incurred under clause (4), (11)(b), (19), (21) or (28) of the definition of Permitted Debt will be automatically reclassified as Ratio Debt on the first date on which such Indebtedness would have been permitted to be incurred as Ratio Debt. The accrual of interest, the accretion of accreted value, amortization of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms (including any pay-in-kind interest) and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will not be deemed to be an incurrence of Indebtedness for purposes of this Section 6.01. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP. Guarantees of, or obligations in respect of letters of credit relating to Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such Guarantee or letter of credit, as the case may be, was in compliance with this Section 6.01. Any incurrence of Permitted Refinancing Debt with respect to any Refinanced Debt that was incurred in reliance on a dollar or Equivalent Percentage basket (and not subsequently reclassified) shall not, for the avoidance of doubt, reload any such dollar or Equivalent Percentage based basket.

For purposes of determining compliance with any Dollar-denominated (or Equivalent Percentage, if greater) restriction on the incurrence of Indebtedness, the Dollar equivalent principal amount of Indebtedness denominated in a currency other than Dollars shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to Refinance other Indebtedness denominated in a currency other than Dollars, and such refinancing would cause the applicable Dollar-denominated (or Equivalent Percentage, if greater) restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated (or Equivalent Percentage, if greater) restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced ( *plus* unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses in connection therewith).

Any Indebtedness permitted to be incurred under this Section 6.01 may, at the option of the Borrower, be Convertible Indebtedness.

SECTION 6.02 Liens. Create, incur, assume or permit to exist any Lien that secures obligations under any Indebtedness on any property or assets at the time owned by it, except the following (collectively, “*Permitted Liens*”):

- (1) Liens securing Indebtedness incurred in accordance with Sections 6.01(1) or 6.01(2), including Liens on the Collateral securing obligations in respect of any Permitted Junior Secured Refinancing Debt and all Permitted Refinancing Indebtedness incurred to Refinance any such Indebtedness; *provided* that, in the case of Indebtedness incurred in accordance with Section 6.01(2), the applicable Liens are subject to the Closing Date Intercreditor Agreement or other Intercreditor Agreement(s) substantially consistent with and no less favorable to the Lenders in any material respect than the Closing Date Intercreditor Agreement as determined in good faith by a Responsible Officer of the Borrower;
- (2) Liens securing Indebtedness existing on the Closing Date; *provided* that such Liens only secure the obligations that they secure on the Closing Date (and any Permitted Refinancing Indebtedness in respect of such obligations permitted by Section 6.01) and do not apply to any other property or assets of the Borrower or any Restricted Subsidiary other than replacements, additions, accessions and improvements thereto and products thereof and customary security deposits; *provided further*, that individual financings of equipment or other assets provided by a lender may be cross collateralized to other financings of equipment or other assets financed by such lender;
- (3) Liens securing Indebtedness incurred in accordance with Sections 6.01(4); *provided* that such Liens only extend to the assets financed with such Indebtedness (and any replacements, additions, accessions and improvements thereto and products thereof and customary security deposits); *provided further*, that individual financings of equipment or other assets provided by a lender may be cross collateralized to other financings of equipment or other assets financed by such lender;
- (4) Liens on Securitization Assets sold, conveyed, assigned or otherwise transferred or purported to be sold, conveyed, assigned or otherwise transferred in connection with a Qualified Receivables Transaction permitted pursuant to Section 6.01(16);
- (5) Liens on assets of Non-Loan Parties securing Indebtedness incurred in accordance with Section 6.01(19) or (21);
- (6) [Reserved];
- (7) (a) Liens on property or Equity Interests of a Person at the time such Person becomes a Restricted Subsidiary if such Liens were not created in connection with, or in contemplation of, such other Person becoming a Restricted Subsidiary and (b) Liens on property at the time the Borrower or a Restricted Subsidiary acquired such property, including any acquisition by means of a merger or consolidation with or into the Borrower or any of the Restricted Subsidiaries, if such Liens were not created in connection with, or in contemplation of, such acquisition;

- 
- (8) Liens on property or assets of any Restricted Subsidiary that is not a Guarantor and on any Excluded Assets securing Indebtedness in an aggregate principal amount not to exceed \$100,000,000;
  - (9) Liens for Taxes, assessments or other governmental charges or levies that are not overdue for a period of more than 60 days or that are not yet delinquent or that are being contested in compliance with Section 5.03;
  - (10) Liens disclosed by any title insurance policies delivered on or subsequent to the Closing Date and any replacement, extension or renewal of any such Liens (so long as the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal (*plus* any replacements, additions, accessions and improvements thereto and products thereof);
  - (11) Liens securing any judgments or orders that do not constitute an Event of Default under Section 8.01(10) and notices of lis pendens or similar notices and associated rights related to litigation being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Borrower or any affected Restricted Subsidiary has set aside on its books reserves in accordance with GAAP with respect thereto;
  - (12) Liens imposed by law, including landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens arising in the ordinary course of business securing obligations that are not overdue by more than 60 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Borrower or a Restricted Subsidiary has set aside on its books reserves in accordance with GAAP;
  - (13) (a) pledges and deposits and other Liens made in the ordinary course of business in compliance with any workers' compensation, health, disability or other similar employee benefits, unemployment insurance and other similar laws or regulations and other insurance-related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (b) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Restricted Subsidiary;
  - (14) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, stay, customs, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) incurred by the Borrower or any Restricted Subsidiary in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

- 
- (15) survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights of way, covenants, conditions, restrictions (including zoning restrictions), and declarations on or with respect to the use of Real Property, encroachments, protrusions, servicing agreements, development agreements, site plan agreements and other encumbrances and title defects or irregularities that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole;
  - (16) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under any leases, subleases, licenses or sublicenses entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business;
  - (17) Liens that are contractual rights of set-off relating to (a) the establishment of depository relations with banks or other deposit-taking financial institutions in the ordinary course of business, (b) pooled deposit or sweep accounts of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Restricted Subsidiary or (c) purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business;
  - (18) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;
  - (19) leases or subleases, licenses or sublicenses (including with respect to Intellectual Property Rights and software) (or other agreement under which the Borrower or any Restricted Subsidiary has granted rights to end users to access and use the Borrower's or any Restricted Subsidiary's products, technologies or services) granted to others in the ordinary course of business that do not interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole;
  - (20) Liens (a) solely on any cash earnest money deposits made by the Borrower or any Restricted Subsidiary in connection with any letter of intent or other agreement in respect of any Permitted Investment and (b) incurred in connection with escrow arrangements or other similar agreements relating to an acquisition or Investment permitted hereunder;
  - (21) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;
  - (22) purported Liens evidenced by precautionary Uniform Commercial Code financing statements or similar public filings;
  - (23) Liens on Equity Interests or assets of any joint venture (a) securing obligations of such joint venture or (b) pursuant to the relevant joint venture agreement or arrangement;

- 
- (24) Liens 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;
  - (25) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;
  - (26) Liens (a) securing insurance premium financing arrangements and (b) securing obligations to insurance companies with respect to insurable liabilities incurred in the ordinary course of business;
  - (27) Liens on vehicles or equipment of the Borrower or any of the Restricted Subsidiaries granted in the ordinary course of business;
  - (28) Liens on property or assets used to defease or to satisfy and discharge Indebtedness; *provided* that such defeasance or satisfaction and discharge is not prohibited by this Agreement;
  - (29) Liens:
    - (a) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection;
    - (b) attaching to pooling, commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business; or
    - (c) in favor of banking or other financial institutions or entities, or electronic payment service providers, arising as a matter of law encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking or finance industry;
  - (30) Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment, processing or storage of such inventory or other goods;
  - (31) Liens securing Ratio Debt, Term Loan Credit Agreement Refinancing Indebtedness or Indebtedness incurred in accordance with Section 6.01(11)(b), in each case, to be secured on a *pari passu* basis with the Initial Term Loans; *provided* that after giving Pro Forma Effect to the incurrence of such Indebtedness, the First Lien Net Leverage Ratio measured as of the date of initial incurrence of such Indebtedness is (a) less than or equal to the Closing Date First Lien Net Leverage Ratio or (b) the First Lien Net Leverage Ratio immediately prior to such incurrence; *provided* that a Debt Representative acting on behalf of the holders of such Indebtedness will become party to or otherwise subject to the provisions of the Closing Date Intercreditor Agreement and/or a Junior Lien Intercreditor Agreement, as applicable;

- 
- (32) Liens securing Ratio Debt, Credit Agreement Refinancing Indebtedness or Indebtedness incurred in accordance with Section 6.01(11)(b), in each case, that constitutes Junior Lien Debt; *provided* that, after giving Pro Forma Effect to the incurrence of such Indebtedness, the Total Net Leverage Ratio measured as of the date of initial incurrence of such Junior Lien Debt is less than or equal to (a) the Closing Date Total Net Leverage Ratio or (b) the Total Net Leverage Ratio immediately prior to such incurrence; *provided* that a Debt Representative acting on behalf of the holders of such Indebtedness will become party to or otherwise subject to the provisions of the Closing Date Intercreditor Agreement and/or a Junior Lien Intercreditor Agreement, as applicable;
- (33) Liens securing Indebtedness or other obligations in an aggregate outstanding principal amount not to exceed the greater of (a) \$150.0 million and (b) an amount equal to the Equivalent Percentage of the amount in the preceding clause (a) multiplied by TTM Consolidated EBITDA, as of the applicable date of determination, in each case determined as of the time of initial attachment of such lien;
- (34) Liens in favor of the Borrower or a Loan Party securing any Indebtedness permitted to be incurred under Section 6.01;
- (35) [Reserved];
- (36) Liens (a) on cash advances in favor of the seller of any property to be acquired in a Permitted Investment, (b) consisting of an agreement to Dispose of any property, (c) arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods in the ordinary course of business or (d) imposed by law or incurred pursuant to customary reservations or retentions of title (including contractual Liens in favor of sellers and suppliers of goods) incurred in the ordinary course of business;
- (37) Liens in respect of cash collateralization of letters of credit;
- (38) (a) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Restricted Subsidiaries are located, (b) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business and (c) 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 and its Restricted Subsidiaries, taken as a whole;
- (39) Liens deemed to exist in connection with Permitted Investments in repurchase agreements and reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts maintained in the ordinary course of business and not for speculative purposes;
- (40) the modification, replacement, renewal or extension of any Lien permitted by this Section 6.02; *provided* that the Lien does not extend to any additional property other than property that is affixed or incorporated into the property covered by such Lien and replacements, improvements, proceeds and products thereof; *provided*, *further* that the modification, replacement, renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 6.01;

- 
- (41) Liens securing Permitted Refinancing Indebtedness (but without reloading any dollar or Equivalent Percentage based basket); *provided* that:
- (i) such Indebtedness being Refinanced was permitted by Section 6.01 and was secured by a Lien permitted by this Section 6.02,
  - (ii) such Permitted Refinancing Indebtedness is permitted by Section 6.01, and
  - (iii) the Lien does not extend to any additional property other than property that is affixed or incorporated into the property covered by such Lien and replacements, improvements, proceeds and products thereof, and
- (42) Liens securing amounts owing to any Qualified Counterparty (as defined in the Term Loan Credit Agreement) under any Specified Hedge Agreement (as defined in the Term Loan Credit Agreement), which amounts are secured under the Term Loan Documents; *provided* that, in each case, the applicable Liens are subject to the Closing Date Intercreditor Agreement or other Intercreditor Agreement substantially consistent with and no less favorable to the Lenders in any material respect than the Closing Date Intercreditor Agreement as determined in good faith by a Responsible Officer of the Borrower.

For purposes of determining compliance with this Section 6.02, in the event that any Lien (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Lien (or any portion thereof) in any manner that complies with this covenant on the date such Lien is incurred or such later time, as applicable; *provided* that all Liens created pursuant to the Loan Documents will be deemed to have been incurred in reliance on Section 6.02(1) above and shall not be permitted to be reclassified pursuant to this paragraph.

SECTION 6.03 [Reserved].

SECTION 6.04 Investments, Loans and Advances. Purchase, hold or acquire (including pursuant to any merger, consolidation or amalgamation with a Person that is not a Wholly Owned Subsidiary immediately prior to such merger, consolidation or amalgamation) any Equity Interests, evidences of Indebtedness or other securities of, make any loans or advances to or Guarantees of the obligations of, or make any investment or any other interest in (in each case, excluding any (i) Short Term Advances and (ii) acquisitions of or licenses under intellectual property or related tangible assets used or useful in a business permitted under Section 6.09) (each, a “*Investment*”), any other Person, except the following (collectively, “*Permitted Investments*”):

- (1) the Transactions (including payment of the purchase consideration under the Acquisition Agreement);

- 
- (2) (a) payroll advances in the ordinary course of business and (b) loans and advances to officers, directors, employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary
- (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes,
  - (ii) in connection with such Person's purchase of Equity Interests of the Borrower (or any Parent Entity); *provided* that, to the extent such loans or advances are made in cash, the amount of such loans and advances used to acquire such Equity Interests shall be contributed to the Borrower in cash, and
  - (iii) for any other purpose; *provided* that the aggregate principal amount outstanding under this clause (iii) shall not exceed the greater of (A) \$20.0 million and (B) an amount equal to the Equivalent Percentage of the amount set forth in clause (A) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Investment;
- (3) Investments in Joint Ventures, Unrestricted Subsidiaries or Similar Businesses that do not exceed in the aggregate at any time outstanding the greater of (i) \$200 million and (ii) an amount equal to the Equivalent Percentage of the amount set forth in clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Investment;
- (4) Permitted Acquisitions and pre-existing Investments held by Persons acquired in Permitted Acquisitions or acquired in connection with Permitted Acquisitions;
- (5) Investments of any Person that becomes a Restricted Subsidiary on or after the date hereof (or of a Person merged, consolidated or amalgamated with or into a Restricted Subsidiary); *provided* that any such Investment (a) exists at the time such person becomes (or merges, consolidates or amalgamates with or into) a Restricted Subsidiary and (b) is not made in anticipation of such Person becoming a Restricted Subsidiary (or such merger, consolidation or amalgamation);
- (6) Investments
- (a) by the Borrower or any Restricted Subsidiary in the Borrower or any Restricted Subsidiary; and
  - (b) by the Borrower or any Restricted Subsidiary in a Person if, as a result of such Investment, (i) such Person becomes a Restricted Subsidiary or (ii) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Borrower or any Restricted Subsidiary;

---

*provided* that Investments made after the Closing Date pursuant to this Section 6.04(6) by a Person that is a Loan Party on the date such Investment is made in any Person that on the date of such Investment is not a Loan Party (or does not become a Loan Party as a result thereof) shall not exceed, in the aggregate at any time outstanding, the greater of (i) \$155.0 million and (ii) an amount equal to the Equivalent Percentage of the amount set forth in clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Investment;

- (7) [Reserved];
- (8) Cash Equivalents and, to the extent not made for speculative purposes, Investment Grade Securities or Investments that were Cash Equivalents or Investment Grade Securities when made;
- (9) Investments arising out of the receipt by the Borrower or any of the Restricted Subsidiaries of promissory notes and other non-cash consideration in connection with any Disposition permitted under Section 6.06;
- (10) (a) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy, workout, recapitalization or reorganization of, or in settlement of delinquent obligations of, or other disputes with, the issuer of such Investment or an Affiliate thereof and (b) Investments consisting of accounts or notes receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in each case in the ordinary course of business;
- (11) Investments (including debt obligations and Equity Interests) (a) upon a foreclosure with respect to any secured Investments or other transfer of title with respect to any secured Investment in default, (b) in satisfaction of judgments against other Persons and (c) as a result of the settlement, compromise or resolution of litigation, arbitration or other disputes with Persons who are not Affiliates;
- (12) Hedge Agreements;
- (13) Investments existing on or contractually committed as of the Closing Date and, with respect to each such Investment in an amount in excess of \$25.0 million, set forth on Schedule 6.04, and any modification, replacements, refinancings, refunds, extensions, renewals or reinvestments thereof, so long as the aggregate amount of all Investments pursuant to this clause (13) is not increased at any time above the amount of such Investments existing or committed on the Closing Date (other than pursuant to an increase as required by the terms of any such Investment as in existence on the Closing Date);

- 
- (14) Investments consisting of Indebtedness (including, for the avoidance of doubt, Guarantees) permitted under Section 6.01, Permitted Liens, mergers, dissolutions, liquidations and consolidations permitted under Section 6.05, Dispositions permitted under Section 6.06 and Restricted Payments permitted under Section 6.07;
  - (15) [Reserved];
  - (16) acquisitions of obligations of one or more future, present or former employees, managers, officers, directors, consultants or contractors (or spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing) of the Borrower, any of its Restricted Subsidiaries or any direct or indirect parent thereof, in connection with such employee's, manager's, officer's, director's, consultant's or contractor's acquisition of Equity Interests of the Borrower or any direct or indirect parent thereof, so long as no cash is actually advanced by the Borrower or any Restricted Subsidiary to such Persons in connection with the acquisition of any such obligations;
  - (17) Guarantees of operating leases or of other obligations that do not constitute Indebtedness, in each case, entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business;
  - (18) Investments to the extent that payment for such Investments is made with Equity Interests of the Borrower or any Parent Entity or the proceeds from the issuance thereof;
  - (19) the issuance of, entry into (including any payments of premiums in connection therewith), performance of obligations under, or exercise, transfer, assignment, unwinding, settlement or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any Permitted Bond Hedge Transaction; the issuance of, entry into, performance of obligations under, or repurchase, redemption, transfer, assignment, unwinding, settlement or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any related Permitted Warrant Transaction; and the issuance of, entry into performance of obligations under (including any payments of interest), conversion, exercise, repurchase, redemption, transfer, assignment, unwinding, settlement, cancellation or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any Convertible Indebtedness, in each case, whether in cash, common Capital Stock of Borrower or any direct or indirect parent of Borrower or other securities or property following a merger event or other change of the common Capital Stock of Borrower or such parent and whether in whole or in part and including by netting or set-off;
  - (20) 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;
  - (21) [Reserved];
  - (22) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Borrower or any Restricted Subsidiary;

- 
- (23) Investments, including loans and advances, to any Person so long as the Borrower or any Restricted Subsidiary (as applicable) would otherwise be permitted to make a Restricted Payment in such amount to such Person; provided that the amount of any such Investment will be deemed to be a Restricted Payment under the appropriate clause of Section 6.07 for all purposes of this Agreement;
  - (24) Investments consisting of the leasing, subleasing, licensing or sublicensing of Intellectual Property Rights in the ordinary course of business or the contribution of Intellectual Property Rights pursuant to joint marketing arrangements with other Persons;
  - (25) Investments (a) consisting of purchases or acquisitions of inventory, supplies, materials, equipment, contract rights or Intellectual Property Rights in each case in the ordinary course of business and (b) made in the ordinary course of business in connection with obtaining, maintaining or renewing client contracts or similar arrangements and loans or advances made to distributors in the ordinary course of business;
  - (26) Investments in assets useful in the business of the Borrower or any Restricted Subsidiary made with (or in an amount equal to) any Reinvestment Deferred Amount or Below Threshold Asset Sale Proceeds; provided that if the underlying Asset Sale was with respect to assets of the Borrower or a Subsidiary Loan Party, then such Investment shall be consummated by the Borrower or a Subsidiary Loan Party;
  - (27) any Investment in a Receivables Subsidiary or any Investment by a Receivables Subsidiary in any other Person, in each case in connection with a Qualified Receivables Financing, including Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Receivables Financing or any related Indebtedness;
  - (28) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries;
  - (29) Investments that are made with Excluded Contributions that are Not Otherwise Applied;
  - (30) Investments
    - (a) made in furtherance of collaboration, development, promotion, marketing, supply, research or similar arrangements with respect to pharmaceutical or other therapeutic products, diagnostic products or medical device businesses products, including payments for shared development costs, reimbursements for product development or for patent, regulatory, manufacturing or commercialization expenses, or other payments or Investments paid to a Person in the pharmaceutical industry with a view toward developing the Borrower's or any Restricted Subsidiary's business in the ordinary course of business and in a manner consistent with standard business practices;

- 
- (b) constituting (i) any customary upfront milestone, marketing, revenue sharing, royalty, profit sharing or other funding payment in the ordinary course of business to another Person in connection with obtaining a right to receive royalty or other payments in the future, (ii) Exclusive Licenses from a Restricted Subsidiary that is not a Loan Party to a Loan Party of rights to a drug or other biologic or therapeutic products, diagnostic products, delivery technologies, medical devices or biotechnology businesses or (iii) transfers of Intellectual Property Rights (“**Transferred IP**”) to a Specified IP Subsidiary; *provided* that (x) such transfers do not, individually or in the aggregate, materially impair the Loan Parties’ ability to pay their obligations under the Loan Documents as when due and (y) except as otherwise agreed by the Collateral Agent, prior to such transfer (or at such later date as the Collateral Agent may agree), the Borrower shall pledge (or cause to be pledged) 100% of the issued and outstanding Equity Interests (other than any voting Equity Interests of any non-U.S. Subsidiary or any FSHCO in excess of 65% of the issued and outstanding voting Equity Interests of such non-U.S. Subsidiary or FSHCO) of such Specified IP Subsidiary to the Collateral Agent for the benefit of the Secured Parties under (and in accordance with) the Collateral Agreement; or
- (c) consisting of the licensing (or equivalent thereof), acquisition, sale or contribution of Intellectual Property Rights or proprietary materials pursuant to pharmaceutical or therapeutic product licensing, collaboration, development, promotion, marketing, supply, research or similar arrangements with other Persons made in the ordinary course of business or not exceeding at any time outstanding an aggregate principal amount of the greater of (i) \$60 million and (ii) an amount equal to the Equivalent Percentage of the amount in clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of incurrence;
- (31) Investments; *provided* that both immediately before such Investment is made and immediately after giving Pro Forma Effect to the making of such Investment, the Payment Conditions are satisfied; and
- (32) Investments that do not exceed the greater of (i) \$320.0 million and (ii) an amount equal to the Equivalent Percentage of the amount in the preceding clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Investment.

For purposes of determining compliance with this Section 6.04, (x) the amount of any Investment at any time shall be the amount of cash and the fair market value of other property actually invested (measured at the time made), without adjustment for subsequent changes in the value of such Investment, net of any return, whether a return of capital, interest, dividend or otherwise, with respect to such Investment and (y) in the event that any Investment (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time such Investment is made, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Investment (or any portion thereof) in any manner that complies with this Section 6.04 on the date such Investment is made or such later time, as applicable.

To the extent any Investment in any Person is made in compliance with this Section 6.04 in reliance on a category above that is subject to a Dollar-denominated restriction on the making of Investments and, subsequently, such Person returns to the Borrower, any other Loan Party or, to the extent applicable, any Restricted Subsidiary all or any portion of such Investment (in the form of a dividend, distribution, liquidation or otherwise but excluding intercompany Indebtedness), such return shall be deemed to be credited to the Dollar-denominated category against which the Investment is then charged (but in any event not in an amount that would result in the aggregate Dollar amount able to be invested in reliance on such category to exceed such Dollar-denominated restriction).

The amount set forth in Section 6.07(14) and clause (1)(f) of Section 6.11 (without duplication) may, in lieu of Restricted Payments or prepayments, repayments, redemptions, purchases, defeasances or satisfactions of any Junior Financings, as applicable, be utilized by the Borrower or any Restricted Subsidiary to make or hold any Investments without regards to this Section 6.04.

SECTION 6.05 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of related transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person:

- (1) any Restricted Subsidiary may merge or consolidate with the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that
  - (a) the Borrower will be the continuing or surviving Person, and
  - (b) such merger or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia;
- (2) any Restricted Subsidiary may merge or consolidate with or into any other Restricted Subsidiary, liquidate, dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and the Restricted Subsidiaries and is not materially disadvantageous to the Lenders, taken as a whole;
- (3) any merger the sole purpose of which is to reincorporate or reorganize (i) any U.S. Subsidiary in another jurisdiction in the U.S. or (ii) any Non-U.S. Subsidiary in the U.S. or any other jurisdiction shall be permitted;
- (4) so long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower may merge or consolidate with any other Person; *provided* that
  - (a) the Borrower will be the continuing or surviving Person, or
  - (b) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the “*Successor Borrower*”),

- 
- (i) the Successor Borrower will be an entity organized or existing under the Laws of the United States, any state thereof or the District of Columbia;
  - (ii) the Successor Borrower will expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent;
  - (iii) each Guarantor, unless it is party to such merger or consolidation, will have confirmed that its Guarantee of the Obligations pursuant to the Collateral Agreement will apply to, and the Secured Obligations (as defined in the Collateral Agreement) will include, the Successor Borrower's Obligations; and
  - (iv) the Borrower will have delivered to the Administrative Agent (A) an officer's certificate stating that such merger or consolidation complies with this Agreement and (B) an opinion of counsel, including customary organization, due execution, no conflicts and enforceability opinions with respect to the Successor Borrower, in each case to the extent reasonably requested by the Administrative Agent;
- it being agreed that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement; and
- (5) subject to clauses (1) and (4) above, transactions the purpose of which is to effect a Permitted Investment (other than pursuant to Section 6.04(14)) or a Disposition permitted pursuant to Section 6.06 (other than pursuant to Section 6.06(5)) or a Disposition of all or substantially all of the assets of the Borrower and its Restricted Subsidiaries); and
  - (6) the Transactions.

SECTION 6.06 Dispositions . Make any Disposition, except:

- (1) Dispositions of obsolete, damaged, worn out, used or surplus property (including for purposes of recycling) in the ordinary course of business or Dispositions of property no longer used or useful in the conduct of the business of the Borrower and the Restricted Subsidiaries;
- (2) Dispositions of inventory and goods held for sale in the ordinary course of business;
- (3) Dispositions of property to the extent that (a) such property is exchanged for credit against the purchase price of similar replacement property or (b) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property; *provided* that to the extent the property being transferred constitutes Collateral such replacement property shall constitute Collateral;
- (4) Dispositions of property to the Borrower or a Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party (a) the transferee thereof must be a Loan Party or (b) to the extent constituting an Investment, such Investment must be a Permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04 (other than Section 6.04(14));

- 
- (5) Dispositions consisting of Investments permitted under Section 6.04 (other than Section 6.04(14)), transactions permitted under Section 6.05 (other than Section 6.05(5)) or Restricted Payments permitted under Section 6.07 (other than Section 6.07(4)) or consisting of Permitted Liens;
  - (6) Dispositions of property pursuant to Sale Leaseback Transactions, *provided* that (i) no Event of Default has occurred and is continuing or would result therefrom (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Event of Default has occurred and is continuing) and (ii) such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;
  - (7) Dispositions of Cash Equivalents (or Investments that were Cash Equivalents when made); *provided*, that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;
  - (8) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower and the Restricted Subsidiaries, taken as a whole, *provided*, that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;
  - (9) Dispositions of property subject to any Casualty Event;
  - (10) Dispositions; *provided* that
    - (a) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Event of Default has occurred and is continuing), no Event of Default has occurred and is continuing or would result therefrom; and
    - (b) with respect to any Disposition pursuant to this clause (10) for a purchase price in excess of the greater of (i) \$25.0 million and (ii) an amount equal to the Equivalent Percentage of the amount in the preceding clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Disposition, the Borrower or any of the Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents; *provided*, *however*, that for the purposes of this clause (b) each of the following will be deemed to be cash,
      - (i) any liabilities (as shown on the Borrower's or any Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or any Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and the Restricted Subsidiaries have been validly released by all applicable creditors in writing;

- 
- (ii) any securities received by the Borrower or any Restricted Subsidiary from such transferee that are converted by the Borrower or any Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred and eighty (180) days following the closing of the applicable Disposition;
  - (iii) any Designated Non-Cash Consideration received in respect of such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (iii) that is at that time outstanding, not in excess of the greater of (A) \$25.0 million and (B) an amount equal to the Equivalent Percentage of the amount set forth in clause (A) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value; and
  - (iv) such Disposition shall be for no less than the fair market value of such property at the time of such Disposition (or, if earlier, the definitive documentation or other Contractual Obligation with respect to such Disposition is entered into by the Borrower or any Restricted Subsidiary (as applicable));

; *provided further* that if any such Disposition pursuant to this clause (10) decreases the Borrowing Base by an amount equal to or greater than \$25.0 million after giving effect to such Disposition on a Pro Forma Basis, the Borrower shall deliver a pro forma Borrowing Base Certificate prior to the date of such Disposition (or such later date as the Administrative Agent may agree, in its reasonable discretion);

- (11) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements among, the joint venture parties set forth in joint venture or similar agreements or arrangements;
- (12) Dispositions or discounts of accounts receivable and related assets in connection with the collection or compromise thereof;
- (13) Dispositions (including issuances or sales) of Equity Interests in, or Indebtedness owing to, or of other securities of, an Unrestricted Subsidiary;
- (14) Dispositions constituting any exchange of like property (excluding any boot thereon) for use in any business conducted by the Borrower or any of the Restricted Subsidiaries, to the extent allowable under Section 1031 of the Code (or comparable or successor provision); *provided* that to the extent the property being transferred constitutes Collateral, such replacement property shall constitute Collateral;

- 
- (15) the unwinding of any Hedge Agreement;
  - (16) Dispositions of assets in connection with the closing or sale of a facility, including Dispositions of inventory, fee or leasehold interests in the premises of such facility, equipment and fixtures located at such premises, and the books and records relating to the operations of such facility; *provided* that as to each and all such sales and closings, (a) no Event of Default shall have occurred and be continuing or shall result therefrom and (b) such Dispositions shall be for no less than fair market value at the time of such Disposition;
  - (17) the sale, assignment or other transfer of Securitization Assets to (a) a Receivables Subsidiary in a Qualified Receivables Financing or (b) any other Person in a Qualified Receivables Factoring;
  - (18) (i) settlement of litigation concerning Intellectual Property Rights, or (ii) the lease, sublease, license or sublicense of Intellectual Property Rights outside the United States or (iii) the lapse, abandonment, discontinuance of the use or maintenance of any Intellectual Property Rights, in each case of (i), (ii) and (iii), if the Borrower or any Restricted Subsidiary determines in its reasonable business judgment that it would not materially interfere with the business of the Borrower and its Restricted Subsidiaries, taken as a whole;
  - (19) Disposition of any property or asset with a fair market value not to exceed either (a) the greater of (i) \$10.0 million and (ii) an amount equal to the Equivalent Percentage of the amount in the preceding clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Disposition, with respect to any transaction or series of related transactions or (b) the greater of (i) \$50.0 million and (ii) an amount equal to the Equivalent Percentage of the amount in the preceding clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Disposition, in the aggregate for all such transactions in any fiscal year;
  - (20) Disposition of assets acquired in a Permitted Investment that the Borrower determines will not be used or useful in the business of the Borrower and its Restricted Subsidiaries;
  - (21) Dispositions of pipeline, marketed or other assets required by regulatory authorities in connection with the Transactions, any Permitted Acquisition or other investment permitted hereunder;
  - (22) any Disposition(s) in connection with licensing of Intellectual Property Rights to any Non-Loan Party Restricted Subsidiary or Non-Loan Party Restricted Subsidiaries in connection with bona fide tax planning purposes as determined in good faith by the Borrower; *provided* , that the Collateral and the Lenders are not adversely affected in any material respect by such Disposition(s);
  - (23) Dispositions, including leases, subleases, licenses or sublicenses, of Products in Development in jurisdictions outside the United States; *provided* , that (a) such disposition does not materially interfere with the business of the Borrower and the Restricted Subsidiaries, taken as a whole and (b) such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;

(24) the Transactions; and

- (25) the issuance of, entry into (including any payments of premiums in connection therewith), performance of obligations under, or exercise, transfer, assignment, unwinding, settlement or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any Permitted Bond Hedge Transaction; the issuance of, entry into, performance of obligations under, or repurchase, redemption, transfer, assignment, unwinding, settlement, cancellation or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any related Permitted Warrant Transaction; and the issuance of, entry into performance of obligations under (including any payments of interest), conversion, exercise, repurchase, redemption, transfer, assignment, unwinding, settlement, cancellation or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any Convertible Indebtedness, in each case, whether in cash, common Capital Stock of Borrower or any direct or indirect parent of Borrower or other securities or property following a merger event or other change of the common Capital Stock of Borrower or such parent and whether in whole or in part and including by netting or set-off.

To the extent any Collateral is Disposed of as expressly permitted (or not prohibited) by this Section 6.05 to any Person other than a Loan Party, such Collateral will be Disposed of free and clear of the Liens created by the Loan Documents, and, without limiting, and subject to, the provisions of Section 9.11, the Administrative Agent will take, and each Lender hereby authorizes the Administrative Agent to take, any actions reasonably requested by the Borrower or deemed appropriate in order to evidence or effect the foregoing.

SECTION 6.07 Restricted Payments . Declare or make, directly or indirectly, any Restricted Payment, other than the declaration or making of the following:

- (1) Restricted Payments to the Borrower or any Restricted Subsidiary (or, in the case of any non-Wholly Owned Restricted Subsidiary, to the Borrower, any Restricted Subsidiary and each other owner of Equity Interests of such non-Wholly Owned Subsidiary on a *pro rata* basis (or more favorable basis from the perspective of the Borrower or such Restricted Subsidiary) according to their relative ownership interests);
- (2) the declaration and making of any Restricted Payments payable solely in the form of Equity Interests (other than Disqualified Stock) of the Borrower;
- (3) Restricted Payments to consummate the Transactions (including payments in respect of dissenting shares, which, for the avoidance of doubt, may be made after the Closing Date), to pay any amounts pursuant to the Acquisition Agreement or the Specified Tender Offer;
- (4) to the extent constituting a Restricted Payment or Restricted Payments, mergers, dissolutions, liquidations and consolidations permitted under Section 6.05 (other than a merger or consolidation involving the Borrower) or transactions permitted under Section 6.08 (other than Section 6.08(9));

- 
- (5) repurchases of Equity Interests (a) deemed to occur upon exercise of options, warrants or similar rights if such Equity Interests represent a portion of the exercise price of such options or warrants or similar rights or (b) in consideration of withholding or similar taxes payable by any future, present or former employee, manager, officer, director, consultant or contractor (or any spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing), including deemed repurchases in connection with the exercise of stock options or the vesting of any equity awards;
- (6) Restricted Payments to purchase, repurchase, retire, redeem or otherwise acquire Equity Interests (including related stock appreciation rights or similar securities) (or to allow any direct or indirect parent entity to purchase, retire, redeem or otherwise acquire Equity Interests (including related stock appreciation rights or similar securities)) held directly or indirectly by any future, present or former employee, manager, officer, director, consultant or contractor (or any spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing) of the Borrower, any of its Subsidiaries or any Parent Entity upon the death, disability, retirement or termination of employment of any such Person or otherwise pursuant to any management, employee or director equity plan, management, employee or director stock option or profits interest plan or any other management, employee or director benefit plan or other agreement or arrangement (including any separation, stock subscription, shareholder, partnership or similar agreement) in an aggregate amount after the Closing Date, together with the aggregate amount of loans and advances to any Parent Entity made pursuant to Section 6.04(23) in lieu of Restricted Payments permitted by this clause (6), not to exceed \$25 million in any fiscal year with any unused amounts in any fiscal year being carried over to succeeding fiscal years; *provided* that such amount in any fiscal year may be increased by,
- (a) the amount of net proceeds of any key man life insurance policies received by the Borrower or any Restricted Subsidiary after the Closing Date;
- (b) to the extent contributed in cash to the common equity of the Borrower and Not Otherwise Applied, the proceeds from the sale of Equity Interests of the Borrower or any direct or indirect parent thereof (other than Disqualified Stock, Excluded Contributions or Cure Amounts), in each case to any future, present or former employee, manager, officer director, consultant or contractor (or any spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing) of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof that occurs after the Closing Date; and
- (c) the amount of any cash bonuses or other compensation otherwise payable to any future, present or former employee, manager, officer, director, consultant or contractor (or any spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing) of the Borrower or any of its Restricted Subsidiaries or any Parent Entity that are foregone in return for the receipt of Equity Interests of the Borrower or any of its Restricted Subsidiaries or any direct or indirect parent thereof;

- 
- (7) Restricted Payments to purchase, repurchase, retire, redeem or otherwise acquire (or permit any direct or indirect parent entity to acquire) Equity Interests of the Borrower or any direct or indirect parent thereof in an aggregate amount per fiscal year not to exceed the greater of (a) \$25.0 million and (b) an amount equal to the Equivalent Percentage of the amount set forth in clause (a) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Restricted Payment;
- (8) Restricted Payments the proceeds of which will be used to pay or finance (or permit any Parent Entity to pay or finance):
- (a) distributions made pursuant to Section 4.01(b) of the LLC Agreement;
  - (b) operating, overhead, legal, accounting and other professional fees costs and expenses (including directors' fees and expenses and Public Company Costs) and other ordinary course overhead costs and operational expenses (including administrative, legal, accounting, filing and similar expenses provided by third parties), in each case to the extent related to any such Parent Entity's separate existence as a holding company or attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries;
  - (c) franchise taxes and other fees, taxes and expenses in connection with (i) the ownership of the Borrower or any Restricted Subsidiary or (ii) the maintenance of the Borrower's or any such parent entity's corporate or legal existence;
  - (d) to the extent constituting Restricted Payments, the Borrower and the Restricted Subsidiaries may enter into and consummate transactions expressly permitted under Sections 6.08(3), (5), (7), (16), (17), (19) and (21), in each case to the extent such payments are due at the time of such Restricted Payment;
  - (e) any Permitted Investment; *provided* that (i) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (ii) the Borrower will, immediately following the closing thereof, cause (A) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or a Subsidiary (which shall be a Restricted Subsidiary to the extent required by Section 6.04) or (B) the merger (to the extent permitted in Section 6.05) of the Person formed or acquired with or into the Borrower or a Subsidiary (which shall be a Restricted Subsidiary to the extent required by Section 6.04) in order to consummate such Investment;
  - (f) costs, fees and expenses related to any equity or debt offering expressly permitted by this Agreement or any Permitted Investment, whether or not consummated; and

- 
- (g) (i) customary salary, bonus and other benefits payable to future, present or former employees, managers, officers, directors, consultants or contractors (or any spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing) to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries or (ii) payments permitted under Sections 6.08(7);
- (9) Restricted Payments to pay (or permit any direct or indirect parent entity to pay) cash in lieu of the issuance of fractional Equity Interests in connection with the exercise of warrants, upon the conversion or exchange of Equity Interests of any such Person, in connection with any merger, consolidation, amalgamation or other business combination, or in connection with any dividend, distribution, split or combination of Equity Interests or any Permitted Investment;
- (10) [Reserved];
- (11) the making of any Restricted Payment in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary of the Borrower) of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Entity or from the substantially concurrent contribution of common equity capital to the Borrower, in each case that are Not Otherwise Applied, other than (a) Excluded Contributions and (b) Cure Amounts;
- (12) Restricted Payments that are made with Excluded Contributions that are Not Otherwise Applied;
- (13) Restricted Payments of Investments in one or more Unrestricted Subsidiaries;
- (14) Restricted Payments (the proceeds of which may be utilized by any Parent Entity) in an aggregate amount not to exceed, when taken together with any prepayments, repayments, redemptions, purchases, defeasances or satisfactions made under clause (1)(f) of Section 6.11, the greater of (i) \$125.0 million and (ii) an amount equal to the Equivalent Percentage of the amount set forth in clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such Restricted Payment; *provided*, in each case, that no Event of Default shall have occurred and be continuing either immediately before, or after, giving Pro Forma effect to, such Restricted Payment;
- (15) Restricted Payments; *provided* that both immediately prior to and after giving Pro Forma Effect to such Restricted Payment, the RP Payment Conditions are satisfied; and
- (16) the issuance of, entry into (including any payments of premiums in connection therewith), performance of obligations under, or exercise, transfer, assignment, unwinding, settlement or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any Permitted Bond Hedge Transaction; the issuance of, entry into, performance of obligations under, or repurchase, redemption, transfer, assignment, unwinding, settlement, cancellation or early termination of, or the

satisfaction of any condition that would permit or require any of the foregoing, any related Permitted Warrant Transaction; and the issuance of, entry into performance of obligations under (including any payments of interest), conversion, exercise, repurchase, redemption, transfer, assignment, unwinding, settlement, cancellation or early termination of, or the satisfaction of any condition that would permit or require any of the foregoing, any Convertible Indebtedness, in each case, whether in cash, common Capital Stock of Borrower or any direct or indirect parent of Borrower or other securities or property following a merger event or other change of the common Capital Stock of Borrower or such parent and whether in whole or in part and including by netting or set-off.

