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

FORM 10-Q

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2020**

or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE TRANSITION PERIOD FROM _ TO _**

Commission file number 000-19319

Vertex Pharmaceuticals Incorporated

(Exact name of registrant as specified in its charter)

Massachusetts
(State or other jurisdiction of incorporation or organization)

04-3039129
(I.R.S. Employer Identification No.)

50 Northern Avenue, Boston, Massachusetts
(Address of principal executive offices)

02210
(Zip Code)

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

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, \$0.01 Par Value Per Share	VRTX	The Nasdaq Global Select Market

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

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

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

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

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

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Common Stock, par value \$0.01 per share	260,037,894	Outstanding at October 23, 2020
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VERTEX PHARMACEUTICALS INCORPORATED
FORM 10-Q
FOR THE QUARTER ENDED SEPTEMBER 30, 2020

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

“Vertex,” “KALYDECO®,” “ORKAMBI®,” “SYMDEKO®,” “SYMKEVI®” and “TRIKAFTA®” are registered trademarks of Vertex. The trademark for “KAFTRIO™” is pending in the United States and registered in the European Union. Other brands, names and trademarks contained in this Quarterly Report on Form 10-Q are the property of their respective owners.

We use the brand name for our products when we refer to the product that has been approved and with respect to the indications on the approved label. Otherwise, including in discussions of our cystic fibrosis development programs, we refer to our compounds by their scientific (or generic) name or VX developmental designation.

Part I. Financial Information
Item 1. Financial Statements

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Revenues:				
Product revenues, net	\$ 1,536,271	\$ 949,828	\$ 4,575,863	\$ 2,747,461
Collaborative and royalty revenues	2,000	—	2,000	2,095
Total revenues	1,538,271	949,828	4,577,863	2,749,556
Costs and expenses:				
Cost of sales	186,182	131,914	533,199	362,746
Research and development expenses	493,497	555,948	1,362,953	1,274,529
Sales, general and administrative expenses	184,551	159,674	558,613	463,221
Change in fair value of contingent consideration	1,800	2,959	12,600	2,959
Total costs and expenses	866,030	850,495	2,467,365	2,103,455
Income from operations	672,241	99,333	2,110,498	646,101
Interest income	3,100	17,628	19,919	51,319
Interest expense	(13,856)	(14,548)	(41,863)	(44,253)
Other income (expense), net	84,386	(31,747)	139,621	64,802
Income before provision for income taxes	745,871	70,666	2,228,175	717,969
Provision for income taxes	78,437	13,148	120,718	124,393
Net income	\$ 667,434	\$ 57,518	\$ 2,107,457	\$ 593,576
Net income per common share:				
Basic	\$ 2.56	\$ 0.22	\$ 8.10	\$ 2.32
Diluted	\$ 2.53	\$ 0.22	\$ 7.98	\$ 2.28
Shares used in per share calculations:				
Basic	260,392	256,946	260,313	256,289
Diluted	264,079	260,473	264,031	260,182

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

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Net income	\$ 667,434	\$ 57,518	\$ 2,107,457	\$ 593,576
Other comprehensive (loss) income:				
Unrealized holding (losses) gains on marketable securities, net	(1,132)	64	818	1,111
Unrealized (losses) gains on foreign currency forward contracts, net of tax of \$7.6 million, \$2.2 million, \$7.3 million and \$5.5 million, respectively	(26,313)	12,812	(27,211)	6,814
Foreign currency translation adjustment	584	9,172	(12,616)	10,263
Total other comprehensive (loss) income	(26,861)	22,048	(39,009)	18,188
Comprehensive income	<u>\$ 640,573</u>	<u>\$ 79,566</u>	<u>\$ 2,068,448</u>	<u>\$ 611,764</u>

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

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

	September 30, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents	\$ 5,358,087	\$ 3,109,322
Marketable securities	792,971	698,972
Accounts receivable, net	791,917	633,518
Inventories	245,460	167,502
Prepaid expenses and other current assets	270,021	213,515
Total current assets	7,458,456	4,822,829
Property and equipment, net	920,913	745,080
Goodwill	1,002,158	1,002,158
Intangible assets	400,000	400,000
Deferred tax assets	1,147,816	1,190,815
Other assets	372,290	157,583
Total assets	\$ 11,301,633	\$ 8,318,465
Liabilities and Shareholders' Equity		
Current liabilities:		
Accounts payable	\$ 107,786	\$ 87,610
Accrued expenses	1,703,699	1,116,912
Other current liabilities	192,541	130,305
Total current liabilities	2,004,026	1,334,827
Long-term finance lease liabilities	546,514	538,576
Long-term contingent consideration	189,100	176,500
Other long-term liabilities	428,520	183,318
Total liabilities	3,168,160	2,233,221
Commitments and contingencies	—	—
Shareholders' equity:		
Preferred stock, \$0.01 par value; 1,000 shares authorized; none issued and outstanding	—	—
Common stock, \$0.01 par value; 500,000 shares authorized, 260,174 and 258,993 shares issued and outstanding, respectively	2,601	2,589
Additional paid-in capital	7,917,375	7,937,606
Accumulated other comprehensive loss	(40,982)	(1,973)
Retained earnings (accumulated deficit)	254,479	(1,852,978)
Total shareholders' equity	8,133,473	6,085,244
Total liabilities and shareholders' equity	\$ 11,301,633	\$ 8,318,465

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

VERTEX PHARMACEUTICALS INCORPORATED
Condensed Consolidated Statements of Shareholders' Equity
(unaudited)
(in thousands)

	Three Months Ended					
	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings (Accumulated Deficit)	Total Shareholders' Equity
	Shares	Amount				
Balance at June 30, 2019	256,671	\$ 2,565	\$ 7,564,331	\$ (3,201)	\$ (2,493,730)	\$ 5,069,965
Other comprehensive income, net of tax	—	—	—	22,048	—	22,048
Net income	—	—	—	—	57,518	57,518
Repurchase of common stock	(71)	—	(12,001)	—	—	(12,001)
Common stock withheld for employee tax obligations	—	—	(104)	—	—	(104)
Issuance of common stock under benefit plans	665	6	30,006	—	—	30,012
Stock-based compensation expense	—	—	85,956	—	—	85,956
Balance at September 30, 2019	257,265	\$ 2,571	\$ 7,668,188	\$ 18,847	\$ (2,436,212)	\$ 5,253,394
Balance at June 30, 2020	260,124	\$ 2,601	\$ 7,943,717	\$ (14,121)	\$ (412,955)	\$ 7,519,242
Other comprehensive loss, net of tax	—	—	—	(26,861)	—	(26,861)
Net income	—	—	—	—	667,434	667,434
Repurchase of common stock	(403)	(4)	(108,003)	—	—	(108,007)
Common stock withheld for employee tax obligations	(141)	(1)	(40,527)	—	—	(40,528)
Issuance of common stock under benefit plans	594	5	21,699	—	—	21,704
Stock-based compensation expense	—	—	100,489	—	—	100,489
Balance at September 30, 2020	260,174	\$ 2,601	\$ 7,917,375	\$ (40,982)	\$ 254,479	\$ 8,133,473
	Nine Months Ended					
	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings (Accumulated Deficit)	Total Shareholders' Equity
	Shares	Amount				
Balance at December 31, 2018	255,172	\$ 2,546	\$ 7,421,476	\$ 659	\$ (2,989,478)	\$ 4,435,203
Cumulative effect adjustment for adoption of new accounting guidance	—	—	—	—	(40,310)	(40,310)
Other comprehensive income, net of tax	—	—	—	18,188	—	18,188
Net income	—	—	—	—	593,576	593,576
Repurchase of common stock	(904)	(9)	(162,009)	—	—	(162,018)
Common stock withheld for employee tax obligations	(27)	—	(5,936)	—	—	(5,936)
Issuance of common stock under benefit plans	3,024	34	144,523	—	—	144,557
Stock-based compensation expense	—	—	270,134	—	—	270,134
Balance at September 30, 2019	257,265	\$ 2,571	\$ 7,668,188	\$ 18,847	\$ (2,436,212)	\$ 5,253,394
Balance at December 31, 2019	258,993	\$ 2,589	\$ 7,937,606	\$ (1,973)	\$ (1,852,978)	\$ 6,085,244
Other comprehensive loss, net of tax	—	—	—	(39,009)	—	(39,009)
Net income	—	—	—	—	2,107,457	2,107,457
Repurchase of common stock	(1,807)	(18)	(408,015)	—	—	(408,033)
Common stock withheld for employee tax obligations	(727)	(7)	(179,768)	—	—	(179,775)
Issuance of common stock under benefit plans	3,715	37	232,042	—	—	232,079
Stock-based compensation expense	—	—	335,510	—	—	335,510
Balance at September 30, 2020	260,174	\$ 2,601	\$ 7,917,375	\$ (40,982)	\$ 254,479	\$ 8,133,473

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

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

	Nine Months Ended September 30,	
	2020	2019
Cash flows from operating activities:		
Net income	\$ 2,107,457	\$ 593,576
Adjustments to reconcile net income to net cash provided by operating activities:		
Stock-based compensation expense	332,434	268,898
Depreciation expense	80,160	80,685
Increase in fair value of contingent consideration	12,600	2,959
Deferred income taxes	65,110	94,175
Gains on equity securities	(140,866)	(68,862)
Other non-cash items, net	52,371	(4,024)
Changes in operating assets and liabilities:		
Accounts receivable, net	(151,191)	(41,444)
Inventories	(94,907)	(45,280)
Prepaid expenses and other assets	(264,909)	(23,709)
Accounts payable	16,153	(12,210)
Accrued expenses	451,084	255,699
Other liabilities	296,477	22,859
Net cash provided by operating activities	2,761,973	1,123,322
Cash flows from investing activities:		
Purchases of available-for-sale debt securities	(246,937)	(381,739)
Maturities of available-for-sale debt securities	184,419	375,145
Sale of equity securities	149,595	—
Payment to acquire business, net of cash acquired	—	(245,824)
Expenditures for property and equipment	(212,109)	(58,690)
Investment in equity securities	(19,327)	(27,219)
Net cash used in investing activities	(144,359)	(338,327)
Cash flows from financing activities:		
Issuances of common stock under benefit plans	234,854	144,630
Repurchases of common stock	(408,033)	(150,017)
Payments in connection with common stock withheld for employee tax obligations	(179,775)	(5,936)
Payments on finance leases	(31,378)	(28,879)
Proceeds related to finance leases	8,642	1,002
Advance from collaborator	5,000	10,000
Repayments of advanced funding	(2,741)	(4,316)
Other financing activities	(6,658)	(1,132)
Net cash used in financing activities	(380,089)	(34,648)
Effect of changes in exchange rates on cash	2,779	(4,009)
Net increase in cash and cash equivalents	2,240,304	746,338
Cash, cash equivalents and restricted cash—beginning of period	3,120,681	2,658,253
Cash, cash equivalents and restricted cash—end of period	\$ 5,360,985	\$ 3,404,591
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ 40,769	\$ 41,704
Cash paid for income taxes	\$ 81,684	\$ 22,838
Issuances of common stock from employee benefit plans receivable	\$ 45	\$ 13
Accrued share repurchase liability	\$ —	\$ 12,001

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

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

A. Basis of Presentation and Accounting Policies

Basis of Presentation

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

The condensed consolidated financial statements reflect the operations of the Company and its wholly-owned subsidiaries. All material intercompany balances and transactions have been eliminated. The Company operates in one segment, pharmaceuticals. The Company has reclassified certain items from the prior year’s condensed consolidated financial statements to conform to the current year’s presentation.

Certain information and footnote disclosures normally included in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2019 (the “2019 Annual Report on Form 10-K”) have been condensed or omitted. These interim financial statements, in the opinion of management, reflect all normal recurring adjustments necessary for a fair presentation of the financial position and results of operations for the interim periods ended September 30, 2020 and 2019.

The results of operations for the interim periods are not necessarily indicative of the results of operations to be expected for the full fiscal year. These interim financial statements should be read in conjunction with the audited financial statements for the year ended December 31, 2019, which are contained in the Company’s 2019 Annual Report on Form 10-K.

Use of Estimates

The preparation of condensed consolidated financial statements in accordance with U.S. GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements, and the amounts of revenues and expenses during the reported periods. Significant estimates in these condensed consolidated financial statements have been made in connection with (i) determining the transaction price of revenues and (ii) accounting for intangible assets and contingent consideration. The Company bases its estimates on historical experience and various other assumptions, including in certain circumstances future projections that management believes to be reasonable under the circumstances. Actual results could differ from those estimates. Changes in estimates are reflected in reported results in the period in which they become known.

Recently Adopted Accounting Standards

Leases

On January 1, 2019, the Company adopted Accounting Standards Codification (“ASC”) 842, *Leases* (“ASC 842”) using the modified-retrospective method, which amended a number of aspects of lease accounting and required the Company to recognize right-of-use assets and liabilities on the balance sheet. As of January 1, 2019, the Company recorded a cumulative effect adjustment to increase its “Accumulated deficit” by \$40.3 million, which related to its leases that were accounted for as build-to-suit leases under the previous accounting guidance.

Internal-Use Software

In 2018, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2018-15, *Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract* (“ASU 2018-15”), which clarifies the accounting for implementation costs in cloud computing arrangements. ASU 2018-15 became effective on January 1, 2020. The adoption of ASU 2018-15 resulted in an insignificant amount of additional assets recorded on the Company’s condensed consolidated balance sheet.

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

Fair Value Measurement

In 2018, the FASB issued ASU 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework-Changes to the Disclosure Requirements for Fair Value Measurement* (“ASU 2018-13”), which modifies the disclosure requirements for fair value measurements. ASU 2018-13 became effective on January 1, 2020. The adoption of ASU 2018-13 resulted in additional disclosures related to the Company’s Level 3 inputs. Please refer to Note E, “Fair Value Measurements,” for further information.

Credit Losses

In 2016, the FASB issued ASU 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* (“ASU 2016-13”), which requires entities to record expected credit losses for certain financial instruments, including trade receivables, as an allowance that reflects the entity’s current estimate of credit losses expected to be incurred. For available-for-sale debt securities in unrealized loss positions, ASU 2016-13 requires allowances to be recorded instead of reducing the amortized cost of the investment. ASU 2016-13 became effective on January 1, 2020. The adoption of ASU 2016-13 did not have a significant impact on the Company’s condensed consolidated financial statements.

Recently Issued Accounting Standards

Income Taxes

In 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740)* (“ASU 2019-12”), which simplifies the accounting for income taxes. ASU 2019-12 is effective on January 1, 2021. The Company is evaluating the impact the adoption of ASU 2019-12 may have on its condensed consolidated financial statements.

For a discussion of other recent accounting pronouncements please refer to Note A, “Nature of Business and Accounting Policies,” in the Company’s 2019 Annual Report on Form 10-K.

Summary of Significant Accounting Policies

The Company’s significant accounting policies are described in Note A, “Nature of Business and Accounting Policies,” in its 2019 Annual Report on Form 10-K.

B. Revenue Recognition

Disaggregation of Revenue

Revenues by Product

Product revenues, net consisted of the following:

	<u>Three Months Ended September 30,</u>		<u>Nine Months Ended September 30,</u>	
	<u>2020</u>	<u>2019</u>	<u>2020</u>	<u>2019</u>
	(in thousands)			
TRIKAFTA/KAFTRIO	\$ 960,308	\$ —	\$ 2,773,256	\$ —
SYMDEKO/SYMKEVI	156,178	403,714	501,066	1,085,821
ORKAMBI	225,919	296,711	692,038	906,159
KALYDECO	193,866	249,403	609,503	755,481
Total product revenues, net*	<u>\$ 1,536,271</u>	<u>\$ 949,828</u>	<u>\$ 4,575,863</u>	<u>\$ 2,747,461</u>

* The preceding table does not include collaborative and royalty revenues.

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

Revenues by Geographic Location

Net product revenues are attributed to countries based on the location of the customer. Collaborative and royalty revenues outside of the United States are attributed to countries based on the location of the Company's subsidiary associated with the collaborative arrangement related to such revenues. Total revenues from external customers and collaborators by geographic region consisted of the following:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
	(in thousands)			
United States	\$ 1,224,565	\$ 710,323	\$ 3,622,467	\$ 2,052,044
Outside of the United States				
Europe	251,366	184,845	766,438	532,809
Other	62,340	54,660	188,958	164,703
Total revenues outside of the United States	313,706	239,505	955,396	697,512
Total revenues	\$ 1,538,271	\$ 949,828	\$ 4,577,863	\$ 2,749,556

Contract Liabilities

The Company had contract liabilities of \$94.8 million and \$62.3 million as of September 30, 2020 and December 31, 2019, respectively, related to annual contracts with government-owned and supported customers in international markets that limit the amount of annual reimbursement the Company can receive. Upon exceeding the annual reimbursement amount, products are provided free of charge, which is a material right. These contracts include upfront payments and fees. The Company defers a portion of the consideration received for shipments made up to the annual reimbursement limit as a portion of "Other current liabilities." The deferred amount is recognized as revenue when the free products are shipped. The Company's product revenue contracts include performance obligations that are one year or less.

The Company's contract liabilities at the end of each fiscal year relate to contracts with annual reimbursement limits in international markets in which the annual period associated with the contract is not the same as the Company's fiscal year. In these markets, the Company recognizes revenues related to performance obligations satisfied in previous years; however, these revenues do not relate to any performance obligations that were satisfied more than 12 months prior to the beginning of the current year.

C. Collaborative Arrangements

The Company has entered into numerous agreements pursuant to which it collaborates with third parties on research, development and commercialization programs, including in-license and out-license agreements.

The Company's in-license and out-license agreements that had a significant impact on its financial statements for the three and nine months ended September 30, 2020 and 2019, or were new or otherwise revised during the three and nine months ended September 30, 2020, are described below. Additional in-license and out-license agreements were described in Note B, "Collaborative Arrangements," of the Company's 2019 Annual Report on Form 10-K.

In-license Agreements

The Company has entered into a number of license agreements in order to advance and obtain access to technologies and services related to its research and early-development activities. The Company is generally required to make an upfront payment upon execution of the license agreement; development, regulatory and commercialization milestones payments upon the achievement of certain product research, development and commercialization objectives; and royalty payments on future sales, if any, of commercial products resulting from the collaboration.

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

Pursuant to the terms of its in-license agreements, the Company's collaborators typically lead the discovery efforts and the Company leads all preclinical, development and commercialization activities associated with the advancement of any drug candidates and funds all expenses.

The Company typically can terminate its in-license agreements by providing advance notice to its collaborators; the required length of notice is dependent on whether any product developed under the license agreement has received marketing approval. The Company's license agreements may be terminated by either party for a material breach by the other, subject to notice and cure provisions. Unless earlier terminated, these license agreements generally remain in effect until the date on which the royalty term and all payment obligations with respect to all products in all countries have expired.

CRISPR Therapeutics AG

In 2015, the Company entered into a strategic collaboration, option and license agreement (the "CRISPR Agreement") with CRISPR Therapeutics AG and its affiliates ("CRISPR") to collaborate on the discovery and development of potential new treatments aimed at the underlying genetic causes of human diseases using CRISPR-Cas9 gene-editing technology. The Company had the exclusive right to license certain targets. In the fourth quarter of 2019, the Company elected to exclusively license three targets, including cystic fibrosis, pursuant to the CRISPR Agreement. For each of the three targets that the Company elected to license, CRISPR has the potential to receive up to an additional \$410.0 million in development, regulatory and commercial milestones as well as royalties on net product sales.

In 2017, the Company entered into a co-development and co-commercialization agreement with CRISPR pursuant to the terms of the CRISPR Agreement, under which the Company and CRISPR are co-developing and will co-commercialize CTX001 (the "CTX001 Co-Co Agreement") for the treatment of hemoglobinopathies, including treatments for sickle cell disease and beta thalassemia. As part of the collaboration, the Company and CRISPR share equally all development costs and potential worldwide revenues related to potential hemoglobinopathy treatments. The Company concluded that the CTX001 Co-Co Agreement is a cost-sharing arrangement, which results in the net impact of the arrangement being recorded in "Research and development expenses" in its condensed consolidated statements of operations. During the three and nine months ended September 30, 2020, the net expense related to the CTX001 Co-Co Agreement was \$14.3 million and \$33.4 million, respectively. During the three and nine months ended September 30, 2019, the net expense related to the CTX001 Co-Co Agreement was \$7.7 million and \$22.3 million, respectively.

In July 2019, the Company entered into a separate strategic collaboration and license agreement (the "CRISPR DMD/DM1 Agreement") with CRISPR. Pursuant to this agreement, the Company received an exclusive worldwide license to CRISPR's existing and future intellectual property for Duchenne muscular dystrophy ("DMD") and myotonic dystrophy type 1 ("DM1") and the Company made an upfront payment of \$175.0 million to CRISPR. The Company concluded that it did not have any alternative future use for the acquired in-process research and development and recorded the upfront payment to "Research and development expenses" in the third quarter of 2019. In the first quarter of 2020, the Company recorded \$25.0 million to "Research and development expenses" related to a pre-clinical milestone earned by CRISPR under the CRISPR DMD/DM1 Agreement. CRISPR has the potential to receive up to an additional \$800.0 million in research, development, regulatory and commercial milestones for the DMD and DM1 programs as well as royalties on net product sales. CRISPR has the option to co-develop and co-commercialize all DM1 products globally and forego the milestones and royalties associated with the DM1 program. The Company funds all expenses associated with the collaboration except for research costs for specified guide RNA research conducted by CRISPR, which the Company and CRISPR share equally.

Moderna, Inc.

In 2016, the Company entered into a strategic collaboration and licensing agreement with Moderna, Inc. ("Moderna"), pursuant to which the parties are seeking to identify and develop messenger Ribonucleic Acid ("mRNA") therapeutics for the treatment of cystic fibrosis.

In September 2020, the Company entered into a new strategic collaboration and licensing agreement with Moderna (the "2020 Moderna Agreement") aimed at the discovery and development of lipid nanoparticles and mRNAs that can deliver gene-editing therapies to lung cells for the treatment of cystic fibrosis. Pursuant to the 2020 Moderna Agreement, Moderna received an upfront payment of \$75.0 million and is eligible to receive up to \$380.0 million in development, regulatory and commercial milestones as well as royalties on net product sales. The Company determined that substantially all of the fair

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value of the 2020 Moderna Agreement was attributable to in-process research and development and no substantive processes were acquired that would constitute a business. The Company concluded that it did not have any alternative future use for the acquired in-process research and development and recorded the upfront payment to “Research and development expenses” in the third quarter of 2020.

Out-license Agreements

The Company has entered into licensing agreements pursuant to which it has out-licensed rights to certain drug candidates to third-party collaborators. Pursuant to these out-license agreements, the Company’s collaborators become responsible for all costs related to the continued development of such drug candidates and obtain development and commercialization rights to these drug candidates. Depending on the terms of the agreements, the Company’s collaborators may be required to make upfront payments, milestone payments upon the achievement of certain product research and development objectives and may also be required to pay royalties on future sales, if any, of commercial products resulting from the collaboration. The termination provisions associated with these collaborations are generally the same as those described above related to the Company’s in-license agreements. None of the Company’s out-license agreements had a significant impact on the Company’s condensed consolidated statement of operations during the three and nine months ended September 30, 2020 and 2019.

Janssen Pharmaceuticals, Inc.

In the third quarter of 2020, Janssen Pharmaceuticals, Inc. (“Janssen”) exercised its right to terminate its exclusive worldwide license from the Company to develop and commercialize certain drug candidates for the treatment of influenza, based on Phase 3 clinical trial results for pimodivir. Janssen had been developing pimodivir since 2014.

Cystic Fibrosis Foundation

The Company has a research, development and commercialization agreement that was originally entered into in 2004 with the Cystic Fibrosis Foundation (“CFF”), as successor in interest to the Cystic Fibrosis Foundation Therapeutics, Inc. This agreement was most recently amended in 2016. Pursuant to the agreement, as amended, the Company agreed to pay royalties ranging from low-single digits to mid-single digits on potential sales of certain compounds first synthesized and/or tested between March 1, 2014 and August 31, 2016, including elexacaftor, and tiered royalties ranging from single digits to sub-teens on covered compounds first synthesized and/or tested during a research term on or before February 28, 2014, including KALYDECO (ivacaftor), ORKAMBI (lumacaftor in combination with ivacaftor) and SYMDEKO/SYMKEVI (tezacaftor in combination with ivacaftor). For combination products, such as ORKAMBI, SYMDEKO/SYMKEVI and TRIKAFTA/KAFTRIO (elexacaftor/tezacaftor/ivacaftor and ivacaftor), sales are allocated equally to each of the active pharmaceutical ingredients in the combination product.

D. Earnings Per Share

Basic net income per common share is based upon the weighted-average number of common shares outstanding. Diluted net income per common share utilizing the treasury method is based upon the weighted-average number of common shares outstanding during the period plus additional weighted-average common equivalent shares outstanding during the period when the effect is dilutive.

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The following table sets forth the computation of basic and diluted net income per common share for the periods ended:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
	(in thousands, except per share amounts)			
Net income	\$ 667,434	\$ 57,518	\$ 2,107,457	\$ 593,576
Basic weighted-average common shares outstanding	260,392	256,946	260,313	256,289
Effect of potentially dilutive securities:				
Stock options	1,887	2,080	1,936	2,297
Restricted stock and restricted stock units (including PSUs)	1,788	1,434	1,765	1,582
Employee stock purchase program	12	13	17	14
Diluted weighted-average common shares outstanding	264,079	260,473	264,031	260,182
Basic net income per common share	\$ 2.56	\$ 0.22	\$ 8.10	\$ 2.32
Diluted net income per common share	\$ 2.53	\$ 0.22	\$ 7.98	\$ 2.28

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
	(in thousands)			
Stock options	23	3,303	303	3,116
Unvested restricted stock and restricted stock units (including PSUs)	252	13	229	7

E. Fair Value Measurements

The following fair value hierarchy is used to classify assets and liabilities based on observable inputs and unobservable inputs used in order to determine the fair value of the Company's financial assets and liabilities:

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

The Company's investment strategy is focused on capital preservation. The Company invests in instruments that meet the credit quality standards outlined in the Company's investment policy. This policy also limits the amount of credit exposure to any one issue or type of instrument. The Company maintains strategic investments separately from the investment policy that governs its other cash, cash equivalents and marketable securities as described in Note F, "Marketable Securities and Equity Investments." Additionally, the Company utilizes foreign currency forward contracts intended to mitigate the effect of changes in foreign exchange rates on its condensed consolidated statement of operations.

During the three and nine months ended September 30, 2020 and 2019, the Company did not record any other-than-temporary impairment charges related to its financial assets.

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The following tables set forth the Company's financial assets and liabilities subject to fair value measurements by level within the fair value hierarchy (and does not include \$2.2 billion and \$2.3 billion of cash as of September 30, 2020 and December 31, 2019, respectively):

	As of September 30, 2020				As of December 31, 2019			
	Total	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3
(in thousands)								
Financial instruments carried at fair value (asset positions):								
Cash equivalents:								
Money market funds	\$ 3,130,364	\$ 3,130,364	\$ —	\$ —	\$ 791,039	\$ 791,039	\$ —	\$ —
Corporate debt securities	—	—	—	—	6,070	—	6,070	—
Commercial paper	5,001	—	5,001	—	29,472	—	29,472	—
Marketable securities:								
Corporate equity securities	312,682	216,142	96,540	—	282,084	261,797	20,287	—
Government-sponsored enterprise securities	91,283	91,283	—	—	12,733	12,733	—	—
Corporate debt securities	276,610	—	276,610	—	301,799	—	301,799	—
Commercial paper	112,396	—	112,396	—	102,356	—	102,356	—
Prepaid expenses and other current assets:								
Foreign currency forward contracts	673	—	673	—	9,725	—	9,725	—
Total financial assets	\$ 3,929,009	\$ 3,437,789	\$ 491,220	\$ —	\$ 1,535,278	\$ 1,065,569	\$ 469,709	\$ —
Financial instruments carried at fair value (liability positions):								
Other current liabilities:								
Foreign currency forward contracts	\$ (29,554)	\$ —	\$ (29,554)	\$ —	\$ (5,533)	\$ —	\$ (5,533)	\$ —
Long-term contingent consideration	(189,100)	—	—	(189,100)	(176,500)	—	—	(176,500)
Other long-term liabilities:								
Foreign currency forward contracts	(3,254)	—	(3,254)	—	(1,821)	—	(1,821)	—
Total financial liabilities	\$ (221,908)	\$ —	\$ (32,808)	\$ (189,100)	\$ (183,854)	\$ —	\$ (7,354)	\$ (176,500)

Please refer to Note F, "Marketable Securities and Equity Investments," for the carrying amount and related unrealized gains (losses) by type of investment.

Fair Value of Corporate Equity Securities

The Company maintains strategic investments in corporate equity securities separately from the investment policy that governs its other cash, cash equivalents and marketable securities. The Company classifies its investments in publicly traded companies as "Marketable securities" on its condensed consolidated balance sheets. Generally, the Company's investments in the common stock of these publicly traded companies are valued based on Level 1 inputs because they have readily determinable fair values. However, certain of the Company's investments in publicly traded companies have been or continue to be valued based on Level 2 inputs due to transfer restrictions associated with these investments. Please refer to Note F, "Marketable Securities and Equity Investments," for further information on these investments.

Fair Value of Contingent Consideration

In 2019, the Company acquired Exonics Therapeutics, Inc. ("Exonics"), a privately-held company focused on creating transformative gene-editing therapies to repair mutations that cause DMD and other severe neuromuscular diseases, including DM1. The Company's Level 3 contingent consideration liabilities are related to \$678.3 million of development and regulatory milestones potentially payable to Exonics' former equity holders. The Company bases its estimates of the probability of achieving the milestones relevant to the fair value of contingent payments on industry data attributable to rare diseases. The discount rates used in the valuation model for contingent payments, which were between 0.6% and 1.9% as of September 30, 2020, represent a measure of credit risk and market risk associated with settling the liabilities. Significant judgment is used in determining the appropriateness of these assumptions at each reporting period. Due to the uncertainties

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associated with development and commercialization of drug candidates in the pharmaceutical industry and the effects of changes in other assumptions including discount rates, the Company expects its estimates regarding the fair value of contingent consideration to change in the future, resulting in adjustments to the fair value of the Company's contingent consideration liabilities, and the effect of any such adjustments could be material.

The following table represents a rollforward of the fair value of the Company's contingent consideration liabilities:

	Nine Months Ended September 30, 2020	
	(in thousands)	
Balance at December 31, 2019	\$	176,500
Increase in fair value of contingent payments		12,600
Balance at September 30, 2020	\$	189,100

The "Increase in fair value of contingent payments" in the table above was primarily due to changes in market interest rates.

F. Marketable Securities and Equity Investments

A summary of the Company's cash equivalents and marketable securities, which are recorded at fair value (and do not include \$2.2 billion and \$2.3 billion of cash as of September 30, 2020 and December 31, 2019, respectively), is shown below:

	As of September 30, 2020				As of December 31, 2019			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
	(in thousands)							
Cash equivalents:								
Money market funds	\$ 3,130,364	\$ —	\$ —	\$ 3,130,364	\$ 791,039	\$ —	\$ —	\$ 791,039
Corporate debt securities	—	—	—	—	6,070	—	—	6,070
Commercial paper	5,000	1	—	5,001	29,470	3	(1)	29,472
Total cash equivalents	\$ 3,135,364	\$ 1	\$ —	\$ 3,135,365	\$ 826,579	\$ 3	\$ (1)	\$ 826,581
Marketable securities:								
Government-sponsored enterprise securities	\$ 91,256	\$ 33	\$ (6)	\$ 91,283	\$ 12,689	\$ 44	\$ —	\$ 12,733
Corporate debt securities	275,554	1,067	(11)	276,610	301,458	391	(50)	301,799
Commercial paper	112,159	242	(5)	112,396	102,240	121	(5)	102,356
Total marketable debt securities	478,969	1,342	(22)	480,289	416,387	556	(55)	416,888
Corporate equity securities	103,463	209,219	—	312,682	113,829	168,255	—	282,084
Total marketable securities	\$ 582,432	\$ 210,561	\$ (22)	\$ 792,971	\$ 530,216	\$ 168,811	\$ (55)	\$ 698,972

Available-for-sale debt securities were classified on the Company's condensed consolidated balance sheets at fair value as follows:

	As of September 30, 2020		As of December 31, 2019	
	(in thousands)			
Cash and cash equivalents	\$	3,135,365	\$	826,581
Marketable securities		480,289		416,888
Total	\$	3,615,654	\$	1,243,469

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Available-for-sale debt securities by contractual maturity were as follows:

	<u>As of September 30, 2020</u>	<u>As of December 31, 2019</u>
	(in thousands)	
Matures within one year	\$ 3,514,474	\$ 1,137,942
Matures after one year through five years	101,180	105,527
Total	\$ 3,615,654	\$ 1,243,469

The Company has a limited number of available-for-sale debt securities in insignificant loss positions as of September 30, 2020, which it does not intend to sell and has concluded it will not be required to sell before recovery of the amortized costs for the investments at maturity. The Company did not record any charges for other-than-temporary declines in the fair value of available-for-sale debt securities or gross realized gains or losses in the three and nine months ended September 30, 2020 and 2019.

As of September 30, 2020 and December 31, 2019, the total fair value of the Company's strategic investments in the common stock of publicly traded companies was \$312.7 million and \$282.1 million, respectively, and was classified as "Marketable securities" on its condensed consolidated balance sheets.

The Company records changes in the fair value of its investments in corporate equity securities to "Other income (expense), net" on its condensed consolidated statements of operations. During the three and nine months ended September 30, 2020, the Company recorded net unrealized gains of \$69.8 million and \$102.3 million, respectively, on corporate equity securities held as of September 30, 2020. During the three and nine months ended September 30, 2019, the Company recorded a net unrealized loss of \$31.2 million and a net unrealized gain of \$68.9 million, respectively, on corporate equity securities held as of September 30, 2019. During the nine months ended September 30, 2020, the Company received proceeds of \$149.6 million related to the sale of the common stock of publicly traded companies, which had a total original weighted-average cost basis of \$51.3 million. There were no sales of the common stock of publicly traded companies during the nine months ended September 30, 2019.

As of September 30, 2020, the carrying value of the Company's equity investments without readily determinable fair values, which are recorded in "Other assets" on its condensed consolidated balance sheets, was \$20.8 million.

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G. Accumulated Other Comprehensive Income (Loss)

The following table summarizes the changes in accumulated other comprehensive income (loss) by component:

	Foreign Currency Translation Adjustment	Unrealized Holding Gains (Losses), Net of Tax		Total
		On Available-For-Sale Debt Securities	On Foreign Currency Forward Contracts	
		(in thousands)		
Balance at December 31, 2019	\$ (895)	\$ 503	\$ (1,581)	\$ (1,973)
Other comprehensive (loss) income before reclassifications	(12,616)	818	(20,913)	(32,711)
Amounts reclassified from accumulated other comprehensive loss	—	—	(6,298)	(6,298)
Net current period other comprehensive (loss) income	(12,616)	818	(27,211)	(39,009)
Balance at September 30, 2020	<u>\$ (13,511)</u>	<u>\$ 1,321</u>	<u>\$ (28,792)</u>	<u>\$ (40,982)</u>
Balance at December 31, 2018	\$ (11,227)	\$ (536)	\$ 12,422	\$ 659
Other comprehensive income before reclassifications	10,263	1,111	26,663	38,037
Amounts reclassified from accumulated other comprehensive income	—	—	(19,849)	(19,849)
Net current period other comprehensive income	10,263	1,111	6,814	18,188
Balance at September 30, 2019	<u>\$ (964)</u>	<u>\$ 575</u>	<u>\$ 19,236</u>	<u>\$ 18,847</u>

H. Hedging

Foreign currency forward contracts - Designated as hedging instruments

The Company maintains a hedging program intended to mitigate the effect of changes in foreign exchange rates for a portion of the Company's forecasted product revenues denominated in certain foreign currencies. The program includes foreign currency forward contracts that are designated as cash flow hedges under U.S. GAAP having contractual durations from one to eighteen months. The Company recognizes realized gains and losses for the effective portion of such contracts in "Product revenues, net" in its condensed consolidated statements of operations in the same period that it recognizes the product revenues that were impacted by the hedged foreign exchange rate changes.

The Company formally documents the relationship between foreign currency forward contracts (hedging instruments) and forecasted product revenues (hedged items), as well as the Company's risk management objective and strategy for undertaking various hedging activities, which includes matching all foreign currency forward contracts that are designated as cash flow hedges to forecasted transactions. The Company also formally assesses, both at the hedge's inception and on an ongoing basis, whether the foreign currency forward contracts are highly effective in offsetting changes in cash flows of hedged items on a prospective and retrospective basis. If the Company were to determine that a (i) foreign currency forward contract is not highly effective as a cash flow hedge, (ii) foreign currency forward contract has ceased to be a highly effective hedge or (iii) forecasted transaction is no longer probable of occurring, the Company would discontinue hedge accounting treatment prospectively. The Company measures effectiveness based on the change in fair value of the forward contracts and the fair value of the hypothetical foreign currency forward contracts with terms that match the critical terms of the risk being hedged. As of September 30, 2020, all hedges were determined to be highly effective.

The Company considers the impact of its counterparties' credit risk on the fair value of the foreign currency forward contracts. As of September 30, 2020 and December 31, 2019, credit risk did not change the fair value of the Company's foreign currency forward contracts.

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

Foreign Currency	As of September 30, 2020		As of December 31, 2019	
	(in thousands)			
Euro	\$	632,621	\$	501,197
British pound sterling		166,707		87,032
Australian dollar		92,524		89,705
Canadian dollar		74,749		50,452
Total foreign currency forward contracts	\$	966,601	\$	728,386

Foreign currency forward contracts - Not designated as hedging instruments

The Company also enters into foreign currency forward contracts with contractual maturities of less than one month, that are designed to mitigate the effect of changes in foreign exchange rates on monetary assets and liabilities, including intercompany balances. These contracts are not designated as hedging instruments under U.S. GAAP. The Company recognizes realized gains and losses for such contracts in "Other income (expense), net" in its condensed consolidated statements of operations each period. As of September 30, 2020, the notional amount of the Company's outstanding foreign currency forward contracts where hedge accounting under U.S. GAAP is not applied was \$609.9 million.

During the three and nine months ended September 30, 2020 and 2019, the Company recognized the following related to foreign currency forward contracts in its condensed consolidated statements of operations:

	Three Months Ended September 30,		Nine Months Ended September 30,					
	2020	2019	2020	2019				
(in thousands)								
<i>Designated as hedging instruments - Reclassified from AOCI</i>								
Product revenues, net	\$	(7,249)	\$	10,304	\$	8,039	\$	25,381
<i>Not designated as hedging instruments</i>								
Other income (expense), net	\$	25,897	\$	(8,812)	\$	15,724	\$	(10,874)
<i>Total reported in the Condensed Consolidated Statement of Operations</i>								
Product revenues, net	\$	1,536,271	\$	949,828	\$	4,575,863	\$	2,747,461
Other income (expense), net	\$	84,386	\$	(31,747)	\$	139,621	\$	64,802

The following table summarizes the fair value of the Company's outstanding foreign currency forward contracts designated as cash flow hedges under U.S. GAAP included on its condensed consolidated balance sheets:

As of September 30, 2020			
Assets		Liabilities	
Classification	Fair Value	Classification	Fair Value
(in thousands)			
Prepaid expenses and other current assets	\$ 673	Other current liabilities	\$ (29,554)
Other assets	—	Other long-term liabilities	(3,254)
Total assets	<u>\$ 673</u>	Total liabilities	<u>\$ (32,808)</u>
As of December 31, 2019			
Assets		Liabilities	
Classification	Fair Value	Classification	Fair Value
(in thousands)			
Prepaid expenses and other current assets	\$ 9,725	Other current liabilities	\$ (5,533)
Other assets	—	Other long-term liabilities	(1,821)
Total assets	<u>\$ 9,725</u>	Total liabilities	<u>\$ (7,354)</u>

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As of September 30, 2020, the Company expects the amounts that are related to foreign exchange forward contracts designated as cash flow hedges under U.S. GAAP recorded in “Prepaid expenses and other current assets” and “Other current liabilities” to be reclassified to earnings within twelve months.

The following table summarizes the potential effect of offsetting derivatives by type of financial instrument designated as cash flow hedges under U.S. GAAP on the Company’s condensed consolidated balance sheets:

	As of September 30, 2020				
	Gross Amounts Recognized	Gross Amounts Offset	Gross Amounts Presented	Gross Amounts Not Offset	Legal Offset
Foreign currency forward contracts	(in thousands)				
Total assets	\$ 673	\$ —	\$ 673	\$ (673)	\$ —
Total liabilities	(32,808)	—	(32,808)	673	(32,135)
	As of December 31, 2019				
	Gross Amounts Recognized	Gross Amounts Offset	Gross Amounts Presented	Gross Amounts Not Offset	Legal Offset
Foreign currency forward contracts	(in thousands)				
Total assets	\$ 9,725	\$ —	\$ 9,725	\$ (7,354)	\$ 2,371
Total liabilities	(7,354)	—	(7,354)	7,354	—

I. Inventories

Inventories consisted of the following:

	As of September 30, 2020	As of December 31, 2019
	(in thousands)	
Raw materials	\$ 42,542	\$ 26,247
Work-in-process	135,220	107,021
Finished goods	67,698	34,234
Total	\$ 245,460	\$ 167,502

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J. Stock-based Compensation Expense and Share Repurchase Programs

Stock-based compensation expense

During the three and nine months ended September 30, 2020 and 2019, the Company recognized the following stock-based compensation expense:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
	(in thousands)			
Stock-based compensation expense by type of award:				
Restricted stock and restricted stock units (including PSUs)	\$ 84,043	\$ 61,175	\$ 279,611	\$ 185,651
Stock options	13,221	21,737	47,334	76,053
ESPP share issuances	3,225	3,044	8,565	8,430
Stock-based compensation expense related to inventories	(950)	(536)	(3,076)	(1,236)
Total stock-based compensation expense included in costs and expenses	\$ 99,539	\$ 85,420	\$ 332,434	\$ 268,898
Stock-based compensation expense by line item:				
Cost of sales	\$ 1,250	\$ 1,337	\$ 3,998	\$ 4,178
Research and development expenses	60,770	52,504	203,732	167,851
Sales, general and administrative expenses	37,519	31,579	124,704	96,869
Total stock-based compensation expense included in costs and expenses	99,539	85,420	332,434	268,898
Income tax effect	(35,295)	(21,996)	(130,692)	(87,638)
Total stock-based compensation expense, net of tax	\$ 64,244	\$ 63,424	\$ 201,742	\$ 181,260

The following table sets forth the Company's unrecognized stock-based compensation expense as of September 30, 2020, by type of award and the weighted-average period over which that expense is expected to be recognized:

	As of September 30, 2020	
	Unrecognized Expense	Weighted-average Recognition Period
	(in thousands)	(in years)
Type of award:		
Restricted stock units (including PSUs)	\$ 487,254	2.06
Stock options	\$ 76,261	1.95
ESPP share issuances	\$ 3,265	0.44

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The following table summarizes information about stock options outstanding and exercisable as of September 30, 2020:

Range of Exercise Prices	Options Outstanding			Options Exercisable		
	Number Outstanding	Weighted-average Remaining Contractual Life	Weighted-average Exercise Price	Number Exercisable	Weighted-average Exercise Price	
	(in thousands)	(in years)	(per share)	(in thousands)	(per share)	
\$36.28–\$40.00	62	1.09	\$ 38.06	62	\$ 38.06	
\$40.01–\$60.00	157	1.98	\$ 47.13	157	\$ 47.13	
\$60.01–\$80.00	105	3.49	\$ 74.82	104	\$ 74.82	
\$80.01–\$100.00	1,029	5.66	\$ 88.91	919	\$ 89.20	
\$100.01–\$120.00	129	4.39	\$ 109.27	128	\$ 109.21	
\$120.01–\$140.00	282	4.98	\$ 129.42	281	\$ 129.43	
\$140.01–\$160.00	740	7.36	\$ 155.49	369	\$ 155.41	
\$160.01–\$180.00	599	7.76	\$ 168.34	282	\$ 165.74	
\$180.01–\$200.00	1,252	8.14	\$ 185.31	422	\$ 184.85	
\$200.01–\$286.27	23	9.67	\$ 286.27	23	\$ 286.27	
Total	4,378	6.63	\$ 140.26	2,747	\$ 123.22	

Share repurchase programs

In 2018, the Company's Board of Directors approved a share repurchase program (the "2018 Share Repurchase Program"), pursuant to which the Company repurchased \$500.0 million of its common stock in 2018 and 2019. During the nine months ended September 30, 2019, the Company repurchased 832,186 shares of its common stock under the 2018 Share Repurchase Program for an aggregate of \$150.0 million including commissions and fees. As of June 30, 2019, the Company had repurchased the entire \$500.0 million it was authorized to repurchase of its common stock under the 2018 Share Repurchase Program.

In 2019, the Company's Board of Directors approved a new share repurchase program (the "2019 Share Repurchase Program"), pursuant to which the Company is authorized to repurchase up to \$500.0 million of its common stock between August 1, 2019 and December 31, 2020. During the nine months ended September 30, 2020, the Company repurchased 1,806,587 shares of its common stock under the 2019 Share Repurchase Program for an aggregate of \$408.0 million including commissions and fees. As of September 30, 2020, there was a total of \$56.0 million remaining for repurchases under the 2019 Share Repurchase Program. The Company expects to fund further repurchases of its common stock through a combination of cash on hand and cash generated by operations.

Under the 2019 Share Repurchase Program, the Company is authorized to purchase shares from time to time through open market or privately negotiated transactions. Such purchases are made pursuant to Rule 10b5-1 plans or other means as determined by the Company's management and in accordance with the requirements of the SEC.

K. Income Taxes

The Company is subject to U.S. federal, state, and foreign income taxes. For the three and nine months ended September 30, 2020, the Company recorded provisions for income taxes of \$78.4 million and \$120.7 million, respectively. For the three and nine months ended September 30, 2019, the Company recorded provisions for income taxes of \$13.1 million and \$124.4 million, respectively.

The Company's effective tax rate for the third quarter of 2020 was lower than the U.S. statutory rate primarily due to a discrete tax benefit associated with an increase in the United Kingdom's corporate tax rate. The Company's effective tax rate for the nine months ended September 30, 2020 was also lower than the U.S. statutory rate due to discrete tax benefits associated with an intra-entity transfer of intellectual property rights to the United Kingdom and the write-off of a long-term intercompany receivable as well as excess tax benefits related to stock-based compensation. The Company's effective tax rate

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for the three and nine months ended September 30, 2019 was lower than the U.S. statutory rate primarily due to excess tax benefits related to stock-based compensation.

In the second quarter of 2020, the Company completed an intra-entity transfer of intellectual property rights to the United Kingdom, resulting in a deferred tax benefit of \$209.0 million. The Company expects to be able to utilize the deferred tax asset resulting from the intra-entity transfer.

The Company released its valuation allowance on the majority of its net operating losses and other deferred tax assets as of December 31, 2018. Starting in 2019, the Company began recording a provision for income taxes on its pre-tax income using an effective tax rate approximating statutory rates. The Company expects to utilize its remaining previously benefited U.S. net operating losses in 2020. As a result, a larger portion of the Company's tax provision will represent a cash tax payable in future periods.

The Company maintained a valuation allowance of \$205.2 million related primarily to U.S. state and foreign tax attributes as of December 31, 2019. On a periodic basis, the Company reassesses any valuation allowances that it maintains on its deferred tax assets, weighing positive and negative evidence to assess the recoverability of the deferred tax assets.

In March 2020, the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") was signed into law. The CARES Act includes provisions relating to several aspects of corporate income taxes. The Company does not currently expect the CARES Act to have a significant impact on its provision for income taxes; however, it will continue to monitor the provisions of the CARES Act in relation to its operations.

The Company has reviewed the tax positions taken, or to be taken, in its tax returns for all tax years currently open to examination by a taxing authority. Unrecognized tax benefits represent the aggregate tax effect of differences between tax return positions and the benefits recognized in the financial statements. As of September 30, 2020 and December 31, 2019, the Company had \$73.8 million and \$33.9 million, respectively, of gross unrecognized tax benefits, which would affect the Company's tax rate if recognized. The Company does not expect that its unrecognized tax benefits will materially change within the next twelve months. The Company accrues interest and penalties related to unrecognized tax benefits as a component of its provision for income taxes. The Company did not recognize any material interest or penalties related to uncertain tax positions during the three and nine months ended September 30, 2020 and 2019.

As of September 30, 2020, foreign earnings, which were not significant, have been retained by foreign subsidiaries for indefinite reinvestment. Upon repatriation of those earnings, in the form of dividends or otherwise, the Company could be subject to withholding taxes payable to the various foreign countries.

The Company files U.S. federal income tax returns and income tax returns in various state, local and foreign jurisdictions. The Company is no longer subject to any tax assessment from an income tax examination in the U.S. or any other major taxing jurisdiction for years before 2011, except where the Company has net operating losses or tax credit carryforwards that originate before 2011. The Company has various income tax audits ongoing at any time throughout the world.

L. Commitments and Contingencies

Revolving Credit Facilities

The Company and certain of its subsidiaries have entered into two Credit Agreements (the "Credit Agreements") with Bank of America, N.A., as administrative agent and the lenders referred to therein (the "Lenders"). The Credit Agreements were not drawn upon at closing and the Company has not drawn upon them to date. Amounts drawn pursuant to the Credit Agreements, if any, will be used for general corporate purposes. Any amounts borrowed under the Credit Agreements will bear interest, at the Company's option, at either a base rate or a Eurocurrency rate, in each case plus an applicable margin based on the Company's consolidated leverage ratio (the ratio of the Company's total consolidated funded indebtedness to the Company's consolidated EBITDA for the most recently completed four fiscal quarter period).

In September 2019, the Company and certain of its subsidiaries entered into a \$500.0 million unsecured revolving facility (the "2019 Credit Agreement") with the Lenders, which matures on September 17, 2024. The 2019 Credit Agreement

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superseded the Company's credit agreement entered into in 2016 with Bank of America, N.A serving in the same capacity. Under the 2019 Credit Agreement, the applicable margins on base rate loans range from 0.125% to 0.500% and the applicable margins on Eurocurrency loans range from 1.125% to 1.500%. The 2019 Credit Agreement provides a sublimit of \$50.0 million for letters of credit.

In September 2020, the Company and certain of its subsidiaries entered into a \$2.0 billion unsecured revolving facility (the "2020 Credit Agreement") with the Lenders, which matures on September 18, 2022. Under the 2020 Credit Agreement, the applicable margins on base rate loans range from 0.500% to 0.875% and the applicable margins on Eurocurrency loans range from 1.500% to 1.875%. The 2020 Credit Agreement does not include a sublimit for letters of credit.

Subject to satisfaction of certain conditions, the Company may request that the borrowing capacity for each of the Credit Agreements be increased by an additional \$500.0 million. Any amounts borrowed pursuant to the Credit Agreements are guaranteed by certain of the Company's existing and future domestic subsidiaries, subject to certain exceptions.

The Credit Agreements contain customary representations and warranties and affirmative and negative covenants, including financial covenants to maintain (x) subject to certain limited exceptions, a consolidated leverage ratio of 3.50 to 1.00, subject to an increase to 4.00 to 1.00 following a material acquisition and (y) a consolidated interest coverage ratio of 2.50 to 1.00, in each case measured on a quarterly basis. As of September 30, 2020, the Company was in compliance with the covenants described above. The Credit Agreements also contain customary events of default. In the case of a continuing event of default, the administrative agent would be entitled to exercise various remedies, including the acceleration of amounts due under outstanding loans.

Direct costs related to the Credit Agreements, which were not material to the Company's financial statements, were deferred and recorded over the term of the Credit Agreements.

Guaranties and Indemnifications

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

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

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or settle claims related to these indemnification provisions. Accordingly, the Company believes the estimated fair value of these indemnification arrangements is minimal.

Other Contingencies

The Company has certain contingent liabilities that arise in the ordinary course of its business activities. The Company accrues a reserve for contingent liabilities when it is probable that future expenditures will be made, and such expenditures can be reasonably estimated. There were no material contingent liabilities accrued as of September 30, 2020 or December 31, 2019.