The amount set forth in Section 6.07(14) may (without duplication), in lieu of Restricted Payments, be utilized by the Borrower or any Restricted Subsidiary to (i) make or hold any Investments without regards to Section 6.04 or (ii) prepay, repay redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof any Junior Financing without regards to Section 6.11.

SECTION 6.08 Transactions with Affiliates. Engage in any transaction with any Affiliate of the Borrower, except that this Section 6.08 will not prohibit:

- (1) any transactions between or among the Borrower or any of the Restricted Subsidiaries or any Person that becomes a Restricted Subsidiary as a result of such transaction;
- (2) any transactions on terms substantially as favorable to the Borrower or such Restricted Subsidiary (as applicable) as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate (as determined by the Borrower in good faith);
- (3) the Transactions (including the issuance or conversion of Equity Interests in connection therewith) and the payment of fees and expenses (including the Transaction Costs) related to the Transactions;
- (4) the issuance, transfer or conversion of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Entity not constituting a Change in Control;
- (5) employment and severance arrangements and confidentiality agreements among the Borrower, any of its Subsidiaries or any direct or indirect parent thereof and any future, present or former employee, manager, officer, director, consultant or contractor (or any spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing) of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof in the ordinary course of business and transactions pursuant to equity plans, stock option or profits interest plan or any other equity or benefit plan or other similar agreement or arrangement (including to the extent set forth in any separation, stock subscription, shareholder, partnership or similar agreement);
- (6) the licensing of Intellectual Property Rights in the ordinary course of business to permit the commercial exploitation of Intellectual Property Rights between or among the Borrower, its Affiliates or its Restricted Subsidiaries;

- 
- (7) the payment of fees, reasonable out-of-pocket costs and expenses to, and indemnities provided to or on behalf of, any officers, directors, managers, employees, consultants or contractors of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries or any such parent's separate existence;
  - (8) any other transaction, agreement, instrument or arrangement as in effect as of the Closing Date and, with respect to each such transaction, agreement, instrument or arrangement involving aggregate payments or consideration in excess of \$25.0 million, set forth on Schedule 6.08, or any amendment thereto (so long as any such amendment is not materially adverse to the Lenders, taken as a whole, as compared to the applicable transaction, agreement, instrument or arrangement as in effect on the Closing Date);
  - (9) any Restricted Payments permitted under Section 6.07, transactions permitted under Sections 6.05 and Investments permitted under Section 6.04;
  - (10) (a) the Tax Receivable Agreement or transactions thereunder or (b) payments by the Borrower, any Subsidiary or any direct or indirect parent thereof pursuant to reasonable tax sharing arrangements between or among such Persons;
  - (11) any transactions in which the Borrower or any of the Restricted Subsidiaries, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or any such Restricted Subsidiary, as applicable, from a financial point of view or meets the requirements of clause (2) of this Section 6.08 (without giving effect to the parenthetical phrase at the end thereof);
  - (12) any transaction or series of related transactions with consideration valued (as determined in good faith by the Borrower) at less than the greater of (a) \$20.0 million and (b) an amount equal to the Equivalent Percentage of the amount set forth in clause (a) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of consummating such transaction(s);
  - (13) investments by the Investors in securities of the Borrower or any Parent Entity or Indebtedness of the Borrower, any Parent Entity or any of the Restricted Subsidiaries so long as (a) the investment is being offered generally to other investors on the same or more favorable terms and (b) any such investment constitutes less than 5.0% of the proposed or outstanding issue amount of such class of securities; *provided*, that any investments in debt securities by any Debt Fund Affiliates shall not be subject to the limitation in this clause (b);
  - (14) payments to or from, and transactions with, Joint Ventures (to the extent any such Joint Venture is only an Affiliate as a result of Investments by the Borrower and the Restricted Subsidiaries in such Joint Venture);
  - (15) transactions between or among the Borrower or its Subsidiaries effected as part of any Qualified Receivables Transaction permitted hereunder;

- 
- (16) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to shareholders of the Borrower or any Parent Entity pursuant to the stockholders agreement or the registration and participation rights agreement entered into on the Closing Date in connection therewith;
  - (17) the payment of any dividend or distribution or consummation of any redemption within sixty (60) days after the date of declaration thereof or the giving of a redemption notice related thereto, if at the date of declaration or notice such payment would have complied with the provisions of this Agreement;
  - (18) transactions between or among the Borrower, any of its Restricted Subsidiaries or any direct or indirect parent thereof and any Person, a director of which Person is also a director of the Borrower or any Parent Entity of the Borrower; *provided, however*, that such director abstains from voting as a director of the Borrower or such Parent Entity, as the case may be, on any matter involving such other Person and such Person is not an Affiliate of the Borrower for any reason other than such director's acting in such capacity;
  - (19) payments, loans (or cancellation of loans) or advances to any future, present or former employee, manager, officer, director, consultant or contractor (or any spouses, former spouses, successors, executors, administrators, heirs, trustees, legatees or distributees of any of the foregoing) that are approved in good faith by a majority of the Disinterested Directors of the Borrower, any of its applicable Restricted Subsidiaries or any applicable direct or indirect parent of the foregoing;
  - (20) any purchase by any Parent Entity of the Equity Interests of the Borrower and the issuance, sale or transfer of Equity Interests of the Borrower to any Parent Entity and capital contributions by any Parent Entity to the Borrower (and payment of reasonable out-of-pocket expenses incurred in connection therewith);
  - (21) the existence of, or the performance by the Borrower or any of its Subsidiaries of its obligations under the terms of, any customary registration rights agreement to which such Person or any Parent Entity is a party or becomes a party in the future; and
  - (22) transactions approved by a majority of the Disinterested Directors of the Borrower or any applicable Parent Entity.

SECTION 6.09 Business of the Borrower and its Subsidiaries. Engage in any material line of business substantially different from those lines of business conducted or proposed to be conducted by the Borrower and its Restricted Subsidiaries on the Closing Date (after giving effect to the Transactions) and any business that is similar, corollary, ancillary, incidental or complementary or related to, or a reasonable extension, development or expansion of, the businesses conducted or proposed to be conducted by the Borrower and its Restricted Subsidiaries on the Closing Date (after giving effect to the Transactions), including any Similar Business.

SECTION 6.10 Burdensome Agreements. Enter or permit any Material Restricted Subsidiary to enter into any Contractual Obligation (other than the Loan Documents, the Term Loan Documents or the Impax Convertible Notes) that by its terms restricts (I) with respect to any such Material Restricted Subsidiary that is not a Guarantor, Restricted Payments from such Material Restricted Subsidiary to the Borrower or any other Loan Party, as applicable, that is a direct or indirect parent of such Restricted Subsidiary or (II) with respect to the Borrower or any such Material Restricted Subsidiary that is a Loan Party, the granting of Liens by such Material Restricted Subsidiary pursuant to the Security Documents; *provided* that the foregoing clauses (I) and (II) will not apply to any Contractual Obligations that:

- (1) (a) exist on the Closing Date and are to the extent such Contractual Obligation relates to any security with a value exceeding \$25.0 million, listed on Schedule 6.10 and (b) to the extent Contractual Obligations permitted by clause (a) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted Refinancing of such Indebtedness so long as (to the extent not otherwise permitted by this Section 6.10) such Refinancing does not materially expand the scope of such Contractual Obligation with respect to restrictions described in the preceding clauses (I) or (II);
- (2) are (a) binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary or (b) acquired in connection with a Permitted Investment, so long as, in each case, such Contractual Obligations were not entered into in contemplation of such Person becoming a Restricted Subsidiary or such Permitted Investment, in each case as such Contractual Obligations may be amended, restated, supplemented, modified extended renewed or replaced, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement does not expand in any material respect the scope of any restriction contemplated by this Section 6.10 contained therein;
- (3) represent Indebtedness of a Restricted Subsidiary that is not a Loan Party;
- (4) are customary restrictions and conditions that arise in connection with (a) any Lien (other than Liens on Collateral) permitted by Section 6.02, and relate to the property permitted to be subject to such Lien, or (b) any Disposition pending consummation of such Disposition and solely with respect to the assets (including Equity Interests) subject to such Disposition;
- (5) are customary provisions in joint venture or similar agreements relating to the applicable joint venture;
- (6) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 6.01, but solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness and the proceeds and products thereof;
- (7) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto;
- (8) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted under Section 6.01 to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

- 
- (9) are (a) customary provisions restricting subletting or assignment of any lease governing a leasehold interest or (b) customary net worth provisions contained in Real Property leases entered into by Restricted Subsidiaries, so long as a Responsible Officer of the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower and the other Restricted Subsidiaries to meet their ongoing obligations;
  - (10) are customary provisions restricting assignment of any Contractual Obligation entered into in the ordinary course of business;
  - (11) are customary provisions contained in leases or licenses of Intellectual Property Rights and other similar agreements entered into in the ordinary course of business;
  - (12) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;
  - (13) arise in connection with cash or other deposits permitted under Section 6.02;
  - (14) comprise restrictions in any Indebtedness permitted pursuant to Section 6.01 that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Restricted Subsidiary than customary market terms for agreements governing Indebtedness of such type or otherwise reasonably acceptable to the Administrative Agent, so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required hereunder;
  - (15) apply by reason of any applicable Law, rule, regulation or order or are required by any Governmental Authority having or purporting to have jurisdiction over the Borrower or any Restricted Subsidiary;
  - (16) customary restrictions contained in Indebtedness permitted to be incurred pursuant to Sections 6.01(4) and (11)(a), and any Permitted Refinancing Indebtedness in respect of the foregoing;
  - (17) consist of any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (16) above, so long as such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, not materially more restrictive with respect to such Lien, dividend and other payment restrictions, taken as a whole, than those contained in the Lien, dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; or
  - (18) are encumbrances or restrictions applicable to a Receivables Subsidiary in connection with a Qualified Receivables Financing that, in the good faith determination of the Borrower, are necessary or advisable to effect such Qualified Receivables Financing.

SECTION 6.11 Limitation on Payments and Modifications of Certain Indebtedness; Amendments of Certain Documents.

- (1) Prepayments of Junior Financing. Prepay, repay, redeem, purchase, defease or otherwise satisfy prior to scheduled maturity thereof any Junior Financing, except:
- (a) the refinancing thereof with the Net Cash Proceeds of, or in exchange for, any Permitted Refinancing Indebtedness;
  - (b) the conversion or exchange of any Junior Financing into or for Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Entity;
  - (c) the prepayment repayment, redemption, purchase, defeasance or satisfaction of any of Indebtedness of the Borrower or any of its Restricted Subsidiaries owed to the Borrower or any of its Restricted Subsidiaries;
  - (d) the prepayment, repayment, redemption, purchase, defeasance or satisfaction of any Junior Financing with the proceeds of (i) any other Junior Financing or (ii) any Qualified Equity Interests or any cash contribution to the common equity capital of the Borrower after the Closing Date (other than any Cure Amount or Excluded Contribution) that is Not Otherwise Applied; *provided* that such prepayment, repayment, redemption, purchase, defeasance or satisfaction is made within 60 days after receipt of such proceeds and no Event of Default has occurred and is continuing;
  - (e) payments or distributions in respect of all or any portion of such Junior Financing with the proceeds contributed directly or indirectly to the Borrower by any Parent Entity from the issuance, sale or exchange by any Parent Entity of Equity Interests (other than Disqualified Stock, Cure Amounts or Excluded Contributions) made within eighteen (18) months prior thereto and Not Otherwise Applied;
  - (f) prepayments, repayments, redemptions, purchases, defeasances or satisfactions of any Junior Financing in an aggregate amount not to exceed, when taken together with any Restricted Payments made under Section 6.07(14)(a), the greater of (i) \$125 million and (ii) an amount equal to the Equivalent Percentage of the amount set forth in clause (i) multiplied by TTM Consolidated EBITDA as of the applicable date of determination, in each case determined as of the time of making such prepayment, repayment, redemption, purchase, defeasance or satisfaction; *provided* , in each case, that no Event of Default shall have occurred and be continuing or shall result therefrom;
  - (g) prepayments, repayments, redemptions, purchases, defeasances or satisfactions, of any Junior Financing so long as immediately prior to and after giving Pro Forma Effect to such prepayment, repayment, redemption, purchase, defeasance or satisfaction, the RP Payment Conditions are satisfied; or
  - (h) any Specified Tender Offer;

---

*provided, however*, that each of the following shall be permitted: payments of regularly scheduled principal and interest (including default interest and any “AHYDO” catch-up payment) on Junior Financing, fees related to Junior Financing, indemnity and expense reimbursement payments in connection with Junior Financing, and mandatory prepayments, mandatory redemptions and mandatory purchases of any Junior Financing (including any principal, premium or interest with respect thereto), in each case pursuant to the terms of the applicable Junior Financing Documentation.

The amount set forth in clause (1)(f) of this Section 6.11 (without duplication) may be, in lieu of prepayments, repayments, redemptions, purchases, defeasances or satisfactions of any Junior Financing, be utilized by the Borrower or any Restricted Subsidiary to (i) make or hold any Investments without regards to Section 6.04 or (ii) make Restricted Payments without regards to Section 6.07.

- (2) Amendments to Junior Financing Documentation. Amend, modify or change in any manner without the consent of the Administrative Agent, any Junior Financing Documentation in a manner that is materially adverse to the interests of the Lenders (taken as a whole), in each case other than as a result of a Permitted Refinancing thereof; *provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least four (4) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to any such amendment, modification or change, together with a reasonably detailed description of the material terms and conditions of such amendment, modification or change or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (2) shall be conclusive evidence that such amendment, modification or change satisfies this clause (2) unless the Administrative Agent notifies the Borrower within such four (4) Business Day (or shorter) period that it disagrees with such determination (including a description of the basis upon which it disagrees); or
- (3) Amendments to Organization Documents. Amend, modify or change its certificate or articles of incorporation or formation (including by the filing or modification of any certificate or articles of designation), certificate of formation, limited liability company agreement or by-laws (or the equivalent organizational documents), as applicable, in each case, in any manner materially adverse to the interests of the Lenders (taken as a whole); *provided* that, in each case, a certificate of a Responsible Officer delivered to the Administrative Agent at least four (4) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to any such amendment, modification or change, together with a reasonably detailed description of the material terms and conditions of such amendment, modification or change or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (3) shall be conclusive evidence that such amendment, modification or change satisfies such requirement unless the Administrative Agent notifies the Borrower within such four (4) Business Day (or shorter) period that it disagrees with such determination (including a description of the basis upon which it disagrees).

SECTION 6.12 Use of Proceeds. The Borrower shall not use, and the Borrower shall procure that its Subsidiaries and its or their respective directors, officers, employees and, to the Borrower's knowledge, agents shall not use, the proceeds of the Loans (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in or with any Sanctioned Country, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto

SECTION 6.13 Financial Performance Covenant. Upon the occurrence and during the continuance of a Covenant Trigger Event, the Borrower will maintain a Fixed Charge Coverage Ratio of not less than 1.0 to 1.0 measured at the time of occurrence of such Covenant Trigger Event (as of the last day of the Test Period ending immediately prior to the date on which such Covenant Trigger Event has commenced), and on the last day of each subsequent Test Period ending during the continuance of such Covenant Trigger Event.

## ARTICLE VII

*[Reserved]*

## ARTICLE VIII

### *Events of Default*

SECTION 8.01 Events of Default. In case of the happening of any of the following events (each, an "*Event of Default*"):

- (1) any representation or warranty made by the Borrower or any other Loan Party herein or in any other Loan Document or any certificate or document required to be delivered pursuant hereto or thereto proves to have been false or misleading in any material respect when so made; *provided* that the failure of any Specified Acquisition Agreement Representation to be true and correct will not result in a Default or an Event of Default, unless such failure results in a failure of a condition precedent to the Borrower's (or its Affiliates') obligation to consummate the Acquisition pursuant to the terms of the Acquisition Agreement or such failure gives the Borrower (or its Affiliates) the right (taking into account any applicable cure provisions) to terminate its (or their) obligations under the Acquisition Agreement;
- (2) default is made in the payment of any principal of any Loan or the reimbursement of any L/C Disbursement when and as the same becomes due and payable, whether at the due date thereof, at a date fixed for prepayment thereof, by acceleration thereof or otherwise;
- (3) default is made in the payment of any interest on any Loan or in the payment of any fee (other than an amount referred to in clause (2) of this Section 8.01), when and as the same becomes due and payable, and such default continues unremedied for a period of five (5) Business Days;

- 
- (4) default is made in the due observance or performance by the Borrower or any Restricted Subsidiary of any covenant, condition or agreement contained in (a) Section 5.01(1) (with respect to the Borrower only), 5.05(1) or in Article VI (in each case solely to the extent applicable to such Person), (b) Section 5.11 but only if such default continues unremedied for a period of five (5) Business Days or (c) Section 5.04(9) and such default continues unremedied for a period of five (5) Business Days (or, after the occurrence and during the continuance of an Increased Reporting Period, two (2) Business Days) following notice thereof from the Administrative Agent to the Borrower;
- (5) default is made in the due observance or performance by the Borrower or any Restricted Subsidiary of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (1), (2), (3) and (4) of this Section 8.01), in each case solely to the extent applicable to such Person, and such default continues unremedied for a period of 30 days after the earlier of (x) receipt of written notice thereof from the Administrative Agent to the Borrower and (y) the date on which an executive officer of the Borrower becomes aware of such default;
- (6) (a) (i) any event or condition occurs (other than, with respect to Indebtedness under any Hedge Agreement, termination events or equivalent events pursuant to the terms of such Hedge Agreement that do not result from a default thereunder by a Loan Party or Restricted Subsidiary) that (A) results in any Material Indebtedness becoming due prior to its scheduled maturity or (B) enables or permits (with all applicable grace periods having expired) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity or (ii) the Borrower or any Restricted Subsidiary fails to pay the principal of any Material Indebtedness at the stated final maturity thereof and (b) such event, condition or failure is unremedied and is not waived or cured by the holders of such Indebtedness prior to any acceleration of the Loans pursuant to this Section 8.01; *provided* that this clause (6) will not apply to any (A) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of all or a portion of the property or assets securing such Indebtedness or (B) any redemption, repurchase, conversion, exercise or settlement (or the occurrence of any event or satisfaction of any condition giving rise to or permitting any of the foregoing) with respect to any Convertible Indebtedness pursuant to its terms unless such redemption, repurchase, conversion or settlement (or occurrence, giving rise to, or permitting any of the foregoing) results from a default thereunder or an event of the type that constitutes an Event of Default thereunder;
- (7) a Change in Control occurs;
- (8) an involuntary proceeding is commenced or an involuntary petition is filed in a court of competent jurisdiction seeking:
- (a) relief in respect of the Borrower or any of the Material Restricted Subsidiaries, or of a substantial part of the property or assets of the Borrower or any Material Restricted Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other applicable federal, state or foreign bankruptcy, insolvency, receivership or similar law;

- 
- (b) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any of the Material Restricted Subsidiaries or for a substantial part of the property or assets of the Borrower or any Restricted Subsidiary; or
  - (c) the winding up or liquidation of the Borrower or any Material Restricted Subsidiary (except, in the case of any Material Restricted Subsidiary, in a transaction permitted by Section 6.05) and such proceeding or petition continues undismissed for 60 days or an order or decree approving or ordering any of the foregoing is entered;
- (9) the Borrower or any Material Restricted Subsidiary:
- (a) voluntarily commences any proceeding or files any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other applicable federal, state or foreign bankruptcy, insolvency, receivership or similar law;
  - (b) consents to the institution of, or fails to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (8) of this Section 8.01;
  - (c) applies for or consents to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any of the Material Restricted Subsidiaries or for a substantial part of the property or assets of the Borrower or any Material Restricted Subsidiary;
  - (d) files an answer admitting the material allegations of a petition filed against it in any such proceeding;
  - (e) makes a general assignment for the benefit of creditors; or
  - (f) becomes unable or admits in writing its inability or fails generally to pay its debts as they become due;
- (10) the Borrower or any Restricted Subsidiary fails to pay one or more final judgments for the payment of money aggregating in excess of the Threshold Amount (to the extent not covered by insurance or other indemnity obligation), which such judgment(s) are not satisfied, vacated, discharged, stayed, bonded pending appeal or effectively waived or stayed for a period of 60 consecutive days;
- (11) an ERISA Event occurs with respect to any Plan or Multiemployer Plan, and such ERISA Event, together with all other such ERISA Events, if any, is reasonably expected to have a Material Adverse Effect; or

- (12) (a) any material provision of the Loan Documents, taken as a whole, at any time after their execution and delivery and prior the Payment In Full of the Obligations, for any reason other than as expressly permitted under a Loan Document (including as a result of a transaction permitted under Section 6.05), ceases to be, or is asserted in writing by the Borrower or any Restricted Subsidiary not to be, for any reason, a legal, valid and binding obligation of any party thereto, (b) any security interest purported to be created by any Security Document and to extend to assets that are included in the Borrowing Base or otherwise are not immaterial to the Borrower and the Restricted Subsidiaries, when taken as a whole, on a consolidated basis ceases to be, or is asserted in writing by the Borrower or any other Loan Party not to be, a valid and perfected security interest in the Collateral covered thereby, except to the extent that any such loss of validity or perfection results from (i) the limitations of foreign laws, rules and regulations or the application thereof, or (ii) the failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under a Security Document or to file Uniform Commercial Code continuation statements or take any other action and except to the extent that such loss is covered by a lender's title insurance policy and the Collateral Agent is reasonably satisfied with the credit of such insurer or (c) the Guarantees pursuant to the Security Documents by any Material Restricted Subsidiary Guarantor of any of the Obligations cease to be in full force and effect (other than in accordance with the terms hereof or thereof, including the release of such Person as provided for under the Loan Documents and the Payment in Full of the Obligations) or are asserted in writing by the Borrower or any other Subsidiary Loan Party not to be in effect or not to be legal, valid and binding obligations, except in the cases of clauses (b) and (c), in connection with an Asset Sale permitted by this Agreement;

then, (i) upon the occurrence of any such Event of Default (other than an Event of Default with respect to the Borrower described in clause (8) or (9) of this Section 8.01) and at any time thereafter during the continuance of such Event of Default, the Administrative Agent, at the request of the Required Lenders, will, by notice to the Borrower, take any or all of the following actions, at the same or different times: (A) terminate forthwith the Commitments, (B) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, will become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; (C) if the Loans have been declared due and payable pursuant to clause (B) above, demand cash collateral pursuant to Section 2.05(11); and (D) exercise all rights and remedies granted to it under any Loan Document and all of its rights under any other applicable law or in equity, and (ii) in any event with respect to the Borrower described in clause (8) or (9) of this Section 8.01, the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, will automatically become due and payable and the Administrative Agent shall be deemed to have made a demand for cash collateral to the full extent permitted under Section 2.05(11), without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; *provided* that,

notwithstanding any of the foregoing, (w) upon the occurrence of and during the continuance of an Event of Default under Section 8.01(2) or (3) with respect to the Refinancing Term Loans, the Administrative Agent, at the request of the Required Term Lenders, will, by notice to the Borrower, declare the Refinancing Term Loans then outstanding to be forthwith due and payable in whole or in part pursuant to the foregoing clause (B), (x) upon the acceleration of the Revolving Loans hereunder, the principal of the Refinancing Term Loans then outstanding, together with accrued interest thereon and all other Obligations accrued in respect thereof, shall be automatically due and payable in whole immediately and all Refinancing Term Loan Commitments shall automatically terminate, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, (y) upon the acceleration of the Refinancing Term Loans hereunder, the principal of the Revolving Loans then outstanding, together with accrued interest thereon and all other Obligations accrued in respect thereof, shall be automatically due and payable in whole immediately and all Commitments shall automatically terminate, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and (z) except as expressly set forth herein (including, without limitation, in the FILO Intercreditor Provisions), no Refinancing Term Lender shall have any right to affirmatively exercise any remedy with respect to the Collateral upon the occurrence and during the continuance of an Event of Default until the Discharge of ABL Revolving Claims.

SECTION 8.02 Right to Cure. Notwithstanding anything to the contrary contained in Section 8.01, in the event that the Borrower fails (or, but for the operation of this Section 8.02, would fail) to comply with the requirements of the Financial Performance Covenant, until the expiration of the tenth Business Day subsequent to the date the Required Financial Statements are required to be delivered pursuant to Section 5.04(1) or (2) for the applicable fiscal quarter, the Borrower shall have the right to issue Permitted Cure Securities for cash (*provided* that, if such Permitted Cure Securities are not in the form of common equity, the terms of such Permitted Cure Securities must be reasonably acceptable to the Administrative Agent) or otherwise receive cash contributions to the capital of the Borrower, and, in each case, to contribute any such cash to the capital of the Borrower (collectively, the “**Cure Right**”) and, upon the receipt by the Borrower of such cash (the “**Cure Amount**”) pursuant to the exercise by the Borrower of such Cure Right, the Financial Performance Covenant shall be recalculated giving effect to a *pro forma* adjustment by which Consolidated EBITDA shall be increased with respect to such applicable fiscal quarter and any Test Period that contains such quarter, solely for the purpose of measuring the Financial Performance Covenant and not for any other purpose under this Agreement, by an amount equal to the Cure Amount. The resulting increase to Consolidated EBITDA from the application of a Cure Amount shall not result in any adjustment to Consolidated EBITDA or any other financial definition for any purpose under this Agreement other than for purposes of calculating the Financial Performance Covenant and there shall be no *pro forma* or other reduction in Indebtedness from the application of a Cure Amount for purposes of calculating the Financial Performance Covenant unless such Cure Amount is actually applied to prepay Indebtedness. In each four fiscal quarter period there shall be at least two fiscal quarters in which the Cure Right is not exercised and the Cure Right may not be exercised more than five times during the term of this Agreement and, for purposes of this Section 8.02, the Cure Amount shall be no greater than the amount required for purposes of complying with the Financial Performance Covenant. If, after giving effect to the adjustments in this Section 8.02, the Borrower shall then be in compliance with the requirements of the

Financial Performance Covenant, the Borrower shall be deemed to have satisfied the requirements of the Financial Performance Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Financial Performance Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement. Notwithstanding the foregoing, after the occurrence of an Event of Default under the Financial Performance Covenant, the Borrower shall not be able to request the making of any Loan or the issuance or renewal of any Letter of Credit until receipt by the Borrower of the Cure Amount.

## ARTICLE IX

### *The Agents*

#### SECTION 9.01 Appointment.

- (1) Each Lender (in its capacities as a Lender and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) and each Issuing Bank hereby irrevocably designates and appoints the entity named as Administrative Agent in the heading of this Agreement and its permitted successors and assigns to serve as administrative agent under this Agreement and the other Loan Documents, as applicable, including as the Collateral Agent for such Lender and the other applicable Secured Parties under the applicable Security Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacities, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are delegated to the Administrative Agent under this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the United States, each of the Lenders and the Issuing Banks hereby grants to the Administrative Agent any required powers of attorney to execute and enforce any Security Document governed by the laws of such jurisdiction on such Lender's or Issuing Bank's behalf. Without limiting the foregoing, each Lender and each Issuing Bank authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents.
- (2) Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent; additionally, each Lender and each Issuing Bank agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and transactions contemplated hereby. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental

---

Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. For the avoidance of doubt, the Borrower shall not have liability for the actions of the Administrative Agent pursuant to the immediately preceding sentence.

- (3) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, (a) the Administrative Agent (irrespective of whether the principal of any Obligation 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 (i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of any or all of the 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, the Issuing Banks and the Agents and any Subagents allowed in such judicial proceeding and (ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and (b) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, 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 the Loan Documents. 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 or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

SECTION 9.02 Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement and the other Loan Documents (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of the agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent may also from time to time, when the Administrative Agent deems it to be necessary or desirable, appoint one or more trustees, co-trustees, collateral co-agents, collateral subagents or attorneys-in-fact (each, a “**Subagent**”)

with respect to all or any part of the Collateral; *provided* that no such Subagent shall be authorized to take any action with respect to any Collateral unless and except to the extent expressly authorized in writing by the Administrative Agent. Should any instrument in writing from the Borrower or any other Loan Party be reasonably required by any Subagent so appointed by the Administrative Agent to more fully or certainly vest in and confirm to such Subagent such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon reasonable written request by the Administrative Agent. If any Subagent, or successor thereto, shall die, become incapable of acting, resign or be removed, all rights, powers, privileges and duties of such Subagent, to the extent permitted by law, shall automatically vest in and be exercised by the Administrative Agent until the appointment of a new Subagent. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent, attorney-in-fact or Subagent that it selects in accordance with the foregoing provisions of this Section 9.02 in the absence of the Administrative Agent's gross negligence or willful misconduct.

SECTION 9.03 Exculpatory Provisions. None of the Administrative Agent, its Affiliates or any of their respective officers, directors, employees, agents or attorneys-in-fact shall be (1) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (2) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, and (b) the Administrative Agent 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 Administrative Agent or any of its Affiliates in any capacity. 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 or Event of 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 Security Documents;
  - (v) the value or 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.

SECTION 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) or conversation believed in good faith 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 in good faith 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 any Credit Event, that by its terms must be fulfilled to the satisfaction of a Lender or any Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to such Borrowing. The Administrative Agent may consult with legal counsel (including counsel to 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. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all or other Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement, all or other Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

SECTION 9.05 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all or other Lenders); *provided* that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

SECTION 9.06 Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that neither the Agents nor any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates have made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of a Loan Party or any Affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any Affiliate of a Loan Party that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

SECTION 9.07 Indemnification. The Lenders agree to indemnify each Agent and each Issuing Bank, in each case in its capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), in the amount of its pro rata share (based on its aggregate Revolving Facility Credit Exposure and, in the case of the indemnification of each Agent, unused Commitments hereunder; *provided* that the aggregate principal amount of L/C Disbursements owing to any Issuing Bank shall be considered to be owed to the Revolving Lenders ratably in accordance with their respective Revolving Facility Credit Exposure) (determined at the time such indemnity is sought), 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 the Administrative Agent or such Issuing Bank in any way relating to or arising out of the Commitments, 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 the Administrative Agent or such Issuing Bank 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 non-appealable decision of a court of competent jurisdiction to have resulted from the Administrative Agent's or such Issuing Bank's gross negligence or willful misconduct. The failure of any Lender to reimburse the Administrative Agent or any Issuing Bank, as the case may be, promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Administrative Agent or such Issuing Bank, as the case may be, as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Administrative Agent or such Issuing Bank, as the case may be, for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Administrative Agent or such Issuing Bank, as the case may be, for such other Lender's ratable share of such amount. The agreements in this Section 9.07 shall survive the payment of the Loans and all other amounts payable hereunder.

SECTION 9.08 Agent in Its Individual Capacity. Each Agent and its Affiliates may make loans to, accept deposits from, and generally engage in any kind of business with any Loan Party as though the Administrative Agent were not the Administrative Agent. With respect to its Loans made or renewed by it and with respect to any Letter of Credit issued, or Letter of Credit participated in by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not the Administrative Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

SECTION 9.09 Successor Agent. The Administrative Agent may resign as Administrative Agent upon thirty days' notice to the Lenders and the Borrower. Any such resignation by the Administrative Agent hereunder shall also constitute its resignation as an Issuing Bank, in which case the resigning Administrative Agent (x) shall not be required to issue any further Letters of Credit hereunder and (y) shall maintain all of its rights as Issuing Bank with respect to any Letters of Credit issued by it prior to the date of such resignation. If the Administrative Agent resigns as the Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall (unless a Specified Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the reference to the resigning Administrative Agent means such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Loans. If no 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, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. If no successor agent has accepted appointment as Administrative Agent by the date that is 30 days following a retiring Administrative Agent's notice of resignation, the retiring

Administrative Agent's resignation will nevertheless thereupon become effective, and the Required Lenders will thereafter perform all the duties of such Administrative Agent hereunder or under any other Loan Document until such time, if any, as the Required Lenders and the Issuing Banks appoint a successor Administrative Agent which shall (unless a Specified Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed). After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Section 9.09 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

SECTION 9.10 Arrangers; Co-Syndication Agents; Co-Documentation Agents. None of the Arrangers, Co-Syndication Agents or Co-Documentation Agents will have any duties, responsibilities or liabilities hereunder in their respective capacities as such.

SECTION 9.11 Collateral and Guaranty Matters.

- (1) Each of the Lenders (including in its capacity as a potential Qualified Counterparty or Cash Management Bank) and the other Secured Parties irrevocably appoints and authorizes the Administrative Agent and the Collateral Agent to be the agent for and representative of the Lenders with respect to the Collateral Agreement, the Collateral and the Security Documents, together with such powers and discretion as are reasonably incidental thereto; *provided* that neither the Administrative Agent nor the Collateral Agent shall owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure or any other obligation whatsoever to any holder of any Cash Management Obligations or Obligations with respect to any Specified Hedge Agreement.
- (2) Each Agent, each Lender and each other Secured Party agrees that:
  - (a) Liens on any property granted to or held by an Agent in favor of any Secured Party under any Loan Document will be automatically released,
    - (i) upon Payment in Full and the termination of the Commitments;
    - (ii) at the time the property subject to such Lien is Disposed (or to be Disposed) as part of, or in connection with, any transfer permitted under the Loan Documents to any Person that is not (and is not required to be) a Loan Party,
    - (iii) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under the Collateral Agreement pursuant to clause (c) below;
    - (iv) subject to Section 10.08, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders; or
    - (v) upon such property becoming an Excluded Asset or Excluded Equity Interest.