M. Additional Cash Flow Information

The cash, cash equivalents and restricted cash at the beginning and ending of each period presented in the Company's condensed consolidated statements of cash flows consisted of the following:

	Nine Months Ended September 30,			
	2020		2019	
	Beginning of period	End of period	Beginning of period	End of period
	(in thousands)			
Cash and cash equivalents	\$ 3,109,322	\$ 5,358,087	\$ 2,650,134	\$ 3,397,941
Prepaid expenses and other current assets	8,004	2,898	4,910	6,650
Other assets	3,355	—	3,209	—
Cash, cash equivalents and restricted cash per statement of cash flows	<u>\$ 3,120,681</u>	<u>\$ 5,360,985</u>	<u>\$ 2,658,253</u>	<u>\$ 3,404,591</u>

N. Facilities

Cell and Genetic Therapies Lease

In 2019, the Company entered into an agreement to lease approximately 269,000 square feet of office and laboratory space near its corporate headquarters in Boston, MA. The lease agreement includes an initial term of 15 years plus a period to install leasehold improvements, with an option to extend the lease term for up to two additional ten-year periods. The Company expects base rent payments to commence in the fourth quarter of 2021. The Company has utilized the initial period, which commenced in the third quarter of 2020 upon occupation of the building, as its lease term. As of September 30, 2020, the Company recorded a right-of-use asset of \$256.8 million and an operating lease liability of \$268.5 million related to the lease agreement on its condensed consolidated balance sheet.

Boston Continuous Manufacturing Facility

In the third quarter of 2020, the Company purchased its continuous manufacturing facility located near its corporate headquarters in Boston, MA from its former landlord for \$155.3 million in cash. As of September 30, 2020, the Company adjusted its condensed consolidated balance sheet to (i) classify the building within "Property and equipment, net" with a 40 years useful life, (ii) derecognize a previously recorded right-of-use asset and operating lease liability for the facility and (iii) record a finance lease for the land on which the facility is constructed. The previously recognized right-of-use asset and operating lease liability and the newly recognized finance lease related to the land were not significant to the Company's condensed consolidated balance sheet for the periods presented.

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

OVERVIEW

We invest in scientific innovation to create transformative medicines for people with serious diseases with a focus on specialty markets. We have four approved medicines to treat cystic fibrosis, or CF, a life-threatening genetic disease, and are focused on expanding the number of people with CF eligible for our medicines. We are broadening our pipeline into additional disease areas through internal research efforts and accessing external innovation through business development transactions.

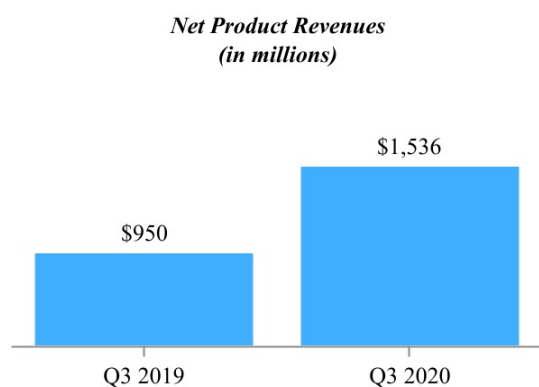
In October 2019, TRIKAFTA (elixacaftor/tezacaftor/ivacaftor and ivacaftor), our triple combination regimen, was approved by the U.S. Food and Drug Administration, or FDA, for the treatment of people with CF 12 years of age and older who have at least one *F508del* mutation in the cystic fibrosis transmembrane conductance regulator, or CFTR, gene. In August 2020, our triple combination regimen was approved by the European Commission for people with CF 12 years of age and older with specific mutations in their CFTR gene. We market our triple combination regimen as KAFTRIO in the European Union, or E.U. Approval of TRIKAFTA and KAFTRIO increased the number of people with CF that are eligible for our medicines by up to 16,000 and provides an additional treatment option for many people who are eligible for one of our previously approved products. Collectively, our medicines currently are approved to treat the majority of the people with CF in North America, Europe and Australia. We are evaluating our triple combination regimen in younger children with the goal of having small molecule treatments for up to 90% of people with CF. We are also pursuing genetic therapies to address the remaining 10% of people with CF.

Beyond CF, our small molecule programs include programs focused on developing treatments for alpha-1 antitrypsin, or AAT, deficiency, APOL1-mediated kidney diseases, and pain. We are evaluating CTX001, a genetic therapy, as a potential treatment for sickle cell disease, or SCD, and transfusion-dependent beta thalassemia, or TDT, in Phase 1/2 clinical trials in collaboration with CRISPR Therapeutics AG, or CRISPR. In 2019, through a series of strategic transactions, we acquired preclinical programs to develop cell-based therapies for type 1 diabetes, or T1D, and preclinical genetic therapy programs for Duchenne muscular dystrophy, or DMD, and myotonic dystrophy type 1, or DM1.

Financial Highlights

Revenues

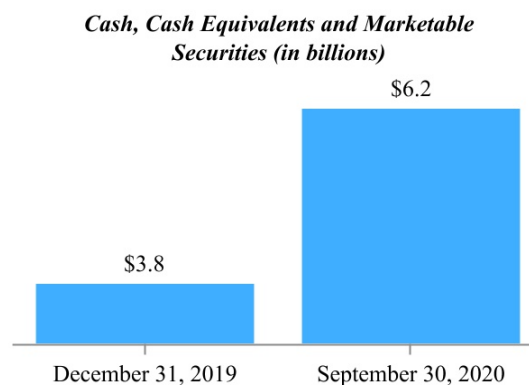
In the third quarter of 2020, our net product revenues continued to increase due to the approval of TRIKAFTA in late 2019 and uptake of our medicines in ex-U.S. markets following completion of several significant reimbursement agreements.



Expenses

Our combined R&D and SG&A expenses decreased to \$678.0 million in the third quarter of 2020 from \$715.6 million in the third quarter of 2019. In the third quarter of 2020, cost of sales was 12% of our net product revenues.

Balance Sheet



Business Updates

Cystic Fibrosis

TRIKAFTA/KAFTRIO (elexacaftor/tezacaftor/ivacaftor and ivacaftor)

- In August 2020, the European Commission granted marketing authorization for KAFTRIO to treat people with CF 12 years of age and older with one *F508del* mutation and one minimal function mutation, or two *F508del* mutations.
- The European Medicines Agency, or EMA, validated a Type II Variation Marketing Authorization Application, or MAA, for KAFTRIO that we believe supports an expansion of the E.U. label to people with CF who have one copy of the *F508del* mutation.
- We reported positive data from our Phase 3 clinical trial evaluating the use of our triple combination regimen in children 6 to 11 years of age with CF who have two copies of the *F508del* mutation or who have one *F508del* mutation and one minimal function mutation. We plan to submit a supplemental New Drug Application, or sNDA, to the FDA for children 6 to 11 years of age with at least one *F508del* mutation in the fourth quarter of 2020.
- The FDA accepted three sNDAs for TRIKAFTA, SYMDEKO and KALYDECO. These regulatory submissions are intended to expand the labels of TRIKAFTA, SYMDEKO and KALYDECO to include people with CF who have rare CFTR mutations.
- We are initiating a Phase 3 clinical trial evaluating the use of our triple combination regimen in children two to five years of age with CF who have either two copies of the *F508del* mutation or one copy of the *F508del* mutation and one minimal function mutation.

SYMDEKO/SYMKEVI (tezacaftor and ivacaftor)

- The EMA's Committee for Medicinal Products for Human Use, or CHMP, adopted a positive opinion for the label extension of SYMKEVI for the treatment of children 6 to 11 years of age with CF with two *F508del* mutations or one *F508del* mutation and certain residual function mutations.

KALYDECO (ivacaftor)

- In September 2020, the FDA approved KALYDECO to treat infants with CF four months of age to less than six months of age who have at least one mutation in their CFTR gene that is responsive to KALYDECO.
- The EMA's CHMP adopted a positive opinion for the label extension of KALYDECO for the treatment of infants with CF four months of age to less than six months of age who have at least one mutation in their CFTR gene that is responsive to KALYDECO.

Genetic Therapies

- We entered into a new collaboration with Moderna, Inc., or Moderna, aimed at the discovery and development of lipid nanoparticles and mRNAs that can deliver gene-editing therapies to lung cells for the treatment of CF.

Pipeline

Beta Thalassemia and Sickle Cell Disease

- We and our collaborator, CRISPR, are evaluating the use of an ex-vivo CRISPR gene-editing therapy for the treatment of TDT and SCD. This approach aims to edit a patient's hematopoietic stem cells to produce fetal hemoglobin in red blood cells, which has the potential to reduce or eliminate symptoms associated with disease.
- We and our collaborator, CRISPR, previously announced that, as of June 2020, seven patients had been dosed across the two Phase 1/2 clinical trials of the investigational CRISPR/Cas9 gene-editing therapy CTX001 and presented data at the European Hematology Association Congress from two patients with TDT and one patient with severe SCD. Additional patients have been enrolled and dosed in both TDT and SCD Phase 1/2 clinical trials. In the fourth quarter of 2020, we expect to report clinical data from additional patients treated with CTX001 and data from patients with longer follow-up.

- The EMA granted Priority Medicines designation to CTX001 for the treatment of severe SCD. CTX001 has been granted Regenerative Medicine Advanced Therapy, Fast Track, Orphan Drug and Rare Pediatric Disease designations from the FDA and Orphan Drug Designation from the European Commission for both TDT and SCD.

Alpha-1 Antitrypsin Deficiency

- We are focused on identifying and developing multiple drug candidates with the potential to correct the misfolding of Z-AAT protein in the liver in order to increase the levels of functional AAT in the blood. Misfolded Z-AAT protein is the root cause of AAT deficiency.
- Enrollment is ongoing in a Phase 2 proof-of-concept clinical trial for the Z-AAT corrector, VX-864. We expect data from this clinical trial in the first half of 2021.
- In October 2020, we discontinued development of VX-814 based on the safety and pharmacokinetic profile of VX-814 observed in a Phase 2 clinical trial.

APOL1-Mediated Kidney Diseases

- We are evaluating inhibitors of APOL1 function to reduce proteinuria in people with serious kidney disease, including focal segmental glomerulosclerosis, or FSGS.
- Enrollment is ongoing in a Phase 2 proof-of-concept clinical trial designed to evaluate the reduction of proteinuria in people with APOL1-mediated FSGS after treatment with VX-147. We expect data from this clinical trial in 2021.

Type 1 Diabetes

- We are developing a cell therapy designed to replace insulin-producing islet cells in patients with T1D. We are pursuing two programs for the transplant of these functional islets into patients: transplantation of islet cells alone, using immunosuppression to protect the implanted cells, and implantation of the islet cells inside a novel immunoprotective device.
- We have completed the required enabling nonclinical studies and manufacturing work to support the submission of an Investigational New Drug, or IND, application to the FDA for the first program (transplantation of islet cells alone) in the fourth quarter of 2020.

COVID-19

We continue to monitor the impacts of the COVID-19 global pandemic on our business. COVID-19 has not affected our supply chain or the demand for our medicines, and we believe that we will be able to continue to supply all of our approved medicines to patients globally. We have adjusted our business operations in response to COVID-19, with a majority of our employees continuing to work remotely. We continue to monitor local COVID-19 trends and government guidance for each of our site locations, and we have begun to re-open certain of our sites utilizing a phased, site-specific approach. To provide a safe working environment for our on-site employees, we have, among other things, limited employee numbers at our sites and increased safety measures, including enhanced cleaning and sanitation protocols, required use of personal protective equipment for all on-site employees, hand sanitation stations throughout our sites and implementation of various social distancing measures while on-site.

Research

We continue to invest in our research programs and foster scientific innovation in order to identify and develop transformative medicines. Our strategy is to combine transformative advances in the understanding of human disease and the science of therapeutics in order to identify and develop new medicines. We believe that pursuing research in diverse areas allows us to balance the risks inherent in drug development and may provide drug candidates that will form our pipeline in future years. To supplement our internal research programs, we acquire technologies and programs and collaborate with biopharmaceutical and technology companies, leading academic research institutions, government laboratories, foundations and other organizations, as needed, to advance research in our areas of therapeutic interest and to access technologies needed to execute on our strategy.

Drug Discovery and Development

Discovery and development of a new pharmaceutical product is a difficult and lengthy process that requires significant financial resources along with extensive technical and regulatory expertise. Potential drug candidates are subjected to rigorous evaluations, driven in part by stringent regulatory considerations, designed to generate information concerning efficacy, side effects, proper dosage levels and a variety of other physical and chemical characteristics that are important in determining whether a drug candidate should be approved for marketing as a pharmaceutical product. Most chemical compounds that are investigated as potential drug candidates never progress into development, and most drug candidates that do advance into development never receive marketing approval. Because our investments in drug candidates are subject to considerable risks, we closely monitor the results of our discovery, research, clinical trials and nonclinical studies and frequently evaluate our drug development programs in light of new data and scientific, business and commercial insights, with the objective of balancing risk and potential. This process can result in abrupt changes in focus and priorities as new information becomes available and as we gain additional understanding of our ongoing programs and potential new programs, as well as those of our competitors. For example, in October 2020, we discontinued development of VX-814 based on the safety and pharmacokinetic profile of VX-814 observed in a Phase 2 clinical trial.

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

Regulatory Compliance

Our marketing of pharmaceutical products is subject to extensive and complex laws and regulations. We have a corporate compliance program designed to actively identify, prevent and mitigate risk through the implementation of compliance policies and systems and through the promotion of a culture of compliance. Among other laws, regulations and standards, we are subject to various U.S. federal and state laws, and comparable laws in other jurisdictions, pertaining to health care fraud and abuse, including anti-kickback and false claims laws, and laws prohibiting the promotion of drugs for unapproved or off-label uses. Anti-kickback laws generally make it illegal for a prescription drug manufacturer to knowingly and willfully solicit, offer, receive or pay any remuneration in return for or to induce the referral of business, including the purchase or prescription of a particular drug that is reimbursed by a state or federal health care program. False claims laws prohibit anyone from knowingly or willfully presenting for payment to third-party payors, including Medicare and Medicaid, claims for reimbursed drugs or services that are false or fraudulent, claims for items or services not provided as claimed, or claims for medically unnecessary items or services. We are subject to laws and regulations that regulate the sales and marketing practices of pharmaceutical manufacturers, as well as laws such as the U.S. Foreign Corrupt Practices Act, which govern our international business practices with respect to payments to government officials. In addition, we are subject to various data protection and privacy laws and regulations in the U.S., E.U., U.K., Canada, Australia and other jurisdictions. We expect to continue to devote substantial resources to maintain, administer and expand these compliance programs globally.

Reimbursement

Sales of our products depend, to a large degree, on the extent to which our products are reimbursed by third-party payors, such as government health programs, commercial insurance and managed health care organizations. We dedicate substantial management and other resources in order to obtain and maintain appropriate levels of reimbursement for our products from third-party payors, including governmental organizations in the U.S. and ex-U.S. markets.

In the U.S., we have worked successfully with third party payors in order to promptly obtain appropriate levels of reimbursement for our CF medicines. We plan to continue to engage in discussions with numerous commercial insurers and managed health care organizations, along with government health programs that are typically managed by authorities in the

individual states, to ensure that payors recognize the significant benefits that our medicines provide by treating the underlying cause of CF and continue to provide access to our medicines.

In Europe and other ex-U.S. markets, we seek government reimbursement for our medicines on a country-by-country basis. This is necessary for each new medicine, as well as label expansions for our current medicines in most countries. We successfully obtained reimbursement for KALYDECO in each significant ex-U.S. market within two years of approval, but experienced significant challenges in obtaining reimbursement for ORKAMBI in certain ex-U.S. markets. With the completion of reimbursement discussions in England and France in 2019, we have reimbursement for ORKAMBI or SYMKEVI in most of our significant ex-U.S. markets. In addition, in several ex-U.S. markets, including England, Ireland, Denmark and Australia, our reimbursement agreements include innovative arrangements that provide a pathway to access and rapid reimbursement for certain future CF medicines. For example, our existing reimbursement agreements in England, Ireland, and Denmark have been expanded to include KAFTRIO. We expect to continue to focus significant resources to obtain appropriate reimbursement for our products in ex-U.S. markets.

Strategic Transactions

Acquisitions

As part of our business strategy, we seek to acquire drugs, drug candidates and other technologies and businesses that have the potential to complement our ongoing research and development efforts. In 2019, we invested significantly in business development transactions designed to augment our pipeline, including the acquisition of Semma Therapeutics, Inc., or Semma, a privately-held company focused on the use of stem cell-derived human islets as a potentially curative treatment for T1D, and Exonics Therapeutics, Inc., or Exonics, a privately-held company focused on creating transformative gene-editing therapies to repair mutations that cause DMD and other severe neuromuscular diseases, including DM1. In the Semma acquisition, we paid approximately \$950.0 million in cash to Semma equity holders. In the Exonics acquisition, we paid approximately \$245.0 million upfront to Exonics equity holders and agreed to additional payments based upon successful achievement of specified development and regulatory milestones. We expect to continue to identify and evaluate potential acquisitions that may be similar to or different from the transactions that we have engaged in previously.

Both of our 2019 acquisitions were accounted for as business combinations. As of the acquisition date for each transaction, the cash payments, as well as the fair value of contingent consideration for Exonics, were allocated primarily to goodwill and the fair value of several in-process research and development assets that we acquired. The fair value of contingent consideration related to Exonics was recorded as a liability and will be adjusted on a quarterly basis in the future. As a result, these acquisitions are primarily reflected in additional assets and liabilities on our condensed consolidated balance sheet. Please refer to Note C, "Acquisitions," and our critical accounting policies, "Acquisitions," in our 2019 Annual Report on Form 10-K for further information regarding the significant judgments and estimates related to our 2019 acquisitions.

Collaboration and Licensing Arrangements

We enter into arrangements with third parties, including collaboration and licensing arrangements, for the development, manufacture and commercialization of drugs, drug candidates and other technologies that have the potential to complement our ongoing research and development efforts. We expect to continue to identify and evaluate collaboration and licensing opportunities that may be similar to or different from the collaborations and licenses that we have engaged in previously.

In-License Agreements

We have entered into collaborations with biotechnology and pharmaceutical companies in order to acquire rights or to license drug candidates or technologies that enhance our pipeline and/or our research capabilities. Over the last several years, we entered into collaboration agreements with a number of companies, including Affinia Therapeutics Inc., Arbor Biotechnologies, Inc., CRISPR, Kymera Therapeutics, Inc., Moderna, and Molecular Templates, Inc. Generally, when we in-license a technology or drug candidate, we make upfront payments to the collaborator, assume the costs of the program and/or agree to make contingent payments, which could consist of milestone, royalty and option payments. Most of these collaboration payments are expensed as research and development expenses; however, depending on many factors, including the structure of the collaboration, the significance of the in-licensed drug candidate to the collaborator's operations and the other activities in which our collaborators are engaged, the accounting for these transactions can vary significantly. In the

nine months ended September 30, 2020 and 2019, our research and development expenses included \$143.3 million and \$261.6 million, respectively, related to upfront and milestones payments pursuant to our collaboration agreements.

Out-License Agreements

We also have out-licensed internally developed programs to collaborators who are leading the development of these programs. These out-license arrangements include our agreement with Merck KGaA, Darmstadt, Germany, which licensed oncology research and development programs from us in early 2017. Pursuant to these out-licensing arrangements, our collaborators are responsible for the research, development and commercialization costs associated with these programs, and we are entitled to receive contingent milestone and/or royalty payments. As a result, we do not expect to incur significant expenses in connection with these programs and have the potential for future collaborative and royalty revenues resulting from these programs.

Please refer to Note C, "Collaborative Arrangements," for further information regarding our in-license agreements and out-license agreements.

Strategic Investments

In connection with our business development activities, we have periodically made equity investments in our collaborators. As of September 30, 2020, we held strategic equity investments in public companies and certain private companies, and we plan to make additional strategic equity investments in the future. While we invest the majority of our cash, cash equivalents and marketable securities in instruments that meet specific credit quality standards and limit our exposure to any one issue or type of instrument, our strategic investments are maintained and managed separately from our other cash, cash equivalents and marketable securities. Any changes in the fair value of equity investments with readily determinable fair values (including publicly traded securities) are recorded to other income (expense), net in our condensed consolidated statement of operations. For equity investments without readily determinable fair values including equity investments in private companies, each reporting period we are required to re-evaluate the carrying value of the investment, which may result in other income (expense).

In the nine months ended September 30, 2020 and 2019, we recorded within other income (expense), net gains of \$140.9 million and \$68.9 million, respectively, related to changes in the fair value of our strategic investments, and from sales of certain equity investments. To the extent that we continue to hold strategic investments, particularly strategic investments in publicly traded companies, we will record other income (expense) related to these strategic investments on a quarterly basis. Due to the increased volatility of the global markets, including as a result of COVID-19, and the high volatility of stocks in the biotechnology industry, we expect the value of these strategic investments to fluctuate and that the increases or decreases in the fair value of these strategic investments will continue to have material impacts on our net income (expense) and our profitability on a quarterly and/or annual basis.

RESULTS OF OPERATIONS

	Three Months Ended September 30,		Increase/(Decrease)		Nine Months Ended September 30,		Increase/(Decrease)	
	2020	2019	\$	%	2020	2019	\$	%
(in thousands, except percentages and per share amounts)								
Revenues	\$ 1,538,271	\$ 949,828	\$ 588,443	62 %	\$ 4,577,863	\$ 2,749,556	\$ 1,828,307	66 %
Operating costs and expenses	866,030	850,495	15,535	2 %	2,467,365	2,103,455	363,910	17 %
Income from operations	672,241	99,333	572,908	577 %	2,110,498	646,101	1,464,397	227 %
Other non-operating income (expense), net	73,630	(28,667)	102,297	**	117,677	71,868	45,809	64 %
Provision for income taxes	78,437	13,148	65,289	497 %	120,718	124,393	(3,675)	(3)%
Net income	\$ 667,434	\$ 57,518	\$ 609,916	1,060 %	\$ 2,107,457	\$ 593,576	\$ 1,513,881	255 %
Net income per diluted common share	\$ 2.53	\$ 0.22			\$ 7.98	\$ 2.28		
Diluted shares used in per share calculations	264,079	260,473			264,031	260,182		

** Not meaningful

Net Income

Our net income increased in the third quarter of 2020 as compared to the third quarter of 2019 primarily due to increased revenues resulting from the U.S. approval of TRIKAFTA in the fourth quarter of 2019 and continued uptake of our medicines in ex-U.S. markets. Our net income in the third quarter of 2020 as compared to the third quarter of 2019 also increased due to an increase in the fair value of our strategic investments and decreased collaborative research and development payments, partially offset by increased cost of sales consistent with increased product revenues, increased sales, general and administrative expenses to support our business and an increased provision for income taxes due to our increasing profitability.

Our net income increased in the nine months ended September 30, 2020 as compared to the nine months ended September 30, 2019 primarily due to increased revenues partially offset by increased operating costs and expenses. The increased revenues were primarily due to the U.S. approval of TRIKAFTA in the fourth quarter of 2019 and continued uptake of our medicines in ex-U.S. markets. The increased operating expenses were primarily due to increased cost of sales consistent with increased product revenues, increased investment in research and development and increased sales, general and administrative expenses to support our business.

Revenues

	Three Months Ended September 30,		Increase/(Decrease)		Nine Months Ended September 30,		Increase/(Decrease)	
	2020	2019	\$	%	2020	2019	\$	%
(in thousands, except percentages)								
Product revenues, net	\$ 1,536,271	\$ 949,828	\$ 586,443	62 %	\$ 4,575,863	\$ 2,747,461	\$ 1,828,402	67 %
Collaborative and royalty revenues	2,000	—	2,000	**	2,000	2,095	(95)	(5)%
Total revenues	\$ 1,538,271	\$ 949,828	\$ 588,443	62 %	\$ 4,577,863	\$ 2,749,556	\$ 1,828,307	66 %

** Not meaningful

Product Revenues, Net

	Three Months Ended September 30,		Increase/(Decrease)		Nine Months Ended September 30,		Increase/(Decrease)	
	2020	2019	\$	%	2020	2019	\$	%
(in thousands, except percentages)								
TRIKAFTA/KAFTRIO	\$ 960,308	\$ —	\$ 960,308	**	\$ 2,773,256	\$ —	\$ 2,773,256	**
SYMDEKO/SYMKEVI	156,178	403,714	(247,536)	(61)%	501,066	1,085,821	(584,755)	(54)%
ORKAMBI	225,919	296,711	(70,792)	(24)%	692,038	906,159	(214,121)	(24)%
KALYDECO	193,866	249,403	(55,537)	(22)%	609,503	755,481	(145,978)	(19)%
Total product revenues, net	\$ 1,536,271	\$ 949,828	\$ 586,443	62 %	\$ 4,575,863	\$ 2,747,461	\$ 1,828,402	67 %

** Not meaningful

In the third quarter and nine months ended September 30, 2020, our net product revenues increased by \$586.4 million and \$1.83 billion, respectively, as compared to the third quarter and nine months ended September 30, 2019. The increase in total net product revenues in the third quarter of 2020 and nine months ended September 30, 2020 was primarily due to the launch of TRIKAFTA, which was approved in the United States in the fourth quarter of 2019. Decreases in revenues for our other products were the result of patients in the United States switching from these medicines to TRIKAFTA, partially offset by label expansions and expanded access to our medicines in ex-U.S. markets. In the third quarter and nine months ended September 30, 2020, our net product revenues included \$313.7 million and \$955.4 million, respectively, from ex-U.S. markets. In the third quarter and nine months ended September 30, 2019, our net product revenues included \$239.5 million and \$697.6 million, respectively, from ex-U.S. markets. In the third quarter of 2020, KAFTRIO was approved in the E.U., which we anticipate will positively affect our net product revenues in the future.

Collaborative and Royalty Revenues

Our collaborative and royalty revenues were \$2.0 million in the third quarter and nine months ended September 30, 2020, respectively. We did not record any collaborative and royalty revenues in the third quarter of 2019. In the nine months ended September 30, 2019, our collaborative and royalty revenues were \$2.1 million. Our collaborative revenues have historically fluctuated significantly from one period to another and may continue to fluctuate in the future. Our future royalty revenues will be dependent on if, and when, our collaborators, including Merck KGaA, Darmstadt, Germany, are able to successfully develop drug candidates that we have out-licensed to them.