- 
- (b) it will release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(3);
  - (c) if any Subsidiary Loan Party ceases to be a Subsidiary in a transaction permitted hereunder, is not a Material Subsidiary or as a result of a transaction permitted hereunder becomes an Excluded Subsidiary (in each case, as certified in writing by a Responsible Officer), and the Borrower notifies the Administrative Agent in writing that it wishes such Guarantor to be released from its obligations under the Collateral Agreement and, upon request of the Administrative Agent or the Collateral Agent, as applicable, provides the Administrative Agent and the Collateral Agent certifications that such Subsidiary Loan Party is not a Material Subsidiary or has become an Excluded Subsidiary (as applicable), it will release (or evidence the release) of (i) such Subsidiary Loan Party from its obligations under the Collateral Agreement and the other Loan Documents and (ii) any Liens granted by such Subsidiary or Liens on the Equity Interests of such Subsidiary; and
  - (d) the Administrative Agent and the Collateral Agent will exclusively exercise the rights and remedies under the Loan Documents, and neither the Lenders nor any other Secured Party will exercise such rights and remedies (other than the Required Lenders through the Administrative Agent); *provided* that the foregoing shall not preclude any Lender from exercising any right of set-off in accordance with the provisions of Section 10.06 or enforcing compliance with the provisions set forth in clauses (i) through (vi) of Section 10.08(2) or from exercising rights and remedies (other than the enforcement of Collateral) with respect to any payment default after the occurrence of the Maturity Date with respect to any Term Loans made by it or 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.

Each Agent agrees that it will take such action and execute any such documents as may be reasonably requested by the Borrower in connection with any of the foregoing releases or any such subordination. Each of the Collateral Agent and the Administrative Agent shall be entitled to rely exclusively on an officers certificate of the Borrower confirming that such release or subordination (as applicable) is permitted hereunder. Each Lender and each Secured Party irrevocably authorizes each Administrative Agent to take such action and execute any such document and consents to such reliance. No Agent will 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 Collateral Agent's Lien thereon, or contained in any certificate prepared or delivered by the Borrower or any Loan Party in connection with the Collateral or compliance with the terms set forth above or in a Loan Document, nor shall any Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

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 Loan Party from its obligations under, the Loan Documents. Notwithstanding anything to the contrary set forth herein, any execution and delivery of documents by any Agent pursuant to this Section 9.11 shall be without recourse to or warranty by such Agent and at the Borrower's expense; and such documents shall be reasonably acceptable to such Agent and the Borrower.

- (3) Anything contained in any of the Loan Documents to the contrary notwithstanding, each Agent, each Lender and each Secured Party hereby agree that:
- (a) no Lender or other Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Collateral Agreement or any other Loan Document, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent or the Collateral Agent, as applicable, for the benefit of the Secured Parties in accordance with the terms hereof and thereof, and all powers, rights and remedies under the Collateral Documents may be exercised solely by the Collateral Agent for the benefit of the Lenders in accordance with the terms thereof;
  - (b) in the event of a foreclosure or similar enforcement action by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the U.S. Bankruptcy Code), the Collateral Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the U.S. Bankruptcy Code) may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Collateral Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities), shall be entitled, upon instructions from the Required Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition;
  - (c) no provision of any Loan Documents shall require the creation, perfection or maintenance of pledges of or security interests in, or the obtaining of title insurance or abstracts with respect to, any Excluded Assets, any Excluded Equity Interests and any other particular assets, if and for so long as, in the reasonable judgment of the Collateral Agent, the cost of creating, perfecting or maintaining such pledges or security interests in such other particular assets or obtaining title insurance or abstracts in respect of such other particular assets is excessive in view of the fair market value of such assets or the practical benefit to the Lenders afforded thereby as reasonably determined by a Responsible Officer of the Borrower and the Administrative Agent (or with respect to matters relating primarily to the ABL Priority Collateral, the Borrower and the ABL Agent);

- 
- (d) the Collateral Agent may grant extensions of time for the creation or perfection of security interests in or the obtaining of title insurance and surveys with respect to particular assets (including extensions beyond the Closing Date for the creation or perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that creation or perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents;
  - (e) no actions required by the Laws of any non-U.S. jurisdiction shall be required in order to create any security interests in any assets or to perfect such security interests (including any intellectual property registered in any non-U.S. jurisdiction) (it being understood that there shall be no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction);
  - (f) no control agreements shall be required with respect to assets requiring perfection through control agreements or perfection by “control” (as defined in the Uniform Commercial Code); and
  - (g) the provisions of Section 5.10(4) of this Agreement and Sections 4.01(4) and 4.01(6) of the Collateral Agreement shall supersede any other provision of a Loan Document to the contrary.

SECTION 9.12 Certain ERISA Matters.

- (1) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, solely for the benefit of, the Administrative Agent, the Arrangers and the Bookrunners and their respective Affiliates (the “Relevant Parties”), and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

- (a) such Lender is not using “plan assets” of one or more Benefit Plans in connection with the Loans, the Letter of Credit or the Commitments;

- (b) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable, and the conditions of such exemptions are satisfied will continue to be satisfied, with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letter of Credit, the Commitments and this Agreement;

(c) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letter of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letter of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied, and the conditions of such exemption are satisfied and will continue to be satisfied, with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letter of Credit, the Commitments and this Agreement; or

(d) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

- (2) In addition, (I) unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (II) if such sub-clause (i) is not true with respect to a Lender and such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Relevant Parties, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(a) none of the Relevant Parties is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, or any of the other Loan Documents);

(b) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21, as amended from time to time) and is a bank, an insurance carrier, a registered investment adviser, a registered broker-dealer or other person that has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E), as amended from time to time;

(c) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letter of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies;

(d) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letter of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder; and

(e) no fee or other compensation is being paid directly to any Relevant Party for investment advice (as opposed to other services) in connection with the Loans, the Letter of Credit, the Commitments or this Agreement.

- (3) Each of the Administrative Agent, the Lead Arrangers and the Bookrunners hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letter of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letter of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letter of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

For purposes of this Section 9.12, the following definitions apply to each of the capitalized terms below:

“**Benefit Plan**” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code, to which Section 4975 of the Code applies or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“**PTE**” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

## ARTICLE X

### *Miscellaneous*

#### SECTION 10.01 Notices: Communications.

- (1) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.01(2)), 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 or e-mail, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, in each case, as follows:

- 
- (a) if to any Loan Party, the Administrative Agent or any Issuing Bank as of the Closing Date, to the address, facsimile number, e-mail address or telephone number specified for such Person on Schedule 10.01; and
- (b) if to any other Lender or Issuing Bank, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Questionnaire.
- (2) Notices and other communications to the Lenders and any Issuing Bank 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 Lender or any Issuing Bank pursuant to Article II if such Lender or any Issuing Bank, as applicable, 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, 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. Notices sent by e-mail shall be deemed to have been given when sent and confirmation of transmission received (except that, if not sent during normal business hours for the recipient, such e-mail shall be deemed to have been given at the opening of business on the next Business Day for the recipient).
- (3) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by facsimile shall be deemed to have been given when sent and confirmation of transmission received (except that, if not sent during normal business hours for the recipient, such notice shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 10.01(2) shall be effective as provided in such Section 10.01(2).
- (4) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.
- (5) Documents required to be delivered hereunder may be delivered electronically (including as set forth in Section 10.17) and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.01 or (b) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that (i) the Borrower shall notify the Administrative Agent (by facsimile or e-mail) of the posting of any such documents and, upon the Administrative Agent's written request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents and (ii) upon reasonable written

request by the Administrative Agent, the Borrower shall also provide a hard copy to the Administrative Agent of any such document; *provided, further*, that any documents posted for which a link is provided after normal business hours for the recipient shall be deemed to have been given at the opening of business on the next Business Day. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

SECTION 10.02 Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and each Issuing Bank and shall survive the making by the Lenders of the Loans, the execution and delivery of the Loan Documents and the issuance of the Letters of Credit, regardless of any investigation made by such Persons or on their behalf, and shall continue in full force and effect until the Obligations are Paid in Full, the Commitments are terminated and any outstanding Letters of Credit are expired, terminated or cash collateralized on terms reasonably satisfactory to the applicable Issuing Bank(s) in accordance herewith. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Sections 2.15, 2.17 and 10.05) shall survive the payment in full of the principal and interest hereunder, the expiration of the Letters of Credit and the termination of the Commitments or this Agreement.

SECTION 10.03 Binding Effect. This Agreement shall become effective when it has been executed by the Borrower and the Administrative Agent and when the Administrative Agent has received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the Borrower, the Subsidiary Loan Parties, each Agent, each Issuing Bank, each Lender and their respective permitted successors and assigns.

SECTION 10.04 Successors and Assigns.

- (1) 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 (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (a) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void), except to any Successor Borrower pursuant to Section 6.05 and (b) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 10.04. 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 (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (3) of this Section 10.04) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents, any Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement or the other Loan Documents.

- 
- (2) (a) Subject to the conditions set forth in paragraph (2)(b) of this Section 10.04, any Lender may assign to one or more assignees (other than a natural person, a Disqualified Institution or a Defaulting Lender) (each, an “*Assignee*”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) of:
- (i) the Borrower; *provided* that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if a Specified Event of Default with respect to the Borrower has occurred and is continuing; *provided, further*, that such consent shall be deemed to have been given if the Borrower has not responded within ten (10) Business Days after delivery of a written request therefor by the Administrative Agent; and
  - (ii) the Administrative Agent and each Issuing Bank; *provided* that no consent of the Administrative Agent or any Issuing Bank will be required for an assignment of all or any portion of Loan to a Lender, an Affiliate of a Lender or an Approved Fund; and
- (b) Assignments shall be subject to the following additional conditions:
- (i) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender’s Commitments or Loans, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$2,500,000, unless each of the Borrower and the Administrative Agent otherwise consent; *provided* that (1) no such consent of the Borrower shall be required if a Specified Event of Default with respect to the Borrower has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds (with simultaneous assignments to or by two or more Approved Funds being treated as one assignment for purposes of meeting the minimum assignment amount requirement), if any;
  - (ii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and, shall pay to the Administrative Agent a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent);

- 
- (iii) the Assignee, if it shall not already be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required to be delivered pursuant to Section 2.17;
  - (iv) the Assignee will not be the Borrower or any of the Borrower's Affiliates or Subsidiaries; and
  - (v) the Assignor shall deliver to the Administrative Agent any Note issued to it with respect to the assigned Loan.
- (c) Subject to acceptance and recording thereof pursuant to paragraph (2)(e) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, 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 Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance 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 2.15, 2.16, 2.17 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such Assignment and Acceptance). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04 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 paragraph (4) of this Section 10.04 to the extent such participation would be permitted by such Section 10.04(4).
- (d) The Administrative Agent, acting for this purpose as the Administrative Agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest with respect thereto) of the Loans and Revolving L/C Exposure owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent, the Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank and any Lender (but solely, in the case of a Lender, entries with respect to such Lender's Loans) at any reasonable time and from time to time upon reasonable prior notice. This clause (d) and Section 2.09 shall be construed so that all Refinancing Term Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

- 
- (e) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee's completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), all applicable tax forms, any Note outstanding with respect to the assigned Loan (or other documentation (including an affidavit of loss and indemnitee agreement) reasonably acceptable to the Borrower in lieu thereof), the processing and recordation fee referred to in paragraph (2)(b)(ii) of this Section 10.04 and any written consent to such assignment required by paragraph (2) of this Section 10.04, the Administrative Agent promptly shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (2)(e).
- (3) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows:
- (a) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its Revolving Facility Commitment, and the outstanding balances of its Revolving Loans, in each case, without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance;
- (b) except as set forth in clause (a) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Restricted Subsidiary or the performance or observance by the Borrower or any Restricted Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto;
- (c) the Assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance;
- (d) the Assignee confirms that it has received a copy of this Agreement, together with copies of the most recent Required Financial Statements delivered pursuant to Section 5.04, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance;
- (e) the Assignee will independently and without reliance upon the Administrative Agent or the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement;

- 
- (f) the Assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms of this Agreement, together with such powers as are reasonably incidental thereto; and
  - (g) the Assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.
- (4) (a) Any Lender may, without the consent of the Administrative Agent or, subject to Section 10.04(8), the Borrower, sell participations to one or more banks or other entities (other than any Disqualified Institution) (a “ *Participant* ”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitments and 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, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement.

Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; *provided that* (A) such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to Section 10.04(1) (a) or clauses (i), (ii), (iii), (iv), (v) or (vi) of the first proviso to Section 10.08(2) and (2) directly affects such Participant and (B) no other agreement with respect to amendment, modification or waiver may exist between such Lender and such Participant. Subject to clause (4)(b) of this Section 10.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (in each case subject to the requirements thereof and the delivery of any documentation required thereunder) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (2) of this Section 10.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.06 as though it were a Lender; *provided that* such

Participant shall be subject to Section 2.18(5) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, 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, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. Each Lender shall indemnify the Loan Parties for any Taxes (including any additions to Tax) attributable to or resulting from such Lender's failure to comply with the provisions of this Section 10.04(4)(a) relating to the maintenance of a Participant Register.

- (b) A Participant shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, 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. A Participant shall not be entitled to the benefits of Section 2.17 to the extent such Participant fails to comply with Section 2.17(5) as though it were a Lender.
- (5) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.
- (6) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (5) of this Section 10.04; *provided* that such Lender will have delivered for exchange any Notes previously issued with respect to the applicable Loans (or other documentation (including an affidavit of loss and indemnitee agreement) reasonably acceptable to the Borrower in lieu thereof).

- 
- (7) If the Borrower wishes to replace the Loans or Commitments with ones having different terms, it shall have the option, with the consent of the Administrative Agent and, where relevant, each Issuing Bank, and subject to at least three Business Days' advance notice to the Lenders, instead of repaying the Loans or reducing or terminating the Commitments to be replaced, to (i) require the Lenders to assign such Loans or Commitments to the Administrative Agent or its designees and (ii) amend the terms thereof in accordance with Section 10.08 (with such replacement, if applicable, being deemed to have been made pursuant to Section 10.08(5)). Pursuant to any such assignment, all Loans and Commitments to be replaced shall be purchased at par (allocated among the Lenders in the same manner as would be required if such Loans were being optionally prepaid or such Commitments were being optionally reduced or terminated by the Borrower), accompanied by payment of any accrued interest and fees thereon and any amounts owing pursuant to Section 10.05(2); *provided* that, for the avoidance of doubt, the Administrative Agent shall not be required to purchase such Loans and Commitments to be replaced unless it has agreed to purchase such Loans and Commitments in its sole discretion. By receiving such purchase price, the Lenders shall automatically be deemed to have assigned the Loans or Commitments pursuant to the terms of the form of Assignment and Acceptance attached hereto as Exhibit A, and accordingly no other action by such Lenders shall be required in connection therewith. The provisions of this paragraph (7) are intended to facilitate the maintenance of the perfection and priority of existing security interests in the Collateral during any such replacement.
- (8) Notwithstanding the foregoing, no assignment may be made or participation sold to a Disqualified Institution without the prior written consent of the Borrower; *provided* that, in connection with a participation, the Lenders shall have received a list of the Disqualified Institutions prior to the execution of such participation right. To the extent that any assignment is purported to be made or participation is purported to be sold to a Disqualified Institution (notwithstanding this clause (8) or otherwise), such Disqualified Institution shall be required immediately (and in any event within five (5) Business Days) to assign all Loans and Commitments then owned by such Disqualified Institution to another Lender (other than a Defaulting Lender) or another Assignee in accordance with this Section 10.04 or unwind such participation, as applicable (and the Borrower shall be entitled to seek specific performance in any applicable court of law or equity to enforce this sentence).

SECTION 10.05 Expenses; Indemnity.

- (1) If the Transactions are consummated and the Closing Date occurs, the Borrower agrees to pay all reasonable, documented and invoiced out-of-pocket expenses incurred by the Administrative Agent and the Arrangers in connection with the preparation of this Agreement and the other Loan Documents, or by the Administrative Agent, the Arrangers (and, in the case of enforcement of this Agreement, each Lender) in connection with the preparation, execution and delivery, amendment, modification, waiver or enforcement of this Agreement and the other Loan Documents (including expenses incurred in connection with due diligence and initial and ongoing Collateral examination to the extent incurred with the reasonable prior approval of the Borrower or provided for in this

Agreement or the other Loan Documents) or in connection with the administration of this Agreement or the other Loan Documents and any amendments, modifications or waivers of the provisions hereof or thereof, including the reasonable, documented and invoiced fees and out-of-pocket charges and disbursements of a single counsel for the Administrative Agent and the Arrangers (which shall be Simpson Thacher and Bartlett LLP), one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and, in the case of any actual or perceived conflict of interest, one additional firm of counsel for each such group of affected Persons similarly situated.

- (2) The Borrower agrees to indemnify the Administrative Agent, each Arranger, each Lender, each of their respective Affiliates and each of their respective directors, officers, employees, agents, advisors, controlling Persons, equityholders, partners, members and other representatives and each of their respective successors and permitted assigns (each such Person being called an “*Indemnitee*”) against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and reasonable, documented and invoiced out-of-pocket fees and expenses (limited to reasonable and documented legal fees of a single firm of counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, where the applicable Indemnitees affected by such conflict informs the Borrower of such conflict and has retained, or thereafter retains, its own counsel, of an additional counsel for each group of affected Indemnitees similarly situated taken as a whole)), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of:
- (a) the execution, delivery or administration of this Agreement or any other Loan Document, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated hereby;
  - (b) the use of the proceeds of the Loans; or
  - (c) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether based in contract, tort or any other theory, whether or not any Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of their Restricted Subsidiaries or Affiliates or creditors (and including any investigation, preparation for, or defense of any pending or threatened claim, litigation, investigation or proceeding);

*provided* that no Indemnitee will be indemnified for any loss, claim, damage, liability, cost or expense to the extent it: (i) has been determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (A) the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties or (B) a material breach of the obligations of such Indemnitee under the Loan Documents or (ii) relates to any proceeding between or among Indemnitees other than (A) claims against Administrative Agent or

---

Arrangers or their respective Affiliates, in each case, in their capacity or in fulfilling their role as the agent or arranger or any other similar role under the Revolving Facility (excluding their role as a Lender) to the extent such Persons are otherwise entitled to receive indemnification under this Section 10.05(2) or (B) claims arising out of any act or omission on the part of the Borrower or its Restricted Subsidiaries.

- (3) Subject to and without limiting the generality of the foregoing sentence, the Borrower agrees to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses claims, damages, liabilities and related out-of-pocket expenses, including reasonable, documented and invoiced fees and out-of-pocket charges and disbursements of one firm of counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest where the applicable Indemnitees affected by such conflict informs the Borrower of such conflict, an additional counsel for each group of affected Indemnitees similarly situated, taken as a whole) and reasonable, documented and invoiced consultant fees, in each case, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result any claim related in any way to Environmental Laws and the Borrower or any of the Restricted Subsidiaries, or any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on or from any property for which the Borrower or any Restricted Subsidiaries would reasonably be expected to be held liable under Environmental Laws; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties.
- (4) Any indemnification or payments required by the Loan Parties under this Section 10.05 shall not apply with respect to (a) Taxes other than (x) any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim and (y) expenses related to the enforcement of Section 2.17 or (b) Taxes that are duplicative of any indemnification or payments required by the Loan Parties under Section 2.15 or 2.17.
- (5) To the fullest extent permitted by applicable law, no Indemnitee or Loan Party shall assert, and each hereby waives, any claim against any Indemnitee or Loan Party, as applicable, nor will any Indemnitee, Loan Party or any of their respective Affiliates be liable, 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 Commitment, any Letter of Credit, any Loan or the use of the proceeds thereof. No Indemnitee, Loan Party or any of their respective Affiliates shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby; *provided* that, nothing in this clause (5) shall relieve any Loan Party of any obligation it may otherwise have hereunder to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

- 
- (6) The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement. All amounts due under this Section 10.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

SECTION 10.06 Right of Set-off.

- (1) If an Event of Default shall have occurred and be continuing, each Revolving Lender and each Issuing Bank is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Revolving Lender or such Issuing Bank to or for the credit or the account of the Borrower or any Subsidiary Loan Party against any and all of the Obligations (except to the extent relating to Refinancing Term Loans) of the Borrower or any Subsidiary Loan Party now or hereafter existing under this Agreement or any other Loan Document held by such Revolving Lender or such Issuing Bank, irrespective of whether or not such Revolving Lender or such Issuing Bank shall have made any demand under this Agreement or such other Loan Document and although such Obligations may be unmatured. The rights of each Revolving Lender and each Issuing Bank under this Section 10.06(1) are in addition to other rights and remedies (including other rights of set-off) that such Revolving Lender or such Issuing Bank may have, but may be exercised only at the direction of the Administrative Agent or the Required Lenders.
- (2) After the Discharge of ABL Revolving Claims, if an Event of Default shall have occurred and be continuing, each Refinancing Term Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Refinancing Term Lender to or for the credit or the account of the Borrower or any Subsidiary Loan Party against any and all of the Obligations (to the extent relating to the Refinancing Term Loans) of the Borrower or any Subsidiary Loan Party now or hereafter existing under this Agreement or any other Loan Document held by such Refinancing Term Lender, irrespective of whether or not such Refinancing Term Lender shall have made any demand under this Agreement or such other Loan Document and although such Obligations may be unmatured. The rights of each Refinancing Term Lender under this Section 10.06(2) are in addition to other rights and remedies (including other rights of set-off) that such Refinancing Term Lender may have, but may be exercised only at the direction of the Administrative Agent or the Required Term Lenders and only after the Discharge of ABL Revolving Claims.

SECTION 10.07 Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN THE OTHER LOAN DOCUMENTS) AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 10.08 Waivers: Amendment.

- (1) No failure or delay of the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent, each Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (2) of this Section 10.08, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower or any other Loan Party in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.
- (2) Subject to Section 2.14(2) and 10.08(12) below, except as otherwise set forth in this Agreement (or the applicable Loan Documents), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except:
  - (a) as provided in Sections 2.21, 2.22, 2.23 and 10.20;
  - (b) in the case of this Agreement, pursuant to an agreement or agreements in writing signed by the Borrower and the Required Lenders; and
  - (c) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto, the Administrative Agent (with the consent of the Required Lenders) and the Borrower;

---

*provided, however*, that, except as expressly provided in Sections 2.14(2), 2.21, 2.22, 2.23 and 10.20, no such agreement will:

- (i) decrease, forgive, waive or excuse the principal amount of, or any interest on, or extend the final maturity of, or decrease the rate of interest on, any Loan or any L/C Disbursement, or extend the stated expiration of any Letter of Credit beyond the Maturity Date, without the prior written consent of each Lender directly and adversely affected thereby, except as provided in Section 2.05(3) with respect to the expiration of Letters of Credit (it being understood that waivers or other modifications of any conditions precedent, covenants, mandatory prepayments, mandatory commitment reductions, default interest, Defaults or Events of Default shall not constitute a decrease, forgiveness, waiver or excuse of the principal amount of, or any interest on, or an extension of the final maturity of, or a decrease the rate of interest on, any Loan or L/C Disbursement or an extension of the stated expiration of any Letter of Credit beyond the Maturity Date);
- (ii) increase or extend the Commitment or Refinancing Term Loan Commitment of any Lender or decrease, forgive, waive or excuse the Commitment Fees or L/C Participation Fees or other fees of any Lender, Agent or Issuing Bank without the prior written consent of such Lender, Agent or Issuing Bank (it being understood that waivers or other modifications of conditions precedent, covenants, mandatory prepayments, mandatory commitment reductions, default interest, Defaults or Events of Default or of a mandatory reduction in the aggregate Commitments or Refinancing Term Loan Commitments shall not constitute an increase or extension of the Commitments or Refinancing Term Loan Commitments of any Lender or a decrease, forgiveness, waiver or excuse of any such fees);
- (iii) extend any date on which payment of principal or interest on any Loan or any L/C Disbursement or any Fees is due, without the prior written consent of each Lender directly and adversely affected thereby (it being understood that waivers or other modifications of any conditions precedent, covenants, mandatory prepayments, mandatory commitment reductions, default interest, Defaults or Events of Default shall not constitute an extension of any date on which payment of principal or interest on any Loan, L/C Disbursement or any Fee is due);
- (iv) amend the provisions of Section 2.18(3), (4) or (5) of this Agreement, Section 5.02 of the Collateral Agreement or any analogous provision of any other Loan Document, in a manner that would by its terms alter the pro rata sharing of payments required thereby or the relative priorities of such payments, without the prior written consent of each Lender directly and adversely affected thereby;
- (v) change the definition of the term "Borrowing Base" or any component definition thereof if as a result thereof the amounts available to be borrowed by the Borrower would be increased, or increase any of the percentages set forth in the definition of "Borrowing Base", without the prior written consent of the Supermajority Lenders; *provided* that, for the avoidance of doubt, the foregoing shall not limit the ability of the Administrative Agent to implement, change or eliminate any Reserves in its Reasonable Credit Judgment as permitted hereunder without the prior written consent of any Lenders;

- 
- (vi) amend or modify the provisions of this Section 10.08 or the definition of the term “Supermajority Lenders”, “Required Lenders”, “Required Revolving Lenders” or “Required Term Lenders”, as the case may be, or any other provision hereof specifying the number or percentage of Supermajority Lenders, Required Lenders, Required Revolving Lenders or Required Term Lenders, as the case may be, required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each applicable Lender; or
  - (vii) subordinate or release the liens on all or substantially all of the Collateral or all or substantially all of the aggregate value of the Guarantees (other than in connection with any transfer or other release of Collateral or of the relevant Guarantor permitted by the Loan Documents), without the prior written consent of each Lender;

*provided, further*, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or an Issuing Bank hereunder without the prior written consent of the Administrative Agent or such Issuing Bank acting as such at the effective date of such agreement, as applicable.

Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 10.08 and any consent by any Lender pursuant to this Section 10.08 shall bind any assignee of such Lender.

- (3) Without the consent of any Lender or Issuing Bank, the Loan Parties and the Administrative Agent may enter into any amendment, modification or waiver of any Loan Document, or enter into any new agreement or instrument, in each case to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law.
- (4) No Lender consent is required to effect any amendment or supplement to any Intercreditor Agreement that is:
  - (a) for the purpose of adding the holders of Junior Lien Debt or Indebtedness secured on a pari passu basis with the Liens securing the Initial Term Loans, Permitted Junior Secured Refinancing Debt (or a Debt Representative with respect thereto) as parties thereto, as expressly contemplated by the terms of such Intercreditor Agreement (it being understood that any such amendment or supplement may make such other changes to the applicable Intercreditor Agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing), or

- 
- (b) expressly contemplated by any Intercreditor Agreement.
- (5) This Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Loans and the Letters of Credit and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders; *provided* that after giving effect to such new credit facilities (and each incurrence of Indebtedness thereunder), in no event shall the total Revolving Facility Credit Exposure (plus any such Indebtedness under a new facility permitted under this section (5)) exceed the Line Cap (subject to the Administrative Agent's authority, in its sole discretion, to make Overadvances under Section 2.01(2) or Protective Advances under Section 2.01(3));
- (6) Notwithstanding anything in this Section 10.08 to the contrary, the Borrower may enter into Incremental Facility Amendments in accordance with Section 2.21, Refinancing Amendments in accordance with Section 2.22, and Extension Amendments in accordance with Section 2.23, and such Incremental Facility Amendments, Refinancing Amendments and Extension Amendments shall be effective to amend the terms of this Agreement and the other applicable Loan Documents, in each case, without any further action or consent of any other party to any Loan Document.
- (7) [Reserved].
- (8) Notwithstanding anything to the contrary herein or any other Loan Document other than as set forth in the definition of "Required Revolving Lenders" or "Required Term Lenders", no Defaulting Lender or Disqualified Institution will have any right to approve or disapprove any amendment, waiver or consent hereunder and any amendment, waiver or consent which by its terms requires the consent of all Lenders, the Required Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than any Defaulting Lenders or Disqualified Institutions.
- (9) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, any amendment or waiver that by its terms affects the rights or duties of Lenders holding Loans or Commitments of a particular tranche (but not the Lenders holding Loans or Commitments of any other tranche) will require only the requisite percentage in interest of the affected Lenders that would be required to consent thereto if such Lenders were the only Lenders.
- (10) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent.

- 
- (11) Prior to the Discharge of ABL Revolving Claims, any amendment, modification, termination or waiver of or consent with respect to any provision of this Agreement solely affecting the Refinancing Term Lenders will be in writing and signed by the Administrative Agent and the Required Term Lenders. Prior to the Discharge of ABL Revolving Claims, it is understood that no Term Lender will have any voting or consent rights under, or with respect to, any Loan Document other than as expressly provided herein.
  - (12) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Administrative Agent, with the consent of the Borrower, may amend, modify or supplement any Loan Document without the consent of any Lender or the Required Lenders in order to correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error or other manifest error in any Loan Document, and such amendment, modification or supplement shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof.
  - (13) In addition, notwithstanding anything to the contrary herein or any other Loan Document, the Collateral Agreement, each of the other Security Documents and any related documents may be in a form reasonably determined by the Administrative Agent and the Borrower and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (a) to comply with local Law or advice of local counsel, (b) to cure ambiguities or defects (as reasonably determined by the Administrative Agent and the Borrower) or (c) to cause such Security Document or other document to be consistent with this Agreement and the other Loan Documents

SECTION 10.09 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the “**Charges**”), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender, shall exceed the maximum lawful rate (the “**Maximum Rate**”) that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable to such Lender, shall be limited to the Maximum Rate; *provided* that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation. In no event will the total interest received by any Lender exceed the amount which it could lawfully have received and any such excess amount received by any Lender will be applied to reduce the principal balance of the Loans or to other amounts (other than interest) payable hereunder to such Lender, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining will be paid to the Borrower.

SECTION 10.10 Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain Fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Notwithstanding the foregoing, the Fee Letters shall survive the execution and delivery of this Agreement and remain in full force and effect. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 10.11 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY 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, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

SECTION 10.12 Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 10.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract, and shall become effective as provided in Section 10.03. Delivery of an executed counterpart to this Agreement by facsimile or other electronic transmission (e.g., "PDF" or "TIFF") shall be as effective as delivery of a manually signed original.

SECTION 10.14 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 10.15 Jurisdiction; Consent to Service of Process.

- (1) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in the Borough of Manhattan (or if such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in the

Borough of Manhattan) and any appellate court from any thereof (collectively, “*New York Courts*”), in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents or the transactions relating hereto or thereto, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such Federal (to the extent permitted by law) or New York State court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or any of the other Loan Documents in the courts of any jurisdiction, except that each of the Loan Parties agrees that it will not bring any such action or proceeding in any court other than New York Courts (it being acknowledged and agreed by the parties hereto that any other forum would be inconvenient and inappropriate in view of the fact that more of the Lenders who would be affected by any such action or proceeding have contacts with the State of New York than any other jurisdiction).

- (2) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 10.16 Confidentiality. Each of the Lenders, each Issuing Bank and each of the Agents agrees (and agrees to cause each of its Related Parties) to use all information provided to it by or on behalf of the Borrower, Impax or their respective Restricted Subsidiaries under the Loan Documents or otherwise in connection with the Acquisition or the Transactions solely for the purposes of the transactions contemplated by this Agreement and the other Loan Documents and shall not publish, disclose or otherwise divulge such information (other than information that

- (1) has become generally available to the public other than as a result of a disclosure by such Person or its Related Parties;
- (2) has been independently developed by such Lender, such Issuing Bank or the Administrative Agent without violating this Section 10.16 or relying on such information; or
- (3) was available to such Lender, such Issuing Bank or the Administrative Agent from a third party having, to such Person’s knowledge, no obligations of confidentiality to the Borrower or any other Loan Party);

and shall not reveal the same other than to its directors, trustees, officers, employees and advisors with a need to know or to any Person that approves or administers the Revolving Facility or any Refinancing Term Loans on behalf of such Lender or any numbering, administration or settlement service providers (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16 and, with respect to its directors, trustees, officers, employees and advisors, to the extent within its control, such Lender or Agent, as applicable, will be responsible for any such Person's non-compliance with this Section 10.16), except:

- (a) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, in which case such Person agrees, to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure or, if not practicable prior to disclosure and not prohibited by law, promptly after disclosure;
- (b) as part of normal reporting or review procedures to, or examinations by, Governmental Authorities or any bank accountants or bank regulatory authority exercising examination or regulatory authority, in which case (except with respect to any audit or examination conducted by any such bank accountant or bank regulatory authority) such Person agrees, to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure or, if not practicable prior to disclosure and not prohibited by law, promptly after disclosure;
- (c) to its parent companies, Affiliates or auditors (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16 and, to the extent within its control, such Lender or Agent will be responsible for any such Person's non-compliance with this Section 10.16);
- (d) in order to enforce its rights under any Loan Document in a legal proceeding;
- (e) to any pledgee or assignee under Section 10.04(5) or any other prospective assignee of, or prospective Participant in, any of its rights under this Agreement (so long as such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16);
- (f) to any direct or indirect contractual counterparty in Hedge Agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 10.16); and
- (g) with the prior written consent of the Borrower; and
- (h) to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake to preserve the confidentiality of any confidential information relating to the Loan Parties received by it from such Person.

Notwithstanding the foregoing, no such information shall be disclosed to a Disqualified Institution that constitutes a Disqualified Institution at the time of such disclosure without the Borrower's prior written consent.

SECTION 10.17 Platform; Borrower Materials. The Borrower hereby acknowledges that (1) the Administrative Agent or the Arrangers will make available to the Lenders and the Issuing Bank materials or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**") and (2) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "**Public Lender**"). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that:

- (a) all the Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" shall appear prominently on the first page thereof;
- (b) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the Issuing Bank and the Lenders to treat the Borrower Materials as either publicly available information or not material information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws;
- (c) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and
- (d) the Administrative Agent and the Arrangers shall be entitled to treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

Notwithstanding the foregoing, the following Borrower Materials shall be deemed to be marked "PUBLIC" unless the Borrower notifies the Administrative Agent that any such document contains MNPI: (1) the Loan Documents, (2) any notification of changes in the terms of the Loans, (3) any notification of the identity of Disqualified Institutions and (4) all information delivered pursuant to clauses (1), (2), (3) and (9) of Section 5.04.

SECTION 10.18 [Reserved].

SECTION 10.19 USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act 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, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act.

SECTION 10.20 Intercreditor Agreements.

- (1) The parties hereto acknowledge and agree that any provision of any Loan Document to the contrary notwithstanding, prior to the discharge in full of all Term Loan Claims, the Loan Parties shall not be required to act or refrain from acting under any Loan Document with respect to the Term Loan Priority Collateral in any manner that would result in a “Default” or “Event of Default” (as defined in any Term Loan Document) under the terms and provisions of the Term Loan Documents.
- (2) Each Secured Party:
  - (a) consents to the subordination of Liens on Term Priority Collateral provided for in the Closing Date Intercreditor Agreement,
  - (b) agrees that it will be bound by and will take no actions contrary to the provisions of the Closing Date Intercreditor Agreement; and
  - (c) authorizes and instructs the Administrative Agent to enter into the Closing Date Intercreditor Agreement as ABL Agent (as defined in the Intercreditor Agreement) and on behalf of such Lender. The foregoing provisions are intended as an inducement to the lenders under the Term Loan Credit Agreement to extend credit and such lenders are intended third party beneficiaries of such provisions and the provisions of the Closing Date Intercreditor Agreement.
- (3) Each Secured Party:
  - (a) authorizes and instructs the Administrative Agent to enter into any Junior Lien Intercreditor Agreement in the form attached hereto or in such other form as may be satisfactory to the Administrative Agent and agrees that it will be bound by and will take no actions contrary to the provisions of any Junior Lien Intercreditor Agreement;
  - (b) agrees that the Administrative Agent may from time to time enter into a modification of the Closing Date Intercreditor Agreement or any Junior Lien Intercreditor Agreement, as the case may be, so long as the Administrative Agent reasonably determines that such modification is consistent with the terms of this Agreement and agrees that it will be bound by and will take no actions contrary to any such Intercreditor Agreement (as so modified); and
  - (c) pursuant to the express terms of the Intercreditor Agreements, in the event of any conflict or inconsistency between the provisions of the Intercreditor Agreements and this Agreement, the provisions of the Intercreditor Agreements shall govern and control.

SECTION 10.21 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: (1) (a) the arranging and other services regarding this Agreement

provided by the Agents, the Lenders and the Arrangers are arm's-length commercial transactions between the Borrower, on the one hand, and the Agents and the Arrangers, on the other hand, (b) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent they 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; (2) (a) each Agent, each Lender and each Arranger each 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 other Person and (b) none of the Agents or Arrangers 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 (3) the Agents, the Arrangers 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 none of the Agents or any Arranger has any obligation to disclose any of such interests to the Borrower or any of its Affiliates. The Borrower agrees that it will not assert any claim against any Agent, Arranger or their respective Affiliates based on an alleged breach of fiduciary duty by such party in connection with this Agreement and the transactions contemplated hereby.