Operating Costs and Expenses

	Three Months Ended September 30,		Increase/(Decrease)		Nine Months Ended September 30,		Increase/(Decrease)	
	2020	2019	\$	%	2020	2019	\$	%
(in thousands, except percentages)								
Cost of sales	\$ 186,182	\$ 131,914	\$ 54,268	41 %	\$ 533,199	\$ 362,746	\$ 170,453	47 %
Research and development expenses	493,497	555,948	(62,451)	(11)%	1,362,953	1,274,529	88,424	7 %
Sales, general and administrative expenses	184,551	159,674	24,877	16 %	558,613	463,221	95,392	21 %
Change in fair value of contingent consideration	1,800	2,959	(1,159)	(39)%	12,600	2,959	9,641	326 %
Total costs and expenses	\$ 866,030	\$ 850,495	\$ 15,535	2 %	\$ 2,467,365	\$ 2,103,455	\$ 363,910	17 %

Cost of Sales

Our cost of sales primarily consists of the cost of producing inventories that corresponded to product revenues for the reporting period, plus the third-party royalties payable on our net sales of our products. Pursuant to our agreement with the CFF, our tiered third-party royalties on sales of TRIKAFTA/KAFTRIO, SYMDEKO/SYMKEVI, KALYDECO and ORKAMBI, calculated as a percentage of net sales, range from the single digits to the sub-teens, with royalties on sales of TRIKAFTA/KAFTRIO slightly lower than for our other products. Over the last several years, our cost of sales has been increasing due to increased net product revenues. Our cost of sales as a percentage of our net product revenues was approximately 12% and 14% in the third quarter of 2020 and 2019, respectively. Our cost of sales as a percentage of our net product revenues was approximately 12% and 13% in the nine months ended September 30, 2020 and 2019, respectively.

Research and Development Expenses

	Three Months Ended September 30,		Increase/(Decrease)		Nine Months Ended September 30,		Increase/(Decrease)	
	2020	2019	\$	%	2020	2019	\$	%
(in thousands, except percentages)								
Research expenses	\$ 186,152	\$ 302,418	\$ (116,266)	(38)%	\$ 477,560	\$ 537,509	\$ (59,949)	(11)%
Development expenses	307,345	253,530	53,815	21 %	885,393	737,020	148,373	20 %
Total research and development expenses	\$ 493,497	\$ 555,948	\$ (62,451)	(11)%	\$ 1,362,953	\$ 1,274,529	\$ 88,424	7 %

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

Since January 2018, we have incurred approximately \$4.5 billion in research and development expenses associated with drug discovery and development. The successful development of our drug candidates is highly uncertain and subject to a number of risks. In addition, the duration of clinical trials may vary substantially according to the type, complexity and novelty of the drug candidate and the disease indication being targeted. The FDA and comparable agencies in foreign countries impose substantial requirements on the introduction of therapeutic pharmaceutical products, typically requiring lengthy and detailed laboratory and clinical testing procedures, sampling activities and other costly and time-consuming procedures. Data obtained from nonclinical and clinical activities at any step in the testing process may be adverse and lead to discontinuation or redirection of development activities. Data obtained from these activities also are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. The duration and cost of discovery, nonclinical studies and clinical trials may vary significantly over the life of a project and are difficult to predict. Therefore, accurate and meaningful estimates of the ultimate costs to bring our drug candidates to market are not available.

In 2019 and the nine months ended September 30, 2020, costs related to our CF programs represented the largest portion of our development costs. Any estimates regarding development and regulatory timelines for our drug candidates are highly subjective and subject to change. Until we have data from Phase 3 clinical trials, we cannot make a meaningful estimate regarding when, or if, a clinical development program will generate revenues and cash flows.

Research Expenses

	Three Months Ended September 30,		Increase/(Decrease)		Nine Months Ended September 30,		Increase/(Decrease)	
	2020	2019	\$	%	2020	2019	\$	%
(in thousands, except percentages)								
Research Expenses:								
Salary and benefits	\$ 32,145	\$ 33,767	\$ (1,622)	(5)%	\$ 97,513	\$ 80,644	\$ 16,869	21 %
Stock-based compensation expense	15,301	16,170	(869)	(5)%	68,206	50,843	17,363	34 %
Outsourced services and other direct expenses	27,911	27,721	190	1 %	79,837	78,707	1,130	1 %
Collaborative payments	80,050	198,979	(118,929)	(60)%	143,300	251,179	(107,879)	(43)%
Infrastructure costs	30,745	25,781	4,964	19 %	88,704	76,136	12,568	17 %
Total research expenses	\$ 186,152	\$ 302,418	\$ (116,266)	(38)%	\$ 477,560	\$ 537,509	\$ (59,949)	(11)%

We expect to continue to invest in our research programs with a focus on identifying drug candidates with the goal of creating transformative medicines for serious diseases. Our research expenses decreased by 38% in the third quarter of 2020 as compared to the third quarter of 2019 primarily due to a decrease in collaborative payments. Our research expenses decreased by 11% in the nine months ended September 30, 2020 as compared to the nine months ended September 30, 2019, primarily due to a decrease in collaborative payments partially offset by increased expenses to support our cell and genetic therapy programs.

Development Expenses

	Three Months Ended September 30,		Increase/(Decrease)		Nine Months Ended September 30,		Increase/(Decrease)	
	2020	2019	\$	%	2020	2019	\$	%
(in thousands, except percentages)								
Development Expenses:								
Salary and benefits	\$ 73,698	\$ 59,552	\$ 14,146	24 %	\$ 221,828	\$ 178,254	\$ 43,574	24 %
Stock-based compensation expense	45,469	36,334	9,135	25 %	135,526	117,008	18,518	16 %
Outsourced services and other direct expenses	133,595	107,439	26,156	24 %	374,926	298,908	76,018	25 %
Collaborative payments	—	5,000	(5,000)	**	—	10,440	(10,440)	**
Infrastructure costs	54,583	45,205	9,378	21 %	153,113	132,410	20,703	16 %
Total development expenses	\$ 307,345	\$ 253,530	\$ 53,815	21 %	\$ 885,393	\$ 737,020	\$ 148,373	20 %

** Not meaningful

Our development expenses increased by 21% in the third quarter of 2020 as compared to the third quarter of 2019 and increased by 20% in the nine months ended September 30, 2020 as compared to the nine months ended September 30, 2019, primarily due to increased expenses related to our diverse pipeline, including clinical trials, headcount and infrastructure costs.

Sales, General and Administrative Expenses

	Three Months Ended September 30,		Increase/(Decrease)		Nine Months Ended September 30,		Increase/(Decrease)	
	2020	2019	\$	%	2020	2019	\$	%
(in thousands, except percentages)								
Sales, general and administrative expenses	\$ 184,551	\$ 159,674	\$ 24,877	16 %	\$ 558,613	\$ 463,221	\$ 95,392	21 %

Sales, general and administrative expenses increased by 16% in the third quarter of 2020 as compared to the third quarter of 2019 and increased by 21% in the nine months ended September 30, 2020 as compared to the nine months ended September 30, 2019, primarily due to increased global support for our medicines, including incremental investment to support the launch of our triple combination regimen and increased support for our CF pipeline products and other disease areas.

Contingent Consideration

In the third quarter and nine months ended September 30, 2020, the increase in the fair value of contingent consideration potentially payable to Exonics' former equity holders was \$1.8 million and \$12.6 million, respectively. In each of the third quarter and nine months ended September 30, 2019, the increase in the fair value of contingent consideration potentially payable to Exonics' former equity holders was \$3.0 million.

Other Non-Operating Income (Expense), Net

Interest Income

Interest income decreased from \$17.6 million and \$51.3 million in the third quarter and nine months ended September 30, 2019, respectively, to \$3.1 million and \$19.9 million in the third quarter and nine months ended September 30, 2020, respectively, primarily due to a decrease in prevailing market interest rates. Our future interest income will be dependent on the amount of, and prevailing market interest rates on, our outstanding cash equivalents and marketable securities.

Interest Expense

Interest expense was \$13.9 million and \$41.9 million in the third quarter and nine months ended September 30, 2020, respectively, as compared to \$14.5 million and \$44.3 million in the third quarter and nine months ended September 30, 2019, respectively. The majority of our interest expense in these periods was related to imputed interest expense associated with our leased corporate headquarters in Boston. Our future interest expense will be dependent on whether, and to what extent, we borrow amounts under our credit facilities.

Other Income (Expense), Net

Other income (expense), net was income of \$84.4 million and \$139.6 million in the third quarter and nine months ended September 30, 2020, respectively, as compared to an expense of \$31.7 million and income of \$64.8 million in the third quarter and nine months ended September 30, 2019, respectively. Our other income (expense), net in these periods was primarily related to changes in the fair value of our strategic investments, as well as realized gains from sales of certain investments. We expect that due to the volatility of the stock price of biotechnology companies, our other income (expense), net will fluctuate in future periods based on increases or decreases in the fair value of our strategic investments.

Income Taxes

Our provision for income taxes was \$78.4 million and \$120.7 million in the third quarter and nine months ended September 30, 2020, respectively, as compared to \$13.1 million and \$124.4 million in the third quarter and nine months ended September 30, 2019, respectively. Our effective tax rate for the nine months ended September 30, 2020 was lower than the U.S. statutory rate primarily due to (i) discrete tax benefits associated with the \$209.0 million transfer of intellectual property rights to the United Kingdom, the write-off of a long-term intercompany receivable, and an increase in the United Kingdom's corporate tax rate; and (ii) excess tax benefits related to stock-based compensation. Our effective tax rate for the nine months ended September 30, 2019 was lower than the U.S. statutory rate primarily due to excess tax benefits related to stock-based compensation. We released our valuation allowance on the majority of our net operating losses and other deferred tax assets in the fourth quarter of 2018. Starting in 2019, we began recording a provision for income taxes on our pre-tax income using an effective tax rate approximating statutory rates. We expect to utilize our remaining previously benefited U.S. net operating losses in 2020. As a result, a larger portion of our tax provision will represent a cash tax payable in future periods.

LIQUIDITY AND CAPITAL RESOURCES

The following table summarizes the components of our financial condition as of September 30, 2020 and December 31, 2019:

	September 30,	December 31,	Increase/(Decrease)	
	2020	2019	\$	%
(in thousands)				
Cash, cash equivalents and marketable securities	\$ 6,151,058	\$ 3,808,294	\$ 2,342,764	62 %
Working Capital				
Total current assets	7,458,456	4,822,829	2,635,627	55 %
Total current liabilities	(2,004,026)	(1,334,827)	669,199	50 %
Total working capital	<u>\$ 5,454,430</u>	<u>\$ 3,488,002</u>	<u>\$ 1,966,428</u>	<u>56 %</u>

As of September 30, 2020, total working capital was \$5.5 billion, which represented an increase of \$2.0 billion from \$3.5 billion as of December 31, 2019. The increase in total working capital in the nine months ended September 30, 2020 was primarily related to \$2.8 billion of cash provided by operations partially offset by \$408.0 million of cash used to repurchase our common stock pursuant to the share repurchase program that we announced in July 2019 and expenditures for property and equipment of \$212.1 million.

Sources of Liquidity

As of September 30, 2020, we had cash, cash equivalents and marketable securities of \$6.2 billion, which represented an increase of \$2.3 billion from \$3.8 billion as of December 31, 2019. We intend to rely on our existing cash, cash equivalents and marketable securities together with cash flows from product sales as our primary source of liquidity.

We may borrow up to a total of \$2.5 billion pursuant to two revolving credit facilities. We may repay and reborrow amounts under these revolving credit agreements without penalty. Subject to certain conditions, we may request that the borrowing capacity for each of the credit agreements be increased by an additional \$500.0 million, for a total of \$3.5 billion collectively.

Other possible sources of future liquidity include commercial debt, public and private offerings of our equity and debt securities, strategic sales of assets or businesses and financial transactions. Negative covenants in our credit agreement may prohibit or limit our ability to access these sources of liquidity.

Future Capital Requirements

We have significant future capital requirements, including:

- significant expected operating expenses to conduct research and development activities and to operate our organization; and
- substantial facility and capital lease obligations.

In addition:

- We have entered into certain collaboration agreements with third parties that include the funding of certain research, development and commercialization efforts with the potential for future milestone and royalty payments by us upon the achievement of pre-established developmental and regulatory targets and/or commercial targets, and we may enter into additional business development transactions, including acquisitions, collaborations and equity investments, that require additional capital.
- In 2019, we reached an agreement with the French government and agreed to repay a portion of the amounts we have collected under the ORKAMBI early access programs in France to the French government in the fourth quarter of 2020 based on the difference between the invoiced amount and the final amount for ORKAMBI distributed through these programs as reflected in the structure of the agreement with the French government.
- To the extent we borrow amounts under the credit agreements we entered into in 2019 and 2020, we would be required to repay any outstanding principal amounts in 2024 or 2022, respectively.

- As of September 30, 2020, \$56.0 million remained available to fund repurchases under our share repurchase program.

We expect that cash flows from our products together with our current cash, cash equivalents and marketable securities will be sufficient to fund our operations for at least the next twelve months and do not expect COVID-19 to have an adverse effect on our liquidity. The adequacy of our available funds to meet our future operating and capital requirements will depend on many factors, including the amounts of future revenues generated by our products, and the potential introduction of one or more of our other drug candidates to the market, the level of our business development activities and the number, breadth, cost and prospects of our research and development programs.

Financing Strategy

We may raise additional capital by borrowing under credit agreements, through public offerings or private placements of our securities or securing new collaborative agreements or other methods of financing. We will continue to manage our capital structure and will consider all financing opportunities, whenever they may occur, that could strengthen our long-term liquidity profile. There can be no assurance that any such financing opportunities will be available on acceptable terms, if at all.

CONTRACTUAL COMMITMENTS AND OBLIGATIONS

Our commitments and obligations were reported in our Annual Report on Form 10-K for the year ended December 31, 2019, which was filed with the Securities and Exchange Commission, or SEC, on February 13, 2020. There have been no material changes from the contractual commitments and obligations previously disclosed in that Annual Report on Form 10-K.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Our discussion and analysis of our financial condition and results of operations are based upon our condensed consolidated financial statements prepared in accordance with generally accepted accounting principles in the United States. The preparation of these financial statements requires us to make certain estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reported periods. These items are monitored and analyzed by management for changes in facts and circumstances, and material changes in these estimates could occur in the future. Changes in estimates are reflected in reported results for the period in which the change occurs. We base our estimates on historical experience and various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ from our estimates if past experience or other assumptions do not turn out to be substantially accurate. During the nine months ended September 30, 2020, there were no material changes to our critical accounting policies as reported in our Annual Report on Form 10-K for the year ended December 31, 2019, which was filed with the SEC on February 13, 2020.

RECENT ACCOUNTING PRONOUNCEMENTS

For a discussion of recent accounting pronouncements, please refer to Note A, “Basis of Presentation and Accounting Policies.”

Item 3. Quantitative and Qualitative Disclosures About Market Risk

As part of our investment portfolio, we own financial instruments that are sensitive to market risks. The investment portfolio is used to preserve our capital. None of these market risk-sensitive instruments are held for trading purposes. We do not have derivative financial instruments in our investment portfolio.

Interest Rate Risk

We invest our cash in a variety of financial instruments, principally securities issued by the U.S. government and its agencies, investment-grade corporate bonds and commercial paper, and money market funds. These investments are denominated in U.S. Dollars. All of our interest-bearing securities are subject to interest rate risk and could decline in value if interest rates fluctuate, including potential fluctuations as a result of COVID-19. Substantially all of our investment portfolio consists of marketable securities with active secondary or resale markets to help ensure portfolio liquidity, and we have implemented guidelines limiting the term-to-maturity of our investment instruments. Due to the conservative nature of these instruments, we do not believe that we have a material exposure to interest rate risk. If interest rates were to increase or decrease by 1%, the fair value of our investment portfolio would increase or decrease by an immaterial amount.

We entered into a credit agreement in each of 2019 and 2020. Loans under these credit agreements bear interest, at our option, at either a base rate or a Eurocurrency rate, in each case plus an applicable margin based on our consolidated leverage ratio (the ratio of our total consolidated funded indebtedness to our consolidated EBITDA for the most recently completed four fiscal quarter period). Pursuant to the credit agreement that we entered into in 2019, the applicable margin on base rate loans ranges from 0.125% to 0.500% and the applicable margin on Eurocurrency loans ranges from 1.125% to 1.500%. Pursuant to the credit agreement that we entered into in 2020, the applicable margin on base rate loans ranges from 0.500% to 0.875% and the applicable margin on Eurocurrency loans ranges from 1.500% to 1.875%. We do not believe that changes in interest rates related to either credit agreement would have a material effect on our financial statements. As of September 30, 2020, we had no principal or interest outstanding under either of our existing credit facilities. A portion of our "Interest expense" in the fourth quarter of 2020 will be dependent on whether, and to what extent, we borrow amounts under these existing facilities.

Foreign Exchange Market Risk

As a result of our foreign operations, we face exposure to movements in foreign currency exchange rates, primarily the Euro and British Pound against the U.S. Dollar. Fluctuations in the global markets, including as a result of COVID-19, may have a positive or negative effect on our foreign exchange rate exposure. The current exposures arise primarily from cash, accounts receivable, intercompany receivables and payables, payables and accruals and inventories. Both positive and negative effects to our net revenues from international product sales from movements in exchange rates are partially mitigated by the natural, opposite effect that exchange rates have on our international operating costs and expenses.

We have a foreign currency management program with the objective of reducing the effect of exchange rate fluctuations on our operating results and forecasted revenues and expenses denominated in foreign currencies. We currently have cash flow hedges for the Euro, British Pound, Canadian Dollar and Australian Dollar related to a portion of our forecasted product revenues that qualify for hedge accounting treatment under U.S. GAAP. We do not seek hedge accounting treatment for our foreign currency forward contracts related to monetary assets and liabilities that impact our operating results. As of September 30, 2020, we held foreign exchange forward contracts that were designated as cash flow hedges with notional amounts totaling \$966.6 million representing a net liability at fair value of \$32.1 million on our condensed consolidated balance sheet.

Although not predictive in nature, we believe a hypothetical 10% threshold reflects a reasonably possible near-term change in exchange rates. Assuming that the September 30, 2020 exchange rates were to change by a hypothetical 10%, the fair value recorded on our condensed consolidated balance sheet related to our foreign exchange forward contracts that were designated as cash flow hedges as of September 30, 2020 would change by approximately \$96.7 million. However, since these contracts hedge a specific portion of our forecasted product revenues denominated in certain foreign currencies, any change in the fair value of these contracts is recorded in "Accumulated other comprehensive loss" on our condensed consolidated balance sheet and is reclassified to earnings in the same periods during which the underlying product revenues affect earnings. Therefore, any change in the fair value of these contracts that would result from a hypothetical 10% change in exchange rates would be entirely offset by the change in value associated with the underlying hedged product revenues

resulting in no impact on our future anticipated earnings and cash flows with respect to the hedged portion of our forecasted product revenues.

Equity Price Risk

Information required by this section is incorporated by reference from the discussion in the “Strategic Investments” section of this Part I, Item 2, “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management (under the supervision and with the participation of our chief executive officer and chief financial officer), after evaluating the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this Quarterly Report on Form 10-Q, has concluded that, based on such evaluation, as of September 30, 2020 our disclosure controls and procedures were effective and designed to provide reasonable assurance that the information required to be disclosed is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. In designing and evaluating our disclosure controls and procedures, our management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Changes in Internal Controls Over Financial Reporting

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended) occurred during the three months ended September 30, 2020 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. Other Information

Item 1. Legal Proceedings

We are not currently subject to any material legal proceedings.

Item 1A. Risk Factors

Information regarding risk factors appears in Part I, Item 1A. "Risk Factors" of our Annual Report on Form 10-K for the year ended December 31, 2019, which was filed with the SEC on February 13, 2020. There have been no material changes from the risk factors previously disclosed in the Annual Report on Form 10-K, except as discussed in Part II, Item 1A. "Risk Factors" in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2020, which was filed with the SEC on May 1, 2020 and our Quarterly Report on Form 10-Q for the quarter ended June 30, 2020, which was filed with the SEC on July 31, 2020 and is being updated below.

We are subject to risks associated with the spread of COVID-19.

COVID-19 has broadly affected the global economy, resulted in significant travel and work restrictions in many regions and has put a significant strain on healthcare resources. COVID-19 has had, and we expect it will continue to have, an impact on our operations and an impact on the operations of our collaborators, third-party contractors and other entities, including governments, governmental agencies and payors, with which we interact. To date, the most significant effect on our business operations has been the requirement that a majority of our employees work remotely. We have re-initiated enrollment and dosing in all of our ongoing clinical trials and initiated new clinical trials despite some earlier temporary pauses to enrollment and dosing caused by COVID-19.

We continue to monitor local COVID-19 trends and government guidance for each of our site locations and have begun to re-open certain of our sites utilizing a phased, site-specific approach. There can be no assurance that these re-openings will continue or that, due to additional waves of increased infections, updated government guidance or other considerations, we will not be required to temporarily close or ramp-down sites that had re-opened or to pause enrollment and dosing at clinical trial sites. Any site closure or pause of a clinical trial could harm our operations and delay the development of our product candidates.

In the future, the economic impacts of the COVID-19 pandemic could affect our business directly or indirectly, including potentially affecting the net prices for our products through changes in our payor mix as a result of increased unemployment in the United States or increased pressure on healthcare costs. The effects on our research, development, manufacturing and commercialization activities will be dependent on, among other things, the severity and duration of the COVID-19 pandemic, and any worsening of the global economic environment as a result thereof, as well as the impact of the pandemic on our third-party manufacturers, suppliers, distributors, subcontractors and customers. While the ultimate impact of COVID-19 on our business is highly uncertain, any negative impacts that materialize could materially adversely affect our operations, financial performance and stock price. Any negative impacts of COVID-19, alone or in combination with others, could exacerbate other risk factors discussed in Part I, "Item 1A. Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2019. The full extent to which the COVID-19 pandemic will negatively affect our operations, financial performance and stock price will depend on future developments that are highly uncertain and cannot be predicted, including the scope and duration of the pandemic and actions taken by governmental authorities and other third parties in response to the pandemic.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

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

- our expectations regarding the amount of, timing of, and trends with respect to our financial performance, including revenues, costs and expenses and other gains and losses, including those related to net product revenues;
- our expectations regarding the effect of COVID-19 on, among other things, our financial performance, liquidity, business and operations, including manufacturing, supply chain, research and development activities and pipeline programs;
- our expectations regarding clinical trials, development timelines, regulatory authority filings, submissions and potential approvals and label expansions for ivacaftor, lumacaftor, tezacaftor, elexacaftor, and any combination regimen;

- our ability to obtain reimbursement for our medicines in the U.S. and ex-U.S. markets and our ability to launch, commercialize and market our medicines or any of our other drug candidates for which we obtain regulatory approval;
- our expectations regarding the timing and structure of clinical trials of our drugs, drug candidates and other pipeline programs and the expected timing of our receipt of data from our ongoing and planned clinical trials;
- the data that will be generated by ongoing and planned clinical trials and the ability to use that data to advance compounds, continue development or support regulatory filings;
- our beliefs regarding the support provided by clinical trials and preclinical and nonclinical studies of our drug candidates and other pipeline programs for further investigation, clinical trials or potential use as a treatment;
- our expectations regarding the potential benefits and commercial potential of our product candidates, including the potential approach to treating specific diseases;
- our plan to continue investing in our research and development programs, including anticipated timelines for our programs, and our strategy to develop our pipeline programs, alone or with third party-collaborators;
- the potential future benefits of our acquisitions and collaborations;
- the establishment, development and maintenance of collaborative relationships, including potential milestone payments or other obligations;
- potential business development activities, including the identification of potential collaborative partners or acquisition targets;
- potential fluctuations in foreign currency exchange rates;
- our expectations regarding our provision for or benefit from income taxes and the utilization of our deferred tax assets, including the impact of the Coronavirus Aid, Relief and Economic Security Act;
- our ability to use our research programs to identify and develop new drug candidates to address serious diseases and significant unmet medical needs; and
- our liquidity and our expectations regarding the possibility of raising additional capital.

Any or all of our forward-looking statements in this Quarterly Report on Form 10-Q may turn out to be wrong. There are a number of assumptions, risks, and uncertainties, known or unknown, which could cause actual events or results to differ materially from those indicated by our forward-looking statements, including the risks and uncertainties described under “Risk Factors” in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2019, which was filed with the SEC on February 13, 2020, our Quarterly Report on Form 10-Q for the quarter ended March 31, 2020, which was filed with the SEC on May 1, 2020, our Quarterly Report on Form 10-Q for the quarter ended June 30, 2020, which was filed with the SEC on July 31, 2020 and in this Quarterly Report on Form 10-Q. These are factors and uncertainties that we think could cause our actual results to differ materially from expected results. Other factors and uncertainties besides those listed there could also adversely affect us.

Without limiting the foregoing, the words “believes,” “anticipates,” “plans,” “intends,” “expects,” “could,” “may,” “potential,” “will,” “estimate” and similar expressions are intended to identify forward-looking statements. The forward-looking statements contained herein represent our estimate only as of the date of this filing and should not be relied upon as representing our estimate as of any subsequent date. While we may elect to update these forward-looking statements at some point in the future, we specifically disclaim any obligation to do so to reflect actual results, changes in assumptions or changes in other factors affecting such forward-looking statements.

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

In July 2019, our Board of Directors approved a share repurchase program (the “2019 Share Repurchase Program”), pursuant to which we are authorized to repurchase up to \$500.0 million of our common stock between August 1, 2019 and December 31, 2020. The table set forth below shows repurchases of securities by us during the three months ended September 30, 2020 under our 2019 Share Repurchase Program.

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1)	Approximate Dollar Value of Shares that May Yet be Purchased Under the Plans or Programs (1)
July 1, 2020 to July 31, 2020	—	\$—	—	\$164,001,989
August 1, 2020 to August 31, 2020	310,562	\$270.48	310,562	\$80,002,649
September 1, 2020 to September 30, 2020	92,157	\$260.42	92,157	\$56,003,011
Total	402,719	\$268.17	402,719	\$56,003,011

(1) Under our 2019 Share Repurchase Program, we are authorized to purchase shares from time to time through open market or privately negotiated transactions. Such purchases may be made pursuant to Rule 10b5-1 plans or other means as determined by our management and in accordance with the requirements of the Securities and Exchange Commission.

Item 6. Exhibits

Exhibit Number	Exhibit Description
10.1	Credit Agreement, dated as of September 18, 2020, by and among Vertex Pharmaceuticals Incorporated, Bank of America, N.A. and the other lenders party thereto.
31.1	Certification of the Chief Executive Officer under Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of the Chief Financial Officer under Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of the Chief Executive Officer and the Chief Financial Officer under Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	XBRL Taxonomy Extension Schema
101.CAL	XBRL Taxonomy Extension Calculation
101.LAB	XBRL Taxonomy Extension Labels
101.PRE	XBRL Taxonomy Extension Presentation
101.DEF	XBRL Taxonomy Extension Definition
104	Cover Page Interactive Data File—the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.