SECTION 10.22 Private-Side Information Contacts. 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 Investor**" 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 information that is not made available through the "**Public Investor**" portion of the Platform and that may contain MNPI with respect to the Borrower, any of its Affiliates, their respective Subsidiaries or their respective securities for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (1) other Lenders may have availed themselves of such information and (2) neither the Borrower nor the Administrative Agent has (a) any responsibility for such Public Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Loan Documents and (b) any duty to disclose such information to such Public Lender or to use such information on behalf of such Public Lender, and shall not be liable for the failure to so disclose or use, such information.

SECTION 10.23 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (1) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

- 
- (2) the effects of any Bail-In Action on any such liability, including, if applicable:
- (a) a reduction in full or in part or cancellation of any such liability;
  - (b) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
  - (c) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority

SECTION 10.24 Incorporation by Reference. The FILO Intercreditor Provisions are hereby incorporated by reference in this Agreement and apply to each Refinancing Term Lender, and to all Refinancing Term Loans at any time incurred or outstanding hereunder, as fully as if set forth herein in their entirety. Each Refinancing Term Lender, by extending Refinancing Term Loans or acquiring same by assignment, agrees to be bound by the FILO Intercreditor Provisions.

*[ Remainder of page intentionally left blank ]*

---

**IN WITNESS WHEREOF** , the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**AMNEAL PHARMACEUTICALS LLC** , as the Borrower

By: /s/ Chintu Patel

Name: Chintu Patel

Title: President

*[Amneal Pharmaceuticals – ABL Credit Agreement]*

---

**JPMORGAN CHASE BANK, N.A.** , as a Lender, Issuing  
Bank, Administrative Agent and Collateral Agent

By: /s/ James A. Knight  
Name: James A. Knight  
Title: Executive Director

*[Amneal Pharmaceuticals – ABL Credit Agreement]*

---

**BANK OF AMERICA, N.A.** , as a Lender

By: /s/ Daniel K. Clancy

Name: Daniel K. Clancy

Title: Senior Vice President

*[Amneal Pharmaceuticals – ABL Credit Agreement]*

---

**ROYAL BANK OF CANADA** , as a Lender and an Issuing  
Bank

By: /s/ Pierre Noriega  
Name: Pierre Noriega  
Title: Authorized Signatory

*[Amneal Pharmaceuticals – ABL Credit Agreement]*

---

**BANK OF THE WEST** , as a Lender

By: /s/ Harry Yergey

Name: Harry Yergey

Title: Managing Director

By: /s/ Michael Weinert

Name: Michael Weinert

Title: Director

---

**CAPITAL ONE, NATIONAL ASSOCIATION** , as a Lender

By: /s/ Osvaldo Velázquez

Name: Osvaldo Velázquez

Title: Duly Authorized Signatory

---

**SUNTRUST BANK** , as a Lender and Issuing Bank

By: /s/ Virginia S. Singletary

Name: Virginia S. Singletary

Title: Vice President

---

**GOLDMAN SACHS BANK USA** , as a Lender

By: /s/ Annie Carr

Name: Annie Carr

Title: Authorized Signatory

---

**WELLS FARGO BANK, NATIONAL ASSOCIATION**, as a  
Lender

By: /s/ Eric Chico

Name: Eric Chico

Title: Duly Authorized Signatory

---

**CITIZENS BANK, N.A.** , as a Lender

By: /s/ Ryan K. Gass

Name: Ryan K. Gass

Title: Associate Portfolio Manager

---

**U.S. BANK NATIONAL ASSOCIATION** , as a Lender

By: /s/ Rod Swenson

Name: Rod Swenson

Title: Vice President

---

**MUFG UNION BANK, N.A.** , as a Lender

By: /s/ John McDevitt

---

Name: John McDevitt

Title: Director

---

**STATE BANK OF INDIA, NEW YORK BRANCH**, as a  
Lender

By: /s/ Manoranjan Panda

Name: Manoranjan Panda

Title: VP and Head (CMC)

TERM LOAN GUARANTEE AND COLLATERAL AGREEMENT,

dated as of May 4, 2018,

among

AMNEAL PHARMACEUTICALS LLC,  
as the Borrower,

each other Grantor party hereto,

and

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent and Collateral Agent

Reference is made to the ABL/Term Loan Intercreditor Agreement dated as of May 4, 2018 (as amended, restated, supplemented or otherwise modified from time to time, the “**Closing Date Intercreditor Agreement**”), by and among JPMorgan Chase Bank, N.A., as ABL Agent (as defined therein), and JPMorgan Chase Bank, N.A., as Term Loan Agent (as defined therein), and acknowledged by the Borrower and the other parties from time to time signatory thereto. Notwithstanding anything herein to the contrary, the liens and security interests granted to the Collateral Agent, for the ratable benefit of the Secured Parties hereunder, pursuant to this Agreement and the exercise of any right or remedy by the Collateral Agent and the other Secured Parties hereunder are subject to the provisions of the Closing Date Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of the Closing Date Intercreditor Agreement and this Agreement, the provisions of the Closing Date Intercreditor Agreement shall control.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	1
Section 1.01.    Credit Agreement	1
Section 1.02.    Other Defined Terms	2
ARTICLE II GUARANTEE	9
Section 2.01.    Guarantee	9
Section 2.02.    Guarantee of Payment	9
Section 2.03.    No Limitations, Etc.	10
Section 2.04.    Reinstatement	11
Section 2.05.    Agreement To Pay; Contribution; Subrogation	11
Section 2.06.    Information	12
Section 2.07.    Maximum Liability	13
ARTICLE III PLEDGE OF SECURITIES	13
Section 3.01.    Pledge	13
Section 3.02.    Delivery of the Pledged Collateral	14
Section 3.03.    Representations, Warranties and Covenants	15
Section 3.04.    Registration in Nominee Name; Denominations	17
Section 3.05.    Voting Rights; Dividends and Interest, Etc.	17
ARTICLE IV SECURITY INTERESTS IN OTHER PERSONAL PROPERTY	19
Section 4.01.    Security Interest	19
Section 4.02.    Representations and Warranties	22
Section 4.03.    Covenants	25
Section 4.04.    Other Actions	26
Section 4.05.    Covenants Regarding Patent, Trademark and Copyright Collateral	27

---

Section 4.06.	Intercreditor Relations	28
ARTICLE V REMEDIES		29
Section 5.01.	Remedies Upon Default	29
Section 5.02.	Application of Proceeds	31
Section 5.03.	Securities Act, Etc.	32
ARTICLE VI INDEMNITY, SUBROGATION AND SUBORDINATION		33
Section 6.01.	Indemnity	33
Section 6.02.	Contribution and Subrogation	33
Section 6.03.	Subordination	34
ARTICLE VII MISCELLANEOUS		34
Section 7.01.	Notices	34
Section 7.02.	Security Interest Absolute	34
Section 7.03.	Limitation By Law	35
Section 7.04.	Binding Effect; Several Agreement	35
Section 7.05.	Successors and Assigns	35
Section 7.06.	Collateral Agent's Fees and Expenses; Indemnification	36
Section 7.07.	Collateral Agent Appointed Attorney-in-Fact	36
Section 7.08.	APPLICABLE LAW	37
Section 7.09.	Waivers; Amendment	37
Section 7.10.	WAIVER OF JURY TRIAL	38
Section 7.11.	Severability	38
Section 7.12.	Counterparts	38
Section 7.13.	Headings	38
Section 7.14.	Jurisdiction; Consent to Service of Process	38
Section 7.15.	Termination or Release	39
Section 7.16.	Additional Subsidiaries	40

---

Schedules

Schedule I	Pledged Stock; Debt Securities
Schedule II	Intellectual Property
Schedule III	Filing Jurisdictions
Schedule IV	Commercial Tort Claims

Exhibits

Exhibit I	Form of Supplement to the Guarantee and Collateral Agreement
Exhibit II	Form of Trademark Security Agreement
Exhibit III	Form of Patent Security Agreement
Exhibit IV	Form of Copyright Security Agreement

TERM LOAN GUARANTEE AND COLLATERAL AGREEMENT dated as of May 4, 2018 (as amended, amended and restated, supplemented or otherwise modified from time to time, this “*Agreement*”), among AMNEAL PHARMACEUTICALS LLC (the “*Borrower*”) and each other party identified as a “Grantor” on the signature pages hereto (together with any other entity that may become a party hereto as a Grantor as provided herein, each a “*Grantor*” and, collectively, the “*Grantors*”), and JPMORGAN CHASE BANK, N.A. (“*JPM*”), as Administrative Agent for the Lenders under the Credit Agreement referred to below (in such capacity, the “*Administrative Agent*”) and as Collateral Agent for the Secured Parties (as defined below) (in such capacity, the “*Collateral Agent*”).

#### RECITALS

- (1) Reference is made to that certain TERM LOAN CREDIT AGREEMENT, dated as of the date hereof (as amended, amended and restated, supplemented, refinanced, replaced, extended or otherwise modified from time to time, the “*Credit Agreement*”), by and among AMNEAL PHARMACEUTICALS LLC, a Delaware limited liability company, the Lenders and other parties that are party thereto from time to time and JPM, as Administrative Agent and as Collateral Agent.
- (2) In consideration of the extensions of credit and other accommodations of the Lenders as set forth in the Credit Agreement and of the Qualified Counterparties as set forth in the Specified Hedge Agreements, each Guarantor has agreed to guarantee the obligations of the Borrower under the Credit Agreement and each Grantor has agreed to secure such Grantor’s obligations under the Loan Documents, in each case as set forth herein.

#### AGREEMENT

Accordingly, the parties hereto agree as follows:

#### ARTICLE I

#### DEFINITIONS

##### Section 1.01. Credit Agreement.

(a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein have the meanings assigned to them in the Credit Agreement, and the following terms which are defined in the UCC are used herein as so defined (and if defined in more than one article of the UCC have the meaning specified in Article 9 thereof): Accounts, Account Debtor, As-Extracted Collateral, Authenticate, Certificated Security, Chattel Paper, Commodity Account, Commodity Contract, Commodity Intermediary, Deposit Account, Documents, Electronic Chattel Paper, Entitlement Order, Equipment, Farm Products, Financial Asset, Fixtures, Goods, Health-Care-Insurance Receivable, Instruments, Inventory, Letter-of-Credit Rights, Manufactured Homes, Money, Payment Intangibles, Securities Account, Securities Intermediary, Security, Security Entitlement, Supporting Obligations, Tangible Chattel Paper and Uncertificated Security.

---

(b) The rules of construction specified in Sections 1.02 through 1.09 of the Credit Agreement also apply, *mutatis mutandis*, to this Agreement.

Section 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“**ABL Administrative Agent**” means JPM, as “Administrative Agent” under the ABL Credit Agreement, and any duly appointed successor in such capacity.

“**ABL Collateral Agent**” means JPM, as “Collateral Agent” under the ABL Credit Agreement, and any duly appointed successor in such capacity.

“**Administrative Agent**” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“**Agreement**” has the meaning assigned to such term in the introductory paragraph hereto.

“**Article 9 Collateral**” has the meaning assigned to such term in Section 4.01(1).

“**Collateral**” means the collective reference to Article 9 Collateral and Pledged Collateral.

“**Collateral Agent**” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**Control**” has the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

“**Control Agreement**” means a deposit account control agreement, a securities account control agreement or a commodity account control agreement, as applicable, which provides the ABL Collateral Agent with Control of any such accounts, in form and substance reasonably satisfactory to the ABL Collateral Agent.

“**Copyright License**” means any written agreement, now or hereafter in effect, granting any right to any Grantor under any Copyright now or hereafter owned by any third party, and all rights of any Grantor under any such agreement (including any such rights that such Grantor has the right to license).

“**Copyrights**” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Copyright License or otherwise):

(1) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise;

- 
- (2) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule II;
  - (3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
  - (4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“ **Credit Agreement** ” has the meaning assigned to such term in the recitals to this Agreement.

“ **DDA** ” means any checking or other demand deposit account maintained by the Grantors.

“ **Discharge of ABL Claims** ” has the meaning assigned to such term in the Closing Date Intercreditor Agreement.

“ **Excluded Accounts** ” means any DDA, securities account, commodity account or any other deposit account of any Grantor (and all Cash, Cash Equivalents and other securities or investments credited thereto or deposited therein): (1) that is a zero balance account, disbursement account or imprest account; (2) that is an account holding ABL Priority Collateral or the proceeds thereof, so long as all amounts on deposit therein constitute ABL Priority Collateral; (3) that does not have an individual daily balance in excess of \$500,000, or in the aggregate with each other account described in this clause (3), in excess of \$5.0 million; (4) the balance of which is swept at the end of each Business Day into a deposit account, securities account or commodity account in the name of the ABL Collateral Agent or subject to a Control Agreement, so long as such daily sweep is not terminated or modified (other than to provide that the balance in such deposit account, securities account or commodity account is swept into another deposit account, securities account or commodity account subject to a Control Agreement) without the consent of the ABL Collateral Agent; (5) that is a Trust Account; or (6) to the extent that it is cash collateral for letters of credit to the extent permitted under Section 6.02 of the Credit Agreement.

“ **Excluded Assets** ” means all of the following, whether now owned or hereafter acquired:

- (1) any Excluded Equity Interests;
- (2) any Real Property interests (but, for the avoidance of doubt, excluding Fixtures to the extent a security interest in such Fixtures can be perfected by the filing of a Uniform Commercial Code financing statement in the office of the secretary of state (or similar central filing office) in the jurisdiction of organization of the applicable Grantor);

- 
- (3) any particular asset if the pledge thereof or the security interest therein would result in material adverse tax consequences, as reasonably determined by the Borrower in consultation with the Administrative Agent;
  - (4) any particular asset if and to the extent that a security interest therein (a) is prohibited by or in violation of any applicable law, rule or regulation or (b) requires consent of any Governmental Authority that has not been obtained;
  - (5) any (a) As-Extracted Collateral, (b) timber to be cut, (c) Farm Products, (d) Manufactured Homes and (e) Health-Care Insurance Receivables (but only to the extent such Health-Care Insurance Receivables are (i) Medicare or Medicaid receivables or other governmental third party payor receivables, (ii) not perfected by the filing of a Uniform Commercial Code financing statement in the office of the secretary of state (or similar central filing office) in the jurisdiction of organization of the applicable Grantor) or (iii) as otherwise agreed by the Borrower and the Administrative Agent);
  - (6) any “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act;
  - (7) any Excluded Accounts;
  - (8) any assets owned directly or indirectly by a non-U.S. Subsidiary or a FSHCO;
  - (9) any motor vehicles, airplanes and any other assets subject to certificates of title or similar certificates of ownership;
  - (10) [reserved];
  - (11) any lease, license, franchise, charter, contract or agreement, together with any rights or interest thereunder, in each case, if and to the extent a security interest therein granted to the Collateral Agent is prohibited by or in violation of a term, provision or condition of any such lease, license, franchise, charter, contract or agreement, or would result in the abandonment, invalidation or unenforceability thereof or create a right of termination in favor of or require the consent, approval, license or authorization of any third party (other than the Borrower or any Subsidiary) thereto, except, in each case, to the extent that such prohibition or restriction would be rendered ineffective under the UCC or other applicable Law; provided, that the exclusions referred to in clause (11) of this definition shall not include any Proceeds or receivables of any such asset, lease, license, franchise, charter, contract or agreement, the assignment of which is expressly deemed effective under the UCC or other similar applicable law notwithstanding such prohibition or restriction (unless such Proceeds or receivables would otherwise constitute Excluded Assets);
  - (12) any Commercial Tort Claim with a value not in excess of \$15 million, as determined in good faith by the Borrower;

- 
- (13) any assets to the extent the cost, burden, difficulty or consequence of obtaining, maintaining or perfecting a security interest therein exceeds the fair market value thereof or the practical benefit to the Secured Parties of the security afforded (or proposed to be afforded) thereby as reasonably determined by the Administrative Agent in consultation with the Borrower;
  - (14) (a) any assets and proceeds thereof subject to a Lien permitted under Section 6.02(3) of the Credit Agreement to the extent that the documents providing for the Indebtedness secured by such Liens do not permit such assets and proceeds thereof to be pledged to the Collateral Agent or would require a third party consent or (b) any assets subject to a Lien permitted by Section 6.02(7) so long as the documents providing for such Lien do not permit such assets to be pledged to the Collateral Agent; or
  - (15) without duplication, any assets to the extent excluded pursuant to Section 5.10(4) of the Credit Agreement.

“*Excluded Equity Interests*” means any and all of the following Equity Interests, whether now owned or hereafter acquired:

- (1) any Equity Interests in any Person that is not a direct Wholly Owned Restricted Subsidiary of the Borrower or another Grantor;
- (2) any Equity Interests in any Person (other than a direct or indirect Wholly Owned Subsidiary of the Borrower or another Grantor) in each case to the extent (a) the Organizational Documents or other agreements with respect to such Equity Interests with other equity holders prohibits or restricts the pledge of such Equity Interests or (b) the pledge of such Equity Interests is otherwise prohibited or restricted by law, any agreement with a third party (other than the Borrower or any of its respective Subsidiaries), would require consent of any Governmental Authority which has not been obtained or would result in a change of control, repurchase obligation or other adverse consequence (in each case, except to the extent that any such prohibition or restriction would be rendered ineffective under the UCC or other applicable Law);
- (3) any Equity Interests in Immaterial Subsidiaries (except to the extent the security interest therein can be perfected by the filing of a Form UCC-1 financing statement in the office of the secretary of state (or similar central filing office) in the jurisdiction of organization of the applicable Grantor), Captive Insurance Subsidiaries, not-for-profit organizations, special purpose entities used for securitization facilities (including Receivables Subsidiaries) and Unrestricted Subsidiaries;
- (4) any Margin Stock;
- (5) any voting Equity Interests of any non-U.S. Subsidiary or any FSHCO in excess of 65% of the issued and outstanding voting Equity Interests of such non-U.S. Subsidiary or FSHCO;

- 
- (6) subject to Section 7.15(4), any Equity Interests to the extent that a pledge of such Equity Interests would give rise to additional subsidiary reporting requirements under Rule 3-10 or Rule 3-16 of Regulation S-X promulgated under the Exchange Act;
  - (7) to the extent applicable law requires that a Subsidiary of such Grantor issue directors' qualifying shares, nominee shares or similar shares which are required by applicable law to be held by persons other than the Grantors, such qualifying shares, nominee shares or similar shares held by Persons other than Grantors;
  - (8) without duplication, any Equity Interests to the extent excluded pursuant to Section 5.10(4) of the Credit Agreement;
  - (9) any Equity Interests to the extent the pledge thereof or a security interest therein would result in material adverse tax consequences or material adverse regulatory consequences, in each case, as reasonably determined by the Borrower in consultation with the Administrative Agent; or
  - (10) any Equity Interests to the extent the cost, burden, difficulty or consequence of obtaining, maintaining or perfecting a security interest therein exceeds the fair market value thereof or the practical benefit to the Secured Parties afforded (or proposed to be afforded) thereby as reasonably determined by the Administrative Agent in consultation with the Borrower.

“**Excluded Swap Obligation**” means, with respect to any Guarantor, (a) as it relates to all or a portion of the guarantee of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor becomes effective with respect to such Swap Obligation or (b) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“**Federal Securities Laws**” has the meaning assigned to such term in Section 5.03.

“**Grantor**” and “**Grantors**” have the meanings assigned to such terms in the introductory paragraph to this Agreement.

“**Intellectual Property**” means all intellectual property of every kind and nature that any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest, including inventions, designs, Patents, Copyrights, Trademarks, trade secrets, domain names, confidential or proprietary technical and business information or know-how.

“**Intellectual Property Collateral**” has the meaning assigned to such term in Section 4.02(7).

“**Intellectual Property Security Agreement**” means a Trademark Security Agreement in substantially the form of Exhibit II hereto, a Patent Security Agreement in substantially the form of Exhibit III hereto, or a Copyright Security Agreement in substantially the form of Exhibit IV hereto.

“**IP Agreements**” means all material Copyright Licenses, Patent Licenses and Trademark Licenses, and all other agreements, permits, consents, orders and franchises relating to the license, development, use or disclosure of any material Intellectual Property to which a Grantor, now or hereafter, is a party or a beneficiary, including the agreements set forth on Schedule II hereto.

“**JPM**” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“**Patent License**” means any written agreement, now or hereafter in effect, granting to any Grantor any right to make, use or sell any invention covered by a Patent, now or hereafter owned by any third party (including any such rights that such Grantor has the right to license) and all rights of any Grantor under any such agreement.

“**Patents**” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Patent License or otherwise):

- (1) all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II, and all applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II;
- (2) all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;
- (3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
- (4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

---

“ **Pledged Collateral** ” has the meaning assigned to such term in Section 3.01(5).

“ **Pledged Debt Securities** ” has the meaning assigned to such term in Section 3.01(2).

“ **Pledged Securities** ” means any promissory notes, stock certificates or other certificated securities now or hereafter included in the Pledged Collateral, including all certificates, instruments or other documents representing or evidencing any Pledged Collateral.

“ **Pledged Stock** ” has the meaning assigned to such term in Section 3.01(1).

“ **Secured Obligations** ” means the Obligations; *provided* that the Secured Obligations will not include any Excluded Swap Obligations.

“ **Secured Parties** ” means (a) the Lenders, (b) the Agents, (c) the Qualified Counterparties, (d) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (e) the successors and permitted assigns of each of the foregoing.

“ **Security Interest** ” has the meaning assigned to such term in Section 4.01(1).

“ **Swap Obligation** ” 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.

“ **Trademark License** ” means any written agreement, now or hereafter in effect, granting to any Grantor any right to use any Trademark now or hereafter owned by any third party (including any such rights that such Grantor has the right to license).

“ **Trademarks** ” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Trademark License or otherwise):

- (1) all trademarks, service marks, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule II;
- (2) all goodwill associated therewith or symbolized thereby;

- 
- (3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
- (4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“ **Trust Account** ” means any accounts or trusts used solely to hold Trust Funds.

“ **Trust Funds** ” means cash, cash equivalents or other assets comprised of:

- (1) funds used for payroll and payroll taxes, wages and other employee benefit payments to or for the benefit of such Loan Party’s or any of its Restricted Subsidiaries’ employees;
- (2) all taxes required to be collected, remitted or withheld (including Federal and state withholding taxes (including the employer’s share thereof)); and
- (3) any other funds which the Borrower or any of the Restricted Subsidiaries holds in trust or as an escrow or fiduciary for another person which is not a Restricted Subsidiary.

“ **Uniform Commercial Code** ” or “ **UCC** ” means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided*, *however*, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “ **Uniform Commercial Code** ” or “ **UCC** ” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

## ARTICLE II

### GUARANTEE

Section 2.01. Guarantee. Each Guarantor unconditionally guarantees, jointly with the other Guarantors and severally, to the Collateral Agent for the ratable benefit of the Secured Parties as a primary obligor and not merely as a surety, the due and punctual payment and performance of the Secured Obligations. Each Guarantor further agrees that the Secured Obligations may be extended or renewed, in whole or in part, without notice to or further assent from such Guarantor, and that such Guarantor will remain bound upon its guarantee hereunder notwithstanding any extension or renewal of any Secured Obligation. Each Guarantor waives presentment to, demand of payment from and protest to the Borrower or any other Loan Party of any of the Secured Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment. The Borrower shall be deemed to be a Guarantor hereunder solely in respect of any Specified Hedge Agreements to which the Borrower is not a party.

Section 2.02. Guarantee of Payment. Each Guarantor further agrees that its guarantee hereunder constitutes a guarantee of payment when due (whether at the stated maturity, by acceleration or otherwise) and not of collection, and waives any right to require that any resort be had by the Collateral Agent or any other Secured Party to any security held for the payment of the Secured Obligations or to any balance of any Deposit Account or credit on the books of the Collateral Agent or any other Secured Party in favor of any Loan Party or any other person.

Section 2.03. No Limitations, Etc.

- (1) Except for termination of a Guarantor's obligations hereunder as expressly provided for in Section 7.15 and except as provided in Section 2.07, the obligations of each Guarantor hereunder will not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and will not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Secured Obligations or otherwise (other than defense of payment or performance of Secured Obligations). Without limiting the generality of the foregoing, except for termination or release of a Guarantor's obligations hereunder in accordance with the terms of Section 7.15 the obligations of each Guarantor hereunder, to the fullest extent permitted by applicable law, will not be discharged or impaired or otherwise affected by, and each Guarantor hereby waives any defense to the enforcement hereof by reason of:
- (a) the failure of the Collateral Agent or any other Secured Party to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of any Loan Document or otherwise;
  - (b) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any other Guarantor under this Agreement;
  - (c) the failure to perfect any security interest in, or the release of, any of the Collateral held by or on behalf of the Collateral Agent or any other Secured Party for the Secured Obligations;
  - (d) any default, failure or delay, willful or otherwise, in the performance of the Secured Obligations;
  - (e) any illegality, lack of validity or enforceability of any Secured Obligation;
  - (f) any change in the corporate existence, structure or ownership of any Loan Party, or any insolvency, bankruptcy or reorganization of any Loan Party;
  - (g) the existence of any claim, set-off or other rights that the Guarantors may have at any time against the Borrower, the Collateral Agent, any other Secured Party or any other person, whether in connection herewith, the other Loan Documents or any unrelated transactions; *provided* that nothing herein will prevent the assertion of any such claim by separate suit or compulsory counterclaim;
  - (h) any action permitted or authorized hereunder; or

- 
- (i) any other circumstance (including any statute of limitations) or any act or omission that may in any manner or to any extent vary the risk of any Guarantor or otherwise operate as a defense to, or a legal or equitable discharge of, the Borrower or any Guarantor or any other guarantor or surety (other than the Payment in Full or performance of the Secured Obligations).
- (2) Each Guarantor expressly authorizes the Secured Parties to take and hold security for the payment and performance of the Secured Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release, substitute or add any one or more other guarantors or obligors upon or in respect of the Secured Obligations, all without affecting the obligations of any Guarantor hereunder.
- (3) To the fullest extent permitted by applicable law and except for termination or release of a Guarantor's obligations hereunder in accordance with the terms of Section 7.15 hereof, each Guarantor waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Secured Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than, after all Commitments have been terminated, the Payment in Full or performance of all the Secured Obligations. The Collateral Agent and the other Secured Parties may exercise any right or remedy available to them against any other Loan Party pursuant to this Agreement or the other Loan Documents, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent that after giving effect thereto there shall have been Payment in Full in respect of all Secured Obligations. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against any other Loan Party, as the case may be, or any security.

Section 2.04. Reinstatement. Each Guarantor agrees that its guarantee hereunder will continue to be effective or be reinstated if, at any time, payment, or any part thereof, of any Secured Obligation is rescinded or must otherwise be restored by the Collateral Agent or any other Secured Party upon the bankruptcy or reorganization of the Borrower or any other Loan Party or otherwise.

Section 2.05. Agreement To Pay; Contribution; Subrogation.

- (1) In furtherance of the foregoing and not in limitation of any other right that the Collateral Agent or any other Secured Party has at law or in equity against any Guarantor by virtue hereof, upon the failure of any Loan Party to pay any Secured Obligation when and as the same becomes due and payable, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will pay, or cause to be paid, to the Collateral Agent for distribution to the applicable Secured Parties in cash the amount of such unpaid Secured Obligation.

- 
- (2) Subject to the foregoing clause (1), to the extent that any Guarantor, under this Agreement or the Credit Agreement as a joint and several obligor, repays any of the Secured Obligations constituting Loans or other advances made to or reimbursement obligations owed by another Loan Party under the Credit Agreement (an “*Accommodation Payment*”), then the Guarantor making such Accommodation Payment will be entitled to contribution and indemnification from, and be reimbursed by, each of the other Guarantors in an amount equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Guarantor’s Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Guarantors; *provided* that such rights of contribution and indemnification will be subordinated to the Payment in Full of the Secured Obligations. As of any date of determination, the “*Allocable Amount*” of each Guarantor will be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Guarantor hereunder and under the Credit Agreement without:
- (a) rendering such Guarantor “insolvent” within the meaning of Section 101 (31) of the Bankruptcy Code of the United States, Section 2 of the Uniform Fraudulent Transfer Act (“*UFTA*”) or Section 2 of the Uniform Fraudulent Conveyance Act (“*UFCA*”);
  - (b) leaving such Guarantor with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code of the United States, Section 4 of the UFTA, or Section 5 of the UFCA;
  - (c) leaving such Guarantor unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code of the United States or Section 4 of the UFTA, or Section 5 of the UFCA; or
  - (d) otherwise rendering such Guarantor’s obligation under Section 2 of this Agreement void or voidable under any federal, state or foreign bankruptcy, insolvency, receivership or similar law.

Upon payment by any Guarantor of any sums to the Collateral Agent as provided above, all rights of such Guarantor against the Borrower, any other Loan Party or any other Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise will in all respects be subject to Article VI.

Section 2.06. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the financial condition and assets of the Borrower and each other Loan Party, and of all other circumstances bearing upon the risk of nonpayment of the Secured Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that no Agent nor any other Secured Party will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

Section 2.07. Maximum Liability. Each Guarantor and, by its acceptance of this guarantee, each Agent and each other Secured Party hereby confirms that it is the intention of all such persons that this guarantee and the Secured Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the U.S. Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this guarantee and the Secured Obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Secured Parties and the Guarantors hereby irrevocably agree that the Secured Obligations of the Guarantors under this guarantee at any time are limited to the maximum amount as will result in the Secured Obligations of such Guarantor under this guarantee not constituting a fraudulent transfer or conveyance.

### ARTICLE III

#### PLEDGE OF SECURITIES

Section 3.01. Pledge. As security for the payment or performance, as the case may be, in full of its Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, a security interest in all of such Grantor's right, title and interest in, to and under:

- (1) the Equity Interests (a) directly owned by such Grantor as of the Closing Date (including those Equity Interests listed on Schedule I) and (b) obtained by such Grantor after the Closing Date and, in each case, the certificates representing all such Equity Interests, in each case, other than any Excluded Assets (the Equity Interests described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “*Pledged Stock*”);
- (2) the promissory notes and any instruments evidencing Indebtedness (a) owned by such Grantor as of the Closing Date (including those promissory notes and any instruments evidencing Indebtedness listed on Schedule I) and (b) issued to such Grantor after the Closing Date and having an aggregate principal amount in excess of \$15 million, in each case, other than any Excluded Assets (the instruments described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “*Pledged Debt Securities*”);

in each case, including all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all Pledged Debt Securities (except to the extent constituting an Excluded Asset or otherwise excluded from the Collateral pursuant to this Agreement);

- (3) subject to Section 3.05 hereof, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the securities referred to in the foregoing clauses (1) and (2);

- 
- (4) subject to Section 3.05 hereof, all rights and privileges of such Grantor with respect to the securities and other property referred to in the foregoing clauses (1), (2) and (3) above; and
  - (5) all proceeds of any of the foregoing items referred to in clauses (1) through (4) above, but excluding any Excluded Assets (the items referred to in clauses (1) through (5) of this Section 3.02, collectively, the “*Pledged Collateral*”).

Notwithstanding anything to the contrary in this Agreement or any other Security Document, no representation, warranty, covenant or any other provision in this Agreement or any other Security Document will apply to and none of the Pledged Stock, Pledged Debt Securities or Pledged Collateral will include nor will the security interests granted hereunder attach to any Excluded Asset.

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto (in each case other than any Excluded Assets), unto the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, forever, subject, however, to the terms, covenants and conditions hereinafter set forth and in each case subject to the Credit Agreement.

Section 3.02. Delivery of the Pledged Collateral.

- (1) Subject to any applicable Intercreditor Agreement(s), each Grantor agrees, within the time periods required hereunder or under the Credit Agreement (as applicable) (or at such later date as any Agent may agree, in its sole discretion) to deliver or cause to be delivered to the Collateral Agent, for the ratable benefit of the Secured Parties, any and all Pledged Securities to the extent such Pledged Securities, in the case of promissory notes or other instruments, are required to be delivered pursuant to paragraph (2) of this Section 3.02.
- (2) Subject to any applicable Intercreditor Agreement(s), each Grantor will use its commercially reasonable efforts to cause any Indebtedness for borrowed money that would otherwise constitute Pledge Collateral if in the form of a promissory note and having an aggregate principal amount in excess of \$15 million owed to such Grantor by any Person to be evidenced by a duly executed promissory note that is pledged and delivered (within 60 days (or such longer period as any Agent may agree, in its sole discretion) at the time of delivery of the next Required Financial Statements after receipt thereof), to the Collateral Agent, for the ratable benefit of the Secured Parties, pursuant to the terms hereof; *provided* that the foregoing requirement will not apply to (a) instruments, notes and debt securities that are promptly deposited into an investment or securities account or (b) checks received in the ordinary course of business. To the extent any such promissory note is a demand note, each Grantor party thereto agrees, if requested in writing by the Collateral Agent, to immediately demand payment thereunder upon an Event of Default unless such demand would not be commercially reasonable or would otherwise expose such Grantor to liability to the maker.

- 
- (3) Upon delivery to the Collateral Agent, (a) any Pledged Securities required to be delivered pursuant to the foregoing paragraphs (1) and (2) of this Section 3.02 will be accompanied by stock powers or note powers, as applicable, duly executed in blank or other instruments of transfer reasonably satisfactory to the Collateral Agent and (b) all other property composing part of the Pledged Collateral delivered pursuant to the terms of this Agreement will be accompanied, to the extent necessary to perfect the security interest in or allow realization on the Pledged Collateral, by proper instruments of assignment duly executed by the applicable Grantor as the Collateral Agent may reasonably request. Each delivery of Pledged Securities will be accompanied by a schedule describing the securities, which schedule will be attached hereto as Schedule I (or a supplement to Schedule I, as applicable) and made a part hereof; *provided* that failure to attach any such schedule hereto will not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered will supplement any prior schedules so delivered.
  - (4) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Grantor will be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of creating, perfecting or making enforceable the Security Interest in any Pledged Collateral of such Grantor and no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction will be required.

Section 3.03. Representations, Warranties and Covenants. Each Grantor represents and warrants (but solely to the extent (and at the times) required by the Credit Agreement) and covenants to and with the Collateral Agent, for the ratable benefit of the Secured Parties that:

- (1) Schedule I correctly sets forth, as of the Closing Date, (a) all of the Pledged Stock owned by such Grantor on the Closing Date and the percentage of the issued and outstanding shares of each class of the Equity Interests of the issuer thereof represented by such Pledged Stock and (b) all of the Pledged Debt Securities owned by such Grantor on the Closing Date;
- (2) the Pledged Stock and Pledged Debt Securities (solely with respect to Pledged Debt Securities issued by a Person that is not a Subsidiary of any Grantor, to the best of each Grantor's knowledge) have been duly and validly authorized and issued by the issuers thereof and (a) in the case of Pledged Stock, are fully paid and non-assessable (to the extent such concepts are applicable to such Pledged Stock and other than with respect to Pledged Stock consisting of membership interests of limited liability companies to the extent provided in Sections 18-502 and 18-607 of the Delaware Limited Liability Company Act) and (b) in the case of Pledged Debt Securities (solely with respect to Pledged Debt Securities issued by a Person that is not a Subsidiary of any Grantor, to the best of each Grantor's knowledge) are legal, valid and binding obligations of the issuers thereof, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding at law or in equity) and an implied covenant of good faith and fair dealing;

- 
- (3) except for the security interests granted hereunder, each Grantor:
- (a) is and, subject to any transfers made in compliance with the Credit Agreement, will continue to be the direct owner, beneficially and of record, of the Pledged Securities indicated on Schedule I as owned by such Grantor;
  - (b) holds the same free and clear of all Liens, other than Permitted Liens;
  - (c) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral, other than pursuant to a transaction permitted by the Credit Agreement and other than Permitted Liens; and
  - (d) subject to the rights of such Grantor under the Loan Documents to dispose of Pledged Collateral, will use commercially reasonable efforts to defend its title or interest hereto or therein against any and all Liens (other than Permitted Liens), however arising, of all persons;
- (4) other than as set forth in the Credit Agreement or the schedules thereto, and except for restrictions and limitations imposed by the Loan Documents or securities laws generally or otherwise permitted to exist pursuant to the terms of the Credit Agreement, the Pledged Stock (other than Pledged Stock that is partnership interests) is and will continue to be freely transferable and assignable, and, except for limitations existing on the Closing Date (or the date of acquisition thereof, as applicable) in the articles or certificate of incorporation, bylaws or other organizational documents of any Subsidiary that is not a wholly owned Subsidiary, none of the Pledged Stock is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that might reasonably be expected to prohibit, impair, delay or otherwise affect, in any material respect, the pledge of such Pledged Stock hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder;
- (5) each Grantor has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated;
- (6) other than as set forth in the Credit Agreement or the schedules thereto, no consent or approval of any Governmental Authority, any securities exchange or any other Person was or is necessary to the validity of the pledge effected hereby (other than such as have been obtained and are in full force and effect);
- (7) as of the Closing Date, this Agreement is effective to create in favor of the Collateral Agent (for the ratable benefit of the Secured Parties) a legal, valid and enforceable security interest in the Pledged Collateral described herein and proceeds thereof;
- (8) Each Grantor acknowledges and agrees that, to the extent any interest in any limited liability company or limited partnership controlled by any Grantor and pledged under Section 3.01 is a “security” within the meaning of Article 8 of the UCC and is governed by Article 8 of the UCC, such interest shall be represented by a certificate. Each Grantor further acknowledges and agrees that with respect to any interest in any limited liability company or limited partnership Controlled on or after the Closing Date by such Grantor

and pledged hereunder that is not a “security” within the meaning of Article 8 of the UCC, such Grantor shall at no time elect to treat any such interest as a “security” within the meaning of Article 8 of the UCC, nor shall such interest be represented by a certificate, unless such election and such interest is thereafter represented by a certificate that, subject to any applicable Intercreditor Agreement(s), within 60 days after such election (or at such later date as the Administrative Agent may agree), is delivered to the Collateral Agent pursuant to the terms hereof; and

- (9) Notwithstanding anything to the contrary in any Loan Document, to the extent any provision of this Agreement or the Credit Agreement excludes any assets from the scope of the Pledged Collateral, or from any requirement to take any action to perfect or maintain any security interest (or the priority thereof) in favor of the Collateral Agent in the Pledged Collateral, the representations, warranties and covenants made by any Grantor in this Agreement with respect to the creation, perfection or priority (as applicable) of the security interest granted in favor of the Collateral Agent (including Section 3.02) shall be deemed not to apply to such excluded assets.