SIGNATURES

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

Vertex Pharmaceuticals Incorporated

October 30, 2020

By:

/s/ Charles F. Wagner, Jr.

Charles F. Wagner, Jr.

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

Published CUSIP Numbers: 92534MAK9 (Deal)

92534MAL7 (Revolver)

CREDIT AGREEMENT

Dated as of September 18, 2020

among

VERTEX PHARMACEUTICALS INCORPORATED,

as the Company and a Borrower,
THE SUBSIDIARIES OF THE COMPANY PARTY HERETO,

as Designated Foreign Borrowers or Subsidiary Guarantors,

BANK OF AMERICA, N.A.,

as Administrative Agent, Swingline Lender and an L/C Issuer,

and

THE LENDERS PARTY HERETO

BofA SECURITIES, INC.,

CITIBANK, N.A.,

JPMORGAN CHASE BANK, N.A.,

SOCIÉTÉ GÉNÉRALE,

TRUIST SECURITIES, INC., and

WELLS FARGO SECURITIES, LLC,

as Joint Lead Arrangers, Joint Bookrunners and Co-Syndication Agents,

and

MIZUHO BANK, LTD.,

MUFG BANK, LTD.,

PNC BANK, NATIONAL ASSOCIATION,

SUMITOMO MITSUI BANKING CORPORATION, and

U.S. BANK NATIONAL ASSOCIATION,

as Co-Documentation Agents

The Borrowers hereby acknowledge that, under the Credit Reporting Act 2013 (Ireland), lenders are required to provide personal and credit information for credit applications and credit agreements of €500 and above to the Central Credit Register. This information will be held on the Central Credit Register and may be used by other lenders when making decisions on your credit applications and credit agreements.

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CREDIT AGREEMENT

This **CREDIT AGREEMENT** is entered into as of September 18, 2020, among **VERTEX PHARMACEUTICALS INCORPORATED**, a Massachusetts corporation (the "Company"), **VERTEX PHARMACEUTICALS (EUROPE) LIMITED**, a private limited company incorporated in England and Wales with registered number 02907620 ("Vertex Europe"), **VERTEX PHARMACEUTICALS (IRELAND) LIMITED**, a private company limited by shares incorporated in Ireland with registered number 502558 ("Vertex Ireland"), any other Foreign Subsidiaries of the Company party hereto pursuant to Section 2.16 (together with Vertex Europe and Vertex Ireland, collectively, the "Designated Foreign Borrowers", and each, a "Designated Foreign Borrower", and the Designated Foreign Borrowers together with the Company, collectively, the "Borrowers", and each, a "Borrower"), the Subsidiaries of the Company as are or may from time to time become parties to this Agreement as Subsidiary Guarantors (defined herein), the Lenders (defined herein), and **BANK OF AMERICA, N.A.**, as Administrative Agent, Swingline Lender and an L/C Issuer.

PRELIMINARY STATEMENTS:

WHEREAS, the Borrowers have requested that the Lenders, the Swingline Lender and the L/C Issuers make loans and other financial accommodations to the Borrowers in an aggregate amount of \$2,000,000,000, in the form of a revolving credit facility.

WHEREAS, the Lenders, the Swingline Lender and the L/C Issuers have agreed to make such loans and other financial accommodations to the Borrowers on the terms and subject to the conditions set forth herein.

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

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

1.01 **Defined Terms.**

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

"Acquisition" means the acquisition, whether through a single transaction or a series of related transactions, of (a) a majority of the Voting Stock or other controlling ownership interest in another Person (including the purchase of an option, warrant or convertible or similar type security to acquire such a controlling interest at the time it becomes exercisable by the holder thereof), whether by purchase of such equity or other ownership interest or upon the exercise of an option or warrant for, or conversion of securities into, such equity or other ownership interest, or (b) assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person.

"Additional Commitment Lender" has the meaning specified in Section 2.19(c).

“Additional Obligations” means (a) all obligations arising under Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements and (b) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, expenses and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, expenses and fees are allowed claims in such proceeding; provided that (x) Additional Obligations shall be guaranteed pursuant to the Guaranty only until such time as the Guaranty terminates pursuant to Section 10.06 and (y) any release of Guarantors and/or Designated Foreign Borrowers effected in a manner not prohibited by this Agreement and the other Loan Documents shall not require the consent of holders of obligations under any Guaranteed Cash Management Agreements or any Guaranteed Hedge Agreements; provided, further, that Additional Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

“Adjusted Consolidated Leverage Ratio” has the meaning specified in Section 7.11(a).

“Adjustment” has the meaning specified in Section 3.03(c).

“Administrative Agent” means Bank of America (as defined below) (or any of its designated branch offices or affiliates), in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means, with respect to any currency, the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 1.01(a) with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify the Company and the Lenders.

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

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

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

“Agent Parties” has the meaning specified in Section 11.02(c).

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

“Agreement” means this Credit Agreement, including all schedules, exhibits and annexes hereto.

“Agreement Currency” has the meaning specified in Section 11.23.

“Alternative Currency” means any of the following currencies: (a) Australian Dollars, (b) Canadian Dollars, (c) Euro, (d) Sterling, (e) Swiss Francs and (f) each other currency (other than Dollars) that is approved in accordance with Section 1.09; provided that, for each Alternative Currency, such requested currency is an Eligible Currency.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

“Alternative Currency Sublimit” means an amount equal to the lesser of (a) \$100,000,000 and (b) the Aggregate Revolving Commitments. The Alternative Currency Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

“Applicable Designated Foreign Borrower Documents” has the meaning specified in Section 5.23(a).

“Applicable Percentage” means, with respect to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Facility represented by such Revolving Lender’s Revolving Commitment or, as the context may require, Revolving Commitment of any applicable Class at such time, subject (in each case) to adjustment as provided in Section 2.15. If the Revolving Commitments of all of the Revolving Lenders to make Revolving Loans and the obligation of the L/C Issuers to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Commitments have expired, then the Applicable Percentage of each Revolving Lender in respect of any Class of the Revolving Facility shall be determined based on the Applicable Percentage of such Revolving Lender in respect of the Revolving Facility most recently in effect (including, with respect to any such Class), giving effect to any subsequent assignments. The Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 1.01(b) as of the Closing Date (and as automatically updated pursuant to Section 2.18 or 2.19) or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto or in any documentation executed by such Lender pursuant to Section 2.18 or 2.19.

“Applicable Rate” means, for any day, the rate per annum set forth below opposite the applicable Level then in effect (based on the Consolidated Leverage Ratio), it being understood that the Applicable Rate for (a) Revolving Loans that are Base Rate Loans shall be the percentage set forth under the column “Base Rate Loans”, (b) Revolving Loans that are Eurocurrency Rate Loans shall be the percentage set forth under the column “Eurocurrency Rate Loans & Letter of Credit Fee”, (c) the Letter of Credit Fee shall be zero, and (d) the Commitment Fee shall be the percentage set forth under the column “Commitment Fee”:

Level	Consolidated Leverage Ratio	Eurocurrency Rate Loans	Base Rate Loans	Commitment Fee
I	< 1.00 to 1.00	1.500%	0.500%	0.250%
II	≥ 1.00 to 1.00 but < 2.00 to 1.00	1.625%	0.625%	0.275%
III	≥ 2.00 to 1.00 but < 3.00 to 1.00	1.750%	0.750%	0.300%
IV	≥ 3.00 to 1.00	1.875%	0.875%	0.325%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Level IV shall apply, in each case as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and in each case shall remain in effect until the first Business Day following the date on which such Compliance Certificate is delivered.

Notwithstanding anything to the contrary contained in this definition, (x) the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b), (y) the initial Applicable Rate shall be set forth in Level I until the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a) for the fiscal year ending December 31, 2020, and (z) the Applicable Rate with respect to Credit Extensions under Extended Revolving Commitments of any Revolving Extension Series shall be as set forth in the Revolving Extension Amendment relating thereto. Any adjustment in the Applicable Rate shall be applicable to all Credit Extensions then existing or subsequently made or issued.

“Applicable Revolving Percentage” means, with respect to any Revolving Lender at any time, such Revolving Lender’s Applicable Percentage in respect of the Revolving Facility (or, as the context may require, the Applicable Percentage in respect of the Revolving Facility reflecting a specified Class of Revolving Commitments) at such time.

“Applicable Time” means, with respect to any Borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Applicant Foreign Borrower” has the meaning specified in Section 2.16(b).

“Appropriate Lender” means, at any time, (a) with respect to the Revolving Facility, a Lender that has a Revolving Commitment or holds Revolving Loans thereunder (or as applicable and as the context shall require, a Lender that has a Class of Revolving Commitments or holds a specified Class of Revolving Loans) at such time, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuers and (ii) if any Letters of Credit have been issued pursuant to Section 2.03, the Revolving Lenders and (c) with respect to the Swingline Sublimit, (i) the Swingline Lender and (ii) if any Swingline Loans are outstanding pursuant to Section 2.04(a), the Revolving Lenders.

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

“Arrangers” means (a) BofA Securities, Inc., (b) Citibank, N.A., (c) JPMorgan Chase Bank, N.A., (d) Société Générale, (e) Truist Securities, Inc. and (f) Wells Fargo Securities, LLC, in their respective capacities as joint lead arrangers and joint bookrunners.

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

“Attributable Indebtedness” means, on any date and without duplication, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP (excluding Capitalized Leases in respect of the Specified Leased Properties), (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease, and (c) in respect of any Sale and Leaseback Transaction, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease.

“Audited Financial Statements” means the audited Consolidated balance sheet of the Company and its Restricted Subsidiaries for the fiscal year ended December 31, 2019, and the related Consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Company and its Restricted Subsidiaries, including the notes thereto.

“Australian Dollar” means the lawful currency of Australia.

“Auto-Extension Letter of Credit” has the meaning specified in Section 2.03(b)(iv).

“Availability Period” means, in respect of any Class of Revolving Commitments, the period from and including the Closing Date (or, if later, the effective date for such Class of

Revolving Commitments) to the earliest of (a) the Maturity Date for such Class, (b) the date of termination of the Revolving Commitments pursuant to Section 2.06, and (c) the date of termination of the Revolving Commitment of each Revolving Lender to make Revolving Loans and of the obligation of each L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

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

“Bail-In Legislation” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank of America” means Bank of America, N.A. and its successors.

“Bankruptcy Code” means Title 11 of the United States Code (11 U.S.C. Section 101 et. seq.) or any successor statute thereto.

“Base Rate” means for any day a fluctuating rate of interest per annum equal to the highest of (a) the Federal Funds Rate plus 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” and (c) the Eurocurrency Rate plus 1.00%; provided that, if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate Loan” means a Revolving Loan that bears interest based on the Base Rate. All Base Rate Loans are available only to the Company and shall be denominated in Dollars.

“Beneficial Ownership Certification” has the meaning specified in Section 4.01(i).

“Beneficial Ownership Regulation” has the meaning specified in Section 4.01(i).

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Borrower” and “Borrowers” have the meanings specified in the introductory paragraph hereto.

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

“Borrowing” means a Revolving Borrowing or a Swingline Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office with respect to Obligations denominated in Dollars is located and:

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any issuance, fundings, disbursements, settlements and payments in Dollars in respect of any Eurocurrency Rate Loan or Letter of Credit denominated in Dollars, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Credit Extension, means any such day that is also a London Banking Day;

(b) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Euro, any issuance, fundings, disbursements, settlements and payments in Euro in respect of any Eurocurrency Rate Loan or Letter of Credit denominated in Euro, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Credit Extension, means a TARGET Day;

(c) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and

(d) if such day relates to any issuance, fundings, disbursements, settlements and payments in a currency other than Dollars or Euro in respect of any Eurocurrency Rate Loan or Letter of Credit denominated in a currency other than Dollars or Euro, or any other dealings in any currency other than Dollars or Euro to be carried out pursuant to this Agreement in respect of any such Credit Extension (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

“Canadian Dollar” and “CAD” means the lawful currency of Canada.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases, subject to Section 1.03(c).

“Capped Call Transactions” means one or more call options referencing the Company’s Equity Interests purchased by the Company in connection with the issuance of Convertible Bond Indebtedness with a strike or exercise price (howsoever defined) initially equal to the conversion price (howsoever defined) of the related Convertible Bond Indebtedness (subject to rounding) and limiting the amount deliverable to the Company upon exercise thereof based on a cap or upper strike price (howsoever defined).

“Captive Insurance Subsidiary” means any Subsidiary of the Company that is subject to regulation as an insurance company (or any Subsidiary thereof) under, and in accordance with, applicable Law.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuers or Swingline Lender (as applicable) or the Lenders, as collateral for L/C Obligations, the Obligations in respect of Swingline Loans, or obligations of the Revolving Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and such L/C Issuer or Swingline Lender (as applicable). “Cash Collateral” and “Cash Collateralization” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Company or any of its Restricted Subsidiaries free and clear of all Liens (other than Permitted Liens):

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

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

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

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

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

(f) solely with respect to any Restricted Subsidiary that is a Foreign Subsidiary, (x) such local currencies in those countries in which such Foreign Subsidiary transacts business from time to time in the ordinary course of business and (y) Investments of comparable tenor and credit quality to those described in the foregoing clauses (a) through (e) customarily utilized in countries in which such Foreign Subsidiary operates for short term cash management purposes; and

(g) other Investments held by the Company and its Restricted Subsidiaries in accordance with the Company's Investment Policy.

“Cash Management Agreement” means any agreement to provide treasury or cash management services, including deposit accounts, overnight draft, credit cards, debit cards, p-cards (including purchasing cards and commercial cards), funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

“Cash Management Bank” means any Person in its capacity as a party to a Cash Management Agreement that, (a) at the time it enters into a Cash Management Agreement with a Loan Party or any Subsidiary, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Cash Management Agreement with a Loan Party or any Subsidiary, in each case in its capacity as a party to such Cash Management Agreement (even if such Person ceases to be a Lender or such Person's Affiliate ceased to be a Lender); provided, however, that for any of the foregoing to be included as a “Guaranteed Cash Management Agreement” on any date of determination by the Administrative Agent, the applicable Cash Management Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Guaranteed Party Designation Notice to the Administrative Agent prior to such date of determination.

“CF Asset Subsidiary” means each Restricted Subsidiary of the Company that (i) owns, possesses the right to use, or controls any Intellectual Property, or (ii) owns or controls any of the material economic rights derived from any Intellectual Property, in each case with respect to clause (i) or (ii), covering the Cystic Fibrosis Drug Franchise Assets. For the avoidance of doubt, Restricted Subsidiaries of the Company that provide commercial distribution services shall not constitute “CF Asset Subsidiaries” pursuant to clause (ii) above as a result of intercompany distributor relationships in the ordinary course of business and any reimbursement arrangements pursuant thereto. As of the Closing Date, Vertex Europe and Vertex Ireland are the only CF Asset Subsidiaries.

“CFC” means a Person that is a controlled foreign corporation within the meaning of Section 957 of the Code.

“CFF” means Cystic Fibrosis Foundation (as successor in interest to Cystic Fibrosis Foundation Therapeutics Incorporated).

“CFF Amendment” means that certain Amendment #7 to the CFF R&D Agreement, dated as of October 13, 2016, by and among the Company and CFF, and any agreements ancillary thereto.

“CFF R&D Agreement” means that certain Research, Development and Commercialization Agreement, dated as of May 24, 2004 between the Company and CFF, as amended.

“CFF Royalty Payments” means royalty payments paid pursuant to the CFF R&D Agreement (as amended by the CFF Amendment) by the Company to CFF, if any, on net sales of compounds.

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

“Change of Control” means an event or series of events by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of thirty-five percent (35)% or more of the Equity Interests of the Company entitled to vote for members of the board of directors or equivalent governing body of the Company on a fully-diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire pursuant to any option right); or

(b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Company cease to be composed of individuals (i) who were members of that board or equivalent governing body on

the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.

“Class” means (a) when used in respect of any Loan or Borrowing, whether such Loan or the Loans comprising such Borrowing are Revolving Loans (other than under Extended Revolving Commitments), Revolving Loans under Extended Revolving Commitments of a given Revolving Extension Series, or Swingline Loans, and (b) when used in respect of any Revolving Commitment, whether such Revolving Commitment is a Revolving Commitment (other than an Extended Revolving Commitment) or an Extended Revolving Commitment of a given Revolving Extension Series. Revolving Extension Series that have different terms and conditions (together with the Revolving Commitments in respect thereof) from any Existing Revolving Tranche, or from other Revolving Extension Series, as applicable, shall be construed to be in separate and distinct Classes.

“Closing Date” means the date hereof.

“Code” means the Internal Revenue Code of 1986.

“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.

“Communication” has the meaning specified in Section 11.18(a).

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

“Compliance Certificate” means a certificate substantially in the form of Exhibit C.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated” means, when used with reference to financial statements or financial statement items of the Company and its Restricted Subsidiaries or any other Person, such statements or items on a consolidated basis in accordance with the consolidation principles of GAAP.

“Consolidated EBITDA” means, for any Measurement Period, the sum of the following determined on a Consolidated basis, without duplication, for the Company and its Restricted Subsidiaries in accordance with GAAP:

- (a) Consolidated Net Income for such Measurement Period, plus

(b) each of the following to the extent deducted (or, in the case of clause (xiv)(A) below, not otherwise included) in calculating such Consolidated Net Income (without duplication):

(i) Consolidated Interest Charges,

(ii) the provision for federal, state, local and foreign income taxes payable,

(iii) depreciation and amortization expense,

(iv) non-cash expenses related to stock-based compensation, benefits or incentives (net of any cash payments related to stock-based compensation, benefits or incentives),

(v) non-cash charges, expenses and losses (including any non-cash charges attributable to impairment of goodwill or other intangible assets or impairment of long-lived assets but excluding any such non-cash charges or losses to the extent (A) there were cash charges with respect to such charges and losses in past accounting periods or (B) there is a reasonable expectation that there will be cash charges with respect to such charges and losses in future accounting periods),

(vi) R&D Collaboration Payments,

(vii) Lease Restructuring Expenses in an aggregate amount not to exceed \$5,000,000 during the term of this Agreement,

(viii) (A) one-time non-recurring transaction fees, costs and expenses, integration, reorganization and restructuring costs and facility consolidation and closing costs incurred in connection with reorganizations and restructurings, provided that such fees, costs and expenses are incurred within twelve (12) months of the occurrence of such applicable triggering event, (B) one-time non-recurring severance costs and expenses, payments to employees on account of their equity ownership and compensation charges incurred in connection with reorganizations and restructurings, provided that such costs, expenses and charges are incurred within twelve (12) months of the occurrence of such applicable triggering event, (C) one-time non-recurring expenses related to the transactions contemplated by this Agreement and any other one-time non-recurring expenses or charges related to any equity offering, Investment, Acquisition, Disposition, divestiture or merger, consolidation, amalgamation or other business combination, in each case, not prohibited under this Agreement, or the incurrence, amendment or modification of Indebtedness permitted to be incurred under this Agreement (including a refinancing thereof) (in each case, whether or not successful), and (D) such other amounts as the Administrative Agent shall approve in its reasonable discretion, provided, however, that the aggregate amount added back pursuant to this clause (viii) in calculating Consolidated EBITDA for any Measurement Period shall not exceed 12.5% of Consolidated EBITDA for such Measurement Period (determined prior to giving effect to such adjustments),

(ix) any earnouts, milestone payments, royalty payments, working capital adjustments and other contingent payment obligations incurred under any Acquisition or other Investment,

(x) net after-tax losses (including all fees and expenses or charges relating thereto) on any sale or disposition of any asset of the Company or any of its Restricted Subsidiaries outside of the ordinary course of business and net after-tax losses from discontinued operations,

(xi) net after-tax losses (including all fees and expenses or charges relating thereto) on the retirement or extinguishment of Indebtedness,

(xii) the effects of adjustments pursuant to GAAP resulting from purchase accounting in relation to Investments not prohibited by this Agreement, or the amortization or write-off of any amounts thereof, net of taxes, in each case, which do not represent a cash item in such period or any future period,

(xiii) to the extent classified as such under Accounting Standards Update No. 2016-01 (“ASU 2016-01”), any net unrealized, non-cash losses associated with the Company’s strategic investments in the ordinary course of business, and

(xiv) (A) proceeds of business interruption insurance in an amount representing the earnings for the applicable period that such proceeds are intended to replace (whether or not received so long as such Person in good faith expects to receive the same within four fiscal quarters of the occurrence of the event for which any such claim is made (it being understood that to the extent not actually received within such fiscal quarters, such proceeds shall be deducted in calculating Consolidated EBITDA for such fiscal quarters)) and (B) the amount of any fee, cost, expense or reserve to the extent actually reimbursed or reimbursable by third parties pursuant to indemnification or reimbursement provisions or similar agreements or insurance (so long as the Company in good faith expects to receive reimbursement for such fee, cost, expense or reserve within the next four fiscal quarters of the occurrence of the event for which any such reimbursement is sought (it being understood that to the extent not actually received within such fiscal quarters, such amounts shall be deducted in calculating Consolidated EBITDA for such fiscal quarters)); provided, however, that (1) the aggregate amount added or added back, as the case may be, pursuant to this clause (xiv) shall not exceed \$50,000,000 during the term of this Agreement and (2) with respect to any claim for business interruption or reimbursement made against any insurer, such insurer has been notified to the potential claim and does not dispute coverage, less

(c) without duplication and to the extent reflected as a gain or otherwise included in the calculation of Consolidated Net Income for such Measurement Period, (i) non-cash gains (excluding any such non-cash gains to the extent (A) there were cash gains with respect to such gains in past accounting periods or (B) there is a reasonable expectation that there will be cash gains with respect to such gains in future accounting periods, but including nonrecurring or unusual gains), (ii) amounts received in respect of upfront, earnout or milestone payments or other similar contingent amounts in connection with any Disposition, (iii) net after-

tax gains (less any fees and expenses or charges relating thereto) on any sale or disposition of any asset of the Company or any of its Restricted Subsidiaries outside of the ordinary course of business and net after-tax gains from discontinued operations, (iv) net after-tax gains (less any fees and expenses or charges relating thereto) on the retirement or extinguishment of Indebtedness and (v) to the extent classified as such under ASU 2016-01, any net unrealized, non-cash gains associated with the Company's strategic investments in the ordinary course of business.

Notwithstanding the foregoing to the contrary, in determining Consolidated EBITDA for any Measurement Period, (I) the net impact of (w) variable interest entities that the Company is required to consolidate pursuant to FASB ASC 810, (x) gains or losses associated with the revaluation of earnouts, milestones or other similar contingent obligations incurred in connection with any Investment (including upfront, earnout or milestone payments) and (y) net unrealized losses/gains from embedded derivatives that require the application of Accounting Standard Codification Topic 815 and related pronouncements (*i.e.*, related revenues minus related expenses and or reversals of accruals), shall, in each case of clauses (w)-(y), be excluded, (II) interest, depreciation and amortization related to the Specified Leased Properties shall be treated as operating expenses, and (III) notwithstanding any accounting principles or standards to the contrary, including Accounting Standards Codification Topic 730 and related pronouncements, for the purposes of calculating Consolidated EBITDA, (x) CFF Royalty Payments shall be characterized as a royalty expense and (y) Quarterly Reimbursement Payments shall be characterized as a reduction to research and development expense.

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Company and its Restricted Subsidiaries on a Consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) all purchase money Indebtedness; (c) unreimbursed obligations under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments; (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business, but including all earnouts, milestone payments, royalty payments, working capital adjustments and other contingent payment obligations (including all R&D Collaboration Payments) that (x) are, or are required to be, classified as liabilities on the financial statements of the Company and its Restricted Subsidiaries in accordance with GAAP and (y) are, or will be, due and payable on or prior to the date that is ninety-one (91) days after the Latest Maturity Date in effect at the time of incurrence thereof); (e) all Attributable Indebtedness; (f) all mandatory obligations to purchase, redeem, retire, defease or otherwise make any payment prior to the Latest Maturity Date in effect at the time of issuance thereof in respect of any Equity Interests or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (g) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (f) above of Persons other than the Company or any Restricted Subsidiary; and (h) all Indebtedness of the types referred to in clauses (a) through (g) above of any partnership or joint venture (other than a joint venture that is

itself a corporation or limited liability company) in which the Company or a Restricted Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Company or such Restricted Subsidiary; provided that “Consolidated Funded Indebtedness” shall not include any intercompany Indebtedness among the Company and/or its Restricted Subsidiaries. To the extent Specified CFF Payments qualify as Consolidated Funded Indebtedness, such Specified CFF Payments shall only constitute Consolidated Funded Indebtedness to the extent that such Specified CFF Payments are settled in cash.

“Consolidated Interest Charges” means, for any Measurement Period, an amount equal to the following, in each case, of or by the Company and its Restricted Subsidiaries on a Consolidated basis for such Measurement Period: (a) the sum of (i) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (ii) the portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP, minus (b) to the extent included in clause (a)(i) above, (i) non-cash amounts attributable to amortization of financing costs paid in a previous period, (ii) non-cash amounts attributable to amortization of debt discounts or accrued interest payable in kind for such period, (iii) any break funding payment made pursuant to Section 3.05, and (iv) any imputed interest expense (including any interest, yield, rent or break funding payment (or similar obligations) paid or payable) in respect of any operating lease, including in respect of any leases of the Specified Leased Properties.

“Consolidated Interest Coverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated EBITDA for the most recently completed Measurement Period to (b) Consolidated Interest Charges for the most recently completed Measurement Period.

“Consolidated Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Measurement Period.

“Consolidated Net Income” means, at any date of determination, the net income (or loss) of the Company and its Restricted Subsidiaries on a Consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (a) extraordinary non-cash gains and extraordinary non-cash losses for such Measurement Period, (b) the net income of any Restricted Subsidiary that is not a Subsidiary Guarantor during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Restricted Subsidiary during such Measurement Period, except that the Company’s equity in any net loss of any such Restricted Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, and (c) any income (or loss) for such Measurement Period of any Person if such Person is not a Restricted Subsidiary, except that the Company’s equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to the Company or a Restricted Subsidiary as a dividend or

other distribution (and in the case of a dividend or other distribution to a Restricted Subsidiary, such Restricted Subsidiary is not precluded from further distributing such amount to the Company as described in clause (b) of this proviso).

“Consolidated Net Worth” means, at any date of determination, the consolidated stockholders’ equity of the Company and its Restricted Subsidiaries on a Consolidated basis at such date.

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

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Convertible Bond Hedge Transactions” means one or more call options referencing the Company’s Equity Interests purchased by the Company in connection with the issuance of Convertible Bond Indebtedness with a strike or exercise price (howsoever defined) initially equal to the conversion or exchange price (howsoever defined) of the related Convertible Bond Indebtedness (subject to rounding).

“Convertible Bond Indebtedness” means Indebtedness having a feature which entitles the holder thereof to convert all or a portion of such Indebtedness into Equity Interests of the Company (and cash in lieu of fractional Equity Interests) and/or cash (in an amount determined by reference to the price of Equity Interests of the Company).

“Copyright License” means any agreement now or hereafter in existence, providing for the grant to any Person of any rights (including, without limitation, the grant of rights for a party to be designated as an author or owner and/or to enforce, defend, use, display, copy, manufacture, distribute, exploit and sell, make derivative works, and require joinder in suit and/or receive assistance from another party) in a Copyright.

“Copyrights” means, collectively, all of the following of any Person: (i) all copyrights, works protectable by copyright, copyright registrations and copyright applications anywhere in the world, (ii) all derivative works, counterparts, extensions and renewals of any of the foregoing, (iii) all income, royalties, damages and payments now or hereafter due and/or payable under any of the foregoing or with respect to any of the foregoing, including, without limitation, damages or payments for past, present and future infringements, violations or misappropriations of any of the foregoing, (iv) the right to sue for past, present and future infringements, violations or misappropriations of any of the foregoing and (v) all rights corresponding to any of the foregoing throughout the world.

“Cost of Acquisition” means, with respect to any Acquisition, as at the date of entering into any agreement therefor, the sum of the following (without duplication): (a) the value of the

Equity Interests of the Company or any Subsidiary to be transferred in connection with such Acquisition, (b) the amount of any cash and Fair Market Value of other property (excluding property described in clause (a) and the unpaid principal amount of any debt instrument) given as consideration in connection with such Acquisition, (c) the amount (determined by using the face amount or the amount payable at maturity, whichever is greater) of any Indebtedness incurred, assumed or acquired by the Company or any Subsidiary in connection with such Acquisition, and (d) all additional purchase price amounts in the form of earnouts, milestone payments, royalty payments, working capital adjustments and other contingent obligations that would be recorded on the financial statements of the Company and its Subsidiaries in accordance with GAAP in connection with such Acquisition. For purposes of determining the Cost of Acquisition for any transaction, the Equity Interests of the Company shall be valued in accordance with GAAP.

“Covered Entity” means any of the following: (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b), (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b) or (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning specified in Section 11.21.

“CRD IV” means (a) Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and (b) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“Credit Parties” means, collectively, the Administrative Agent, the Lenders, the L/C Issuers, each Hedge Bank, each Cash Management Bank, the Indemnitees and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“Cystic Fibrosis Drug Franchise Assets” means (a) all approved products manufactured, sold and/or distributed by the Company or any of its Subsidiaries in any country related to the treatment of patients with cystic fibrosis, including, ivacaftor (tradenname KALYDECO), lumacaftor in combination with ivacaftor (tradenname ORKAMBI), tezacaftor in combination with ivacaftor (tradenames SYMDEKO (US) and SYMKEVI (EU)), elexacaftor in combination with tezacaftor and ivacaftor (tradenames TRIKAFTA(US) and KAFTRIO (EU)) and any drug candidates related to the treatment of cystic fibrosis for which the Company has submitted an application for regulatory approval in any country, including the triple-combination of elexacaftor in combination with ivacaftor and tezacaftor and (b) all proceeds, Intellectual Property, permits and other assets of the Company or any of its Subsidiaries related thereto.

“Debtor Relief Laws” means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement,

receivership, examinership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

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

“Default Rate” means (a) with respect to any Obligation for which a rate is specified, a rate per annum equal to two percent (2%) in excess of the rate otherwise applicable thereto and (b) with respect to any Obligation for which a rate is not specified or available, a rate per annum equal to the Base Rate plus the Applicable Rate for Revolving Loans that are Base Rate Loans plus two percent (2%), in each case, to the fullest extent permitted by applicable Law.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” means, subject to Section 2.15(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Company in writing that such failure is the result of such Lender’s good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any L/C Issuer, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Company, the Administrative Agent, any L/C Issuer or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Company, to confirm in writing to the Administrative Agent and the Company that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Company), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had 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 (a) through (d) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Company, the L/C Issuers, the Swingline Lender and each other Lender promptly following such determination.

“Designated Foreign Borrower” and “Designated Foreign Borrowers” have the meanings specified in the introductory paragraph hereto.

“Designated Foreign Borrower Notice” means the notice substantially in the form of Exhibit O attached hereto.

“Designated Foreign Borrower Request and Assumption Agreement” means the notice substantially in the form of Exhibit N attached hereto.

“Designated Foreign Borrower Requirements” has the meaning specified in Section 2.16(b).

“Designated Jurisdiction” means any country, region or territory to the extent that such country, region or territory is the subject or target of comprehensive Sanctions.

“Designated Lender” has the meaning specified in Section 2.17.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any Sale and Leaseback Transaction) of any property by any Loan Party or any Restricted Subsidiary, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, but excluding any Involuntary Disposition.

“Disqualified Institution” means, on any date, (a) any Person set forth on Schedule 11.06, (b) competitors of the Company or any of its Subsidiaries which have been designated by the Company as a “Disqualified Institution” by written notice to the Administrative Agent and the Lenders, (c) any Affiliate of any such Person identified in clauses (a) and (b) to the extent such Affiliate is either (i) clearly identifiable on the basis of its name or (ii) designated by the Company as a “Disqualified Institution” by written notice to the Administrative Agent and the Lenders; provided that (1) no Person shall be a Disqualified Institution hereunder pursuant to clauses (b) or (c)(ii) until a period of two (2) Business Days has elapsed after the date on which such written designation with respect to such Person shall have been posted to the Platform and (2) “Disqualified Institutions” shall exclude (x) any bona fide fixed income investors, banks (or similar financial institutions) and debt funds and (y) any Person that the Company has designated as no longer being a “Disqualified Institution” by written notice delivered to the Administrative Agent and the Lenders from time to time.

“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 Interest into which it is convertible or for which it is exchangeable) or upon the happening of any event or condition or pursuant to any agreement, (a) matures or is mandatorily redeemable (other than solely for Qualified Stock), 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 event shall be subject to the prior occurrence of the Facility Termination Date), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Stock) (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 event shall be subject to the prior occurrence of the Facility Termination Date), in whole or in part, (c) provides for the scheduled mandatory payments of dividends in cash or (d) is or may be convertible into or exchangeable for Indebtedness or any other Equity Interest that would constitute Disqualified Stock, in each case, prior to the date that is ninety-one (91) days after the Latest Maturity Date in effect at the time of issuance thereof; provided, that Equity Interests issued pursuant to a plan for the benefit of employees of Company or its Subsidiaries or by any such plan to such employees shall not constitute Disqualified Stock solely because it may be required to be repurchased by Company or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

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

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

“DQ List” has the meaning specified in Section 11.06(h)(iv).

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

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

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

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 11.06 (subject to such consents, if any, as may be required under Section 11.06(b)(iii)). For the avoidance of doubt, any Disqualified Institution is subject to Section 11.06(h).

“Eligible Currency” means any lawful currency other than Dollars that is readily available, freely transferable and convertible into Dollars in the international interbank market available to the Lenders in such market and as to which a Dollar Equivalent may be readily calculated. If, after the designation by the Lenders of any currency as an Alternative Currency, any change in currency controls or exchange regulations, or any change in the national or international financial, political or economic conditions imposed in the country in which such currency is issued, results in, in the reasonable opinion of the Administrative Agent (in the case of any Loans to be denominated in an Alternative Currency) or the applicable L/C Issuer (in the case of any Letter of Credit to be denominated in an Alternative Currency), (a) such currency no longer being readily available, freely transferable and convertible into Dollars, (b) a Dollar Equivalent no longer being readily calculable with respect to such currency, (c) providing such currency no longer being practicable for the Lenders in their reasonable business judgment or (d) such currency no longer being a currency in which the Required Lenders or the applicable L/C Issuer, as applicable, are or is willing to make such Credit Extensions in their or its reasonable business judgment (each of the foregoing clauses, a “Disqualifying Event”), then the Administrative Agent shall promptly notify the Lenders and the Company, and such country’s currency shall no longer be an Alternative Currency until such time as the Disqualifying Event(s) no longer exist. Within five (5) Business Days after receipt of such notice from the Administrative Agent, the Borrowers shall repay all Loans in such currency to which the Disqualifying Event applies or convert such Loans into the Dollar Equivalent of Loans in Dollars, subject to the other terms contained herein.

“Environmental Laws” means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, Environmental Permits, concessions, grants, franchises, licenses, agreements or enforceable governmental restrictions relating to pollution and the protection of the environment or the release of any Hazardous Materials into the environment or into public waste management systems.

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

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

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination, provided, however, that Convertible Bond Indebtedness which is permitted under Section 7.02 and convertible into or exchangeable or exercisable for any Equity Interests and Capped Call Transactions, Convertible Bond Hedge Transactions and Warrant Transactions entered into as a part of, or in connection with, an issuance of such Convertible Bond Indebtedness shall not be deemed an Equity Interest hereunder prior to the actual conversion or exercise thereof in full (or, in the case of a partial conversion, the applicable portion thereof) into shares of capital stock of (or other ownership or profit interests in) such Person.

“ERISA” means the Employee Retirement Income Security Act of 1974.

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

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

“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.

“Euro” and “€” mean the single currency of the Participating Member States.

“Eurocurrency Rate” means:

(a) for any Interest Period, with respect to any Credit Extension:

(i) denominated in a LIBOR Quoted Currency, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) (“LIBOR”), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent in its reasonable discretion from time to time) (in such case, the “LIBOR Rate”) at or about 11:00 a.m. (London time) on the Rate Determination Date, for deposits in the relevant currency, with a term equivalent to such Interest Period;

(ii) denominated in Canadian Dollars, the rate per annum equal to the Canadian Dollar Offered Rate, or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent in its reasonable discretion from time to time) at or about 10:00 a.m. (Toronto, Ontario time) on the Rate Determination Date with a term equivalent to such Interest Period;

(iii) denominated in Australian Dollars, the rate per annum equal to the Bank Bill Swap Reference Bid Rate, or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent in its reasonable discretion from time to time) at or about 10:30 a.m. (Melbourne, Australia time) on the Rate Determination Date with a term equivalent to such Interest Period; and

(b) for any interest rate calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at or about 11:00 a.m. (London time) determined two (2) Business Days prior to such date for Dollar deposits being delivered in the London interbank market for deposits in Dollars with a term of one (1) month commencing that day;

provided that, (i) to the extent a comparable or successor rate is approved by the Administrative Agent in its reasonable discretion in connection with any rate set forth in this definition, the approved rate shall be applied in a manner consistent with market practice; provided, further that, to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the

Administrative Agent and (ii) if the Eurocurrency Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Eurocurrency Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurocurrency Rate”. Eurocurrency Rate Loans may be denominated in Dollars or in an Alternative Currency. All Loans denominated in an Alternative Currency or made to a Designated Foreign Borrower must be Eurocurrency Rate Loans.

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

“Excluded Subsidiary” means (a) each Foreign Subsidiary, (b) each CFC, (c) each Subsidiary, substantially all of the assets of which are Equity Interests or Indebtedness of one or more Foreign Subsidiaries, (d) each Immaterial Subsidiary, (e) each Subsidiary that is not a Wholly Owned Subsidiary (for so long as such Subsidiary remains a non-Wholly Owned Subsidiary), (f) each Subsidiary that is prohibited from Guaranteeing the applicable Obligations by any applicable Law or by any agreement or other undertaking to which such Subsidiary is a party (with any Person, other than any Affiliate) or by which its property or assets is bound existing on the Closing Date, (or, with respect to any Subsidiary acquired by the Company or a Restricted Subsidiary after the Closing Date (and so long as such agreement or other undertaking is not with any Affiliate, was not incurred in contemplation of such Acquisition and is disclosed to the Administrative Agent), on the date such Subsidiary is so acquired) or that would require consent, approval, license or authorization of a Governmental Authority or any Person (other than an Affiliate) to Guarantee the Obligations (unless (x) such consent, approval, license or authorization has been received or (y) such prohibition or restriction is terminated or rendered unenforceable or otherwise deemed ineffective by any other applicable Law), (g) each Unrestricted Subsidiary, (h) each Massachusetts Security Corporation, (i) each not for profit Subsidiary, (j) each Captive Insurance Subsidiary, and (k) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Company reasonably agree that the cost or other consequences (including adverse tax consequences) of providing a Guarantee shall be excessive in view of the benefits to be obtained by the Lenders therefrom. Notwithstanding anything to the contrary contained herein, no Subsidiary of the Company shall be an Excluded Subsidiary so long as it guarantees the obligations or is a co-obligor under the Existing Credit Agreement, other than an Excluded Subsidiary that is excluded by reason of clause (a), (b) or (c) of the definition of Excluded Subsidiary.

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Loan Party of 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 thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 10.11 and any other “keepwell, support or other agreement” for the benefit of such Loan Party and any and all guarantees of such Loan Party’s Swap Obligations by other Loan Parties) at the time the Guaranty of such Loan Party becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master

Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) 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 Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Revolving Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Revolving Commitment (other than pursuant to an assignment request by the Company under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii), (a)(iii) or (c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e), (d) any U.S. federal withholding Taxes imposed pursuant to FATCA, (e) any Irish withholding Tax which arises solely because (i) the Lender is not (or has ceased to be) an Irish Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration or application of) any Irish Tax Treaty, or any published practice of the Revenue Commissioners of Ireland or (ii) the Lender is an Irish Treaty Lender and the Company is able to demonstrate that the payment could have been made to the Lender without any deduction or withholding of any tax imposed by Ireland had that Lender complied with its obligations under Section 3.01(f), (f) any United Kingdom taxes required to be deducted or withheld (a “UK Tax Deduction”) from a payment of interest under any Loan Document if on the date on which the payment falls due: (i) the payment could have been made to the relevant Lender without a UK Tax Deduction if the Lender had been a UK Qualifying Lender, but on that date that Lender is not or has ceased to be a UK Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty, or any published practice or published concession of any relevant taxing authority; or (ii) the relevant Lender is a UK Qualifying Lender solely by virtue of sub-paragraph (b) of the definition of UK Qualifying Lender and that relevant Lender has not given a UK Tax Confirmation to the Company and the payment could have been made to the relevant Lender without a UK Tax Deduction if that Lender had given a UK Tax Confirmation to the Company, on the basis that the UK Tax Confirmation would have enabled the relevant Loan Party to have formed a reasonable belief that the payment was an “excepted payment” for the purpose of section 930 of the UK Taxes Act; or (iii) the relevant Lender is a UK Qualifying Lender solely by virtue of sub-paragraph (b) of the definition of UK Qualifying Lender and an officer of HMRC has given (and not revoked) a direction (a “UK Direction”) under section 931 of the UK Taxes Act which relates to that payment and that Lender has received from the relevant Loan Party a certified copy of that UK Direction and the payment could have been made to the Lender without any UK

Tax Deduction if that UK Direction had not been made, and (g) the bank levy as set out in the Finance Act 2011 of the United Kingdom as in force (other than with respect to rates) at the date of this Agreement.

“Existing Borrower” has the meaning specified in Section 7.04(a)(v).

“Existing Credit Agreement” means that certain Credit Agreement, dated as of September 17, 2019, among the Company, certain Subsidiaries of the Company as co-borrowers and/or guarantors from time to time party thereto, Bank of America as administrative agent thereunder, and a syndicate of lenders and l/c issuers from time to time party thereto.

“Existing Maturity Date” has the meaning specified in Section 2.19(a).

“Existing Revolving Tranche” has the meaning specified in Section 2.19(a).

“Extended Revolving Commitments” has the meaning specified in Section 2.19(a).

“Extending Revolving Lenders” has the meaning specified in Section 2.19(b).

“Facility Termination Date” means the date as of which all of the following shall have occurred: (a) the Aggregate Revolving Commitments have terminated, (b) all Obligations have been paid in full (other than contingent indemnification and contingent expense reimbursement obligations), and (c) all Letters of Credit have terminated or expired (other than Letters of Credit that have been Cash Collateralized or as to which other arrangements with respect thereto satisfactory to the Administrative Agent and the applicable L/C Issuer shall have been made).

“Fair Market Value” means, with respect to any asset or property, the price, as determined in good faith by the Company, that could be negotiated in an arms'-length transaction between a willing seller and a willing buyer, neither of whom is under undue pressure or compulsion to complete the transaction (as determined in good faith by the Company).

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

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version of such Code sections 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 or rules adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“FCPA” means the U.S. Foreign Corrupt Practices Act of 1977.

“Federal Funds Rate” means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set

forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Fee Letter” means the letter agreement, dated as of August 14, 2020, between the Company, the Administrative Agent and BofA Securities, Inc. in connection with this Agreement and the other Loan Documents.

“Foreign Government Scheme or Arrangement” has the meaning specified in Section 5.12(d).

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

“Foreign Plan” has the meaning specified in Section 5.12(d).

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

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

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuers, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender’s Applicable Percentage of Swingline Loans other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof.

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

“Funding Indemnity Letter” means a funding indemnity letter, substantially in the form of Exhibit J.

“GAAP” means generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession) including, without limitation, the FASB

Accounting Standards Codification, that are applicable to the circumstances as of the date of determination, consistently applied and subject to Section 1.03.

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

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

“Guaranteed Cash Management Agreement” means any Cash Management Agreement between any Loan Party or any of its Subsidiaries and any Cash Management Bank.

“Guaranteed Hedge Agreement” means any interest rate, currency, foreign exchange, or commodity Swap Contract not prohibited under Article VII between any Loan Party or any of its Subsidiaries and any Hedge Bank.

“Guaranteed Obligations” has the meaning specified in Section 10.01.

“Guaranteed Party Designation Notice” means a notice from any Lender or an Affiliate of a Lender substantially in the form of Exhibit G.

“Guarantors” means, collectively, (a) the Subsidiary Guarantors with respect to all Obligations and Additional Obligations, in each case, unless and until such Person ceases to be a Subsidiary Guarantor in accordance with the terms hereof, (b) the Company with respect to (i) Additional Obligations owing by any of its Subsidiaries, (ii) any Swap Obligation of a Specified Loan Party (determined before giving effect to Sections 10.01 and 10.11) under the Guaranty, and (iii) Obligations of the Designated Foreign Borrowers, and (c) to the extent (i) permitted by applicable Law and (ii) no material adverse tax consequence would result therefrom, each Designated Foreign Borrower with respect to Obligations of each other Designated Foreign Borrower.

“Guaranty” means, collectively, the Guarantee made by the Guarantors under Article X in favor of the Credit Parties, together with each other guaranty delivered pursuant to Section 6.12.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, natural gas, natural gas liquids, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, infectious or medical wastes and all other substances, wastes, chemicals, pollutants, contaminants or compounds of any nature in any form regulated pursuant to any Environmental Law.

“Hedge Bank” means any Person in its capacity as a party to a Swap Contract that, (a) at the time it enters into a Swap Contract, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Swap Contract, in each case, in its capacity as a party to such Swap Contract (even if such Person ceases to be a Lender or such Person’s Affiliate ceased to be a Lender); provided that, for any of the foregoing to be included as a “Guaranteed Hedge Agreement” on any date of determination by the Administrative Agent, the applicable Hedge Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Guaranteed Party Designation Notice to the Administrative Agent prior to such date of determination.

“HMRC” means Her Majesty’s Revenue and Customs (or any other governmental authority with taxing authority in the United Kingdom).

“Honor Date” has the meaning set forth in Section 2.03(c)(i).

“IFRS” means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

“Immaterial Subsidiary” means any Subsidiary that is not a Material Subsidiary.

“Impacted Loans” has the meaning specified in Section 3.03.

“Increasing Revolving Lender” has the meaning specified in Section 2.18(a)(iii).

“Incremental Revolving Facility” has the meaning specified in Section 2.18(a)(i).

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

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations (including, without limitation, earnouts, milestone payments, royalty payments, working capital adjustments, all R&D Collaboration Payments and other contingent obligations) of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable in the ordinary course of business, including recurring royalty payments reflected in the cost of goods sold and (ii) earnouts, milestone payments, royalty payments, working capital adjustments, R&D Collaboration Payments and other contingent obligations that are not required to be, and are not, classified as liabilities on the financial statements of the Company and its Restricted Subsidiaries in accordance with GAAP);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; provided that the amount of such indebtedness that is non-recourse to the Loan Parties or their Restricted Subsidiaries shall be the lesser of (A) the Fair Market Value of such property at such date of determination as determined in good faith by such Person, and (B) the aggregate unpaid amount of such indebtedness;
- (f) all Attributable Indebtedness of such Person;
- (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and
- (h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation

under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. For the avoidance of doubt, “Indebtedness” does not include obligations representing deferred compensation to employees of the Company and its Subsidiaries incurred in the ordinary course of business.

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

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

“Information” has the meaning specified in Section 11.07.

“Intellectual Property” means, collectively, all of the following owned or controlled by any Person: (a) all systems software and applications software (including source code and object code), all documentation for such software, including, without limitation, user manuals, flowcharts, functional specifications, operations manuals, and all formulas, processes, ideas and know-how embodied in any of the foregoing that are developed by such Person, (b) concepts, discoveries, improvements and ideas, know-how, technology, reports, design information, trade secrets, practices, specifications, test procedures, maintenance manuals, research and development, inventions (whether or not patentable), blueprints, drawings, data, customer lists, catalogs, and all physical embodiments of any of the foregoing that are developed by such Person, and (c) Patents and Patent Licenses, Copyrights and Copyright Licenses, Trademarks and Trademark Licenses.

“Intercompany Debt” has the meaning specified in Section 7.02.

“Intercompany Subordination Agreement” means, collectively, each subordination agreement by and among the Administrative Agent, the Loan Parties and their Restricted Subsidiaries, each in form and substance reasonably satisfactory to the Administrative Agent and pursuant to which each of the Loan Parties and their Restricted Subsidiaries agree to subordinate any intercompany Indebtedness owed by any Loan Party to any such Person that is not a Loan Party to the prior payment of all Guaranteed Obligations.

“Interest Payment Date” means, (a) as to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date for such Class of Loans; provided, however, that if any Interest Period for a Eurocurrency Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date for such Class of Loans; and (c) as to any Swingline Loan, the last Business Day of each March, June, September and December and the Latest Maturity Date for any Class of Revolving Commitments maintained by the Swingline Lender (in its capacity as a Revolving Lender).

“Interest Period” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a

Eurocurrency Rate Loan and ending on the date one (1), two (2), three (3) or six (6) months thereafter (in each case, subject to availability) for the interest rate applicable to the relevant currency, as selected by the applicable Borrower in its Loan Notice, or such other period that is twelve (12) months or less requested by the applicable Borrower (in each case, subject to availability) and consented to by all of the Appropriate Lenders; provided that:

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

(b) 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) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the next earliest Maturity Date.

“Investment” means (a) as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (i) the purchase or other acquisition of Equity Interests of another Person, (ii) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person (including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor guarantees Indebtedness of such other Person), or (iii) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person or (b) any R&D Collaboration Payment. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested (without adjustment for subsequent increases or decreases in the value of such Investment).

“Investment Policy” means the investment policy of the Company and its Subsidiaries approved and duly adopted by the board of directors (or other governing body, including any authorized committee of the board of directors) of the Company, as in effect on the Closing Date (or as otherwise approved by such board of directors or governing body from time to time).

“Involuntary Disposition” means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Loan Party or any Subsidiary.

“IP Rights” has the meaning specified in Section 5.21.

“Irish Qualifying Lender” means a Lender which is beneficially entitled to the interest payable to that Lender in respect of an advance under this Agreement and is (a) a bank within the meaning of section 246 of the Taxes Act which is carrying on bona fide banking business in Ireland for the purposes of section 246(3)(a) of the Taxes Act, (b) (i) a body corporate which, by virtue of the law of a Relevant Territory is resident for the purposes of tax in that Relevant

Territory, where that Relevant Territory imposes a tax that generally applies to interest receivable in that Relevant Territory by bodies corporate from sources outside that Relevant Territory or (ii) a body corporate where interest payable in respect of an advance (A) is exempted from the charge to income tax under a double taxation agreement having force of law under the procedures set out in section 826(1) of the Taxes Act or (B) would be exempted from the charge to Irish income tax under an Irish Tax Treaty entered into on or before the payment date of that interest if that Irish Tax Treaty had the force of law under the provisions set out in section 826(1) of the Taxes Act at that date, (iii) a U.S. company, provided the U.S. company is incorporated in the U.S. and is taxed in the U.S. on its worldwide income or (iv) a U.S. limited liability company where (1) the ultimate recipients of the interest would, if they were themselves Lenders, be Irish Qualifying Lenders under sub-paragraphs (i), (ii) or (iii) of this clause (b) and (2) business is conducted through the U.S. limited liability company for market reasons and not for tax avoidance purposes; provided in each case at (i), (ii) (iii) or (iv) the Lender is not carrying on a trade or business in Ireland through a branch or agency with which interest payment is connected, (c) a body corporate, (i) which advances money in the ordinary course of a trade which includes the lending of money; and (ii) where the interest on monies so advanced is taken into account in computing the trading income of such body corporate; and (iii) such body corporate has complied with the notification requirements under section 246(5)(a) of the Taxes Act or (d) a qualifying company within the meaning of section 110 of the Taxes Act or (e) an investment undertaking within the meaning of section 739B of the Taxes Act or (f) an Irish Treaty Lender.

“Irish Treaty Lender” means, a Lender, other than a Lender falling within clause (b) of the definition of Irish Qualifying Lender, which (a) is treated as a resident of an Irish Treaty State for the purposes of an Irish Tax Treaty, (b) does not carry on a business in Ireland through a permanent establishment with which that Lender’s participation in this Agreement is effectively connected and (c) (subject to the completion of any procedural formalities) fulfils any other conditions which must be fulfilled under an Irish Tax Treaty by residents of that Irish Treaty State for such residents to obtain full exemption from tax imposed by Ireland on interest payable under a Loan Document.

“Irish Treaty State” means a jurisdiction having a double taxation treaty with Ireland (an “Irish Tax Treaty”), which has the force of law and which makes provision for full exemption from tax imposed by Ireland on interest.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by an L/C Issuer and the Company (or any Restricted Subsidiary) or in favor of such L/C Issuer and relating to such Letter of Credit.