Section 3.04. Registration in Nominee Name; Denominations. To the extent required to be delivered to the Collateral Agent in accordance with the terms of this Agreement, the Collateral Agent, on behalf of the Secured Parties, has the right (in its sole and absolute discretion), subject to the applicable Intercreditor Agreement(s), to hold the Pledged Securities in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent or, if an Event of Default shall have occurred and is continuing, in its own name as pledgee or the name of its nominee (as pledgee or as sub-agent). If an Event of Default shall have occurred and is continuing, the Collateral Agent will have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement.

Section 3.05. Voting Rights; Dividends and Interest, Etc.

- (1) Unless and until an Event of Default has occurred and is continuing and the Collateral Agent has given prior written notice to the Borrower of the Collateral Agent’s intention to exercise its rights hereunder:
- (a) each Grantor will be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with the terms of this Agreement, the Credit Agreement and the other Loan Documents; *provided* that, except as permitted under the Credit Agreement, such rights and powers will not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Collateral, the rights and remedies of any of the Collateral Agent or the other Secured Parties under this Agreement, the Credit Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same;

- 
- (b) the Collateral Agent will promptly execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (a) above; and
- (c) each Grantor will be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Credit Agreement and applicable laws; *provided* that (i) any noncash dividends, interest, principal or other distributions, payments or other consideration in respect thereof, including any rights to receive the same to the extent not so distributed or paid, that would constitute Pledged Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities, received in exchange for Pledged Securities or any part thereof, or in redemption thereof, as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise and (ii) any noncash dividends and other distributions paid or payable in respect of any Pledged Securities that would constitute Pledged Securities in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid in surplus, in each case that does not constitute an Excluded Asset, will be and become part of the Pledged Collateral, and, if received by any Grantor will be held in trust for the benefit of the Collateral Agent, for the ratable benefit of the Secured Parties, and (if applicable) will be promptly (and in any event within 60 days (or such longer period as any Agent may agree, in its sole discretion)) delivered to the Collateral Agent, for the ratable benefit of the Secured Parties, in the same form as so received (endorsed in a manner reasonably satisfactory to the Collateral Agent).
- (2) If an Event of Default has occurred and is continuing and after prior written notice by the Collateral Agent to the Borrower of the Collateral Agent's intention to exercise its rights hereunder, all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to paragraph (1)(c) of this Section 3.05 will cease, and all such rights will thereupon become vested, for the ratable benefit of the Secured Parties, in the Collateral Agent, which will have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions; *provided, however*, that even if an Event of Default has occurred and is continuing, any Grantor may continue to receive dividends and distributions solely to the extent permitted under subclause (8)(a), subclause (8)(b), subclause (8)(c), subclause (8)(d) and subclause (8)(e) of Section 6.07 of the Credit Agreement.
- (3) All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this Section 3.05 will be held in trust for the benefit of the Collateral Agent, for the ratable benefit of the Secured Parties, and will be (within 60 days (or such longer period as any Agent may agree, in its sole discretion) after receipt thereof) delivered to the Collateral Agent, for the ratable benefit of the Secured Parties, in the same form as so received (endorsed in a manner reasonably satisfactory to the Collateral Agent).

Agent). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this paragraph (3) subject to any applicable Intercreditor Agreement(s) will be retained by the Collateral Agent in an account to be established by the Collateral Agent upon receipt of such money or other property and will be applied in accordance with Section 5.02 hereof. After all such Events of Default have been cured or waived, the Collateral Agent will promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of paragraph (1)(c) of this Section 3.05 and that remain in such account.

- (4) If an Event of Default has occurred and is continuing and after the Collateral Agent shall have given prior written notice to the Borrower of the Collateral Agent's intention to exercise its rights hereunder, all rights of any Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to paragraph (1)(a) of this Section 3.05, and the obligations of the Collateral Agent under paragraph (1)(b) of this Section 3.05, will cease, and all such rights will thereupon become vested in the Collateral Agent, for the ratable benefit of the Secured Parties, which will have the sole and exclusive right and authority to exercise such voting and consensual rights and powers (subject to any applicable Intercreditor Agreement(s)); *provided* that unless otherwise directed by the Required Lenders, the Collateral Agent will have the right from time to time after an Event of Default has occurred and is continuing to permit the Grantors to exercise such rights.
- (5) After all such Events of Default have been cured or waived, each Grantor will have (i) the right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of paragraph (1)(a) above and (ii) the right to receive and retain the distributions that such Grantor would otherwise be entitled to receive and retain pursuant to the terms of paragraph 1(c) above.

#### ARTICLE IV

##### SECURITY INTERESTS IN OTHER PERSONAL PROPERTY

###### Section 4.01. Security Interest.

- (1) As security for the payment or performance when due (whether at the stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, a security interest (the "**Security Interest**") in all of such Grantor's right, title and interest in or to any and all of the following assets and properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "**Article 9 Collateral**"):
  - (a) all Accounts;

- 
- (b) all Chattel Paper;
  - (c) all cash, Money and Deposit Accounts;
  - (d) all Documents;
  - (e) all Equipment;
  - (f) all General Intangibles;
  - (g) all Instruments;
  - (h) all Inventory;
  - (i) all Investment Property;
  - (j) all Letter-of-Credit Rights;
  - (k) all Intellectual Property;
  - (l) all Commercial Tort Claims, including those described on Schedule IV hereto;
  - (m) each of the following:
    - (i) Securities Accounts;
    - (ii) Investment Property credited to Securities Accounts from time to time and all Security Entitlements in respect thereof; and
    - (iii) all cash held in any Securities Account or Deposit Account;
  - (n) all books and Records pertaining to the Article 9 Collateral; and
  - (o) all Proceeds, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any person with respect to any of the foregoing.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (i) the Article 9 Collateral will not include any Pledged Collateral and (ii) the Article 9 Collateral (and any components comprising thereof) will not include, this Agreement will not constitute a grant of a security interest in, the security interest granted hereunder will not attach to and no representation, warranty, covenant or any other provision contained in this Agreement or any other Security Document shall apply to, any Excluded Asset.

- (2) Subject to the limitations set forth in Section 4.01(6), each Grantor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any financing statements with respect to the Collateral (including all Article 9 Collateral consisting of Pledged Collateral) or any part thereof and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including:

- 
- (a) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor; and
  - (b) a description of collateral that describes such property in any manner as the Collateral Agent may reasonably determine is necessary to ensure the perfection of the security interest in the Collateral granted under this Agreement, including describing such property as “all assets”, whether now owned or hereafter acquired, or words of similar effect.

Each Grantor agrees to provide such information to the Collateral Agent promptly upon reasonable written request.

- (3) The Collateral Agent is further authorized to file with the United States Patent and Trademark Office or United States Copyright Office (or any successor office) such documents as may be reasonably necessary for the purpose of perfecting, continuing, enforcing or protecting the Security Interest granted in Intellectual Property by each Grantor, without the signature of any Grantor, and naming any Grantor or the Grantors as debtors and the Collateral Agent as secured party.
- (4) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Grantor shall be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Article 9 Collateral of such Grantor.
- (5) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Article 9 Collateral.
- (6) Notwithstanding anything to the contrary in any Loan Document, no Grantor will be required:
  - (a) to take, or cause to be taken, any actions to perfect the Security Interest by any means other than (to the extent reasonably applicable):
    - (i) filings pursuant to the Uniform Commercial Code in the office of the Secretary of State (or equivalent central filing office) in the jurisdiction of organization of such Grantor;
    - (ii) filings in the United States Patent and Trademark Office and the United States Copyright Office of an Intellectual Property Security Agreement;
    - (iii) subject to any applicable Intercreditor Agreement(s), delivery of Collateral consisting of instruments, notes and debt securities in a principal amount in excess of \$15 million to the extent required under Section 3.02;

(iv) subject to any applicable Intercreditor Agreement(s), delivery of Collateral consisting of certificated Equity Interests to the extent required under Section 3.02;

- (b) to enter, or cause to be entered, any control agreements or similar arrangements with the Collateral Agent or the Administrative Agent with respect to any Deposit Accounts, Securities Accounts, Commodities Accounts or other Collateral that requires perfection by Control; or
  - (c) to take any actions with respect to assets located outside of the United States or in any non-United States jurisdiction or required by the laws of any non-United States jurisdiction to create, maintain or perfect any security interests in any such assets (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction);
  - (d) to deliver any landlord lien waivers, estoppels or collateral access letters; or
  - (e) to take any perfection action with respect to motor vehicles and other assets subject to certificates of title or Letter-of-Credit Rights other than the filing of Uniform Commercial Code financing statements in the office of the secretary of state (or similar central filing office) in the jurisdiction of organization of the applicable Grantor.
- (7) Notwithstanding anything to the contrary in any Loan Document, to the extent any provision of this Agreement or the Credit Agreement excludes any assets from the scope of the Article 9 Collateral, or from any requirement to take any action to perfect or maintain any security interest (or the priority thereof) in favor of the Collateral Agent in the Article 9 Collateral, the representations, warranties and covenants made by any Grantor in this Agreement with respect to the creation, perfection or priority (as applicable) of the security interest granted in favor of the Collateral Agent (including Section 4.01) shall be deemed not to apply to such excluded assets.

Section 4.02. Representations and Warranties. Each Grantor represents and warrants (but solely to the extent (and at the times) required by the Credit Agreement) to the Collateral Agent and the Secured Parties that:

- (1) Each Grantor has good and valid rights in and title to the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained and is in full force and effect or has otherwise been disclosed herein or in the Credit Agreement.
- (2) The Uniform Commercial Code financing statements containing a description of the Article 9 Collateral that have been prepared by the Collateral Agent for filing in the office specified in Schedule III constitute all the filings, recordings and registrations (except as set forth in the following clause (3)) that are, as of the Closing Date, necessary

---

to publish notice of, protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the ratable benefit of the Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing of Uniform Commercial Code financing statements in the office of the Secretary of State (or equivalent central filing office) of the applicable jurisdiction.

- (3) Each Grantor represents and warrants that a fully executed Intellectual Property Security Agreement containing a description of all Article 9 Collateral existing on the Closing Date and consisting of material Intellectual Property owned by such Grantor with respect to United States Patents (and Patents for which United States applications are pending), United States registered Trademarks (and Trademarks for which United States registration applications are pending) and United States registered Copyrights (and Copyrights for which United States registration applications are pending) was delivered on the Closing Date to the Collateral Agent for recording with the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable.
- (4) The Security Interest constitutes (a) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the Secured Obligations; (b) subject to the filings described in Section 4.02(2), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code in the central filing office of such jurisdictions; and (c) subject to the filings described in Section 4.02(3), a security interest that shall be perfected in all Intellectual Property in which a security interest may be perfected upon the receipt and recording of an Intellectual Property Security Agreement with the United States Patent and Trademark Office and the United States Copyright Office, as applicable. Subject to Section 4.01(6), the Security Interest is and shall be prior to any other Lien on any of the Article 9 Collateral, subject to Permitted Liens.
- (5) The Article 9 Collateral is owned by the Grantors free and clear of any Lien, other than Permitted Liens. None of the Grantors has filed or consented to the filing after the Closing Date of (a) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Article 9 Collateral; (b) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with the United States Patent and Trademark Office or the United States Copyright Office; or (c) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Permitted Liens or in connection with any permitted disposition thereof in accordance with the terms of the Credit Agreement.
- (6) None of the Grantors holds any Commercial Tort Claim individually in excess of \$15 million as of the Closing Date except as indicated on Schedule IV.

- 
- (7) As to itself and its Article 9 Collateral consisting of material Intellectual Property owned by each Grantor with respect to the United States (the “**Intellectual Property Collateral**”), to each Grantor’s knowledge, as of the Closing Date:
- (a) The Intellectual Property Collateral set forth on Schedule II includes all of the material Patents, Trademarks and Copyrights owned by such Grantor as of the date hereof;
  - (b) The Intellectual Property Collateral owned by such Grantors has not been adjudged invalid or unenforceable in whole or part (except for office actions issued in the ordinary course by the United States Patent and Trademark Office or in any similar office in any foreign jurisdiction), and is valid and enforceable, except as would not reasonably be expected to have a Material Adverse Effect. Such Grantor is not aware of any uses of any item of Intellectual Property Collateral that would be expected to lead to such item becoming invalid or unenforceable, except as would not reasonably be expected to have a Material Adverse Effect;
  - (c) Such Grantor has made or performed in the ordinary course of Grantor’s business, acts, including filings, recordings and payment of all required fees and taxes, required to maintain and protect its interest in each and every item of Intellectual Property Collateral owned by such Grantor in full force and effect in the United States, and such Grantor has used proper statutory notice in connection with its use of each Patent, Trademark and Copyright owned by such Grantor in the Intellectual Property Collateral, in each case, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect;
  - (d) With respect to each IP Agreement, the absence, termination, cancellation, breach or violation of which would reasonably be expected to have a Material Adverse Effect: (A) such Grantor has not received any notice of termination or cancellation under such IP Agreement; (B) such Grantor has not received any notice of a breach or default under such IP Agreement, which breach or default has not been cured or waived; and (C) neither such Grantor nor, to the knowledge of Grantor, any other party to such IP Agreement is in breach or default thereof in any material respect, and no event has occurred that, with notice or lapse of time or both, would constitute such a breach or default or permit termination, modification or acceleration under such IP Agreement.
  - (e) Except as would not reasonably be expected to have a Material Adverse Effect, no Grantor or Intellectual Property Collateral owned by such Grantor is subject to any outstanding consent, settlement, decree, order, injunction, judgment or ruling restricting the use of any Intellectual Property Collateral owned by such Grantor or that would impair the validity or enforceability of such Intellectual Property Collateral owned by such Grantor.

---

Section 4.03. Covenants.

- (1) Each Grantor agrees to comply with Section 5.10(3) of the Credit Agreement, subject, for the avoidance of doubt, to Section 5.10(4) of the Credit Agreement.
- (2) Subject to the rights of such Grantor under the Loan Documents to dispose of Collateral and except as would otherwise be permitted by the Credit Agreement, each Grantor will, at its own expense, use commercially reasonable efforts to defend title to the Article 9 Collateral against all persons and to defend the Security Interest of the Collateral Agent, for the ratable benefit of the Secured Parties, in the Article 9 Collateral and the priority thereof against any Lien that is not a Permitted Lien.
- (3) Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Collateral Agent may from time to time reasonably request to preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement and the granting of the Security Interest and the filing of any financing statements or other documents in connection herewith or therewith.
- (4) [Reserved].
- (5) After an Event of Default has occurred and is continuing, and in consultation with the Borrower, the Collateral Agent will have the right to verify under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Article 9 Collateral, including, in the case of Accounts or Article 9 Collateral in the possession of any third person, by contacting Account Debtors or the third person possessing such Article 9 Collateral for the purpose of making such a verification. The Collateral Agent shall have the right to share any information it gains from such inspection or verification with any Secured Party.
- (6) None of the Grantors will, without the Collateral Agent's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned), grant any extension of the time of payment of any Accounts included in the Article 9 Collateral, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any person liable for the payment thereof or allow any credit or discount whatsoever thereon, in each case, other than extensions, credits, discounts, compromises or settlements granted or made in the ordinary course of business or consistent with prudent business practices or as otherwise permitted under the Credit Agreement.
- (7) At its option, after an Event of Default has occurred and is continuing, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not a Permitted Lien, and may pay for the maintenance and preservation of the Article 9 Collateral, in each case, to the extent any Grantor fails to do so as required by the Credit Agreement or this Agreement, and each Grantor jointly and severally agrees to reimburse the Collateral Agent on demand for any reasonable payment made or any reasonable expense incurred by the Collateral Agent pursuant to the foregoing authorization; *provided, however*, that nothing in this Section 4.03(7) will excuse any Grantor from the

---

performance of, or impose any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Documents.

- (8) Each Grantor (rather than the Collateral Agent or any Secured Party) will remain liable for the observance and performance of all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Article 9 Collateral.
- (9) Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent for such purpose) as such Grantor's true and lawful agent (and attorney-in-fact) for the purpose, after an Event of Default has occurred for so long as it is continuing, of making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto.
- (10) In the event that any Grantor at any time or times fails to obtain or maintain any of the policies of insurance required hereby or under the Credit Agreement or to pay any premium in whole or part relating thereto, the Collateral Agent may, after an Event of Default has occurred for so long as it is continuing, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent reasonably deems advisable. All sums disbursed by the Collateral Agent in connection with this Section 4.03(10), including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Collateral Agent, in accordance with Section 7.06, and shall be additional Secured Obligations secured hereby.

Section 4.04. Other Actions. In order to further ensure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, for the ratable benefit of the Secured Parties, the Collateral Agent's security interest in the Article 9 Collateral, each Grantor agrees, in each case at such Grantor's own expense, to take the following actions with respect to the following Article 9 Collateral:

- (1) Tangible Chattel Paper. Except to the extent otherwise provided in Article III, if any Grantor at any time holds or acquires any Tangible Chattel Paper evidencing an amount in excess of \$15 million, such Grantor will (within 60 days (or such longer period as any Agent may agree, in its sole discretion) after receipt thereof) endorse, assign and deliver the same to the Collateral Agent (or a designated bailee, in accordance with any applicable Intercreditor Agreement(s)), accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably request.

- 
- (2) Commercial Tort Claims. If any Grantor shall at any time hold or acquire a Commercial Tort Claim in an amount reasonably estimated by the Borrower in good faith to exceed \$15 million, such Grantor shall (within 60 days (or such longer period as any Agent may agree, in its sole discretion) after determination thereof) notify the Collateral Agent thereof in a writing signed by such Grantor, including a summary description of such claim, and grant to the Collateral Agent in writing a security interest therein and in the proceeds thereof, all under the terms and provisions of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Collateral Agent.

Section 4.05. Covenants Regarding Patent, Trademark and Copyright Collateral. Except as permitted by the Credit Agreement or as would not reasonably be expected to result in a Material Adverse Effect:

- (1) Each Grantor agrees that it will not knowingly do any act or omit to do any act (and will exercise commercially reasonable efforts to contractually prohibit its licensees from doing any act or omitting to do any act) whereby any material Patent owned by such Grantor that is necessary to the normal conduct of such Grantor's business may become prematurely invalidated, abandoned, lapsed or dedicated to the public, and agrees that it will take commercially reasonable steps with respect to any material products covered by any such Patent as necessary to establish and preserve its rights under applicable patent laws.
- (2) Each Grantor will, and will use its commercially reasonable efforts to contractually require its licensees and its sublicensees to, for each material Trademark owned by such Grantor and necessary to the normal conduct of such Grantor's business:
  - (a) maintain such Trademark in full force free from any adjudication of abandonment or invalidity for non-use;
  - (b) maintain the quality of products and services offered under such Trademark;
  - (c) display such Trademark with notice of federal or foreign registration or claim of trademark or service mark as required under applicable law; and
  - (d) not knowingly use or knowingly permit its licensees' use of such Trademark in violation of any third-party rights.
- (3) Each Grantor will, and will use its commercially reasonable efforts to cause its licensees and its sublicensees to, for each work covered by a material Copyright owned by such Grantor and necessary to the normal conduct of such Grantor's business and that it publishes, displays and distributes, use a copyright notice as necessary and sufficient to establish and preserve its rights under applicable copyright laws.
- (4) Each Grantor shall notify the Collateral Agent promptly if it knows that any material Patent, Trademark or Copyright owned by such Grantor and necessary to the normal conduct of such Grantor's business may imminently become abandoned, lapsed or dedicated to the public, or of any materially adverse determination or development, excluding office actions and similar determinations or developments in the United States Patent and Trademark Office, United States Copyright Office, any court, or any similar office of any country, regarding such Grantor's ownership of any such material Patent, Trademark or Copyright or its right to register or maintain the same.

- 
- (5) Each Grantor, either itself or through any agent, employee, licensee or designee, will, upon the reasonable request of the Collateral Agent, execute and deliver any and all agreements, instruments, documents and papers as the Collateral Agent may reasonably request to evidence the Collateral Agent's security interest in each Patent, Trademark, or Copyright listed in each updated Perfection Certificate (or in any applicable specified information contained in the Perfection Certificate) furnished pursuant to Section 5.04(6) of the Credit Agreement.
  - (6) Each Grantor will exercise its reasonable business judgment consistent with the practice in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office with respect to maintaining and pursuing each application owned by such Grantor relating to any material Patent, Trademark and/or Copyright (and obtaining the relevant grant or registration) necessary to the normal conduct of such Grantor's business and to maintain (a) each such Patent and (b) the registrations of each such Trademark and each such Copyright, including, when applicable and necessary in such Grantor's reasonable business judgment, timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if any Grantor believes necessary in its reasonable business judgment, to initiate opposition, interference and cancellation proceedings against third parties.
  - (7) In the event that any Grantor knows or has reason to know that any Article 9 Collateral consisting of a material Patent, Trademark or Copyright necessary to the normal conduct of its business has been materially infringed, misappropriated or diluted by a third party, such Grantor will promptly notify the Collateral Agent and will, if such Grantor deems it necessary in its reasonable business judgment, promptly take actions as are reasonably appropriate under the circumstances.

Section 4.06. Intercreditor Relations. Notwithstanding anything herein to the contrary, (1) the Grantors and the Collateral Agent acknowledge that the exercise of certain of the Collateral Agent's rights and remedies hereunder are subject to the provisions of the Closing Date Intercreditor Agreement and any other applicable Intercreditor Agreement(s) and (2) prior to the Discharge of ABL Claims (or such other applicable date), any obligation hereunder to physically deliver any ABL Priority Collateral (or other applicable Collateral) to the Collateral Agent shall be deemed satisfied by the delivery to the ABL Collateral Agent or other applicable Debt Representative, acting as gratuitous bailee for the Collateral Agent in accordance with the Closing Date Intercreditor Agreement or other applicable Intercreditor Agreement(s). The failure of the Collateral Agent or any other Secured Party to immediately enforce any of its rights and remedies hereunder (as a result of the terms of any applicable Intercreditor Agreement(s) or otherwise) shall not constitute a waiver of any such rights and remedies. In the event of any conflict or inconsistency between the terms of the Closing Date Intercreditor Agreement or any other applicable Intercreditor Agreement(s) and this Agreement, the terms of such Intercreditor Agreement shall govern and control. In the event of any such conflict, each Grantor may act (or omit to act) in accordance with such Intercreditor Agreement and shall not be in breach, violation or default of its obligations hereunder or under any other Loan Document by reason of doing so.

---

ARTICLE V

REMEDIES

Section 5.01. Remedies Upon Default. If an Event of Default has occurred and is continuing, each Grantor agrees to deliver each item of Collateral to the Collateral Agent (or a designated bailee, in accordance with any applicable Intercreditor Agreement(s)) on demand, and it is agreed that the Collateral Agent shall have the right, subject to applicable law and any applicable Intercreditor Agreement(s), to take any of or all the following actions at the same or different times: (1) with respect to any Article 9 Collateral consisting of Intellectual Property, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Article 9 Collateral by the applicable Grantors to the Collateral Agent or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or a non-exclusive basis, any such Article 9 Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers thereunder cannot be obtained with the use of commercially reasonable efforts, which each Grantor hereby agrees to use) and (2) to take possession of the Article 9 Collateral and without liability for trespass to the applicable Grantor to enter any premises where the Article 9 Collateral may be located for the purpose of taking possession of, removing or selling the Article 9 Collateral and, generally, to exercise any and all rights afforded to a secured party under the applicable Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing rights and remedies, each Grantor agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law (including the Uniform Commercial Code), to sell or otherwise dispose of all or any part of the Collateral at a public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized in connection with any sale of a security (if it deems it advisable to do so) pursuant to the foregoing to restrict the prospective bidders or purchasers to persons who represent and agree that they are purchasing such security for their own account, for investment, and not with a view to the distribution or sale thereof. Upon consummation of any such sale of Collateral pursuant to this Section 5.01, the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives and releases (to the extent permitted by law) all rights of redemption, stay, valuation and appraisal that such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Collateral Agent shall give the applicable Grantors ten Business Days' written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Collateral Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral,

or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. The Collateral, or the portion thereof, to be sold at any such sale may be sold in one lot as an entirety or in separate parcels in the Collateral Agent's own right or by one or more agents and contractors, upon any premises owned, leased, or occupied by any Grantor and the Collateral Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory to be sold with other goods (all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor), all as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In the case of any sale of all or any part of the Collateral made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in the event that any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in the case of any such failure, such Collateral may be sold again upon notice given in accordance with provisions above. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section 5.01, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all such rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property in accordance with Section 5.02 hereof without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 5.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its equivalent in other jurisdictions.

Without limiting any other rights of the Collateral Agent under this Agreement, for the purpose of enabling Collateral Agent to exercise rights and remedies under Article V at such time as Collateral Agent shall be lawfully entitled to exercise, after an Event of Default has occurred and is continuing, such rights and remedies, and for no other purpose, each Grantor hereby grants to the Collateral Agent, to the extent licensable, and to the extent not resulting in a material breach, material violation or termination of any Trademark License, a royalty free, non-exclusive, irrevocable license (such license to be effective after an Event of Default has occurred

and while it is continuing), to use, apply, and affix any Trademark in which any Grantor now or hereafter has rights, solely in connection with the Collateral Agent's enforcement of rights or remedies hereunder, including in connection with any sale or other disposition of Inventory, provided that such use is consistent with the use of such Trademark employed by the Grantor in the ordinary conduct of such Grantor's business and Grantor shall have rights of quality control and inspection that are reasonably necessary to maintain the validity and enforceability of such Trademarks. As to each Grantor, the license granted hereby shall remain in full force and effect until such Grantor hereunder is released hereunder in accordance with Section 7.15 of this Agreement.

Any exercise of remedies by the Collateral Agent shall be subject to the applicable Intercreditor Agreement(s).

Section 5.02. Application of Proceeds.

- (1) Subject to the terms of any applicable Intercreditor Agreement(s), the Collateral Agent will promptly apply the proceeds, moneys or balances of any collection or sale of Collateral, as well as any Collateral consisting of cash, in the following order of priority:
  - (a) *first*, to all amounts owing to the Collateral Agent or the Administrative Agent pursuant to any of the Loan Documents in its capacity as such in respect of (i) the preservation of Collateral or its security interest in the Collateral or (ii) with respect to enforcing the rights of the Secured Parties under the Loan Documents;
  - (b) *second*, to the extent proceeds remain after the application pursuant to preceding clause (a), to all other amounts owing to the Administrative Agent or Collateral Agent pursuant to any of the Loan Documents in its capacity as such;
  - (c) *third*, to the extent proceeds remain after the application pursuant to preceding clauses (a) through (b), to an amount equal to the outstanding Secured Obligations shall be paid to the Secured Parties as provided in clause (4) below, with each Secured Party receiving an amount equal to its outstanding Secured Obligations or, if the proceeds are insufficient to pay in full all such Secured Obligations, its pro rata share of the amount remaining to be distributed; and
  - (d) *fourth*, to the extent proceeds remain after the application pursuant to preceding clauses (a) through (c), inclusive, and following the payment in full of the Secured Obligations, to the relevant Loan Party, their successors or assigns, or as a court of competent jurisdiction may otherwise direct.
- (2) If any payment to any Secured Party pursuant to this Section 5.02 of its pro rata share of any distribution would result in overpayment to such Secured Party, such excess amount shall instead be distributed in respect of the unpaid Secured Obligations of the other Secured Parties, with each Secured Party whose Secured Obligations have not been Paid in Full to receive an amount equal to such excess amount multiplied by a fraction the numerator of which is the unpaid Secured Obligations of such Secured Party and the denominator of which is the unpaid Secured Obligations of all Secured Parties entitled to such distribution.

- 
- (3) Subject to the terms of any applicable Intercreditor Agreement(s), all payments required to be made hereunder shall be made to the Administrative Agent or Collateral Agent, as applicable, for the account of such Secured Parties or as the Administrative Agent or Collateral Agent may otherwise direct in accordance with the Loan Documents.
  - (4) For purposes of applying payments received in accordance with this Section 5.02, the Collateral Agent will be entitled to rely upon (a) the Administrative Agent and (b) the applicable Secured Parties with respect to payments of Specified Hedge Agreements (which the Administrative Agent and each other Secured Party agrees (or shall agree) to provide upon request of the Collateral Agent) of the outstanding Secured Obligations of the Loan Parties owed to the Secured Parties.
  - (5) Subject to the other limitations (if any) set forth herein and in the other Loan Documents, it is understood that the Loan Parties will remain liable (as and to the extent set forth in herein except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the Collateral Agent's gross negligence, bad faith or willful misconduct) to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Secured Obligations of the Loan Parties.
  - (6) It is understood and agreed by each Loan Party that the Collateral Agent will have no liability for any determinations made by it in this Section 5.02 except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from its or such person's own gross negligence, bad faith or willful misconduct. Each Loan Party also agrees that the Collateral Agent may (but shall not be required to), at any time and in its sole discretion, and with no liability resulting therefrom, petition a court of competent jurisdiction regarding any application of Collateral in accordance with the requirements hereof and of each applicable Intercreditor Agreement, and the Collateral Agent shall be entitled to wait for, and may conclusively rely on, any such determination.
  - (7) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Collateral Agent will not be required to marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such Guarantee in any particular order.

Section 5.03. Securities Act, Etc. In view of the position of the Grantors in relation to the Pledged Collateral, or because of other current or future circumstances, a question may arise under the Securities Act of 1933, as now or hereafter in effect, or any similar federal statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the “**Federal Securities Laws**”) with respect to any disposition of the Pledged Collateral permitted hereunder. Each Grantor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent were to attempt to dispose of all or any part of the Pledged Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to dispose of all or

part of the Pledged Collateral under applicable Blue Sky or other state securities laws or similar laws analogous in purpose or effect. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Collateral Agent, in its sole and absolute discretion, may (1) proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under the Federal Securities Laws or, to the extent applicable, Blue Sky or other state securities laws and (2) approach and negotiate with a single potential purchaser to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Collateral Agent will incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price that the Collateral Agent, in its sole and absolute discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 5.03 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Collateral Agent sells. For avoidance of doubt, no Grantor shall be required hereunder or under any other Loan Document to take or cause the issuer of any Pledged Collateral to take any action to register any Pledged Collateral for public sale under the Federal Securities Laws or Blue Sky or other state securities laws.

## ARTICLE VI

### INDEMNITY, SUBROGATION AND SUBORDINATION

Section 6.01. Indemnity. In addition to all such rights of indemnity and subrogation as the Guarantors may have under applicable law (but subject to Section 6.03 hereof), the Borrower agrees that (a) in the event a payment is made by any Guarantor under this Agreement in respect of any Secured Obligation of the Borrower, the Borrower shall indemnify such Guarantor for the full amount of such payment and such Guarantor shall be subrogated to the rights of the person to whom such payment shall have been made to the extent of such payment and (b) in the event any assets of any Guarantor are sold pursuant to this Agreement or any other Security Document to satisfy in whole or in part a Secured Obligation of the Borrower, the Borrower will indemnify such Guarantor in an amount equal to the greater of the book value or the fair market value of the assets so sold.

Section 6.02. Contribution and Subrogation. Subject to Section 2.07, each Guarantor (a “**Contributing Guarantor**”) agrees (subject to Section 6.03 hereof) that, in the event a payment shall be made by any other Guarantor hereunder in respect of any Secured Obligation or assets of any other Guarantor are sold pursuant to any Security Document to satisfy any Secured Obligation owed to any Secured Party and such other Guarantor (the “**Claiming Guarantor**”) shall not have been fully indemnified by the Borrower as provided in Section 6.01 hereof, the Contributing Guarantor shall indemnify the Claiming Guarantor in an amount equal to the amount of such payment or the greater of the book value or the fair market value of such assets, as applicable, in each case multiplied by a fraction of which the numerator shall be the net worth of such Contributing Guarantor on the date hereof and the denominator will be the aggregate net worth of all the Guarantors on the date hereof (or, in the case of any Guarantor becoming a party

hereto pursuant to Section 7.16 hereof, the date of the supplement hereto executed and delivered by such Guarantor). Any Contributing Guarantor making any payment to a Claiming Guarantor pursuant to this Section 6.02 shall be subrogated to the rights of such Claiming Guarantor under Section 6.01 hereof to the extent of such payment.

Section 6.03. Subordination.

- (1) Notwithstanding any provision of this Agreement to the contrary, all rights of the Guarantors under Sections 6.01 and 6.02 hereof and all other rights of indemnity, contribution or subrogation of the Guarantors under applicable law or otherwise will be fully subordinated to the Payment in Full of the Secured Obligations until such time as this Agreement has been terminated in accordance with Section 7.15(1) or, with respect to any such Guarantor, until such Guarantor is released in accordance with Section 7.15(2). No failure on the part of the Borrower or any Guarantor to make the payments required by Sections 6.01 and 6.02 hereof (or any other payments required under applicable law or otherwise) will in any respect limit the obligations and liabilities of the Borrower with respect to the Secured Obligations or any Guarantor with respect to its obligations hereunder.
- (2) The Borrower and each Guarantor hereby agree that all Indebtedness owed by it to the Borrower, any other Guarantor or any Restricted Subsidiary (collectively, the “**Subordinated Creditors**”) will be fully subordinated to the prior Payment in Full of the Secured Obligations; *provided, however*, that each of the following shall be permitted: payments permitted under the Credit Agreement, including payments of regularly scheduled principal and interest (including default interest and any “AHYDO” catch-up payment) on such Indebtedness, fees related to such Indebtedness, indemnity and expense reimbursement payments in connection with such Indebtedness, and mandatory prepayments, mandatory redemptions and mandatory purchases of any such Indebtedness (including any principal, premium or interest with respect thereto), in each case pursuant to the terms of such Indebtedness. A Subordinated Creditor will automatically be released from its obligations hereunder upon the consummation of any transaction permitted by the Credit Agreement as a result of which the Subordinated Creditor ceases to be a Restricted Subsidiary of the Borrower.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Notices. All communications and notices hereunder shall (except as otherwise permitted herein) be in writing and given as provided in Section 10.01 of the Credit Agreement. All communications and notices hereunder to any Grantor will be given to it in care of the Borrower, with such notice to be given as provided in Section 10.01 of the Credit Agreement.

Section 7.02. Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest in the Article 9 Collateral, the security interest in the Pledged Collateral and all obligations of each Grantor hereunder will be absolute and unconditional irrespective of:

- (1) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing;

- 
- (2) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument;
  - (3) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations; or
  - (4) subject only to termination or release of a Guarantor's obligations hereunder in accordance with the terms of Section 7.15 hereof any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement (other than a defense of payment or performance).

Section 7.03. Limitation By Law. All obligations, rights, remedies and powers provided in this Agreement may be exercised or performed only to the extent that the exercise or performance thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 7.04. Binding Effect; Several Agreement. This Agreement will become effective as to any party to this Agreement when a counterpart hereof executed on behalf of such party is delivered to the Collateral Agent and a counterpart hereof is executed on behalf of the Collateral Agent, and thereafter will be binding upon such party and the Collateral Agent and their respective permitted successors and assigns, and will inure to the benefit of such party, the Collateral Agent and the other Secured Parties and their respective permitted successors and assigns, except that no party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly permitted under the Credit Agreement. This Agreement will be construed as a separate agreement with respect to each Loan Party and may be amended, modified, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

Section 7.05. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference will be deemed to include the permitted successors and assigns of such party, and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns; *provided* that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent or as expressly permitted under the Credit Agreement. The Collateral

Agent hereunder will at all times be the same person that is the Collateral Agent under the Credit Agreement. Written notice of resignation by the Administrative Agent pursuant to the Credit Agreement will also constitute notice of resignation as the Collateral Agent under this Agreement. Upon the acceptance of any appointment as the Administrative Agent under the Credit Agreement by a successor Administrative Agent, that successor Administrative Agent will thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent pursuant hereto.

Section 7.06. Collateral Agent's Fees and Expenses; Indemnification. The parties hereto agree that the Collateral Agent will be entitled to reimbursement of its expenses incurred hereunder as provided in Section 10.05 of the Credit Agreement and the provisions of Section 10.05 shall be incorporated by reference herein and apply to each Grantor *mutatis mutandis*.

Section 7.07. Collateral Agent Appointed Attorney-in-Fact. Each Grantor hereby appoints the Collateral Agent the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary to accomplish the purposes hereof, effective after an Event of Default has occurred and while it is continuing and with written notice to the Borrower of its exercise or intent to exercise such rights, which appointment is irrevocable and coupled with an interest. The Collateral Agent will have the right, after an Event of Default has occurred and while it is continuing and with written notice to the Borrower of its exercise or intent to exercise such rights, with full power of substitution either in the Collateral Agent's name or in the name of such Grantor, to:

- (1) receive, endorse, assign or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof;
- (2) demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral;
- (3) ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due under and by virtue of any Collateral;
- (4) sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral;
- (5) send verifications of Accounts to any Account Debtor;
- (6) commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral;
- (7) settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral;
- (8) notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent; and

- 
- (9) use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes;

*provided* that nothing herein contained will be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties will be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence, bad faith or willful misconduct.

Section 7.08. APPLICABLE LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

Section 7.09. Waivers: Amendment .

- (1) No failure or delay by the Collateral Agent or any Lender in exercising any right, power or remedy hereunder or under any other Loan Document will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or remedy, or any abandonment or discontinuance of steps to enforce such a right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies of the Collateral Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights, powers or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Loan Party therefrom will in any event be effective unless the same is permitted by paragraph (2) of this Section 7.09, and then such waiver or consent will be effective only in the specific instance and for the purpose for which given.
- (2) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Loan Party or Loan Parties with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 10.08 of the Credit Agreement.

Section 7.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY HERETO (1) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (2) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.10.

Section 7.11. Severability. In the event any one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.

Section 7.12. Counterparts. This Agreement may be executed in one or more counterparts, each of which will constitute an original but all of which when taken together will constitute but one contract, and will become effective as provided in Section 7.04 hereof. Delivery of an executed counterpart to this Agreement by facsimile or other electronic transmission will be as effective as delivery of a manually signed original.

Section 7.13. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 7.14. Jurisdiction; Consent to Service of Process.

- (1) Each party to this Agreement hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in the Borough of Manhattan (or if such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in the Borough of Manhattan) and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the transactions relating hereto or thereto, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such Federal (to the extent permitted by law) or New York State court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document will affect any right that the Administrative Agent, the Collateral Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Grantor, or its properties, in the courts of any jurisdiction.
- (2) Each party to this Agreement hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Section 7.15. Termination or Release.

- (1) This Agreement, the guarantees made herein, the pledges made herein, the Security Interest and all other security interests granted hereby shall automatically terminate and be released when all the Secured Obligations have been Paid in Full and the Lenders have no further commitment to lend under the Credit Agreement.
- (2) (i) Any Grantor's obligations hereunder and all Security Interest in and Lien on its Collateral granted by such Grantor shall automatically terminate and be released if such Grantor is released from its obligations under its Guaranty pursuant to Section 9.11(2)(c) of the Credit Agreement and (ii) the Security Interest in and Lien on any Collateral shall be automatically terminated and released in the circumstances set forth in Section 9.11(2)(a), 9.11(2)(b) or 9.11(2)(c) of the Credit Agreement, including, without limitation, in connection with any property (and any related rights and any related assets) that is sold or otherwise transferred to any Person that is not (and is not required to be) a Loan Party in connection with a sale and leaseback or other transaction permitted by the Credit Agreement.
- (3) In connection with any termination or release pursuant to paragraph (1) or paragraph (2) above, the Collateral Agent shall promptly execute and deliver to any Grantor, at such Grantor's expense, all documents that such Grantor may reasonably request to evidence such termination or release and take all other actions (including return of any pledged collateral) reasonably requested by any Grantor, at such Grantor's expense, in connection with such release, including authorizing such Grantor or its representatives to file any UCC amendment or termination statements with respect to such release. Any execution and delivery of documents pursuant to this Section 7.15 shall be without recourse to or warranty by the Collateral Agent.
- (4) In the event that Rule 3-10 or Rule 3-16 of Regulation S-X of the Exchange Act is amended, modified or interpreted by the SEC or any other relevant Governmental Authority to require (or is replaced with another rule or regulation, or any other law, rule or regulation is adopted, which would require) the filing with the SEC (or any other Governmental Authority) of separate financial statements of any Subsidiary of the Borrower due to the fact that the Equity Interests of such Subsidiary constitute Collateral or are pledged under this Agreement, then the Equity Interests of such Subsidiary shall automatically be deemed not to be part of the Collateral to the extent necessary not to be subject to such requirement. Notwithstanding anything to the contrary in this Agreement, if Equity Interests of any Subsidiary are not required to be Collateral or pledged under this Agreement solely because Rule 3-10 or Rule 3-16 of Regulation S-X of the Exchange Act would require the filing of separate financial statements of such Subsidiary if its Equity Interests were Collateral or so pledged, in the event that Rule 3-10 or Rule 3-16 of Regulation S-X of the Exchange Act is amended, modified or interpreted by the SEC or any other relevant Governmental Authority to no longer require (or is replaced

---

with another rule or regulation that would not require) the filing of separate financial statements of such Subsidiary if some or all of its Equity Interests are Collateral or pledged under this Agreement, then such Equity Interests of such Subsidiary, unless otherwise constituting an Excluded Asset, shall automatically be deemed part of the Collateral and pledged under this Agreement.

Section 7.16. Additional Subsidiaries. Upon execution and delivery by the Collateral Agent and any Subsidiary that is required to become a party hereto under Section 5.10 of the Credit Agreement or otherwise of a supplement in the form of Exhibit I hereto, such Subsidiary will become a Grantor and a Guarantor hereunder with the same force and effect as if originally named as a Grantor and a Guarantor herein. The execution and delivery of any such supplement will not require the consent of any other party to this Agreement. The rights and obligations of each party to this Agreement will remain in full force and effect notwithstanding the addition of any new party to this Agreement.

[Signature Page Follows]

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**GRANTORS :**

**AMNEAL PHARMACEUTICALS LLC**

By: /s/ Chintu Patel

Name: Chintu Patel

Title: President

**AMNEAL PHARMACEUTICALS OF NEW YORK, LLC**

By: /s/ Chintu Patel

Name: Chintu Patel

Title: President

**AMNEAL BIOSCIENCES LLC**

By: /s/ James Mastakas

Name: James Mastakas

Title: Chief Financial Officer and Treasurer

**AMNEAL-AGILA, LLC**

By: /s/ James Mastakas

Name: James Mastakas

Title: Chief Financial Officer and Treasurer

---

**IMPAX LABORATORIES, LLC**

By: /s/ Bryan M. Reasons

Name: Bryan M. Reasons

Title: Senior Vice President and Chief Financial  
Officer

**IMPAX LABORATORIES USA, LLC**

By: /s/ Bryan M. Reasons

Name: Bryan M. Reasons

Title: Chief Financial Officer

**MOUNTAIN, LLC**

By: /s/ Bryan M. Reasons

Name: Bryan M. Reasons

Title: Chief Financial Officer, Treasurer and  
Vice President

**AMEDRA PHARMACEUTICALS LLC**

By: /s/ Bryan M. Reasons

Name: Bryan M. Reasons

Title: Chief Financial Officer

**TRAIL SERVICES, LLC**

By: /s/ Bryan M. Reasons

Name: Bryan M. Reasons

Title: Chief Financial Officer

By: /s/ James A. Knight

Name: James A. Knight

Title: Executive Director

SUPPLEMENT NO. \_\_\_\_\_ dated as of \_\_\_\_\_ (this “**Supplement**”), to the Term Loan Guarantee and Collateral Agreement dated as of May 4, 2018 (as amended, amended and restated, supplemented, refinanced, replaced, extended or otherwise modified from time to time, the “**Guarantee and Collateral Agreement**”), among each of the Grantors party thereto and JPMorgan Chase Bank, N.A. (“**JPM**”), as Administrative Agent for the Lenders under the Credit Agreement referred to below (in such capacity, the “**Administrative Agent**”) and as Collateral Agent for the Secured Parties (as defined therein) (in such capacity, the “**Collateral Agent**”).

- (1) Reference is made to that certain the Term Loan Credit Agreement, dated as of May 4, 2018 (as amended, amended and restated, supplemented, refinanced, replaced, extended or otherwise modified from time to time, the “**Term Loan Credit Agreement**”), by and among AMNEAL PHARMACEUTICALS LLC, a Delaware corporation, the Lenders party thereto from time to time and JPM, as Administrative Agent and as Collateral Agent.
- (2) Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement and the Guarantee and Collateral Agreement.
- (3) The Grantors have entered into the Guarantee and Collateral Agreement in order to induce the Lenders to make Loans under the Credit Agreement. Section 7.16 of the Guarantee and Collateral Agreement provides that additional Subsidiaries may become Guarantors and Grantors under the Guarantee and Collateral Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the “**New Subsidiary**”) is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Guarantor and Grantor under the Guarantee and Collateral Agreement, in each case in order to induce the Lenders to make additional Loans (if available under the Credit Agreement) and as consideration for Loans previously made under the Credit Agreement.

Accordingly, the Administrative Agent and the New Subsidiary agree as follows:

SECTION 1. In accordance with Section 7.16 of the Guarantee and Collateral Agreement, the New Subsidiary by its signature below becomes a Subsidiary Loan Party, a Guarantor and a Grantor under the Guarantee and Collateral Agreement with the same force and effect as if originally named therein as a Subsidiary Loan Party, a Guarantor and a Grantor, and the New Subsidiary hereby [(1)] agrees to all the terms and provisions of the Guarantee and Collateral Agreement applicable to it as a Subsidiary Loan Party, a Guarantor and a Grantor thereunder [and (2) represents and warrants that the representations and warranties made by it as a Grantor in Section 3.03 and Section 4.02 thereof are true and correct, in all material respects,

Exhibit I-1

---

on and as of the date hereof] <sup>1</sup>. In furtherance of the foregoing, the New Subsidiary, as security for the payment and performance in full of the Secured Obligations (as defined in the Guarantee and Collateral Agreement), does hereby create and grant to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in and Lien on all the New Subsidiary's right, title and interest in and to the Collateral (as defined in and to the extent required by the Guarantee and Collateral Agreement) of the New Subsidiary. Each reference to a "Subsidiary Loan Party," a "Guarantor," or a "Grantor" in the Guarantee and Collateral Agreement shall be deemed to include the New Subsidiary. The Guarantee and Collateral Agreement is hereby incorporated herein by reference.

SECTION 2. The New Subsidiary represents and warrants to the Administrative Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to (1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally; (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (3) implied covenants of good faith and fair dealing.

SECTION 3. This Agreement may be executed in one or more counterparts, each of which will constitute an original but all of which when taken together constitutes but one contract. This Supplement will become effective when the Collateral Agent receives a counterpart (whether by electronic transmission or otherwise) of this Supplement that bears the signature of the New Subsidiary.

SECTION 4. The New Subsidiary hereby represents and warrants as of the date hereof that:

- (1) set forth on Schedule I attached hereto is a true and correct schedule of all the Pledged Securities of the New Subsidiary as of the date hereof required to be pledged under the Guarantee and Collateral Agreement;
- (2) set forth on Schedule II attached hereto is a true and correct schedule of all of the material Patents, Trademarks and Copyrights of the New Subsidiary as of the date hereof that constitute Collateral;
- (3) set forth on Schedule III attached hereto is a true and correct schedule of all Commercial Tort Claims of the New Subsidiary individually in excess of \$15 million as of the date hereof; and
- (4) set forth on Schedule IV attached hereto is the true and correct legal name of the New Subsidiary, its jurisdiction of formation and the location of its chief executive office.

SECTION 5. Except as expressly supplemented hereby, the Guarantee and Collateral Agreement shall remain in full force and effect.

---

<sup>1</sup> Subject to the Credit Agreement, clause (2) to be included after the Closing Date.

**SECTION 6. THIS SUPPLEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).**

SECTION 7. In the event any one or more of the provisions contained in this Supplement are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.

SECTION 8. All communications and notices hereunder will be in writing and given as provided in Section 7.01 of the Guarantee and Collateral Agreement.

SECTION 9. The New Subsidiary agrees to reimburse the Collateral Agent for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, disbursements and other charges of counsel for the Collateral Agent.

IN WITNESS WHEREOF, the New Subsidiary and the Agents have duly executed this Supplement to the Guarantee and Collateral Agreement as of the day and year first above written.

[Name of New Subsidiary]

By: \_\_\_\_\_  
Name:  
Title:

---

JPMORGAN CHASE BANK, N.A., as  
Administrative Agent and Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

Exhibit I-4

Pledged Securities of the New Subsidiary

EQUITY INTERESTS

<u>Number of Issuer Certificate</u>	Registered Owner	Number and Class of Equity Interest	Percentage of Equity Interests
---	------------------	--	-----------------------------------

DEBT SECURITIES

<u>Issuer</u>	Principal Amount	Date of Note	Maturity Date
---------------	------------------	--------------	---------------

Schedule I-1

PATENTS, TRADEMARKS AND COPYRIGHTS

Schedule II-1

COMMERCIAL TORT CLAIMS

Schedule III-1

LEGAL NAME, JURISDICTION OF FORMATION  
AND LOCATION OF CHIEF EXECUTIVE OFFICE

Schedule IV-1

**FORM OF TRADEMARK SECURITY AGREEMENT**

This TRADEMARK SECURITY AGREEMENT is dated as of [ ], by [•] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of JPMorgan Chase Bank, N.A., in its capacity as administrative agent and collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Term Loan Guarantee and Collateral Agreement dated as of May 4, 2018 (as amended, amended and restated, supplemented, refinanced, replaced, extended or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Trademark Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Trademark Collateral”), including:

- (a) all Trademarks, including all registrations and applications therefore filed in the United States Patent and Trademark Office or any similar offices in any State of the United States (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule I;

- 
- (b) all goodwill associated therewith or symbolized thereby;
  - (c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
  - (d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Trademark Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. Each Grantor authorizes and requests that the Commissioner of Trademarks record this Trademark Security Agreement.

SECTION 5. Counterparts. This Trademark Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Trademark Security Agreement by signing and delivering one or more counterparts.

SECTION 6. Governing Law. THIS TRADEMARK SECURITY AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

[ *Signature page follows* ]

Exhibit II

---

IN WITNESS WHEREOF, each Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[ \_\_\_\_\_ ],  
as Grantor

By: \_\_\_\_\_  
Name:  
Title:

Exhibit II

---

Accepted and Agreed:

JPMORGAN CHASE BANK, N.A.,  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

Exhibit II

---

**SCHEDULE I**  
**to**  
**TRADEMARK SECURITY AGREEMENT**  
TRADEMARK REGISTRATIONS AND TRADEMARK APPLICATIONS  
Exhibit II

**FORM OF PATENT SECURITY AGREEMENT**

This PATENT SECURITY AGREEMENT is dated as of [ ], by [•] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of JPMorgan Chase Bank, N.A., in its capacity as administrative agent and collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Term Loan Guarantee and Collateral Agreement dated as of May 4, 2018 (as amended, amended and restated, supplemented, refinanced, replaced, extended or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Patent Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Patent Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Patent Collateral”), including:

- (a) all Patents issued or applied for in the United States, including those listed on Schedule I;
- (b) all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;

Exhibit III

- 
- (c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
  - (d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Patent Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Patent Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Patent Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. The Grantor authorizes and requests that the Commissioner of Patents record this Patent Security Agreement.

SECTION 5. Counterparts. This Patent Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Patent Security Agreement by signing and delivering one or more counterparts.

SECTION 6. Governing Law. THIS PATENT SECURITY AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

[ *Signature page follows* ]

Exhibit III

---

IN WITNESS WHEREOF, each Grantor has caused this Patent Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[ \_\_\_\_\_ ],  
as Grantor

By: \_\_\_\_\_  
Name:  
Title:

Exhibit III

---

Accepted and Agreed:

JPMORGAN CHASE BANK, N.A.,  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

Exhibit III

---

**SCHEDULE I**  
**to**  
**PATENT SECURITY AGREEMENT**  
**PATENTS AND PATENT APPLICATIONS**  
Exhibit III

**FORM OF COPYRIGHT SECURITY AGREEMENT**

This COPYRIGHT SECURITY AGREEMENT is dated as of [ ], by [•] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of JPMorgan Chase Bank, N.A., in its capacity as administrative agent and collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Term Loan Guarantee and Collateral Agreement dated as of May 4, 2018 (as amended, amended and restated, supplemented, refinanced, replaced, extended or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Copyright Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Copyright Collateral”), including:

- (a) all Copyright in any work subject to the copyright laws of the United States, whether as author, assignee, transferee or otherwise;
- (b) all registrations and applications for registration of any such copyright in the United States, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule I;
- (c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

Exhibit IV

- 
- (d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyright Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Copyright Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Copyright Office. Each Grantor authorizes and requests that the United States Copyright Office record this Copyright Security Agreement.

SECTION 5. Counterparts. This Copyright Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Copyright Security Agreement by signing and delivering one or more counterparts.

SECTION 6. Governing Law. THIS COPYRIGHT SECURITY AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

[ *Signature page follows* ]

Exhibit IV

---

IN WITNESS WHEREOF, each Grantor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[ \_\_\_\_\_ ],  
as Grantor

By: \_\_\_\_\_  
Name:  
Title:

Exhibit IV

---

Accepted and Agreed:

JPMORGAN CHASE BANK, N.A.,  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

Exhibit IV

---

**SCHEDULE I**  
**to**  
**COPYRIGHT SECURITY AGREEMENT**

**COPYRIGHT REGISTRATIONS AND COPYRIGHT APPLICATIONS**

Exhibit V-1

ABL GUARANTEE AND COLLATERAL AGREEMENT,

dated as of May 4, 2018,

among

AMNEAL PHARMACEUTICALS LLC,

as the Borrower,

each other Grantor party hereto,

and

JPMORGAN CHASE BANK, N.A.,

as Administrative Agent and Collateral Agent

Reference is made to the ABL/Term Loan Intercreditor Agreement dated as of May 4, 2018 (as amended, restated, supplemented or otherwise modified from time to time, the “**Closing Date Intercreditor Agreement**”), by and among JPMorgan Chase Bank, N.A., as ABL Agent (as defined therein), and JPMorgan Chase Bank, N.A., as Term Loan Agent (as defined therein), and acknowledged by the Borrower and the other parties from time to time signatory thereto. Notwithstanding anything herein to the contrary, the liens and security interests granted to the Collateral Agent, for the ratable benefit of the Secured Parties hereunder, pursuant to this Agreement and the exercise of any right or remedy by the Collateral Agent and the other Secured Parties hereunder are subject to the provisions of the Closing Date Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of the Closing Date Intercreditor Agreement and this Agreement, the provisions of the Closing Date Intercreditor Agreement shall control.

---

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	1
Section 1.01.    Credit Agreement	1
Section 1.02.    Other Defined Terms	2
ARTICLE II GUARANTEE	9
Section 2.01.    Guarantee	9
Section 2.02.    Guarantee of Payment	9
Section 2.03.    No Limitations, Etc.	9
Section 2.04.    Reinstatement	11
Section 2.05.    Agreement To Pay; Contribution; Subrogation	11
Section 2.06.    Information	12
Section 2.07.    Maximum Liability	12
ARTICLE III PLEDGE OF SECURITIES	12
Section 3.01.    Pledge	12
Section 3.02.    Delivery of the Pledged Collateral	13
Section 3.03.    Representations, Warranties and Covenants	14
Section 3.04.    Registration in Nominee Name; Denominations	16
Section 3.05.    Voting Rights; Dividends and Interest, Etc.	17
ARTICLE IV SECURITY INTERESTS IN OTHER PERSONAL PROPERTY	19
Section 4.01.    Security Interest	19
Section 4.02.    Representations and Warranties	22
Section 4.03.    Covenants	24
Section 4.04.    Other Actions	26
Section 4.05.    Covenants Regarding Patent, Trademark and Copyright Collateral	26

---

Section 4.06.	Intercreditor Relations	28
ARTICLE V REMEDIES		28
Section 5.01.	Remedies Upon Default	28
Section 5.02.	Application of Proceeds	31
Section 5.03.	Securities Act, Etc.	31
ARTICLE VI INDEMNITY, SUBROGATION AND SUBORDINATION		32
Section 6.01.	Indemnity	32
Section 6.02.	Contribution and Subrogation	32
Section 6.03.	Subordination	32
ARTICLE VII MISCELLANEOUS		33
Section 7.01.	Notices	33
Section 7.02.	Security Interest Absolute	33
Section 7.03.	Limitation By Law	34
Section 7.04.	Binding Effect; Several Agreement	34
Section 7.05.	Successors and Assigns	34
Section 7.06.	Collateral Agent's Fees and Expenses; Indemnification	34
Section 7.07.	Collateral Agent Appointed Attorney-in-Fact	34
Section 7.08.	APPLICABLE LAW	35
Section 7.09.	Waivers; Amendment	36
Section 7.10.	WAIVER OF JURY TRIAL	36
Section 7.11.	Severability	36
Section 7.12.	Counterparts	36
Section 7.13.	Headings	37
Section 7.14.	Jurisdiction; Consent to Service of Process	37
Section 7.15.	Termination or Release	37
Section 7.16.	Additional Subsidiaries	38

---

Schedules

Schedule I	Pledged Stock; Debt Securities
Schedule II	Intellectual Property
Schedule III	Filing Jurisdictions
Schedule IV	Commercial Tort Claims

Exhibits

Exhibit I	Form of Supplement to the Guarantee and Collateral Agreement
Exhibit II	Form of Trademark Security Agreement
Exhibit III	Form of Patent Security Agreement
Exhibit IV	Form of Copyright Security Agreement

ABL GUARANTEE AND COLLATERAL AGREEMENT dated as of May 4, 2018 (as amended, amended and restated, supplemented or otherwise modified from time to time, this “*Agreement*”), among AMNEAL PHARMACEUTICALS LLC (the “*Borrower*”) and each other party identified as a “Grantor” on the signature pages hereto (together with any other entity that may become a party hereto as a Grantor as provided herein, each a “*Grantor*” and, collectively, the “*Grantors*”), and JPMORGAN CHASE BANK, N.A. (“*JPM*”), as Administrative Agent for the Lenders under the Credit Agreement referred to below (in such capacity, the “*Administrative Agent*”) and as Collateral Agent for the Secured Parties (as defined below) (in such capacity, the “*Collateral Agent*”).

#### RECITALS

- (1) Reference is made to that certain REVOLVING CREDIT AGREEMENT, dated as of the date hereof (as amended, amended and restated, supplemented, refinanced, replaced, extended or otherwise modified from time to time, the “*Credit Agreement*”), by and among AMNEAL PHARMACEUTICALS LLC, a Delaware limited liability company, the Lenders and other parties that are party thereto from time to time and JPM, as Administrative Agent and as Collateral Agent.
- (2) In consideration of the extensions of credit and other accommodations of the Lenders as set forth in the Credit Agreement and of the Qualified Counterparties as set forth in the Specified Hedge Agreements, each Guarantor has agreed to guarantee the obligations of the Borrower under the Credit Agreement and each Grantor has agreed to secure such Grantor’s obligations under the Loan Documents, in each case as set forth herein.

#### AGREEMENT

Accordingly, the parties hereto agree as follows:

#### ARTICLE I

#### DEFINITIONS

##### Section 1.01. Credit Agreement.

(a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein have the meanings assigned to them in the Credit Agreement, and the following terms which are defined in the UCC are used herein as so defined (and if defined in more than one article of the UCC have the meaning specified in Article 9 thereof): Accounts, Account Debtor, As-Extracted Collateral, Authenticate, Certificated Security, Chattel Paper, Commodity Account, Commodity Contract, Commodity Intermediary, Deposit Account, Documents, Electronic Chattel Paper, Entitlement Order, Equipment, Farm Products, Financial Asset, Fixtures, Goods, Health-Care Insurance Receivable, Instruments, Inventory, Letter-of-Credit Rights, Manufactured Homes, Money, Payment Intangibles, Securities Account, Securities Intermediary, Security, Security Entitlement, Supporting Obligations, Tangible Chattel Paper and Uncertificated Security.

---

(b) The rules of construction specified in Sections 1.02 through 1.09 of the Credit Agreement also apply, *mutatis mutandis*, to this Agreement.

Section 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“ *Administrative Agent* ” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“ *Agreement* ” has the meaning assigned to such term in the introductory paragraph hereto.

“ *Article 9 Collateral* ” has the meaning assigned to such term in Section 4.01(1).

“ *Collateral* ” means the collective reference to Article 9 Collateral and Pledged Collateral.

“ *Collateral Agent* ” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“ *Commodity Exchange Act* ” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“ *Control* ” has the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

“ *Control Agreement* ” means a deposit account control agreement, a securities account control agreement or a commodity account control agreement, as applicable, which provides the Collateral Agent with Control of any such accounts, in form and substance reasonably satisfactory to the Collateral Agent.

“ *Copyright License* ” means any written agreement, now or hereafter in effect, granting any right to any Grantor under any Copyright now or hereafter owned by any third party, and all rights of any Grantor under any such agreement (including any such rights that such Grantor has the right to license).

“ *Copyrights* ” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Copyright License or otherwise):

- (1) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise;
- (2) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule II;

- 
- (3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
  - (4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“ **Credit Agreement** ” has the meaning assigned to such term in the recitals to this Agreement.

“ **Discharge of Term Loan Claims** ” has the meaning assigned to such term in the Closing Date Intercreditor Agreement.

“ **Excluded Assets** ” means all of the following, whether now owned or hereafter acquired:

- (1) any Excluded Equity Interests;
- (2) any Real Property interests (but, for the avoidance of doubt, excluding Fixtures to the extent a security interest in such Fixtures can be perfected by the filing of a Uniform Commercial Code financing statement in the office of the secretary of state (or similar central filing office) in the jurisdiction of organization of the applicable Grantor);
- (3) any particular asset if the pledge thereof or the security interest therein would result in material adverse tax consequences, as reasonably determined by the Borrower in consultation with the Administrative Agent;
- (4) any particular asset if and to the extent that a security interest therein (a) is prohibited by or in violation of any applicable law, rule or regulation or (b) requires consent of any Governmental Authority that has not been obtained;
- (5) any (a) As-Extracted Collateral, (b) timber to be cut, (c) Farm Products, (d) Manufactured Homes and (e) Health-Care Insurance Receivables (but only to the extent such Health-Care Insurance Receivables are (i) Medicare or Medicaid receivables or other governmental third party payor receivables, (ii) not perfected by the filing of a Uniform Commercial Code financing statement in the office of the secretary of state (or similar central filing office) in the jurisdiction of organization of the applicable Grantor) or (iii) as otherwise agreed by the Borrower and the Administrative Agent);
- (6) any “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act;
- (7) any Excluded Accounts;
- (8) any assets owned directly or indirectly by a non-U.S. Subsidiary or a FSHCO;

- 
- (9) any motor vehicles, airplanes and any other assets subject to certificates of title or similar certificates of ownership;
  - (10) [reserved];
  - (11) any lease, license, franchise, charter, contract or agreement, together with any rights or interest thereunder, in each case, if and to the extent a security interest therein granted to the Collateral Agent is prohibited by or in violation of a term, provision or condition of any such lease, license, franchise, charter, contract or agreement, or would result in the abandonment, invalidation or unenforceability thereof or create a right of termination in favor of or require the consent, approval, license or authorization of any third party (other than the Borrower or any Subsidiary) thereto, except, in each case, to the extent that such prohibition or restriction would be rendered ineffective under the UCC or other applicable Law; provided, that the exclusions referred to in clause (11) of this definition shall not include any Proceeds or receivables of any such asset, lease, license, franchise, charter, contract or agreement, the assignment of which is expressly deemed effective under the UCC or other similar applicable law notwithstanding such prohibition or restriction (unless such Proceeds or receivables would otherwise constitute Excluded Assets);
  - (12) any Commercial Tort Claim with a value not in excess of \$15 million, as determined in good faith by the Borrower;
  - (13) any assets to the extent the cost, burden, difficulty or consequence of obtaining, maintaining or perfecting a security interest therein exceeds the fair market value thereof or the practical benefit to the Secured Parties of the security afforded (or proposed to be afforded) thereby as reasonably determined by the Administrative Agent in consultation with the Borrower;
  - (14) (a) any assets and proceeds thereof subject to a Lien permitted under Section 6.02(3) of the Credit Agreement to the extent that the documents providing for the Indebtedness secured by such Liens do not permit such assets and proceeds thereof to be pledged to the Collateral Agent or would require a third party consent or (b) any assets subject to a Lien permitted by Section 6.02(7) so long as the documents providing for such Lien do not permit such assets to be pledged to the Collateral Agent; or
  - (15) without duplication, any assets to the extent excluded pursuant to Section 5.10(4) of the Credit Agreement.

“ **Excluded Equity Interests** ” means any and all of the following Equity Interests, whether now owned or hereafter acquired:

- (1) any Equity Interests in any Person that is not a direct Wholly Owned Restricted Subsidiary of the Borrower or another Grantor;
- (2) any Equity Interests in any Person (other than a direct or indirect Wholly Owned Subsidiary of the Borrower or another Grantor) in each case to the extent (a) the Organizational Documents or other agreements with respect to such Equity Interests with

---

other equity holders prohibits or restricts the pledge of such Equity Interests or (b) the pledge of such Equity Interests is otherwise prohibited or restricted by law, any agreement with a third party (other than the Borrower or any of its respective Subsidiaries), would require consent of any Governmental Authority which has not been obtained or would result in a change of control, repurchase obligation or other adverse consequence (in each case, except to the extent that any such prohibition or restriction would be rendered ineffective under the UCC or other applicable Law);

- (3) any Equity Interests in Immaterial Subsidiaries (except to the extent the security interest therein can be perfected by the filing of a Form UCC-1 financing statement in the office of the secretary of state (or similar central filing office) in the jurisdiction of organization of the applicable Grantor), Captive Insurance Subsidiaries, not-for-profit organizations, special purpose entities used for securitization facilities (including Receivables Subsidiaries) and Unrestricted Subsidiaries;
- (4) any Margin Stock;
- (5) any voting Equity Interests of any non-U.S. Subsidiary or any FSHCO in excess of 65% of the issued and outstanding voting Equity Interests of such non-U.S. Subsidiary or FSHCO;
- (6) subject to Section 7.15(4), any Equity Interests to the extent that a pledge of such Equity Interests would give rise to additional subsidiary reporting requirements under Rule 3-10 or Rule 3-16 of Regulation S-X promulgated under the Exchange Act;
- (7) to the extent applicable law requires that a Subsidiary of such Grantor issue directors' qualifying shares, nominee shares or similar shares which are required by applicable law to be held by persons other than the Grantors, such qualifying shares, nominee shares or similar shares held by Persons other than Grantors;
- (8) without duplication, any Equity Interests to the extent excluded pursuant to Section 5.10(4) of the Credit Agreement;
- (9) any Equity Interests to the extent the pledge thereof or a security interest therein would result in material adverse tax consequences or material adverse regulatory consequences, in each case, as reasonably determined by the Borrower in consultation with the Administrative Agent; or
- (10) any Equity Interests to the extent the cost, burden, difficulty or consequence of obtaining, maintaining or perfecting a security interest therein exceeds the fair market value thereof or the practical benefit to the Secured Parties afforded (or proposed to be afforded) thereby as reasonably determined by the Administrative Agent in consultation with the Borrower.

“**Excluded Swap Obligation**” means, with respect to any Guarantor, (a) as it relates to all or a portion of the guarantee of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading

Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor becomes effective with respect to such Swap Obligation or (b) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"**Federal Securities Laws**" has the meaning assigned to such term in Section 5.03.

"**Grantor**" and "**Grantors**" have the meanings assigned to such terms in the introductory paragraph to this Agreement.

"**Intellectual Property**" means all intellectual property of every kind and nature that any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest, including inventions, designs, Patents, Copyrights, Trademarks, trade secrets, domain names, confidential or proprietary technical and business information or know-how.

"**Intellectual Property Collateral**" has the meaning assigned to such term in Section 4.02(7).

"**Intellectual Property Security Agreement**" means a Trademark Security Agreement in substantially the form of Exhibit II hereto, a Patent Security Agreement in substantially the form of Exhibit III hereto, or a Copyright Security Agreement in substantially the form of Exhibit IV hereto.

"**IP Agreements**" means all material Copyright Licenses, Patent Licenses and Trademark Licenses, and all other agreements, permits, consents, orders and franchises relating to the license, development, use or disclosure of any material Intellectual Property to which a Grantor, now or hereafter, is a party or a beneficiary, including the agreements set forth on Schedule II hereto.

"**JPM**" has the meaning assigned to such term in the introductory paragraph to this Agreement.

"**Patent License**" means any written agreement, now or hereafter in effect, granting to any Grantor any right to make, use or sell any invention covered by a Patent, now or hereafter owned by any third party (including any such rights that such Grantor has the right to license) and all rights of any Grantor under any such agreement.

“**Patents**” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Patent License or otherwise):

- (1) all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II, and all applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II;
- (2) all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;
- (3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
- (4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“**Pledged Collateral**” has the meaning assigned to such term in Section 3.01(5).

“**Pledged Debt Securities**” has the meaning assigned to such term in Section 3.01(2).

“**Pledged Securities**” means any promissory notes, stock certificates or other certificated securities now or hereafter included in the Pledged Collateral, including all certificates, instruments or other documents representing or evidencing any Pledged Collateral.

“**Pledged Stock**” has the meaning assigned to such term in Section 3.01(1).

“**Secured Obligations**” means the Obligations; *provided* that the Secured Obligations will not include any Excluded Swap Obligations.

“**Secured Parties**” means (a) the Lenders, (b) the Agents, (c) each Issuing Bank, (d) the Cash Management Banks, (e) the Qualified Counterparties, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (g) the successors and permitted assigns of each of the foregoing.

“**Security Interest**” has the meaning assigned to such term in Section 4.01(1).

“**Swap Obligation**” 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.

“**Term Loan Collateral Agent**” means JPM, as “Collateral Agent” under the Term Loan Credit Agreement, and any duly appointed successor in such capacity.

---

“ **Term Loan Priority Collateral** ” has the meaning assigned to such term in the Intercreditor Agreement as in effect on the date hereof.

“ **Trademark License** ” means any written agreement, now or hereafter in effect, granting to any Grantor any right to use any Trademark now or hereafter owned by any third party (including any such rights that such Grantor has the right to license).

“ **Trademarks** ” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Trademark License or otherwise):

- (1) all trademarks, service marks, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule II;
- (2) all goodwill associated therewith or symbolized thereby;
- (3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
- (4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“ **Uniform Commercial Code** ” or “ **UCC** ” means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided*, *however*, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “ **Uniform Commercial Code** ” or “ **UCC** ” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

ARTICLE II

GUARANTEE

Section 2.01. Guarantee. Each Guarantor unconditionally guarantees, jointly with the other Guarantors and severally, to the Collateral Agent for the ratable benefit of the Secured Parties as a primary obligor and not merely as a surety, the due and punctual payment and performance of the Secured Obligations. Each Guarantor further agrees that the Secured Obligations may be extended or renewed, in whole or in part, without notice to or further assent from such Guarantor, and that such Guarantor will remain bound upon its guarantee hereunder notwithstanding any extension or renewal of any Secured Obligation. Each Guarantor waives presentment to, demand of payment from and protest to the Borrower or any other Loan Party of any of the Secured Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment. The Borrower shall be deemed to be a Guarantor hereunder solely in respect of any Specified Hedge Agreements to which the Borrower is not a party.

Section 2.02. Guarantee of Payment. Each Guarantor further agrees that its guarantee hereunder constitutes a guarantee of payment when due (whether at the stated maturity, by acceleration or otherwise) and not of collection, and waives any right to require that any resort be had by the Collateral Agent or any other Secured Party to any security held for the payment of the Secured Obligations or to any balance of any Deposit Account or credit on the books of the Collateral Agent or any other Secured Party in favor of any Loan Party or any other person.