“Joinder Agreement” means a joinder agreement substantially in the form of Exhibit D executed and delivered in accordance with the provisions of Section 6.12.

“Judgment Currency” has the meaning specified in Section 11.23.

“Latest Maturity Date” means, at any date of determination, the latest Maturity Date applicable to any Class of Loans or Revolving Commitments hereunder at such time, in each case then in effect on such date of determination.

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

“L/C Advance” means, with respect to each Revolving Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Revolving Percentage. All L/C Advances shall be denominated in Dollars.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Borrowing. All L/C Borrowings shall be denominated in Dollars.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuer” means with respect to a particular Letter of Credit, (a) Bank of America, through itself or through one of its designated Affiliates or branch offices, in its capacity as issuer of such Letter of Credit, or any successor issuer thereof, (b) such other Lender selected by the Company (that is reasonably acceptable to the Administrative Agent) pursuant to Section 2.03(1) from time to time to issue such Letter of Credit (provided that no Lender shall be required to become an L/C Issuer pursuant to this clause (b) without such Lender’s consent), or any successor issuer thereof or (c) any Lender selected by the Company (that is reasonably acceptable to the Administrative Agent) to replace a Lender who is a Defaulting Lender at the time of such Lender’s appointment as an L/C Issuer (provided that no Lender shall be required to become an L/C Issuer pursuant to this clause (c) without such Lender’s consent), or any successor issuer thereof.

“L/C Obligations” means, as at any date of determination, the Dollar Equivalent of the aggregate amount (a) available to be drawn under all outstanding Letters of Credit plus (b) of all Unreimbursed Amounts (including all L/C Borrowings). For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. 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 ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lease Restructuring Expenses” means, collectively, the amount by which the aggregate rental expense exceeds the sublease rental income from the leased real properties of the Company where such sublease real property arrangements are entered into by the Company or any of its Restricted Subsidiaries from time to time.

“Lender” means each of the Persons identified as a “Lender” on the signature pages hereto, each other Person that becomes a “Lender” in accordance with this Agreement and, their successors and assigns and, unless the context requires otherwise, includes the Swingline Lender. The term “Lender” shall include any Designated Lender who has funded any Credit Extension.

“Lending Office” means, as to the Administrative Agent, any L/C Issuer or any Lender, the office or offices of such Person described as such in such Person’s Administrative Questionnaire, or such other office or offices as such Person may from time to time notify the Company and the Administrative Agent; which office may include any Affiliate of such Person or any domestic or foreign branch of such Person or such Affiliate.

“Letter of Credit” means any letter of credit issued hereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit. Letters of Credit may be issued in Dollars or in an Alternative Currency.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable L/C Issuer.

“Letter of Credit Expiration Date” means, as to any applicable L/C Issuer, the day that is seven (7) days prior to the Maturity Date for the applicable Class of Revolving Commitments maintained by such L/C Issuer (in its capacity as a Revolving Lender hereunder) (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(h).

“Letter of Credit Report” means a certificate substantially in the form of Exhibit L or any other form approved by the Administrative Agent.

“Letter of Credit Sublimit” means an amount equal to \$0. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Facility.

“LIBOR” has the meaning specified in the definition of Eurocurrency Rate.

“LIBOR Quoted Currency” means Dollars, Euro, Sterling and Swiss Franc, in each case as long as there is a published LIBOR rate with respect thereto.

“LIBOR Screen Rate” means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available

source providing such quotations as may be designated by the Administrative Agent from time to time).

“LIBOR Successor Rate” has the meaning specified in Section 3.03(c).

“LIBOR Successor Rate Conforming Changes” has the meaning specified in Section 3.03(c).

“Lien” means any mortgage, pledge, hypothecation, collateral assignment, collateral deposit arrangement, encumbrance, lien (statutory or otherwise), charge, or similar preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property and any financing lease having substantially the same economic effect as any of the foregoing but excluding precautionary liens and filings made in respect of operating leases and assets subject thereto).

“Loan” means an extension of credit by a Lender to any Borrower under Article II in the form of a Revolving Loan or a Swingline Loan.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Revolving Notes, (c) the Guaranty, (d) the Fee Letter, (e) each Issuer Document, (f) each Joinder Agreement, (g) any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.14, (h) the Intercompany Subordination Agreement, (i) each Designated Foreign Borrower Request and Assumption Agreement and (j) all other agreements and documents now or hereafter executed, acknowledged and/or delivered by or on behalf of any Loan Party pursuant to the foregoing designated as a Loan Document (but specifically excluding any Guaranteed Hedge Agreement or any Guaranteed Cash Management Agreement); provided, however, that for purposes of Section 11.01, “Loan Documents” shall mean this Agreement and the Guaranty.

“Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit E or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Company.

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

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

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

“Master Agreement” has the meaning set forth in the definition of “Swap Contract.”

“Material Acquisition” means any Acquisition for which the Cost of Acquisition is equal to or greater than \$300,000,000.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business or financial condition of the Borrowers and their Restricted Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under the Loan Documents; or (c) a material adverse effect upon ability of the Loan Parties to perform their payment obligations under the Loan Documents, taken as a whole.

“Material Indebtedness” means any Indebtedness in an aggregate principal amount in excess of the Threshold Amount.

“Material Intellectual Property” means, as of any particular date of determination, (a) Intellectual Property that are Cystic Fibrosis Drug Franchise Assets and (b) other Intellectual Property of the Loan Parties and their Subsidiaries where the failure to maintain such Intellectual Property would reasonably be expected to have Material Adverse Effect; provided, however, that any Intellectual Property that would otherwise be considered Material Intellectual Property, which are developed or acquired by the Company or its Subsidiaries after the Closing Date, shall be considered to be Material Intellectual Property as of the date of determination described above.

“Material Subsidiary” means, at any date of determination, any Subsidiary of the Company that (a) together with its Subsidiaries, generates revenue equal to or greater than 5% of Consolidated revenue on a Pro Forma Basis for the Measurement Period most recently ended, (b) together with its Subsidiaries, has total assets (including Equity Interests in other Subsidiaries and excluding investments that are eliminated in consolidation) equal to or greater than 5% of Consolidated total assets as of the end of such Measurement Period, or (c) is otherwise designated as a “Material Subsidiary” at such time pursuant to the proviso to this definition; provided, however, that if at any time there are Subsidiaries which are not classified or designated as “Material Subsidiaries” but which, together with their respective Subsidiaries, collectively (i) generate revenue equal to or greater than 10% of Consolidated revenue on a Pro Forma Basis for the Measurement Period most recently ended or (ii) have total assets (including Equity Interests in other Subsidiaries and excluding investments that are eliminated in consolidation) equal to or greater than 10% of Consolidated total assets as of the end of such Measurement Period, then the Company shall promptly designate one or more of such Subsidiaries as “Material Subsidiaries” such that, after giving effect to such designation, Subsidiaries which are not classified or designated as “Material Subsidiaries” shall, together with their respective Subsidiaries, collectively (A) generate revenue less than 10% of Consolidated revenue on a Pro Forma Basis for the Measurement Period most recently ended and (B) have total assets (including Equity Interests in other Subsidiaries and excluding investments that are eliminated in consolidation) less than 10% of Consolidated total assets as of the end of such Measurement Period.

“Maturity Date” means, as the context may require, (a) with respect to Revolving Commitments (except Extended Revolving Commitments), September 18, 2022, and (b) with

respect to any Class of Extended Revolving Commitments, the maturity date set forth in the Revolving Extension Amendment with respect to such Class of Extended Revolving Commitments; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Maximum Rate” has the meaning specified in Section 11.09.

“Measurement Period” means, at any date of determination, the most recently completed four (4) fiscal quarters of the Company (or, for purposes of determining Pro Forma Compliance, the most recently completed four (4) fiscal quarters of the Company for which financial statements have been delivered pursuant to Section 6.01).

“Medicaid” means that government-sponsored entitlement program under Title XIX, P.L. 89-97 of the Social Security Act, which provides federal grants to states for medical assistance based on specific eligibility criteria, as set forth on Section 1396, et seq. of Title 42 of the United States Code.

“Medicare” means that government-sponsored insurance program under Title XVIII, P.L. 89-97, of the Social Security Act, which provides for a health insurance system for eligible elderly and disabled individuals, as set forth at Section 1395, et seq. of Title 42 of the United States Code.

“Minimum Collateral Amount” means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during any period when a Lender constitutes a Defaulting Lender, an amount equal to 100% of the Fronting Exposure of the L/C Issuers with respect to Letters of Credit issued and outstanding at such time and (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 2.14(a)(i), (a)(ii) or (a)(iii), an amount equal to 103% of the Outstanding Amount of all L/C Obligations.

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

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Company or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

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

“Non-Consenting Lender” means any Lender that either (a) does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders, or all Lenders or all affected Lenders, in accordance with the terms of Section 11.01 and (ii) has been approved by the Required Lenders or (b) does not consent to a request by the Company to extend the Maturity Date pursuant to Section 2.19.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Extension Notice Date” has the meaning specified in Section 2.03(b)(iv).

“Non-LIBOR Quoted Currency” means any currency other than a LIBOR Quoted Currency.

“Notice of Additional L/C Issuer” means a certificate substantially in the form of Exhibit M or any other form approved by the Administrative Agent.

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit K or such other form as may be reasonably approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, expenses and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof pursuant to any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, expenses and fees are allowed claims in such proceeding; provided that Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

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

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction); (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction) and (d) with respect to all entities, 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 (or equivalent or comparable documents with respect to any non-U.S. jurisdiction).

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered,

become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

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

“Outstanding Amount” means (a) with respect to Revolving Loans (including any Class thereof) and Swingline Loans on any date, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Loans and Swingline Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the Dollar Equivalent amount of the aggregate outstanding amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by any Borrower of Unreimbursed Amounts.

“Overnight Rate” means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, an overnight rate determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation.

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

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

“Participating Member State” means any member state of the European Union that has the Euro as its lawful currency in accordance with legislation of the European Union related to Economic and Monetary Union.

“Patent License” means any agreement, now or hereafter in existence, providing for the grant to any Person of any rights (including, without limitation, the right for a party to be designated as an owner and/or to enforce, defend, make, have made, make improvements, manufacture, use, sell, import, export, and require joinder in suit and/or receive assistance from another party) in a Patent.

“Patents” means collectively, all of the following of any Person: (a) all patents, all inventions and patent applications anywhere in the world, (b) all improvements, counterparts, reissues, divisional, re-examinations, extensions, continuations (in whole or in part) and renewals

of any of the foregoing and improvements thereon, (c) all income, royalties, damages or payments now or hereafter due and/or payable under any of the foregoing or with respect to any of the foregoing, including, without limitation, damages or payments for past, present or future infringements, violations or misappropriations of any of the foregoing, (d) the right to sue for past, present and future infringements, violations or misappropriations of any of the foregoing and (e) all rights corresponding to any of the foregoing throughout the world.

“Patriot Act” has the meaning specified in Section 11.19.

“PBGC” means the Pension Benefit Guaranty Corporation.

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

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan, but other than a Multiemployer Plan) that is maintained or is contributed to by the Company and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to Pension Funding Rules.

“Permitted Liens” has the meaning set forth in Section 7.01.

“Permitted Restructuring” means a transaction or series of transactions pursuant to which one or more Restricted Subsidiaries of the Company (other than any Designated Foreign Borrower) are converted, restructured or reorganized due to changes or potential changes in any relevant legal or regulatory framework, whether by (i) transfer, (ii) acquisition, (iii) contribution, (iv) merger, (v) consolidation, (vi) voluntary dissolution, (vii) liquidation, (viii) recapitalization, (ix) change in identity, form, place of organization, incorporation, domicile or, to the extent relevant and subject to Section 5.23(c), centre of main interests (as that term is used in Article 3(1) of the Regulation), or (x) otherwise, in each case the result of which may cause a direct or indirect sale, assignment or transfer of Equity Interests and/or other assets between and among the Company and/or various Restricted Subsidiaries of the Company, and in each case to the extent the Administrative Agent (acting in its reasonable credit judgment) approves such Permitted Restructuring.

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

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

“Plan of Reorganization” has the meaning specified in Section 11.06(h)(iii).

“Platform” has the meaning specified in Section 6.02.

“Priority Indebtedness” means (a) Indebtedness (other than Obligations) of any Loan Party secured by a Lien on any assets of such Loan Party, (b) Indebtedness of any Restricted Subsidiary that is not a Loan Party, and (c) Guarantees of the Company or any Restricted Subsidiary in respect of Indebtedness of any Unrestricted Subsidiary; provided that, the definition of “Priority Indebtedness” shall not include any Guarantees of the Company issued with respect to any operating lease payment obligations of any of the Subsidiaries of the Company.

“Pro Forma Basis” and “Pro Forma Effect” means, for any transaction specified herein, including any Disposition (including of all or substantially all of a division or a line of business), Acquisition, or Investment, or incurrence or assumption of Indebtedness, whether actual or proposed, for purposes of determining compliance with the terms of this Agreement and the other Loan Documents (including, the financial covenants set forth in Section 7.11), each such transaction or proposed transaction shall be given pro forma effect as if such events (including all Credit Extensions made in connection therewith) occurred on the first day of the most recent Measurement Period ended on or before the occurrence of such event, and, for the avoidance of any doubt, shall include the following pro forma adjustments:

(a) in the case of an actual or proposed Disposition or the designation of any Restricted Subsidiary as an Unrestricted Subsidiary, all income statement items (whether positive or negative) attributable to the assets or the Person subject to such Disposition or such designation shall be excluded from the results of the Company and its Restricted Subsidiaries for such Measurement Period to the extent occurring prior to the date of such transaction;

(b) in the case of an actual or proposed Acquisition or any Subsidiary Redesignation, income statement items (whether positive or negative) attributable to the property, line of business or the Person subject to such Acquisition or such Subsidiary Redesignation shall be included in the results of the Company and its Restricted Subsidiaries for such Measurement Period;

(c) interest accrued during the relevant Measurement Period on, and the principal of, any Indebtedness repaid or to be repaid or refinanced in such transaction shall be excluded from the results of the Company and its Restricted Subsidiaries for such Measurement Period; and

(d) any Indebtedness or Investment actually or proposed to be incurred or assumed in such transaction shall be deemed to have been incurred as of the first day of the applicable Measurement Period, and interest on any Indebtedness shall be deemed to have accrued from such day on such Indebtedness at the applicable rates provided therefor (and in the case of interest that does or would accrue at a formula or floating rate, at the rate in effect at the time of determination) and shall be included in the results of the Company and its Restricted Subsidiaries for such Measurement Period.

“Pro Forma Compliance” means, with respect to any transaction, such transaction complies with the financial covenants set forth in Section 7.11 after giving Pro Forma Effect, based upon the results of operations for the most recently completed Measurement Period, to (a) such transaction and (b) all other transactions (including any Credit Extensions) which are contemplated or required to be given Pro Forma Effect hereunder that have occurred on or after the first day of the relevant Measurement Period.

“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.

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

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning specified in Section 11.21.

“Qualified ECP Guarantor” means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualified Stock” means any Equity Interest that is not Disqualified Stock.

“Quarterly Reimbursement Payments” means non-refundable quarterly reimbursements of certain of the Company’s research and development expenses.

“R&D Collaboration Payments” means one-time non-recurring up-front payments and milestone payments payable by the Company and its Restricted Subsidiaries under research and development licensing agreements, collaboration agreements or development agreements of the Company and its Subsidiaries relating to product candidates of the Company and its Subsidiaries.

“Rate Determination Date” means two (2) Business Days prior to the commencement of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by the Administrative Agent; provided that, to the extent such market practice is not administratively feasible for the Administrative Agent, then “Rate Determination Date” means such other day as otherwise reasonably determined by the Administrative Agent.

“Real Property” means any means any owned or leased real property of a Loan Party or its Subsidiaries.

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

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

“Regulation” has the meaning specified in Section 5.23(c).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Relevant Territory” means (a) a member state of the European Communities other than Ireland, (b) a jurisdiction with which Ireland has entered into an Irish Tax Treaty that has the force of law by virtue of Section 826(1) of the Taxes Act or (c) a jurisdiction with which Ireland has entered into an Irish Tax Treaty where that treaty will (on completion of necessary procedures set out in Section 826(1) of the Taxes Act) have the force of law.

“Removal Effective Date” has the meaning specified in Section 9.06(b).

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

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Revolving Loans, a Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swingline Loan, a Swingline Loan Notice.

“Required Lenders” means, at any time, Revolving Lenders having Total Revolving Credit Exposures representing more than 50% of the Total Revolving Credit Exposures of all Revolving Lenders. The Total Revolving Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time; provided that, the amount of any participation in any Swingline Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Revolving Lender that is the Swingline Lender or L/C Issuer, as the case may be, in making such determination.

“Resignation Effective Date” has the meaning set forth in Section 9.06(a).

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means (a) the chief executive officer, executive chairman, president, chief financial officer, treasurer, executive vice president, assistant treasurer, controller or assistant controller (and, in the case of a Designated Foreign Borrower incorporated in England and Wales or in Ireland, a director) of a Loan Party, (b) solely for purposes of the delivery of incumbency and/or secretary’s certificates pursuant to Section 4.01, a director, the secretary or any assistant secretary of a Loan Party and (c) solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been

authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party and any document delivered hereunder that is signed by a Responsible Officer of the Company shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of each Subsidiary Guarantor and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Subsidiary Guarantor. To the extent requested by the Administrative Agent, each Responsible Officer will provide an incumbency certificate and to the extent requested by the Administrative Agent, appropriate authorization documentation, in form and substance reasonably satisfactory to the Administrative Agent (it being understood and agreed that the incumbency certificates and authorization documentation provided on the Closing Date shall satisfy this requirement with respect to the Responsible Officers listed therein).

“Restricted Payment” means (a) any dividend or other distribution, direct or indirect, on account of any shares (or equivalent) of any class of Equity Interests of the Company or any of its Restricted Subsidiaries, now or hereafter outstanding (other than a dividend or distribution payable solely in shares of Qualified Stock), (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares (or equivalent) of any class of Equity Interests of the Company or any of its Restricted Subsidiaries, now or hereafter outstanding, (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of any Loan Party or any of its Restricted Subsidiaries, now or hereafter outstanding and (d) any payments (other than payments of interest on a non-accelerated basis) in respect, or on account, of Capped Call Transactions, Convertible Bond Hedge Transactions, Warrant Transactions or otherwise in connection with the settlement of Convertible Bond Indebtedness upon the conversion of such Indebtedness to Equity Interests.

“Restricted Subsidiary” means, at any time, any Subsidiary of the Company that is not an Unrestricted Subsidiary.

“Revaluation Date” means, (a) with respect to any Loan, each of the following: (i) each date of a Borrowing of a Eurocurrency Rate Loan denominated in an Alternative Currency, (ii) each date of a continuation of a Eurocurrency Rate Loan denominated in an Alternative Currency pursuant to Section 2.02, and (iii) such additional dates as the Administrative Agent shall reasonably determine or the Required Lenders shall require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance, amendment and/or extension of a Letter of Credit denominated in an Alternative Currency, (ii) each date of any payment by the applicable L/C Issuer under any Letter of Credit denominated in an Alternative Currency, and (iii) such additional dates as the Administrative Agent or the applicable L/C Issuer shall reasonably determine or the Required Lenders shall require.

“Revolving Borrowing” means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Revolving Lenders pursuant to Section 2.01.

“Revolving Commitment” means, as to each Revolving Lender, its obligation to (a) make Revolving Loans to the Borrowers pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swingline Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 1.01(b) under the caption “Revolving Commitment” (or, in the case of any Extended Revolving Commitment, under the caption reflecting such Revolving Extension Series) or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including in connection with any Revolving Extension Amendment). The Revolving Commitment of all of the Revolving Lenders on the Closing Date shall be \$2,000,000,000.

“Revolving Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender’s participation in L/C Obligations and Swingline Loans at such time.

“Revolving Extension Amendment” has the meaning specified in Section 2.19(d).

“Revolving Extension Request” has the meaning specified in Section 2.19(a).

“Revolving Extension Series” has the meaning specified in Section 2.19(f).

“Revolving Facility” means, as applicable and as the context may require, at any time, (a) the aggregate amount of the Revolving Lenders’ Revolving Commitments at such time or (b) the aggregate amount of the Revolving Lenders’ Revolving Commitments under any specific Class at such time.

“Revolving Facility Increase Effective Date” has the meaning specified in Section 2.18(a)(iv).

“Revolving Lender” means, at any time, (a) so long as any Revolving Commitment is in effect, any Lender that has a Revolving Commitment at such time (including any Class of Extended Revolving Commitments) or (b) if the Revolving Commitments have terminated or expired, any Lender that has a Revolving Loan or a participation in L/C Obligations or Swingline Loans at such time.

“Revolving Loan” has the meaning specified in Section 2.01.

“Revolving Note” means a promissory note made by the Borrowers in favor of a Revolving Lender evidencing Revolving Loans or Swingline Loans, as the case may be, made by such Revolving Lender, substantially in the form of Exhibit F.

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

“Sale and Leaseback Transaction” means, with respect to any Loan Party or any Subsidiary, any arrangement, directly or indirectly, with any Person whereby such Loan Party or

such Subsidiary shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Same Day Funds” means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

“Sanctioned Persons” has the meaning specified in Section 5.17(a).

“Sanction(s)” means all 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 (“HMT”).

“Scheduled Unavailability Date” has the meaning specified in Section 3.03(c).

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

“Social Security Act” means the Social Security Act of 1965.

“Solvent” and “Solvency” mean, with respect to the Company and its Restricted Subsidiaries on any date of determination, that on such date (a) the fair value of the assets of the Company and its Restricted Subsidiaries, on a Consolidated basis, is greater than the total amount of liabilities, including contingent liabilities, of the Company and its Restricted Subsidiaries, on a Consolidated basis, (b) the present fair saleable value of the assets of the Company and its Restricted Subsidiaries, on a Consolidated basis, is not less than the amount that will be required to pay the probable liability of the Company and its Restricted Subsidiaries, on a Consolidated basis, on their existing debts as they become absolute and matured, (c) the Company and its Restricted Subsidiaries, on a Consolidated basis, do not intend to, and do not believe that they will, incur debts or liabilities beyond their ability to pay such debts and liabilities as they mature, (d) the Company and its Restricted Subsidiaries, on a Consolidated basis, are not engaged in business or a transaction, and are not about to engage in business or a transaction, for which their property would constitute an unreasonably small capital, (e) the Company and its Restricted Subsidiaries, on a Consolidated basis, will be able to pay their debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business and (f) without prejudice to paragraphs (a) to (e) above and in relation to a Restricted Subsidiary incorporated in England and Wales or Ireland only, such Restricted Subsidiary is not unable to or has not admitted inability to pay its debts as they fall due. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of

all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Special Notice Currency” means at any time an Alternative Currency, other than the currency of a country that is a member of the Organization for Economic Cooperation and Development at such time located in North America or Europe.

“Specified CFF Payments” means the following amounts paid or payable by CFF to the Company pursuant to the CFF Amendment: (i) the \$75 million non-refundable upfront payment and (ii) the non-refundable Quarterly Reimbursement Payments, in each case, net of any amortization required under GAAP.

“Specified Leased Location” has the meaning set forth in the definition of Specified Leased Properties.

“Specified Leased Properties” means, collectively, (a) as of the Closing Date, the leased Real Property located at (i) 50 Northern Avenue, Boston, Massachusetts, (ii) 11 Fan Pier Boulevard, Boston, Massachusetts (the leased locations set forth in clauses (i) and (ii), collectively, the “Specified Leased Locations”) and (iii) 3215 Merryfield Row, San Diego, California, (b) that certain continuous manufacturing rig located at 40 Lake Drive, East Windsor, New Jersey 08520 and (c) other locations where leased real property arrangements similar to the Specified Leased Locations (and not otherwise reflecting debt arrangements) are entered into by the Company or any of its Restricted Subsidiaries from time to time following the Closing Date. For the avoidance of any doubt, all such leases of Specified Leased Properties shall be treated as operating leases for all purposes of this Agreement.

“Specified Loan Party” means any Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 10.11).

“Spot Rate” for a currency means the rate determined by the Administrative Agent or the applicable L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or such L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or such L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that such L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

“Stated Ratio” has the meaning specified in Section 7.11(a).

“Sterling” and “£” mean the lawful currency of the United Kingdom.

“Subordinating Loan Party” has the meaning specified in Section 11.16.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Loan Parties. For the avoidance of any doubt, no variable interest entities that the Company is required to consolidate solely pursuant to FASB ASC 810 shall be deemed to be “Subsidiaries” for purposes of the Loan Documents.

“Subsidiary Guarantors” means, collectively, the Subsidiaries of the Company set forth on Schedule 5.18(b) and each other Subsidiary of the Company that shall execute and delivery a Joinder Agreement or otherwise become party to this Agreement from time to time pursuant to the requirements of Section 6.12. Notwithstanding anything to the contrary contained herein, no Excluded Subsidiary shall be required to become a “Subsidiary Guarantor” hereunder. As of the Closing Date, the Subsidiary Guarantors are: (i) Vertex Pharmaceuticals (San Diego) LLC, a Delaware limited liability company, (ii) Vertex Holdings, Inc., a Delaware corporation, (iii) Vertex Pharmaceuticals (Distribution) Incorporated, a Delaware corporation, and (iv) Vertex Pharmaceuticals (Puerto Rico) LLC, a Delaware limited liability company.

“Subsidiary Redesignation” has the meaning set forth in the definition of “Unrestricted Subsidiary”.

“Successor Borrower” has the meaning specified in Section 7.04(a)(v).

“Supported QFC” has the meaning specified in Section 11.21.

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

“Swap Obligations” means with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

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

“Swingline Borrowing” means a borrowing of a Swingline Loan pursuant to Section 2.04.

“Swingline Lender” means Bank of America, through itself or through one of its designated Affiliate or branch offices, in its capacity as provider of Swingline Loans, or any successor swingline lender hereunder.

“Swingline Loan” has the meaning specified in Section 2.04(a).

“Swingline Loan Notice” means a notice of a Swingline Borrowing pursuant to Section 2.04(b), which shall be substantially in the form of Exhibit H or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Company.

“Swingline Sublimit” means an amount equal to the lesser of (a) \$20,000,000 and (b) the Revolving Facility. The Swingline Sublimit is part of, and not in addition to, the Revolving Facility.

“Swiss Francs” and “CHF” mean the lawful currency of Switzerland.