Section 2.03. No Limitations, Etc.

- (1) Except for termination of a Guarantor's obligations hereunder as expressly provided for in Section 7.15 and except as provided in Section 2.07, the obligations of each Guarantor hereunder will not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and will not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Secured Obligations or otherwise (other than defense of payment or performance of Secured Obligations). Without limiting the generality of the foregoing, except for termination or release of a Guarantor's obligations hereunder in accordance with the terms of Section 7.15 the obligations of each Guarantor hereunder, to the fullest extent permitted by applicable law, will not be discharged or impaired or otherwise affected by, and each Guarantor hereby waives any defense to the enforcement hereof by reason of:
- (a) the failure of the Collateral Agent or any other Secured Party to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of any Loan Document or otherwise;
  - (b) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any other Guarantor under this Agreement;

- 
- (c) the failure to perfect any security interest in, or the release of, any of the Collateral held by or on behalf of the Collateral Agent or any other Secured Party for the Secured Obligations;
  - (d) any default, failure or delay, willful or otherwise, in the performance of the Secured Obligations;
  - (e) any illegality, lack of validity or enforceability of any Secured Obligation;
  - (f) any change in the corporate existence, structure or ownership of any Loan Party, or any insolvency, bankruptcy or reorganization of any Loan Party;
  - (g) the existence of any claim, set-off or other rights that the Guarantors may have at any time against the Borrower, the Collateral Agent, any other Secured Party or any other person, whether in connection herewith, the other Loan Documents or any unrelated transactions; *provided* that nothing herein will prevent the assertion of any such claim by separate suit or compulsory counterclaim;
  - (h) any action permitted or authorized hereunder; or
  - (i) any other circumstance (including any statute of limitations) or any act or omission that may in any manner or to any extent vary the risk of any Guarantor or otherwise operate as a defense to, or a legal or equitable discharge of, the Borrower or any Guarantor or any other guarantor or surety (other than the Payment in Full or performance of the Secured Obligations).
- (2) Each Guarantor expressly authorizes the Secured Parties to take and hold security for the payment and performance of the Secured Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release, substitute or add any one or more other guarantors or obligors upon or in respect of the Secured Obligations, all without affecting the obligations of any Guarantor hereunder.
- (3) To the fullest extent permitted by applicable law and except for termination or release of a Guarantor's obligations hereunder in accordance with the terms of Section 7.15 hereof, each Guarantor waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Secured Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than, after all Commitments have been terminated, the return of all Letters of Credit (or cash collateralization thereof on terms satisfactory to the applicable Issuing Bank), the Payment in Full or performance of all the Secured Obligations. The Collateral Agent and the other Secured Parties may exercise any right or remedy available to them against any other Loan Party pursuant to this Agreement or the other Loan Documents, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent that after giving effect thereto there shall have been Payment in Full in respect of all Secured Obligations. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against any other Loan Party, as the case may be, or any security.

Section 2.04. Reinstatement. Each Guarantor agrees that its guarantee hereunder will continue to be effective or be reinstated if, at any time, payment, or any part thereof, of any Secured Obligation is rescinded or must otherwise be restored by the Collateral Agent or any other Secured Party upon the bankruptcy or reorganization of the Borrower or any other Loan Party or otherwise.

Section 2.05. Agreement To Pay; Contribution; Subrogation.

- (1) In furtherance of the foregoing and not in limitation of any other right that the Collateral Agent or any other Secured Party has at law or in equity against any Guarantor by virtue hereof, upon the failure of any Loan Party to pay any Secured Obligation when and as the same becomes due and payable, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will pay, or cause to be paid, to the Collateral Agent for distribution to the applicable Secured Parties in cash the amount of such unpaid Secured Obligation.
- (2) Subject to the foregoing clause (1), to the extent that any Guarantor, under this Agreement or the Credit Agreement as a joint and several obligor, repays any of the Secured Obligations constituting Loans or other advances made to or reimbursement obligations owed by another Loan Party under the Credit Agreement (an “*Accommodation Payment*”), then the Guarantor making such Accommodation Payment will be entitled to contribution and indemnification from, and be reimbursed by, each of the other Guarantors in an amount equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Guarantor’s Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Guarantors; *provided* that such rights of contribution and indemnification will be subordinated to the Payment in Full of the Secured Obligations. As of any date of determination, the “*Allocable Amount*” of each Guarantor will be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Guarantor hereunder and under the Credit Agreement without:
  - (a) rendering such Guarantor “insolvent” within the meaning of Section 101 (31) of the Bankruptcy Code of the United States, Section 2 of the Uniform Fraudulent Transfer Act (“*UFTA*”) or Section 2 of the Uniform Fraudulent Conveyance Act (“*UFCA*”);
  - (b) leaving such Guarantor with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code of the United States, Section 4 of the UFTA, or Section 5 of the UFCA;
  - (c) leaving such Guarantor unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code of the United States or Section 4 of the UFTA, or Section 5 of the UFCA; or

- 
- (d) otherwise rendering such Guarantor's obligation under Section 2 of this Agreement void or voidable under any federal, state or foreign bankruptcy, insolvency, receivership or similar law.

Upon payment by any Guarantor of any sums to the Collateral Agent as provided above, all rights of such Guarantor against the Borrower, any other Loan Party or any other Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise will in all respects be subject to Article VI.

Section 2.06. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the financial condition and assets of the Borrower and each other Loan Party, and of all other circumstances bearing upon the risk of nonpayment of the Secured Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that no Agent nor any other Secured Party will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

Section 2.07. Maximum Liability. Each Guarantor and, by its acceptance of this guarantee, each Agent and each other Secured Party hereby confirms that it is the intention of all such persons that this guarantee and the Secured Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the U.S. Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this guarantee and the Secured Obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Secured Parties and the Guarantors hereby irrevocably agree that the Secured Obligations of the Guarantors under this guarantee at any time are limited to the maximum amount as will result in the Secured Obligations of such Guarantor under this guarantee not constituting a fraudulent transfer or conveyance.

### ARTICLE III

#### PLEDGE OF SECURITIES

Section 3.01. Pledge. As security for the payment or performance, as the case may be, in full of its Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, a security interest in all of such Grantor's right, title and interest in, to and under:

- (1) the Equity Interests (a) directly owned by such Grantor as of the Closing Date (including those Equity Interests listed on Schedule I) and (b) obtained by such Grantor after the Closing Date and, in each case, the certificates representing all such Equity Interests, in each case, other than any Excluded Assets (the Equity Interests described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the "**Pledged Stock**");

- 
- (2) the promissory notes and any instruments evidencing Indebtedness (a) owned by such Grantor as of the Closing Date (including those promissory notes and any instruments evidencing Indebtedness listed on Schedule I) and (b) issued to such Grantor after the Closing Date and having an aggregate principal amount in excess of \$15 million, in each case, other than any Excluded Assets (the instruments described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “*Pledged Debt Securities*”);

in each case, including all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all Pledged Debt Securities (except to the extent constituting an Excluded Asset or otherwise excluded from the Collateral pursuant to this Agreement);

- (3) subject to Section 3.05 hereof, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the securities referred to in the foregoing clauses (1) and (2);
- (4) subject to Section 3.05 hereof, all rights and privileges of such Grantor with respect to the securities and other property referred to in the foregoing clauses (1), (2) and (3) above; and
- (5) all proceeds of any of the foregoing items referred to in clauses (1) through (4) above, but excluding any Excluded Assets (the items referred to in clauses (1) through (5) of this Section 3.02, collectively, the “*Pledged Collateral*”).

Notwithstanding anything to the contrary in this Agreement or any other Security Document, no representation, warranty, covenant or any other provision in this Agreement or any other Security Document will apply to and none of the Pledged Stock, Pledged Debt Securities or Pledged Collateral will include nor will the security interests granted hereunder attach to any Excluded Asset.

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto (in each case other than any Excluded Assets), unto the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, forever, subject, however, to the terms, covenants and conditions hereinafter set forth and in each case subject to the Credit Agreement.

Section 3.02. Delivery of the Pledged Collateral.

- (1) Subject to any applicable Intercreditor Agreement(s), each Grantor agrees, within the time periods required hereunder or under the Credit Agreement (as applicable) (or at such later date as any Agent may agree, in its sole discretion) to deliver or cause to be delivered to the Collateral Agent, for the ratable benefit of the Secured Parties, any and all Pledged Securities to the extent such Pledged Securities, in the case of promissory notes or other instruments, are required to be delivered pursuant to paragraph (2) of this Section 3.02.

- 
- (2) Subject to any applicable Intercreditor Agreement(s), each Grantor will use its commercially reasonable efforts to cause any Indebtedness for borrowed money that would otherwise constitute Pledge Collateral if in the form of a promissory note and having an aggregate principal amount in excess of \$15 million owed to such Grantor by any Person to be evidenced by a duly executed promissory note that is pledged and delivered (within 60 days (or such longer period as any Agent may agree, in its sole discretion) at the time of delivery of the next Required Financial Statements after receipt thereof), to the Collateral Agent, for the ratable benefit of the Secured Parties, pursuant to the terms hereof; *provided* that the foregoing requirement will not apply to (a) instruments, notes and debt securities that are promptly deposited into an investment or securities account or (b) checks received in the ordinary course of business. To the extent any such promissory note is a demand note, each Grantor party thereto agrees, if requested in writing by the Collateral Agent, to immediately demand payment thereunder upon an Event of Default unless such demand would not be commercially reasonable or would otherwise expose such Grantor to liability to the maker.
  - (3) Upon delivery to the Collateral Agent, (a) any Pledged Securities required to be delivered pursuant to the foregoing paragraphs (1) and (2) of this Section 3.02 will be accompanied by stock powers or note powers, as applicable, duly executed in blank or other instruments of transfer reasonably satisfactory to the Collateral Agent and (b) all other property composing part of the Pledged Collateral delivered pursuant to the terms of this Agreement will be accompanied, to the extent necessary to perfect the security interest in or allow realization on the Pledged Collateral, by proper instruments of assignment duly executed by the applicable Grantor as the Collateral Agent may reasonably request. Each delivery of Pledged Securities will be accompanied by a schedule describing the securities, which schedule will be attached hereto as Schedule I (or a supplement to Schedule I, as applicable) and made a part hereof; *provided* that failure to attach any such schedule hereto will not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered will supplement any prior schedules so delivered.
  - (4) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Grantor will be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of creating, perfecting or making enforceable the Security Interest in any Pledged Collateral of such Grantor and no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction will be required.

Section 3.03. Representations, Warranties and Covenants. Each Grantor represents and warrants (but solely to the extent (and at the times) required by the Credit Agreement) and covenants to and with the Collateral Agent, for the ratable benefit of the Secured Parties that:

- (1) Schedule I correctly sets forth, as of the Closing Date, (a) all of the Pledged Stock owned by such Grantor on the Closing Date and the percentage of the issued and outstanding shares of each class of the Equity Interests of the issuer thereof represented by such Pledged Stock and (b) all of the Pledged Debt Securities owned by such Grantor on the Closing Date;

- 
- (2) the Pledged Stock and Pledged Debt Securities (solely with respect to Pledged Debt Securities issued by a Person that is not a Subsidiary of any Grantor, to the best of each Grantor's knowledge) have been duly and validly authorized and issued by the issuers thereof and (a) in the case of Pledged Stock, are fully paid and non-assessable (to the extent such concepts are applicable to such Pledged Stock and other than with respect to Pledged Stock consisting of membership interests of limited liability companies to the extent provided in Sections 18-502 and 18-607 of the Delaware Limited Liability Company Act) and (b) in the case of Pledged Debt Securities (solely with respect to Pledged Debt Securities issued by a Person that is not a Subsidiary of any Grantor, to the best of each Grantor's knowledge) are legal, valid and binding obligations of the issuers thereof, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding at law or in equity) and an implied covenant of good faith and fair dealing;
- (3) except for the security interests granted hereunder, each Grantor:
- (a) is and, subject to any transfers made in compliance with the Credit Agreement, will continue to be the direct owner, beneficially and of record, of the Pledged Securities indicated on Schedule I as owned by such Grantor;
  - (b) holds the same free and clear of all Liens, other than Permitted Liens;
  - (c) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral, other than pursuant to a transaction permitted by the Credit Agreement and other than Permitted Liens; and
  - (d) subject to the rights of such Grantor under the Loan Documents to dispose of Pledged Collateral, will use commercially reasonable efforts to defend its title or interest hereto or therein against any and all Liens (other than Permitted Liens), however arising, of all persons;
- (4) other than as set forth in the Credit Agreement or the schedules thereto, and except for restrictions and limitations imposed by the Loan Documents or securities laws generally or otherwise permitted to exist pursuant to the terms of the Credit Agreement, the Pledged Stock (other than Pledged Stock that is partnership interests) is and will continue to be freely transferable and assignable, and, except for limitations existing on the Closing Date (or the date of acquisition thereof, as applicable) in the articles or certificate of incorporation, bylaws or other organizational documents of any Subsidiary that is not a wholly owned Subsidiary, none of the Pledged Stock is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that might reasonably be expected to prohibit, impair, delay or otherwise affect, in any material respect, the pledge of such Pledged Stock hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder;

- 
- (5) each Grantor has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated;
  - (6) other than as set forth in the Credit Agreement or the schedules thereto, no consent or approval of any Governmental Authority, any securities exchange or any other Person was or is necessary to the validity of the pledge effected hereby (other than such as have been obtained and are in full force and effect);
  - (7) as of the Closing Date, this Agreement is effective to create in favor of the Collateral Agent (for the ratable benefit of the Secured Parties) a legal, valid and enforceable security interest in the Pledged Collateral described herein and proceeds thereof;
  - (8) Each Grantor acknowledges and agrees that, to the extent any interest in any limited liability company or limited partnership controlled by any Grantor and pledged under Section 3.01 is a “security” within the meaning of Article 8 of the UCC and is governed by Article 8 of the UCC, such interest shall be represented by a certificate. Each Grantor further acknowledges and agrees that with respect to any interest in any limited liability company or limited partnership Controlled on or after the Closing Date by such Grantor and pledged hereunder that is not a “security” within the meaning of Article 8 of the UCC, such Grantor shall at no time elect to treat any such interest as a “security” within the meaning of Article 8 of the UCC, nor shall such interest be represented by a certificate, unless such election and such interest is thereafter represented by a certificate that, subject to any applicable Intercreditor Agreement(s), within 60 days after such election (or at such later date as the Administrative Agent may agree), is delivered to the Collateral Agent pursuant to the terms hereof; and
  - (9) Notwithstanding anything to the contrary in any Loan Document, to the extent any provision of this Agreement or the Credit Agreement excludes any assets from the scope of the Pledged Collateral, or from any requirement to take any action to perfect or maintain any security interest (or the priority thereof) in favor of the Collateral Agent in the Pledged Collateral, the representations, warranties and covenants made by any Grantor in this Agreement with respect to the creation, perfection or priority (as applicable) of the security interest granted in favor of the Collateral Agent (including Section 3.02) shall be deemed not to apply to such excluded assets.

Section 3.04. Registration in Nominee Name; Denominations. To the extent required to be delivered to the Collateral Agent in accordance with the terms of this Agreement, the Collateral Agent (or a designated bailee, in accordance with the applicable Intercreditor Agreement(s)), on behalf of the Secured Parties, has the right (in its sole and absolute discretion), subject to the applicable Intercreditor Agreement(s), to hold the Pledged Securities in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent (or a designated bailee, in accordance with the applicable Intercreditor Agreement(s)) or, if an Event of Default shall have occurred and is continuing, in its own name as pledgee or the name of its nominee (as pledgee or as sub-agent). If an Event of Default shall have occurred and is

---

continuing, the Collateral Agent (or a designated bailee, in accordance with the applicable Intercreditor Agreement(s)) will have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement.

Section 3.05. Voting Rights; Dividends and Interest, Etc.

- (1) Unless and until an Event of Default has occurred and is continuing and the Collateral Agent has given prior written notice to the Borrower of the Collateral Agent's intention to exercise its rights hereunder:
- (a) each Grantor will be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with the terms of this Agreement, the Credit Agreement and the other Loan Documents; *provided that*, except as permitted under the Credit Agreement, such rights and powers will not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Collateral, the rights and remedies of any of the Collateral Agent or the other Secured Parties under this Agreement, the Credit Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same;
  - (b) the Collateral Agent will promptly execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (a) above; and
  - (c) each Grantor will be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Credit Agreement and applicable laws; *provided that* (i) any noncash dividends, interest, principal or other distributions, payments or other consideration in respect thereof, including any rights to receive the same to the extent not so distributed or paid, that would constitute Pledged Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities, received in exchange for Pledged Securities or any part thereof, or in redemption thereof, as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise and (ii) any noncash dividends and other distributions paid or payable in respect of any Pledged Securities that would constitute Pledged Securities in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid in surplus, in each case that does not constitute an Excluded Asset, will be and become part of the Pledged Collateral, and, if received by any Grantor will be held in trust for the benefit of the Collateral

---

Agent, for the ratable benefit of the Secured Parties, and (if applicable) will be promptly (and in any event within 60 days (or such longer period as the Term Loan Collateral Agent may agree, in its sole discretion)) delivered to the Collateral Agent, for the ratable benefit of the Secured Parties, in the same form as so received (endorsed in a manner reasonably satisfactory to the Collateral Agent).

- (2) If an Event of Default has occurred and is continuing and after prior written notice by the Collateral Agent to the Borrower of the Collateral Agent's intention to exercise its rights hereunder, all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to paragraph (1)(c) of this Section 3.05 will cease, and all such rights will thereupon become vested, for the ratable benefit of the Secured Parties, in the Collateral Agent (or a designated bailee, in accordance with the applicable Intercreditor Agreement(s)), which will have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions; *provided, however*, that even if an Event of Default has occurred and is continuing, any Grantor may continue to receive dividends and distributions solely to the extent permitted under subclause (8)(a), subclause (8)(b), subclause (8)(c), subclause (8)(d) and subclause (8)(e) of Section 6.07 of the Credit Agreement.
- (3) All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this Section 3.05 will be held in trust for the benefit of the Collateral Agent, for the ratable benefit of the Secured Parties, and will be (within 60 days (or such longer period as the Term Loan Collateral Agent may agree, in its sole discretion) after receipt thereof) delivered to the Collateral Agent (or a designated bailee, in accordance with the applicable Intercreditor Agreement(s)), for the ratable benefit of the Secured Parties, in the same form as so received (endorsed in a manner reasonably satisfactory to the Collateral Agent). Any and all money and other property paid over to or received by the Collateral Agent (or a designated bailee, in accordance with the applicable Intercreditor Agreement(s)) pursuant to the provisions of this paragraph (3) subject to any applicable Intercreditor Agreement(s) will be retained by the Collateral Agent (or a designated bailee, in accordance with the applicable Intercreditor Agreement(s)) in an account to be established by the Collateral Agent (or a designated bailee, in accordance with the applicable Intercreditor Agreement(s)) upon receipt of such money or other property and will be applied in accordance with Section 5.02 hereof. After all such Events of Default have been cured or waived, the Collateral Agent will promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of paragraph (1)(c) of this Section 3.05 and that remain in such account.
- (4) If an Event of Default has occurred and is continuing and after the Collateral Agent shall have given prior written notice to the Borrower of the Collateral Agent's intention to exercise its rights hereunder, all rights of any Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to paragraph (1)(a) of this Section 3.05, and the obligations of the Collateral Agent under paragraph (1)(b) of this Section 3.05, will cease, and all such rights will thereupon become vested in the Collateral Agent, for the ratable benefit of the Secured Parties, which will have the sole

and exclusive right and authority to exercise such voting and consensual rights and powers (subject to any applicable Intercreditor Agreement(s)); *provided* that unless otherwise directed by the Required Lenders, the Collateral Agent will have the right from time to time after an Event of Default has occurred and is continuing to permit the Grantors to exercise such rights.

- (5) After all such Events of Default have been cured or waived, each Grantor will have (i) the right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of paragraph (1)(a) above and (ii) the right to receive and retain the distributions that such Grantor would otherwise be entitled to receive and retain pursuant to the terms of paragraph 1(c) above.

#### ARTICLE IV

##### SECURITY INTERESTS IN OTHER PERSONAL PROPERTY

###### Section 4.01. Security Interest.

- (1) As security for the payment or performance when due (whether at the stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, a security interest (the “**Security Interest**”) in all of such Grantor’s right, title and interest in or to any and all of the following assets and properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “**Article 9 Collateral**”):
- (a) all Accounts;
  - (b) all Chattel Paper;
  - (c) all cash, Money and Deposit Accounts;
  - (d) all Documents;
  - (e) all Equipment;
  - (f) all General Intangibles;
  - (g) all Instruments;
  - (h) all Inventory;
  - (i) all Investment Property;
  - (j) all Letter-of-Credit Rights;

- 
- (k) all Intellectual Property;
  - (l) all Commercial Tort Claims, including those described on Schedule IV hereto;
  - (m) each of the following:
    - (i) Securities Accounts;
    - (ii) Investment Property credited to Securities Accounts from time to time and all Security Entitlements in respect thereof; and
    - (iii) all cash held in any Securities Account or Deposit Account;
  - (n) all books and Records pertaining to the Article 9 Collateral; and
  - (o) all Proceeds, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any person with respect to any of the foregoing.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (i) the Article 9 Collateral will not include any Pledged Collateral and (ii) the Article 9 Collateral (and any components comprising thereof) will not include, this Agreement will not constitute a grant of a security interest in, the security interest granted hereunder will not attach to and no representation, warranty, covenant or any other provision contained in this Agreement or any other Security Document shall apply to, any Excluded Asset.

- (2) Subject to the limitations set forth in Section 4.01(6), each Grantor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any financing statements with respect to the Collateral (including all Article 9 Collateral consisting of Pledged Collateral) or any part thereof and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including:
  - (a) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor; and
  - (b) a description of collateral that describes such property in any manner as the Collateral Agent may reasonably determine is necessary to ensure the perfection of the security interest in the Collateral granted under this Agreement, including describing such property as “all assets”, whether now owned or hereafter acquired, or words of similar effect.

---

Each Grantor agrees to provide such information to the Collateral Agent promptly upon reasonable written request.

- (3) The Collateral Agent is further authorized to file with the United States Patent and Trademark Office or United States Copyright Office (or any successor office) such documents as may be reasonably necessary for the purpose of perfecting, continuing, enforcing or protecting the Security Interest granted in Intellectual Property by each Grantor, without the signature of any Grantor, and naming any Grantor or the Grantors as debtors and the Collateral Agent as secured party.
- (4) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Grantor shall be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Article 9 Collateral of such Grantor.
- (5) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Article 9 Collateral.
- (6) Notwithstanding anything to the contrary in any Loan Document, no Grantor will be required:
  - (a) to take, or cause to be taken, any actions to perfect the Security Interest by any means other than (to the extent reasonably applicable):
    - (i) filings pursuant to the Uniform Commercial Code in the office of the Secretary of State (or equivalent central filing office) in the jurisdiction of organization of such Grantor;
    - (ii) filings in the United States Patent and Trademark Office and the United States Copyright Office of an Intellectual Property Security Agreement;
    - (iii) subject to any applicable Intercreditor Agreement(s), delivery of Collateral consisting of instruments, notes and debt securities in a principal amount in excess of \$15 million to the extent required under Section 3.02;
    - (iv) subject to any applicable Intercreditor Agreement(s), delivery of Collateral consisting of certificated Equity Interests to the extent required under Section 3.02;
  - (b) except as required under Section 5.11 of the Credit Agreement, to enter, or cause to be entered, any control agreements or similar arrangements with the Collateral Agent or the Administrative Agent with respect to any Deposit Accounts, Securities Accounts, Commodities Accounts or other Collateral that requires perfection by Control; or
  - (c) to take any actions with respect to assets located outside of the United States or in any non-United States jurisdiction or required by the laws of any non-United States jurisdiction to create, maintain or perfect any security interests in any such assets (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction);

- 
- (d) to deliver any landlord lien waivers, estoppels or collateral access letters; or
  - (e) to take any perfection action with respect to motor vehicles and other assets subject to certificates of title or Letter-of-Credit Rights other than the filing of Uniform Commercial Code financing statements in the office of the secretary of state (or similar central filing office) in the jurisdiction of organization of the applicable Grantor.
- (7) Notwithstanding anything to the contrary in any Loan Document, to the extent any provision of this Agreement or the Credit Agreement excludes any assets from the scope of the Article 9 Collateral, or from any requirement to take any action to perfect or maintain any security interest (or the priority thereof) in favor of the Collateral Agent in the Article 9 Collateral, the representations, warranties and covenants made by any Grantor in this Agreement with respect to the creation, perfection or priority (as applicable) of the security interest granted in favor of the Collateral Agent (including Section 4.01) shall be deemed not to apply to such excluded assets.

Section 4.02. Representations and Warranties. Each Grantor represents and warrants (but solely to the extent (and at the times) required by the Credit Agreement) to the Collateral Agent and the Secured Parties that:

- (1) Each Grantor has good and valid rights in and title to the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained and is in full force and effect or has otherwise been disclosed herein or in the Credit Agreement.
- (2) The Uniform Commercial Code financing statements containing a description of the Article 9 Collateral that have been prepared by the Collateral Agent for filing in the office specified in Schedule III constitute all the filings, recordings and registrations (except as set forth in the following clause (3)) that are, as of the Closing Date, necessary to publish notice of, protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the ratable benefit of the Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing of Uniform Commercial Code financing statements in the office of the Secretary of State (or equivalent central filing office) of the applicable jurisdiction.
- (3) Each Grantor represents and warrants that a fully executed Intellectual Property Security Agreement containing a description of all Article 9 Collateral existing on the Closing Date and consisting of material Intellectual Property owned by such Grantor with respect to United States Patents (and Patents for which United States applications are pending), United States registered Trademarks (and Trademarks for which United States registration applications are pending) and United States registered Copyrights (and Copyrights for which United States registration applications are pending) was delivered on the Closing Date to the Collateral Agent for recording with the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable.

- 
- (4) The Security Interest constitutes (a) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the Secured Obligations; (b) subject to the filings described in Section 4.02(2), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code in the central filing office of such jurisdictions; and (c) subject to the filings described in Section 4.02(3), a security interest that shall be perfected in all Intellectual Property in which a security interest may be perfected upon the receipt and recording of an Intellectual Property Security Agreement with the United States Patent and Trademark Office and the United States Copyright Office, as applicable. Subject to Section 4.01(6), the Security Interest is and shall be prior to any other Lien on any of the Article 9 Collateral, subject to Permitted Liens.
- (5) The Article 9 Collateral is owned by the Grantors free and clear of any Lien, other than Permitted Liens. None of the Grantors has filed or consented to the filing after the Closing Date of (a) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Article 9 Collateral; (b) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with the United States Patent and Trademark Office or the United States Copyright Office; or (c) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Permitted Liens or in connection with any permitted disposition thereof in accordance with the terms of the Credit Agreement.
- (6) None of the Grantors holds any Commercial Tort Claim individually in excess of \$15 million as of the Closing Date except as indicated on Schedule IV.
- (7) As to itself and its Article 9 Collateral consisting of material Intellectual Property owned by each Grantor with respect to the United States (the “**Intellectual Property Collateral**”), to each Grantor’s knowledge, as of the Closing Date:
- (a) The Intellectual Property Collateral set forth on Schedule II includes all of the material Patents, Trademarks and Copyrights owned by such Grantor as of the date hereof;
- (b) The Intellectual Property Collateral owned by such Grantors has not been adjudged invalid or unenforceable in whole or part (except for office actions issued in the ordinary course by the United States Patent and Trademark Office or in any similar office in any foreign jurisdiction), and is valid and enforceable, except as would not reasonably be expected to have a Material Adverse Effect. Such Grantor is not aware of any uses of any item of Intellectual Property Collateral that would be expected to lead to such item becoming invalid or unenforceable, except as would not reasonably be expected to have a Material Adverse Effect;

- 
- (c) Such Grantor has made or performed in the ordinary course of Grantor's business, acts, including filings, recordings and payment of all required fees and taxes, required to maintain and protect its interest in each and every item of Intellectual Property Collateral owned by such Grantor in full force and effect in the United States, and such Grantor has used proper statutory notice in connection with its use of each Patent, Trademark and Copyright owned by such Grantor in the Intellectual Property Collateral, in each case, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect;
  - (d) With respect to each IP Agreement, the absence, termination, cancellation, breach or violation of which would reasonably be expected to have a Material Adverse Effect: (A) such Grantor has not received any notice of termination or cancellation under such IP Agreement; (B) such Grantor has not received any notice of a breach or default under such IP Agreement, which breach or default has not been cured or waived; and (C) neither such Grantor nor, to the knowledge of Grantor, any other party to such IP Agreement is in breach or default thereof in any material respect, and no event has occurred that, with notice or lapse of time or both, would constitute such a breach or default or permit termination, modification or acceleration under such IP Agreement.
  - (e) Except as would not reasonably be expected to have a Material Adverse Effect, no Grantor or Intellectual Property Collateral owned by such Grantor is subject to any outstanding consent, settlement, decree, order, injunction, judgment or ruling restricting the use of any Intellectual Property Collateral owned by such Grantor or that would impair the validity or enforceability of such Intellectual Property Collateral owned by such Grantor.

Section 4.03. Covenants.

- (1) Each Grantor agrees to comply with Section 5.10(3) of the Credit Agreement, subject, for the avoidance of doubt, to Section 5.10(4) of the Credit Agreement.
- (2) Subject to the rights of such Grantor under the Loan Documents to dispose of Collateral and except as would otherwise be permitted by the Credit Agreement, each Grantor will, at its own expense, use commercially reasonable efforts to defend title to the Article 9 Collateral against all persons and to defend the Security Interest of the Collateral Agent, for the ratable benefit of the Secured Parties, in the Article 9 Collateral and the priority thereof against any Lien that is not a Permitted Lien.

- 
- (3) Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Collateral Agent may from time to time reasonably request to preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement and the granting of the Security Interest and the filing of any financing statements or other documents in connection herewith or therewith.
  - (4) [Reserved].
  - (5) After an Event of Default has occurred and is continuing, and in consultation with the Borrower, the Collateral Agent will have the right to verify under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Article 9 Collateral, including, in the case of Accounts or Article 9 Collateral in the possession of any third person, by contacting Account Debtors or the third person possessing such Article 9 Collateral for the purpose of making such a verification. The Collateral Agent shall have the right to share any information it gains from such inspection or verification with any Secured Party.
  - (6) None of the Grantors will, without the Collateral Agent's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned), grant any extension of the time of payment of any Accounts included in the Article 9 Collateral, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any person liable for the payment thereof or allow any credit or discount whatsoever thereon, in each case, other than extensions, credits, discounts, compromises or settlements granted or made in the ordinary course of business or consistent with prudent business practices or as otherwise permitted under the Credit Agreement.
  - (7) At its option, after an Event of Default has occurred and is continuing, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not a Permitted Lien, and may pay for the maintenance and preservation of the Article 9 Collateral, in each case, to the extent any Grantor fails to do so as required by the Credit Agreement or this Agreement, and each Grantor jointly and severally agrees to reimburse the Collateral Agent on demand for any reasonable payment made or any reasonable expense incurred by the Collateral Agent pursuant to the foregoing authorization; *provided, however*, that nothing in this Section 4.03(7) will excuse any Grantor from the performance of, or impose any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Documents.
  - (8) Each Grantor (rather than the Collateral Agent or any Secured Party) will remain liable for the observance and performance of all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Article 9 Collateral.
  - (9) Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent for such purpose) as such Grantor's true and lawful agent (and attorney-in-fact) for the purpose, after an Event

of Default has occurred for so long as it is continuing, of making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto.

- (10) In the event that any Grantor at any time or times fails to obtain or maintain any of the policies of insurance required hereby or under the Credit Agreement or to pay any premium in whole or part relating thereto, the Collateral Agent may, after an Event of Default has occurred for so long as it is continuing, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent reasonably deems advisable. All sums disbursed by the Collateral Agent in connection with this Section 4.03(10), including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Collateral Agent, in accordance with Section 7.06, and shall be additional Secured Obligations secured hereby.

Section 4.04. Other Actions. In order to further ensure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, for the ratable benefit of the Secured Parties, the Collateral Agent's security interest in the Article 9 Collateral, each Grantor agrees, in each case at such Grantor's own expense, to take the following actions with respect to the following Article 9 Collateral:

- (1) Tangible Chattel Paper. Except to the extent otherwise provided in Article III, if any Grantor at any time holds or acquires any Tangible Chattel Paper evidencing an amount in excess of \$15 million, such Grantor will (within 60 days (or such longer period as any Agent may agree, in its sole discretion) after receipt thereof) endorse, assign and deliver the same to the Collateral Agent (or a designated bailee, in accordance with any applicable Intercreditor Agreement(s)), accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably request.
- (2) Commercial Tort Claims. If any Grantor shall at any time hold or acquire a Commercial Tort Claim in an amount reasonably estimated by the Borrower in good faith to exceed \$15 million, such Grantor shall (within 60 days (or such longer period as any Agent may agree, in its sole discretion) after determination thereof) notify the Collateral Agent thereof in a writing signed by such Grantor, including a summary description of such claim, and grant to the Collateral Agent in writing a security interest therein and in the proceeds thereof, all under the terms and provisions of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Collateral Agent.

Section 4.05. Covenants Regarding Patent, Trademark and Copyright Collateral. Except as permitted by the Credit Agreement or as would not reasonably be expected to result in a Material Adverse Effect:

- 
- (1) Each Grantor agrees that it will not knowingly do any act or omit to do any act (and will exercise commercially reasonable efforts to contractually prohibit its licensees from doing any act or omitting to do any act) whereby any material Patent owned by such Grantor that is necessary to the normal conduct of such Grantor's business may become prematurely invalidated, abandoned, lapsed or dedicated to the public, and agrees that it will take commercially reasonable steps with respect to any material products covered by any such Patent as necessary to establish and preserve its rights under applicable patent laws.
  - (2) Each Grantor will, and will use its commercially reasonable efforts to contractually require its licensees and its sublicensees to, for each material Trademark owned by such Grantor and necessary to the normal conduct of such Grantor's business:
    - (a) maintain such Trademark in full force free from any adjudication of abandonment or invalidity for non-use;
    - (b) maintain the quality of products and services offered under such Trademark;
    - (c) display such Trademark with notice of federal or foreign registration or claim of trademark or service mark as required under applicable law; and
    - (d) not knowingly use or knowingly permit its licensees' use of such Trademark in violation of any third-party rights.
  - (3) Each Grantor will, and will use its commercially reasonable efforts to cause its licensees and its sublicensees to, for each work covered by a material Copyright owned by such Grantor and necessary to the normal conduct of such Grantor's business and that it publishes, displays and distributes, use a copyright notice as necessary and sufficient to establish and preserve its rights under applicable copyright laws.
  - (4) Each Grantor shall notify the Collateral Agent promptly if it knows that any material Patent, Trademark or Copyright owned by such Grantor and necessary to the normal conduct of such Grantor's business may imminently become abandoned, lapsed or dedicated to the public, or of any materially adverse determination or development, excluding office actions and similar determinations or developments in the United States Patent and Trademark Office, United States Copyright Office, any court, or any similar office of any country, regarding such Grantor's ownership of any such material Patent, Trademark or Copyright or its right to register or maintain the same.
  - (5) Each Grantor, either itself or through any agent, employee, licensee or designee, will, upon the reasonable request of the Collateral Agent, execute and deliver any and all agreements, instruments, documents and papers as the Collateral Agent may reasonably request to evidence the Collateral Agent's security interest in each Patent, Trademark, or Copyright listed in each updated Perfection Certificate (or in any applicable specified information contained in the Perfection Certificate) furnished pursuant to Section 5.04(6) of the Credit Agreement.

- 
- (6) Each Grantor will exercise its reasonable business judgment consistent with the practice in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office with respect to maintaining and pursuing each application owned by such Grantor relating to any material Patent, Trademark and/or Copyright (and obtaining the relevant grant or registration) necessary to the normal conduct of such Grantor's business and to maintain (a) each such Patent and (b) the registrations of each such Trademark and each such Copyright, including, when applicable and necessary in such Grantor's reasonable business judgment, timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if any Grantor believes necessary in its reasonable business judgment, to initiate opposition, interference and cancellation proceedings against third parties.
- (7) In the event that any Grantor knows or has reason to know that any Article 9 Collateral consisting of a material Patent, Trademark or Copyright necessary to the normal conduct of its business has been materially infringed, misappropriated or diluted by a third party, such Grantor will promptly notify the Collateral Agent and will, if such Grantor deems it necessary in its reasonable business judgment, promptly take actions as are reasonably appropriate under the circumstances.

Section 4.06. Intercreditor Relations. Notwithstanding anything herein to the contrary, (1) the Grantors and the Collateral Agent acknowledge that the exercise of certain of the Collateral Agent's rights and remedies hereunder are subject to the provisions of the Closing Date Intercreditor Agreement and any other applicable Intercreditor Agreement(s) and (2) prior to the Discharge of Term Loan Claims (or such other applicable date), any obligation hereunder to physically deliver any Term Loan Priority Collateral (or other applicable Collateral) to the Collateral Agent shall be deemed satisfied by the delivery to the Term Loan Collateral Agent or other applicable Debt Representative, acting as gratuitous bailee for the Collateral Agent in accordance with the Closing Date Intercreditor Agreement or other applicable Intercreditor Agreement(s). The failure of the Collateral Agent or any other Secured Party to immediately enforce any of its rights and remedies hereunder (as a result of the terms of any applicable Intercreditor Agreement(s) or otherwise) shall not constitute a waiver of any such rights and remedies. In the event of any conflict or inconsistency between the terms of the Closing Date Intercreditor Agreement or any other applicable Intercreditor Agreement(s) and this Agreement, the terms of such Intercreditor Agreement shall govern and control. In the event of any such conflict, each Grantor may act (or omit to act) in accordance with such Intercreditor Agreement and shall not be in breach, violation or default of its obligations hereunder or under any other Loan Document by reason of doing so.

## ARTICLE V

### REMEDIES

Section 5.01. Remedies Upon Default. If an Event of Default has occurred and is continuing, each Grantor agrees to deliver each item of Collateral to the Collateral Agent (or a designated bailee, in accordance with any applicable Intercreditor Agreement(s)) on demand, and it is agreed that the Collateral Agent shall have the right, subject to applicable law and any applicable Intercreditor Agreement(s), to take any of or all the following actions at the same or

different times: (1) with respect to any Article 9 Collateral consisting of Intellectual Property, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Article 9 Collateral by the applicable Grantors to the Collateral Agent or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or a non-exclusive basis, any such Article 9 Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers thereunder cannot be obtained with the use of commercially reasonable efforts, which each Grantor hereby agrees to use) and (2) to take possession of the Article 9 Collateral and without liability for trespass to the applicable Grantor to enter any premises where the Article 9 Collateral may be located for the purpose of taking possession of, removing or selling the Article 9 Collateral and, generally, to exercise any and all rights afforded to a secured party under the applicable Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing rights and remedies, each Grantor agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law (including the Uniform Commercial Code), to sell or otherwise dispose of all or any part of the Collateral at a public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized in connection with any sale of a security (if it deems it advisable to do so) pursuant to the foregoing to restrict the prospective bidders or purchasers to persons who represent and agree that they are purchasing such security for their own account, for investment, and not with a view to the distribution or sale thereof. Upon consummation of any such sale of Collateral pursuant to this Section 5.01, the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives and releases (to the extent permitted by law) all rights of redemption, stay, valuation and appraisal that such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Collateral Agent shall give the applicable Grantors ten Business Days' written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Collateral Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. The Collateral, or the portion thereof, to be sold at any such sale may be sold in one lot as an entirety or in separate parcels in the Collateral Agent's own right or by one or more agents and contractors, upon any premises owned, leased, or occupied by any Grantor and the Collateral Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory to be sold with other goods (all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor), all as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or

private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In the case of any sale of all or any part of the Collateral made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in the event that any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in the case of any such failure, such Collateral may be sold again upon notice given in accordance with provisions above. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section 5.01, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all such rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property in accordance with Section 5.02 hereof without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 5.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its equivalent in other jurisdictions.

Without limiting any other rights of the Collateral Agent under this Agreement, for the purpose of enabling Collateral Agent to exercise rights and remedies under Article V at such time as Collateral Agent shall be lawfully entitled to exercise, after an Event of Default has occurred and is continuing, such rights and remedies, and for no other purpose, each Grantor hereby grants to the Collateral Agent, to the extent licensable, and to the extent not resulting in a material breach, material violation or termination of any Trademark License, a royalty free, non-exclusive, irrevocable license (such license to be effective after an Event of Default has occurred and while it is continuing), to use, apply, and affix any Trademark in which any Grantor now or hereafter has rights, solely in connection with the Collateral Agent's enforcement of rights or remedies hereunder, including in connection with any sale or other disposition of Inventory, provided that such use is consistent with the use of such Trademark employed by the Grantor in the ordinary conduct of such Grantor's business and Grantor shall have rights of quality control and inspection that are reasonably necessary to maintain the validity and enforceability of such Trademarks. As to each Grantor, the license granted hereby shall remain in full force and effect until such Grantor hereunder is released hereunder in accordance with Section 7.15 of this Agreement.

Any exercise of remedies by the Collateral Agent shall be subject to the applicable Intercreditor Agreement(s).

Section 5.02. Application of Proceeds.

- (1) Subject to the terms of any applicable Intercreditor Agreement(s), the Collateral Agent will promptly apply the proceeds, moneys or balances of any collection or sale of Collateral, as well as any Collateral consisting of cash, in the manner specified in the Credit Agreement.
- (2) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Collateral Agent will not be required to marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such Guarantee in any particular order.

Section 5.03. Securities Act, Etc. In view of the position of the Grantors in relation to the Pledged Collateral, or because of other current or future circumstances, a question may arise under the Securities Act of 1933, as now or hereafter in effect, or any similar federal statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the “**Federal Securities Laws**”) with respect to any disposition of the Pledged Collateral permitted hereunder. Each Grantor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent were to attempt to dispose of all or any part of the Pledged Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to dispose of all or part of the Pledged Collateral under applicable Blue Sky or other state securities laws or similar laws analogous in purpose or effect. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Collateral Agent, in its sole and absolute discretion, may (1) proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under the Federal Securities Laws or, to the extent applicable, Blue Sky or other state securities laws and (2) approach and negotiate with a single potential purchaser to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Collateral Agent will incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price that the Collateral Agent, in its sole and absolute discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 5.03 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Collateral Agent sells. For avoidance of doubt, no Grantor shall be required hereunder or under any other Loan Document to take or cause the issuer of any Pledged Collateral take any action to register any Pledged Collateral for public sale under the Federal Securities Laws or Blue Sky or other state securities laws.

## INDEMNITY, SUBROGATION AND SUBORDINATION

Section 6.01. Indemnity. In addition to all such rights of indemnity and subrogation as the Guarantors may have under applicable law (but subject to Section 6.03 hereof), the Borrower agrees that (a) in the event a payment is made by any Guarantor under this Agreement in respect of any Secured Obligation of the Borrower, the Borrower shall indemnify such Guarantor for the full amount of such payment and such Guarantor shall be subrogated to the rights of the person to whom such payment shall have been made to the extent of such payment and (b) in the event any assets of any Guarantor are sold pursuant to this Agreement or any other Security Document to satisfy in whole or in part a Secured Obligation of the Borrower, the Borrower will indemnify such Guarantor in an amount equal to the greater of the book value or the fair market value of the assets so sold.

Section 6.02. Contribution and Subrogation. Subject to Section 2.07, each Guarantor (a “*Contributing Guarantor*”) agrees (subject to Section 6.03 hereof) that, in the event a payment shall be made by any other Guarantor hereunder in respect of any Secured Obligation or assets of any other Guarantor are sold pursuant to any Security Document to satisfy any Secured Obligation owed to any Secured Party and such other Guarantor (the “*Claiming Guarantor*”) shall not have been fully indemnified by the Borrower as provided in Section 6.01 hereof, the Contributing Guarantor shall indemnify the Claiming Guarantor in an amount equal to the amount of such payment or the greater of the book value or the fair market value of such assets, as applicable, in each case multiplied by a fraction of which the numerator shall be the net worth of such Contributing Guarantor on the date hereof and the denominator will be the aggregate net worth of all the Guarantors on the date hereof (or, in the case of any Guarantor becoming a party hereto pursuant to Section 7.16 hereof, the date of the supplement hereto executed and delivered by such Guarantor). Any Contributing Guarantor making any payment to a Claiming Guarantor pursuant to this Section 6.02 shall be subrogated to the rights of such Claiming Guarantor under Section 6.01 hereof to the extent of such payment.

Section 6.03. Subordination.

- (1) Notwithstanding any provision of this Agreement to the contrary, all rights of the Guarantors under Sections 6.01 and 6.02 hereof and all other rights of indemnity, contribution or subrogation of the Guarantors under applicable law or otherwise will be fully subordinated to the Payment in Full of the Secured Obligations until such time as this Agreement has been terminated in accordance with Section 7.15(1) or, with respect to any such Guarantor, until such Guarantor is released in accordance with Section 7.15(2). No failure on the part of the Borrower or any Guarantor to make the payments required by Sections 6.01 and 6.02 hereof (or any other payments required under applicable law or otherwise) will in any respect limit the obligations and liabilities of the Borrower with respect to the Secured Obligations or any Guarantor with respect to its obligations hereunder.

- (2) The Borrower and each Guarantor hereby agree that all Indebtedness owed by it to the Borrower, any other Guarantor or any Restricted Subsidiary (collectively, the “***Subordinated Creditors***”) will be fully subordinated to the prior Payment in Full of the Secured Obligations; provided, however, that each of the following shall be permitted: payments permitted under the Credit Agreement, including payments of regularly scheduled principal and interest (including default interest and any “AHYDO” catch-up payment) on such Indebtedness, fees related to such Indebtedness, indemnity and expense reimbursement payments in connection with such Indebtedness, and mandatory prepayments, mandatory redemptions and mandatory purchases of any such Indebtedness (including any principal, premium or interest with respect thereto), in each case pursuant to the terms of such Indebtedness. A Subordinated Creditor will automatically be released from its obligations hereunder upon the consummation of any transaction permitted by the Credit Agreement as a result of which the Subordinated Creditor ceases to be a Restricted Subsidiary of the Borrower.

## ARTICLE VII

### MISCELLANEOUS

Section 7.01. Notices. All communications and notices hereunder shall (except as otherwise permitted herein) be in writing and given as provided in Section 10.01 of the Credit Agreement. All communications and notices hereunder to any Grantor will be given to it in care of the Borrower, with such notice to be given as provided in Section 10.01 of the Credit Agreement.

Section 7.02. Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest in the Article 9 Collateral, the security interest in the Pledged Collateral and all obligations of each Grantor hereunder will be absolute and unconditional irrespective of:

- (1) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing;
- (2) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument;
- (3) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations; or
- (4) subject only to termination or release of a Guarantor’s obligations hereunder in accordance with the terms of Section 7.15 hereof any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement (other than a defense of payment or performance).

Section 7.03. Limitation By Law. All obligations, rights, remedies and powers provided in this Agreement may be exercised or performed only to the extent that the exercise or performance thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 7.04. Binding Effect; Several Agreement. This Agreement will become effective as to any party to this Agreement when a counterpart hereof executed on behalf of such party is delivered to the Collateral Agent and a counterpart hereof is executed on behalf of the Collateral Agent, and thereafter will be binding upon such party and the Collateral Agent and their respective permitted successors and assigns, and will inure to the benefit of such party, the Collateral Agent and the other Secured Parties and their respective permitted successors and assigns, except that no party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly permitted under the Credit Agreement. This Agreement will be construed as a separate agreement with respect to each Loan Party and may be amended, modified, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

Section 7.05. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference will be deemed to include the permitted successors and assigns of such party, and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns; *provided* that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent or as expressly permitted under the Credit Agreement. The Collateral Agent hereunder will at all times be the same person that is the Collateral Agent under the Credit Agreement. Written notice of resignation by the Administrative Agent pursuant to the Credit Agreement will also constitute notice of resignation as the Collateral Agent under this Agreement. Upon the acceptance of any appointment as the Administrative Agent under the Credit Agreement by a successor Administrative Agent, that successor Administrative Agent will thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent pursuant hereto.

Section 7.06. Collateral Agent's Fees and Expenses; Indemnification. The parties hereto agree that the Collateral Agent will be entitled to reimbursement of its expenses incurred hereunder as provided in Section 10.05 of the Credit Agreement and the provisions of Section 10.05 shall be incorporated by reference herein and apply to each Grantor *mutatis mutandis*.

Section 7.07. Collateral Agent Appointed Attorney-in-Fact. Each Grantor hereby appoints the Collateral Agent the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary to accomplish the purposes hereof, effective after an Event of Default has occurred and while it is continuing and with written notice to the Borrower of its exercise or intent to exercise such rights, which appointment is irrevocable and coupled with an interest. The Collateral Agent will have the right, after an Event of Default has occurred and while it is continuing and with written notice to the Borrower of its exercise or intent to exercise such rights, with full power of substitution either in the Collateral Agent's name or in the name of such Grantor, to:

- (1) receive, endorse, assign or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof;
- (2) demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral;
- (3) ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due under and by virtue of any Collateral;
- (4) sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral;
- (5) send verifications of Accounts to any Account Debtor;
- (6) commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral;
- (7) settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral;
- (8) notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent; and
- (9) use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes;

*provided* that nothing herein contained will be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties will be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence, bad faith or willful misconduct.

Section 7.08. APPLICABLE LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

Section 7.09. Waivers; Amendment.

- (1) No failure or delay by the Collateral Agent or any Lender or Issuing Bank in exercising any right, power or remedy hereunder or under any other Loan Document will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or remedy, or any abandonment or discontinuance of steps to enforce such a right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies of the Collateral Agent and the Lenders and Issuing Banks hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights, powers or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Loan Party therefrom will in any event be effective unless the same is permitted by paragraph (2) of this Section 7.09, and then such waiver or consent will be effective only in the specific instance and for the purpose for which given.
- (2) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Loan Party or Loan Parties with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 10.08 of the Credit Agreement.

Section 7.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY HERETO (1) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (2) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.10.

Section 7.11. Severability. In the event any one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.

Section 7.12. Counterparts. This Agreement may be executed in one or more counterparts, each of which will constitute an original but all of which when taken together will constitute but one contract, and will become effective as provided in Section 7.04 hereof. Delivery of an executed counterpart to this Agreement by facsimile or other electronic transmission will be as effective as delivery of a manually signed original.

---

Section 7.13. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 7.14. Jurisdiction; Consent to Service of Process.

- (1) Each party to this Agreement hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in the Borough of Manhattan (or if such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in the Borough of Manhattan) and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the transactions relating hereto or thereto, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such Federal (to the extent permitted by law) or New York State court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document will affect any right that the Administrative Agent, the Collateral Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Grantor, or its properties, in the courts of any jurisdiction.
- (2) Each party to this Agreement hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Section 7.15. Termination or Release.

- (1) This Agreement, the guarantees made herein, the pledges made herein, the Security Interest and all other security interests granted hereby shall automatically terminate and be released when all the Secured Obligations have been Paid in Full, the Lenders have no further commitment to lend under the Credit Agreement and all Letters of Credit have been returned (or cash collateralized on terms satisfactory to the applicable Issuing Bank).
- (2) (i) Any Grantor's obligations hereunder and all Security Interest in and Lien on its Collateral granted by such Grantor shall automatically terminate and be released if such Grantor is released from its obligations under its Guaranty pursuant to Section 9.11(2)(c) of the Credit Agreement and (ii) the Security Interest in and Lien on any Collateral shall be automatically terminated and released in the circumstances set forth in Section 9.11(2)(a), 9.11(2)(b) or 9.11(2)(c) of the Credit Agreement, including, without limitation, in connection with any property (and any related rights and any related assets) that is sold or otherwise transferred to any Person that is not (and is not required to be) a Loan Party in connection with a sale and leaseback or other transaction permitted by the Credit Agreement.

- 
- (3) In connection with any termination or release pursuant to paragraph (1) or paragraph (2) above, the Collateral Agent shall promptly execute and deliver to any Grantor, at such Grantor's expense, all documents that such Grantor may reasonably request to evidence such termination or release and take all other actions (including return of any pledged collateral) reasonably requested by any Grantor, at such Grantor's expense, in connection with such release, including authorizing such Grantor or its representatives to file any UCC amendment or termination statements with respect to such release. Any execution and delivery of documents pursuant to this Section 7.15 shall be without recourse to or warranty by the Collateral Agent.
- (4) In the event that Rule 3-10 or Rule 3-16 of Regulation S-X of the Exchange Act is amended, modified or interpreted by the SEC or any other relevant Governmental Authority to require (or is replaced with another rule or regulation, or any other law, rule or regulation is adopted, which would require) the filing with the SEC (or any other Governmental Authority) of separate financial statements of any Subsidiary of the Borrower due to the fact that the Equity Interests of such Subsidiary constitute Collateral or are pledged under this Agreement, then the Equity Interests of such Subsidiary shall automatically be deemed not to be part of the Collateral to the extent necessary not to be subject to such requirement. Notwithstanding anything to the contrary in this Agreement, if Equity Interests of any Subsidiary are not required to be Collateral or pledged under this Agreement solely because Rule 3-10 or Rule 3-16 of Regulation S-X of the Exchange Act would require the filing of separate financial statements of such Subsidiary if its Equity Interests were Collateral or so pledged, in the event that Rule 3-10 or Rule 3-16 of Regulation S-X of the Exchange Act is amended, modified or interpreted by the SEC or any other relevant Governmental Authority to no longer require (or is replaced with another rule or regulation that would not require) the filing of separate financial statements of such Subsidiary if some or all of its Equity Interests are Collateral or pledged under this Agreement, then such Equity Interests of such Subsidiary, unless otherwise constituting an Excluded Asset, shall automatically be deemed part of the Collateral and pledged under this Agreement.

Section 7.16. Additional Subsidiaries. Upon execution and delivery by the Collateral Agent and any Subsidiary that is required to become a party hereto under Section 5.10 of the Credit Agreement or otherwise of a supplement in the form of Exhibit I hereto, such Subsidiary will become a Grantor and a Guarantor hereunder with the same force and effect as if originally named as a Grantor and a Guarantor herein. The execution and delivery of any such supplement will not require the consent of any other party to this Agreement. The rights and obligations of each party to this Agreement will remain in full force and effect notwithstanding the addition of any new party to this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**GRANTORS:**

**AMNEAL PHARMACEUTICALS LLC**

By: /s/ Chintu Patel

Name: Chintu Patel

Title: President

**AMNEAL PHARMACEUTICALS OF NEW YORK, LLC**

By: /s/ Chintu Patel

Name: Chintu Patel

Title: President

**AMNEAL BIOSCIENCES LLC**

By: /s/ James Mastakas

Name: James Mastakas

Title: Chief Financial Officer and Treasurer

**AMNEAL-AGILA, LLC**

By: /s/ James Mastakas

Name: James Mastakas

Title: Chief Financial Officer and Treasurer

[ *Signature Page to ABL Guarantee and Collateral Agreement* ]

---

**IMPAX LABORATORIES, LLC**

By: /s/ Bryan M. Reasons

Name: Bryan M. Reasons

Title: Senior Vice President and Chief Financial  
Officer

**IMPAX LABORATORIES USA, LLC**

By: /s/ Bryan M. Reasons

Name: Bryan M. Reasons

Title: Chief Financial Officer

**MOUNTAIN, LLC**

By: /s/ Bryan M. Reasons

Name: Bryan M. Reasons

Title: Chief Financial Officer, Treasurer and  
Vice President

**AMEDRA PHARMACEUTICALS LLC**

By: /s/ Bryan M. Reasons

Name: Bryan M. Reasons

Title: Chief Financial Officer

**TRAIL SERVICES, LLC**

By: /s/ Bryan M. Reasons

Name: Bryan M. Reasons

Title: Chief Financial Officer

[ *Signature Page to ABL Guarantee and Collateral Agreement* ]

By: /s/ James A. Knight

Name: James A. Knight

Title: Executive Director

[ *Signature Page to ABL Guarantee and Collateral Agreement* ]

SUPPLEMENT NO. \_\_\_\_\_ dated as of \_\_\_\_\_ (this “**Supplement**”), to the ABL Guarantee and Collateral Agreement dated as of May 4, 2018 (as amended, amended and restated, supplemented, refinanced, replaced, extended or otherwise modified from time to time, the “**Guarantee and Collateral Agreement**”), among each of the Grantors party thereto and JPMorgan Chase Bank, N.A. (“**JPM**”), as Administrative Agent for the Lenders under the Credit Agreement referred to below (in such capacity, the “**Administrative Agent**”) and as Collateral Agent for the Secured Parties (as defined therein) (in such capacity, the “**Collateral Agent**”).

- (1) Reference is made to that certain the Revolving Credit Agreement, dated as of May 4, 2018 (as amended, amended and restated, supplemented, refinanced, replaced, extended or otherwise modified from time to time, the “**Credit Agreement**”), by and among AMNEAL PHARMACEUTICALS LLC, a Delaware corporation, the Lenders party thereto from time to time and JPM, as Administrative Agent and as Collateral Agent.
- (2) Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement and the Guarantee and Collateral Agreement.
- (3) The Grantors have entered into the Guarantee and Collateral Agreement in order to induce the Lenders to make Loans and each Issuing Bank to issue Letters of Credit under the Credit Agreement. Section 7.16 of the Guarantee and Collateral Agreement provides that additional Subsidiaries may become Guarantors and Grantors under the Guarantee and Collateral Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the “**New Subsidiary**”) is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Guarantor and Grantor under the Guarantee and Collateral Agreement, in each case in order to induce the Lenders to make additional Loans and each Issuing Bank to issue additional Letters of Credit (if available under the Credit Agreement) and as consideration for Loans previously made under the Credit Agreement.

Accordingly, the Administrative Agent and the New Subsidiary agree as follows:

SECTION 1. In accordance with Section 7.16 of the Guarantee and Collateral Agreement, the New Subsidiary by its signature below becomes a Subsidiary Loan Party, a Guarantor and a Grantor under the Guarantee and Collateral Agreement with the same force and effect as if originally named therein as a Subsidiary Loan Party, a Guarantor and a Grantor, and the New Subsidiary hereby [(1)] agrees to all the terms and provisions of the Guarantee and Collateral Agreement applicable to it as a Subsidiary Loan Party, a Guarantor and a Grantor thereunder [and (2) represents and warrants that the representations and warranties made by it as a Grantor in Section 3.03 and Section 4.02 thereof are true and correct, in all material respects,

Exhibit I-1

---

on and as of the date hereof] <sup>1</sup>. In furtherance of the foregoing, the New Subsidiary, as security for the payment and performance in full of the Secured Obligations (as defined in the Guarantee and Collateral Agreement), does hereby create and grant to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in and Lien on all the New Subsidiary's right, title and interest in and to the Collateral (as defined in and to the extent required by the Guarantee and Collateral Agreement) of the New Subsidiary. Each reference to a "Subsidiary Loan Party," a "Guarantor," or a "Grantor" in the Guarantee and Collateral Agreement shall be deemed to include the New Subsidiary. The Guarantee and Collateral Agreement is hereby incorporated herein by reference.

SECTION 2. The New Subsidiary represents and warrants to the Administrative Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to (1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally; (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (3) implied covenants of good faith and fair dealing.

SECTION 3. This Agreement may be executed in one or more counterparts, each of which will constitute an original but all of which when taken together constitutes but one contract. This Supplement will become effective when the Collateral Agent receives a counterpart (whether by electronic transmission or otherwise) of this Supplement that bears the signature of the New Subsidiary.

SECTION 4. The New Subsidiary hereby represents and warrants as of the date hereof that:

- (1) set forth on Schedule I attached hereto is a true and correct schedule of all the Pledged Securities of the New Subsidiary as of the date hereof required to be pledged under the Guarantee and Collateral Agreement;
- (2) set forth on Schedule II attached hereto is a true and correct schedule of all of the material Patents, Trademarks and Copyrights of the New Subsidiary as of the date hereof that constitute Collateral;
- (3) set forth on Schedule III attached hereto is a true and correct schedule of all Commercial Tort Claims of the New Subsidiary individually in excess of \$15 million as of the date hereof; and
- (4) set forth on Schedule IV attached hereto is the true and correct legal name of the New Subsidiary, its jurisdiction of formation and the location of its chief executive office.

SECTION 5. Except as expressly supplemented hereby, the Guarantee and Collateral Agreement shall remain in full force and effect.

---

<sup>1</sup> Subject to the Credit Agreement, clause (2) to be included after the Closing Date.

**SECTION 6. THIS SUPPLEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).**

SECTION 7. In the event any one or more of the provisions contained in this Supplement are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.

SECTION 8. All communications and notices hereunder will be in writing and given as provided in Section 7.01 of the Guarantee and Collateral Agreement.

SECTION 9. The New Subsidiary agrees to reimburse the Collateral Agent for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, disbursements and other charges of counsel for the Collateral Agent.

IN WITNESS WHEREOF, the New Subsidiary and the Agents have duly executed this Supplement to the Guarantee and Collateral Agreement as of the day and year first above written.

[Name of New Subsidiary]

By: \_\_\_\_\_  
Name:  
Title:

---

JPMORGAN CHASE BANK, N.A., as Administrative Agent  
and Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

Exhibit I-4

Pledged Securities of the New Subsidiary

EQUITY INTERESTS

<u>Number of Issuer Certificate</u>	Registered Owner	Number and Class of Equity Interest	Percentage of Equity Interests
---	------------------	--	-----------------------------------

DEBT SECURITIES

<u>Issuer</u>	Principal Amount	Date of Note	Maturity Date
---------------	------------------	--------------	---------------

Schedule I-1

PATENTS, TRADEMARKS AND COPYRIGHTS

Schedule II-1

COMMERCIAL TORT CLAIMS

Schedule III-1

LEGAL NAME, JURISDICTION OF FORMATION  
AND LOCATION OF CHIEF EXECUTIVE OFFICE

Schedule IV-1

**FORM OF TRADEMARK SECURITY AGREEMENT**

This TRADEMARK SECURITY AGREEMENT is dated as of [ ], by [•] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of JPMorgan Chase Bank, N.A., in its capacity as administrative agent and collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain ABL Guarantee and Collateral Agreement dated as of May 4, 2018 (as amended, amended and restated, supplemented, refinanced, replaced, extended or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Trademark Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Trademark Collateral”), including:

- (a) all Trademarks, including all registrations and applications therefore filed in the United States Patent and Trademark Office or any similar offices in any State of the United States (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule I;

Exhibit II

- 
- (b) all goodwill associated therewith or symbolized thereby;
  - (c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
  - (d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Trademark Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. Each Grantor authorizes and requests that the Commissioner of Trademarks record this Trademark Security Agreement.

SECTION 5. Counterparts. This Trademark Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Trademark Security Agreement by signing and delivering one or more counterparts.

SECTION 6. Governing Law. THIS TRADEMARK SECURITY AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

[ *Signature page follows* ]

Exhibit II

---

IN WITNESS WHEREOF, each Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[        ],  
as Grantor

By: \_\_\_\_\_  
Name:  
Title:

Exhibit II

---

Accepted and Agreed:

JPMORGAN CHASE BANK, N.A.,  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

Exhibit II

---

**SCHEDULE I**  
**to**  
**TRADEMARK SECURITY AGREEMENT**  
**TRADEMARK REGISTRATIONS AND TRADEMARK APPLICATIONS**  
Exhibit II

**FORM OF PATENT SECURITY AGREEMENT**

This PATENT SECURITY AGREEMENT is dated as of [ ], by [•] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of JPMorgan Chase Bank, N.A., in its capacity as administrative agent and collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain ABL Guarantee and Collateral Agreement dated as of May 4, 2018 (as amended, amended and restated, supplemented, refinanced, replaced, extended or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Patent Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Patent Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Patent Collateral”), including:

- (a) all Patents issued or applied for in the United States, including those listed on Schedule I;
- (b) all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;

- 
- (c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
  - (d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Patent Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Patent Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Patent Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. The Grantor authorizes and requests that the Commissioner of Patents record this Patent Security Agreement.

SECTION 5. Counterparts. This Patent Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Patent Security Agreement by signing and delivering one or more counterparts.

SECTION 6. Governing Law. THIS PATENT SECURITY AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

[ *Signature page follows* ]

Exhibit III

---

IN WITNESS WHEREOF, each Grantor has caused this Patent Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[        ],  
as Grantor

By: \_\_\_\_\_  
Name:  
Title:

Exhibit III

---

Accepted and Agreed:

JPMORGAN CHASE BANK, N.A.,  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

Exhibit III

---

**SCHEDULE I**  
**to**  
**PATENT SECURITY AGREEMENT**  
**PATENTS AND PATENT APPLICATIONS**  
Exhibit III

**FORM OF COPYRIGHT SECURITY AGREEMENT**

This COPYRIGHT SECURITY AGREEMENT is dated as of [ ], by [\*] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of JPMorgan Chase Bank, N.A., in its capacity as administrative agent and collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain ABL Guarantee and Collateral Agreement dated as of May 4, 2018 (as amended, amended and restated, supplemented, refinanced, replaced, extended or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Copyright Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Copyright Collateral”), including:

- (a) all Copyright in any work subject to the copyright laws of the United States, whether as author, assignee, transferee or otherwise;
- (b) all registrations and applications for registration of any such copyright in the United States, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule I;
- (c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

- 
- (d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyright Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Copyright Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Copyright Office. Each Grantor authorizes and requests that the United States Copyright Office record this Copyright Security Agreement.

SECTION 5. Counterparts. This Copyright Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Copyright Security Agreement by signing and delivering one or more counterparts.

SECTION 6. Governing Law. THIS COPYRIGHT SECURITY AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

[ *Signature page follows* ]

Exhibit IV

---

IN WITNESS WHEREOF, each Grantor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[     ],  
as Grantor

By: \_\_\_\_\_  
Name:  
Title:

Exhibit IV

---

Accepted and Agreed:

JPMORGAN CHASE BANK, N.A.,  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

Exhibit IV

---

**SCHEDULE I**  
**to**  
**COPYRIGHT SECURITY AGREEMENT**

**COPYRIGHT REGISTRATIONS AND COPYRIGHT APPLICATIONS**

Exhibit V-1

**TERMINATION AGREEMENT**  
**dated as of May 7, 2018**  
**Between IMPAX LABORATORIES, LLC (f/k/a IMPAX LABORATORIES, INC.) and ROYAL**  
**BANK OF CANADA**

---

---

THIS TERMINATION AGREEMENT (this “**Agreement**”) with respect to the Call Spread Confirmations (as defined below) is made as of May 7, 2018, between Impax Laboratories, LLC (formerly known as Impax Laboratories, Inc.) (“**Company**”) and Royal Bank of Canada (“**Dealer**”).

WHEREAS, Company issued \$600,000,000 principal amount of 2.00% Convertible Senior Notes due 2022 (the “**Convertible Notes**”) pursuant to an Indenture dated as of June 30, 2015, between Company and Wilmington Trust, National Association, as trustee;

WHEREAS, in connection with the pricing of the Convertible Notes, Company and Dealer entered into (i) a Base Call Option Transaction (the “**Base Call Option Transaction**”) pursuant to an ISDA confirmation dated as of June 25, 2015, which supplements, forms a part of, and is subject to an agreement in the form of the 2002 ISDA Master Agreement, pursuant to which Company purchased from Dealer 500,000 call options (as amended, modified, terminated or unwound from time to time and including the side letter agreement thereto, the “**Base Call Option Confirmation**”) and (ii) a Base Warrants Transaction (the “**Base Warrants Transaction**”) and, together with the Base Call Option Transaction, the “**Base Call Spread Transactions**”) pursuant to an ISDA confirmation dated as of June 25, 2015, which supplements, forms a part of, and is subject to an agreement in the form of the 2002 ISDA Master Agreement, pursuant to which Dealer purchased from Company 7,892,900 warrants to purchase shares of Company’s common stock, par value \$0.01 per share (the “**Common Stock**”) (as amended, modified, terminated or unwound from time to time and including the side letter agreement thereto, the “**Base Warrants Confirmation**”) and, together with the Base Call Option Confirmation, the “**Base Call Spread Confirmations**”);

WHEREAS, in connection with the exercise of the option by the initial purchasers of the Convertible Notes to purchase additional Convertible Notes, Company and Dealer entered into (i) an Additional Call Option Transaction (the “**Additional Call Option Transaction**”) pursuant to an ISDA confirmation dated as of June 26, 2015, which supplements, forms a part of, and is subject to an agreement in the form of the 2002 ISDA Master Agreement, pursuant to which Company purchased from Dealer 100,000 call options (as amended, modified, terminated or unwound from time to time and including the side letter agreement thereto, the “**Additional Call Option Confirmation**”) and (ii) an Additional Warrants Transaction (the “**Additional Warrants Transaction**”) and, together with the Additional Call Option Transaction and the Base Call Spread Transactions, the “**Call Spread Transactions**”) pursuant to an ISDA confirmation dated as of June 26, 2015, which supplements, forms a part of, and is subject to an agreement in the form of the 2002 ISDA Master Agreement, pursuant to which Dealer purchased from Company 1,578,580 warrants to purchase shares of Common Stock (as amended, modified, terminated or unwound from time to time and including the side letter agreement thereto, the “**Additional Warrants Confirmation**”) and, together with the Additional Call Option Confirmation and the Base Call Spread Confirmations, the “**Call Spread Confirmations**”); and

WHEREAS, in connection with the closing and effectiveness of the transactions contemplated by the Business Combination Agreement dated as of October 17, 2017 by and among Company, Amneal Pharmaceuticals, Inc., Atlas Holdings, Inc., and K2 Merger Sub Corporation, as amended by Amendment No. 1, dated November 21, 2017 and Amendment No. 2 dated December 16, 2017, on May 4, 2018, Company has requested full termination of the Call Spread Transactions;

NOW, THEREFORE, in consideration of their mutual covenants herein contained, the parties hereto, intending to be legally bound, hereby mutually covenant and agree as follows:

1. Defined Terms. Any capitalized term not otherwise defined herein shall have the meaning set forth for such term in the Call Spread Confirmations.

2. Termination. Notwithstanding anything to the contrary in the Call Spread Confirmations, Company and Dealer agree that, effective on the date hereof, the Call Spread Transactions shall automatically terminate and all of the respective rights and obligations of the parties under the Call Spread Confirmations shall be terminated, cancelled and extinguished, without any payment or delivery due by any of the parties thereto.

3. Representations and Warranties of Company. Company represents and warrants to Dealer on the date hereof that:

(a) it has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance;

(b) such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any material contractual restriction binding on or affecting it or any of its assets;

(c) all governmental and other consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with;

(d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law));

(e) each of it and its affiliates is not in possession of any material nonpublic information regarding Company or the Shares;

(f) it is not entering into this Agreement to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares) or otherwise in violation of the Securities Exchange Act of 1934, as amended; and

(g) it (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (C) has total assets of at least USD 50,000,000 as of the date hereof.

4. Representations and Warranties of Dealer. Dealer represents and warrants to Company on the date hereof that:

(a) it has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance;

(b) such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any material contractual restriction binding on or affecting it or any of its assets;

(c) all governmental and other consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

5. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and construed in accordance with the laws of the State of New York (without reference to choice of law doctrine).

6. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if all of the signatures thereto and hereto were upon the same instrument.

7. No Reliance, etc. Company confirms that it has relied on the advice of its own counsel and other advisors (to the extent it deems appropriate) with respect to any legal, tax, accounting, or regulatory consequences of this Agreement, that it has not relied on Dealer or its affiliates in any respect in connection therewith, and that it will not hold Dealer or its affiliates accountable for any such consequences.

8. Designation by Dealer. Notwithstanding any other provision in this Agreement to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Company, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform Dealer obligations in respect of the transactions contemplated by this Agreement and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Company to the extent of any such performance.

9. Agreements and Acknowledgements Regarding Hedging. Company understands, acknowledges and agrees that: (A) Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into or unwind swaps or other derivative securities in order to terminate the Call Spread Transactions; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the termination of the Call Spread Transactions; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Company shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the payment required under this Agreement; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares in a manner that may be adverse to Company.

10. Role of Agent. Dealer has appointed, as its agent, its indirect wholly-owned subsidiary, RBC Capital Markets, LLC (“**RBCCM**”), for purposes of conducting, on Dealer’s behalf, a business in privately negotiated transactions in options and other derivatives. Company hereby is advised that Dealer, the principal and stated counterparty in such transactions, duly has authorized RBCCM to market, structure, negotiate, document, price, execute and hedge transactions in over-the-counter derivative products. RBCCM does not act as agent of Company. For the avoidance of doubt, any performance by Dealer of its obligations hereunder solely to RBCCM shall not relieve Dealer of such obligations. RBCCM’s performance to Company of Dealer’s obligations hereunder shall relieve Dealer of such obligations to the extent of such performance. Any performance by Company of its obligations (including notice obligations) through or by means of RBCCM’s agency for Dealer shall constitute good performance of Company’s obligations hereunder to Dealer.

[ *Signature Page Follows* ]

---

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

**ROYAL BANK OF CANADA**  
**by its agent**  
**RBC Capital Markets, LLC**

By: /s/ Amy Disbrow

Name: Amy Disbrow

Title: Associate Director

---

**IMPAX LABORATORIES, LLC**  
**(formerly known as Impax Laboratories, Inc.)**

By: /s/ Bryan M. Reasons  
Name: Bryan M. Reasons  
Title: Chief Financial Officer