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

“TARGET2” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on November 19, 2007.

“TARGET Day” means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

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

“Taxes Act” means the Taxes Consolidation Act 1997 of Ireland, as amended.

“Threshold Amount” means \$100,000,000.

“Total Revolving Credit Exposure” means, as to any Revolving Lender at any time, the unused Revolving Commitments and Revolving Exposure of such Revolving Lender at such time.

“Total Revolving Outstandings” means the aggregate Outstanding Amount of all Revolving Loans, Swingline Loans and L/C Obligations.

“Trademark License” means any agreement, now or hereafter in existence, providing for the grant to any Person of any rights (including, without limitation, the right for a party to be designated as an owner and/or to enforce, defend, use, mark, police, and require joinder in suit and/or receive assistance from another party) in a Trademark.

“Trademarks” means, collectively, all of the following of any Person: (a) all trademarks, trade names, internet domain names, trade styles, service marks, logos and other identifiers of source or origin, whether registered or unregistered, all registrations and recordings thereof, and all applications in connection therewith anywhere in the world, (b) all counterparts, extensions and renewals of any of the foregoing, (c) all income, royalties, damages and payments now or hereafter due and/or payable under any of the foregoing or with respect to any of the foregoing, including, without limitation, damages or payments for past, present or future infringements, violations, dilutions or misappropriations of any of the foregoing, (d) the right to sue for past, present or future infringements, violations, dilutions or misappropriations of any of the foregoing and (e) all rights corresponding to any of the foregoing (including the goodwill associated with any of the foregoing) throughout the world.

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

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

“UCP” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“UK Corporation Tax Act” means the Corporation Tax Act 2009 of the United Kingdom.

“UK Direction” has the meaning assigned to that term in paragraph (f)(iii) of the definition of Excluded Taxes in Section 1.1.

“UK DTTP Filing” means an HMRC Form DTTP2 duly completed and filed by the relevant Loan Party, which: (a) where it relates to a UK Treaty Lender that is a Lender on the date of this Agreement, contains the scheme reference number and jurisdiction of tax residence opposite that Lender’s name in Schedule 1.01(d), and (i) where the Loan Party is a Loan Party on the date of this Agreement, is filed with HMRC within thirty (30) Business Days after the date of this Agreement; or (ii) where the Loan Party becomes a Loan Party after the date of this Agreement, is filed with HMRC within 30 Business Days after the date on which that Loan Party becomes an additional Borrower under this Agreement; or (b) where it relates to a UK Treaty Lender that becomes a Lender after the Closing Date, contains the scheme reference number and jurisdiction of tax residence in the relevant Assignment and Assumption, and (i) where the Loan Party is a Loan Party on the date such UK Treaty Lender becomes a Lender under this Agreement (“New Lender Date”), is filed with HMRC within thirty (30) Business Days after the New Lender Date; or (ii) where the Loan Party becomes a Loan Party under this Agreement after the New Lender Date, is filed with HMRC within thirty (30) Business Days after the date on which that Loan Party becomes a Loan Party under this Agreement.

“UK DTTP Scheme” has the meaning assigned to that term in Section 3.01(g)(ii).

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK/Norway Treaty” means the double taxation agreement between the United Kingdom and Norway signed on 14 March 2013.

“UK Qualifying Lender” means a Lender which is:

(1) beneficially entitled to interest payable to that Lender in respect of an advance under a Loan Document and is: (a) a Lender: (i) which is a bank (as defined for the purpose of section 879 of the UK Taxes Act) making an advance under a Loan Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payment apart from section 18A of the UK Corporation Tax Act; or (ii) in respect of an advance made under a Loan Document by a person that was a bank (as defined for the purpose of section 879 of the UK Taxes Act) at the time that that advance was made and is within the charge to United Kingdom

corporation tax as respects any payments of interest made in respect of that advance; or (b) a Lender which is: (i) a company resident in the United Kingdom for United Kingdom tax purposes; (ii) a partnership each member of which is (A) a company resident in the United Kingdom or (B) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the UK Corporation Tax Act) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the UK Corporation Tax Act; (iii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the UK Corporation Tax Act) of that company; or (c) a UK Treaty Lender; or

(2) DNB Capital LLC, insofar as the Borrower has received authorization from HMRC to make payment to that Lender without UK Tax Deduction because the member of that Lender is DNB Bank ASA and is entitled to the benefits of the UK/Norway Treaty.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“UK Tax Confirmation” means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Loan Document is either: (a) a company resident in the United Kingdom for United Kingdom tax purposes; (b) a partnership each member of which is (i) a company resident in the United Kingdom or (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the UK Corporation Tax Act) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the UK Corporation Tax Act; or (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (for the purposes of section 19 of the UK Corporation Tax Act) of that company.

“UK Tax Deduction” has the meaning assigned to that term in paragraph (f) of the definition of Excluded Taxes in Section 1.1.

“UK Taxes Act” means the Income Tax Act 2007 of the United Kingdom.

“UK Treaty Lender” means a Lender which (a) is treated as a resident of a UK Treaty State for the purposes of the Treaty, (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender’s participation in the Loan is effectively connected and (c) meets all other conditions in the Treaty for full exemption from tax imposed by the United Kingdom on interest, except that for this purpose it shall be assumed that any necessary procedural formalities are satisfied.

“UK Treaty State” means a jurisdiction having a double taxation agreement (a “Treaty”) with the United Kingdom, which makes provision for full exemption from tax imposed by the United Kingdom on interest.

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

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“Unrestricted Subsidiary” means any non-Wholly Owned Subsidiary of the Company, whether now owned or acquired or created after the Closing Date, that is designated on or after the Closing Date by the Company as an Unrestricted Subsidiary hereunder by written notice to the Administrative Agent; provided, that the Company shall only be permitted to so designate a new Unrestricted Subsidiary on or after the Closing Date so long as (a) no Default or Event of Default has occurred and is continuing or would result therefrom, (b) immediately after giving effect to such designation, the Company shall be in Pro Forma Compliance, (c) the aggregate amount of all Investments (including Guarantees of Indebtedness of any such Unrestricted Subsidiary) in Unrestricted Subsidiaries (with each such Unrestricted Subsidiary being valued at its Fair Market Value at the time such Unrestricted Subsidiary was so designated) shall not exceed in the aggregate \$250,000,000 during the term of this Agreement (it being understood and agreed that such aggregate limitation for purposes of determining compliance with this clause (c) shall be calculated without giving effect to any return representing a return of capital with respect to such Unrestricted Subsidiary, whether or not repaid in cash prior to such time of determination (including as a result of Subsidiary Redesignation)), (d) such Subsidiary being designated as an “Unrestricted Subsidiary” shall also, concurrently with such designation and thereafter, constitute an “unrestricted Subsidiary” under any Material Indebtedness, (e) such Subsidiary was not previously designated as an Unrestricted Subsidiary and thereafter re-designated as a Restricted Subsidiary, (f) such Subsidiary shall not (i) own, or possess the right to use, any Intellectual Property, or (ii) own any of the material economic rights derived from any Intellectual Property, in each case with respect to clause (i) or (ii), covering the Cystic Fibrosis Drug Franchise Assets and (g) if such designation is on the Closing Date, the designation shall not occur until the conditions set forth in Section 4.02 are satisfied (or waived in accordance with Section 11.01) and the funding of the initial Loans has occurred. The designation of any Restricted Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Company (or its Restricted Subsidiaries) therein at the date of designation in an amount equal to the Fair Market Value of the Company’s (or its Restricted Subsidiaries’) Investments therein. The Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary for purposes of this Agreement (each, a “Subsidiary Redesignation”); provided, that (i) no Default or Event of Default has occurred and is continuing or would result therefrom (after giving effect to the provisions of the immediately succeeding sentence), (ii) immediately after giving effect to such redesignation, the Company shall be in Pro Forma Compliance, (iii) the Company shall have delivered to the Administrative Agent an officer’s certificate executed by a Responsible Officer of the Company, certifying to such officer’s knowledge, compliance with the foregoing requirements and (iv) the Company shall cause any such Restricted Subsidiary to comply with the provisions of Section 6.12, to the extent applicable. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary on or after the Closing Date shall constitute

the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time. No Borrower may be designated as an Unrestricted Subsidiary.

“U.S. Loan Party” means any Loan Party that is not a Designated Foreign Borrower.

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

“U.S. Special Resolution Regimes” has the meaning specified in Section 11.21.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(3).

“Vertex Europe” has the meaning specified in the introductory paragraph hereto.

“Vertex Ireland” has the meaning specified in the introductory paragraph hereto.

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

“Warrant Transactions” means one or more call options referencing the Company’s common stock written by Company substantially contemporaneously with the purchase by the Company of Convertible Bond Hedge Transactions and having an initial strike or exercise price (howsoever defined) greater than the strike or exercise price (howsoever defined) of such Convertible Bond Hedge Transactions.

“Wholly Owned Subsidiary” of any Person means 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 the context otherwise requires, “Wholly Owned Subsidiary” means a Subsidiary of the Company that is a Wholly Owned Subsidiary of the Company.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02 Other Interpretive Provisions.

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

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

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

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

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a

limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Company and its Restricted Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP or application thereof (including the adoption of IFRS) would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Company or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Company shall negotiate in good faith, each acting reasonably (and without requirement of any fee), to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP or application thereof (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein or the application thereof (without regard to such change or adoption of IFRS) and (ii) the Company shall provide to the Administrative Agent and the Lenders the financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Lease Accounting. Notwithstanding any other provision contained herein, each financial covenant, ratio, accounting definition or requirement used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to the adoption of Accounting Standards Updated No. 2016-02 ("ASU 2016-02") by the Financial Accounting Standards Board such that "Capitalized Leases" shall specifically exclude liabilities that were considered operating lease liabilities under GAAP prior to the adoption of ASU 2016-02; provided that all financial statements delivered pursuant to this Agreement shall, if applicable and solely to the extent reasonably requested by the Administrative Agent, be accompanied by a schedule

showing any adjustments necessary to reconcile such financial statements with GAAP prior to the adoption of ASU 2016-02, with respect to such lease liabilities.

(d) Consolidation of Variable Interest Entities. All references herein to Consolidated financial statements of the Company and its Subsidiaries or to the determination of any amount for the Company and its Subsidiaries on a Consolidated basis or any similar reference shall, in each case, be deemed to exclude each variable interest entity that the Company is required to otherwise consolidate pursuant to FASB ASC 810.

(e) Pro Forma Treatment. Each Disposition of all or substantially all of a line of business, and each Acquisition, by the Company and its Subsidiaries that is consummated during any Measurement Period shall, for purposes of determining compliance with the financial covenants set forth in Section 7.11 and for purposes of determining the Applicable Rate, be given Pro Forma Effect as of the first day of such Measurement Period.

1.04 Rounding.

Any financial ratios required to be maintained by the Company pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day.

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

1.06 Letter of Credit Amounts.

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of 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.

1.07 UCC Terms.

Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term "UCC" refers, as of any date of determination, to the UCC then in effect.

1.08 Exchange Rates; Currency Equivalents.

(a) The Administrative Agent or the applicable L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the applicable L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with a Borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, Eurocurrency Rate Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the applicable L/C Issuer, as the case may be.

(c) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Eurocurrency Rate" or with respect to any rate that is an alternative or replacement for or successor to any of such rates (including, without limitation, any LIBOR Successor Rate) or the effect of any of the foregoing, or of any LIBOR Successor Rate Conforming Changes.

(d) Any amount specified in this Agreement (other than in Articles II, IX and X) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this Section 1.08, the "Spot Rate" for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two (2) Business Days prior to the date of such determination; provided that the Administrative Agent may obtain such Spot Rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

1.09 Additional Alternative Currencies.

(a) The Company may from time to time request that Eurocurrency Rate Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of “Alternative Currency”; provided that (i) such requested currency is an Eligible Currency and (ii) such requested currency shall only be treated as a “LIBOR Quoted Currency” to the extent that there is published LIBOR rate for such currency. In the case of any such request with respect to the making of Eurocurrency Rate Loans, such request shall be subject to the approval of the Administrative Agent and each Lender with a Revolving Commitment under which such currency is requested to be made available; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the applicable L/C Issuer.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., twenty (20) Business Days prior to the date of the desired Credit Extension (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the L/C Issuers, in its or their sole discretion). In the case of any such request pertaining to Eurocurrency Rate Loans, the Administrative Agent shall promptly notify each Appropriate Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the L/C Issuers thereof. Each Appropriate Lender (in the case of any such request pertaining to Eurocurrency Rate Loans) or the L/C Issuers (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., ten (10) Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Eurocurrency Rate Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Lender or any L/C Issuer, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender or such L/C Issuer, as the case may be, to permit Eurocurrency Rate Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all the Appropriate Lenders consent to making Eurocurrency Rate Loans in such requested currency and the Administrative Agent and such Lenders reasonably determine that an appropriate interest rate is available to be used for such requested currency, the Administrative Agent shall so notify the Company and (i) the Administrative Agent and such Lenders may amend the definition of Eurocurrency Rate for any Non-LIBOR Quoted Currency to the extent necessary to add the applicable Eurocurrency Rate for such currency and (ii) to the extent the definition of Eurocurrency Rate reflects the appropriate interest rate for such currency or has been amended to reflect the appropriate rate for such currency, such currency shall thereupon be deemed for all purposes to be an Alternative Currency for purposes of any Borrowings of Eurocurrency Rate Loans. If the Administrative Agent and the L/C Issuers consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Company and (iii) the Administrative Agent and the L/C Issuers may amend the

definition of Eurocurrency Rate for any Non-LIBOR Quoted Currency to the extent necessary to add the applicable Eurocurrency Rate for such currency and (iv) to the extent the definition of Eurocurrency Rate reflects the appropriate interest rate for such currency or has been amended to reflect the appropriate rate for such currency, such currency shall thereupon be deemed for all purposes to be an Alternative Currency, for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.09, the Administrative Agent shall promptly so notify the Company.

1.10 Change of Currency.

(a) Each obligation of the Borrowers to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption. If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that, if any Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

ARTICLE II

COMMITMENTS AND CREDIT EXTENSIONS

2.01 Revolving Loans.

Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make loans (each such loan, a "Revolving Loan") to the Borrowers, in Dollars or in one or more Alternative Currencies, from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Revolving Commitment; provided, however, that after giving effect to any Revolving Borrowing, (a) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, (b) the Revolving Exposure of any Lender shall not exceed such Revolving Lender's Revolving Commitment, (c) the Revolving Exposure of any Lender under any Class of

Revolving Commitments shall not exceed such Lender's Revolving Commitment of such Class, and (d) the aggregate Outstanding Amount of all Loans denominated in Alternative Currencies shall not exceed the Alternative Currency Sublimit. Within the limits of each Revolving Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow Revolving Loans, prepay under Section 2.05, and reborrow under this Section 2.01. Revolving Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein; provided, however, any Revolving Borrowings made on the Closing Date or any of the three (3) Business Days (or such longer applicable period, in accordance with Section 2.02(a), for Revolving Borrowings denominated in Alternative Currencies other than Euro or Sterling) following the Closing Date shall be made as Base Rate Loans unless the Company delivers a Funding Indemnity Letter not less than three (3) Business Days (or such longer applicable period, in accordance with Section 2.02(a), for Revolving Borrowings denominated in Alternative Currencies other than Euro or Sterling) prior to the date of such Revolving Borrowing.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Notice of Borrowing. Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the applicable Borrower's irrevocable notice to the Administrative Agent, which may be given by: (i) telephone or (ii) a Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Loan Notice. Each such Loan Notice must be received by the Administrative Agent not later than 11:00 a.m. (A) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurocurrency Rate Loans denominated in Dollars, Euro or Sterling, or of any conversion of Eurocurrency Rate Loans denominated in Dollars to Base Rate Loans, (B) four (4) Business Days (or five (5) Business Days in the case of a Special Notice Currency) prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans denominated in other Alternative Currencies, and (C) on the requested date of any Borrowing of Base Rate Loans; provided, however, that if the applicable Borrower wishes to request Eurocurrency Rate Loans having an Interest Period other than one (1), two (2), three (3) or six (6) months in duration as provided in the definition of "Interest Period", the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. (x) four (4) Business Days prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans denominated in Dollars, Euro or Sterling, or (y) five (5) Business Days (or six (6) Business Days in the case of a Special Notice Currency) prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans denominated in other Alternative Currencies, whereupon the Administrative Agent shall give prompt notice to the Appropriate Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 a.m., (1) three (3) Business Days before the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans denominated in Dollars, Euro or Sterling, or (2) four (4) Business Days (or five (5) Business Days in the case of a Special Notice Currency) prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency

Rate Loans denominated in other Alternative Currencies, the Administrative Agent shall notify the applicable Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Loan Notice and each telephonic notice shall specify (I) whether the applicable Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Loans, as the case may be, (II) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (III) the principal amount of Loans to be borrowed, converted or continued, (IV) the Type of Loans to be borrowed or to which existing Loans are to be converted, (V) if applicable, the duration of the Interest Period with respect thereto, (VI) the currency of the Loans to be borrowed and (VII) the relevant Borrower requesting such Borrowing. If the applicable Borrower fails to specify a currency in a Loan Notice requesting a Borrowing, then the Loans so requested shall be made in Dollars. If the applicable Borrower fails to specify a Type of Loan in a Loan Notice or if the applicable Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans; provided, however, that in the case of a failure to timely request a continuation of Loans denominated in an Alternative Currency, such Loans shall be continued as Eurocurrency Rate Loans in their original currency with an Interest Period of one (1) month. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the applicable Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month. Notwithstanding anything to the contrary herein, each Swingline Loan shall be made as a Base Rate Loan and may not be converted to a Eurocurrency Rate Loan. Except as provided pursuant to Section 2.12(a), no Loan may be converted into or continued as a Loan denominated in a different currency, but instead must be repaid in the original currency of such Loan and reborrowed in the other currency.

(b) Advances. Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Appropriate Lender of the amount (and currency) of its Applicable Percentage of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the applicable Borrower, the Administrative Agent shall notify each Appropriate Lender of the details of any automatic conversion to Base Rate Loans or continuation of Loans denominated in a currency other than Dollars, in each case as described in Section 2.02(a). In the case of a Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office for the applicable currency not later than 1:00 p.m., in the case of any Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent in the case of any Loan in an

Alternative Currency, in each case on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01, or, if applicable, Section 2.19), the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the applicable Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the applicable Borrower; provided, however, that if, on the date a Loan Notice with respect to a Revolving Borrowing is given by the applicable Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the applicable Borrower as provided above; provided further, however, that no Revolving Borrowing by a Designated Foreign Borrower shall be used to pay any L/C Borrowings of or attributable to any U.S. Loan Party (or any other Domestic Subsidiary).

(c) Eurocurrency Rate Loans. Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan. During the existence of an Event of Default, no Loans may be requested as, converted to or continued as Eurocurrency Rate Loans without the consent of the Required Lenders, and the Required Lenders may demand that any or all of the outstanding Eurocurrency Rate Loans denominated in Dollars be converted immediately to Base Rate Loans and any or all of the then outstanding Eurocurrency Rate Loans denominated in an Alternative Currency be prepaid, or redenominated into Dollars in the amount of the Dollar Equivalent thereof, on the last day of the then current Interest Period with respect thereto.

(d) Interest Rates. Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrowers and the Lenders in the absence of manifest error.

(e) Interest Periods. After giving effect to all Revolving Borrowings, all conversions of Revolving Loans from one Type to the other, and all continuations of Revolving Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect in respect of the Revolving Facility.

(f) Cashless Settlement Mechanism. Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans in connection with any refinancing, extension, incremental increase, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Company, the Administrative Agent and such Lender.

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the Revolving Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the applicable Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or in one or more Alternative Currencies for the account of any Borrower or any of its Restricted Subsidiaries, and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b) and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Lenders severally agree to participate in Letters of Credit issued for the account of any Borrower or its Restricted Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, (y) the Revolving Exposure of any Revolving Lender shall not exceed such Lender's Revolving Commitment and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit; and provided further that no Letter of Credit denominated in any Alternative Currency may be issued by any L/C Issuer other than Bank of America, through itself or through one of its designated Affiliates or branch offices, in its capacity as such. Each request by a Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by such Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed in accordance with the terms hereof.

(ii) No L/C Issuer shall issue any Letter of Credit if:

(A) subject to Section 2.03(b)(iv), the expiry date of the requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Administrative Agent and such L/C Issuer have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless the Administrative Agent and such L/C Issuer have approved such expiry date (it being understood that in the event the expiry date of any requested Letter of Credit would occur after the Letter of Credit Expiration Date, from and after the Letter of Credit Expiration Date, the Borrowers shall immediately Cash

Collateralize the then Outstanding Amount of all L/C Obligations in respect of such Letters of Credit in accordance with Section 2.14);

(iii) No L/C Issuer shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing the Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of Law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate one or more policies of such L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and such L/C Issuer, the Letter of Credit is in an initial stated amount less than \$50,000;

(D) except as otherwise agreed by the Administrative Agent and such L/C Issuer, the Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency;

(E) any Revolving Lender is at that time a Defaulting Lender, unless such L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such L/C Issuer (in its sole discretion) with the applicable Borrowers or such Revolving Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.15(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion;

(F) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder;

(G) such L/C Issuer does not as of the issuance date of the requested Letter of Credit issue Letters of Credit in the requested currency; or

(H) the requested Letter of Credit is to be issued for the benefit of an Irish beneficiary.

(iv) No L/C Issuer shall amend any Letter of Credit if such L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(v) No L/C Issuer shall be under any obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(vi) Each L/C Issuer shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and such L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included such L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuers.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of a Borrower delivered to the applicable L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of such Borrower and/or its Restricted Subsidiary, as required by such L/C Issuer. Such Letter of Credit Application may be sent by facsimile, by mail, by overnight courier, by electronic transmission using the system provided by the applicable L/C Issuer, by personal delivery or by any other means reasonably acceptable to such L/C Issuer. Such Letter of Credit Application must be received by the applicable L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least five (5) Business Days (or such later date and time as the Administrative Agent and such L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the applicable L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a

Business Day); (B) the amount and currency thereof and in the absence of specification of currency shall be deemed a request for a Letter of Credit denominated in Dollars; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as such L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer: (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as such L/C Issuer may require. Additionally, the Borrowers shall furnish to the applicable L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as such L/C Issuer or the Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the applicable Borrower and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the applicable L/C Issuer has received written notice from any Revolving Lender, the Administrative Agent or any Loan Party, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Borrower (or its applicable Restricted Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with such L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Lender's Applicable Revolving Percentage (determined without regard to any Class or Classes of Revolving Commitments of such Lender) times the amount of such Letter of Credit.

(iii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also deliver to the Company and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(iv) If the applicable Borrower so requests in any applicable Letter of Credit Application (or the amendment of an outstanding Letter of Credit), the applicable L/C Issuer may, in its sole discretion, agree to issue a standby Letter of Credit that has automatic extension provisions (each, an “Auto-Extension Letter of Credit”); provided that any such Auto-Extension Letter of Credit must permit such L/C Issuer to prevent any such extension at least once in each twelve (12) month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “Non-Extension Notice Date”) in each such twelve (12) month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the applicable Borrower shall not be required to make a specific request to such L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided that, a Letter of Credit may, upon the request of the applicable Borrower, be renewed for a period beyond the Letter of Credit Expiration Date subject to the provisions of Section 2.03(a)(ii)(B); provided, however, that such L/C Issuer shall not permit any such extension if (A) such L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Lender or any Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing such L/C Issuer not to permit such extension.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable L/C Issuer shall notify the applicable Borrower and the Administrative Agent thereof; provided that any failure to give or delay in giving such notice shall not relieve the applicable Borrower of its obligation to reimburse such L/C Issuer and the Lenders with respect to any drawing under any Letter of Credit. The applicable Borrower shall reimburse the applicable L/C Issuer for all drawings under any Letter of Credit in Dollars, unless, in the case of a Letter of Credit denominated in an Alternative Currency, (A) such L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in such Alternative Currency, or (B) in the absence of any such requirement for reimbursement in such Alternative Currency, the applicable Borrower shall have notified such L/C Issuer promptly following

receipt of the notice of drawing that such Borrower will reimburse such L/C Issuer in such Alternative Currency. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the applicable L/C Issuer shall notify the applicable Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. If such Borrower shall have received such notice from the applicable L/C Issuer on or prior to 11:00 a.m. on the date of payment by the applicable L/C Issuer under a Letter of Credit to be reimbursed in Dollars, not later than 4:00 p.m. on such date of payment by the applicable L/C Issuer, or, if such Borrower shall have received such notice later than 11:00 a.m. on the date of payment by the applicable L/C Issuer under a Letter of Credit to be reimbursed in Dollars, not later than 11:00 a.m. on the immediately following Business Day, or the Applicable Time on the date of any payment by such L/C Issuer under a Letter of Credit to be reimbursed in an Alternative Currency (each such date, an “Honor Date”), the applicable Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency. In the event that (A) a drawing denominated in an Alternative Currency is to be reimbursed in Dollars and (B) the Dollar amount paid by the applicable Borrower, whether on or after the Honor Date, shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the Alternative Currency equal to the drawing, such Borrower agrees, as a separate and independent obligation, to indemnify the applicable L/C Issuer for the loss resulting from its inability on that date to purchase the Alternative Currency in the full amount of the drawing. If such Borrower fails to so reimburse such L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in an amount equal to the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the “Unreimbursed Amount”), and the amount of such Revolving Lender’s Applicable Revolving Percentage thereof. In such event, the Borrowers shall be deemed to have requested a Revolving Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Loan Notice). Any notice given by any L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the applicable L/C Issuer, in Dollars, at the Administrative Agent’s Office in an amount equal to its

Applicable Revolving Percentage (determined without regard to any separate Class or Classes of Revolving Commitments of such Lender) of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Company in such amount. The Administrative Agent shall remit the funds so received to the applicable L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the applicable Borrower shall be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Lender's payment to the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving Lender funds its Revolving Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Revolving Percentage of such amount shall be solely for the account of the applicable L/C Issuer.

(v) Each Revolving Lender's obligation to make Revolving Loans or L/C Advances to reimburse each L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against any L/C Issuer, any Borrower, any Subsidiary or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default; (C) any existing Class of Revolving Commitments or (D) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Company of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the applicable Borrower to reimburse the applicable L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Lender fails to make available to the Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by such L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of any L/C Issuer submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after any L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the applicable Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Revolving Percentage thereof in Dollars and in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Revolving Lender shall pay to the Administrative Agent for the account of the applicable L/C Issuer its Applicable Revolving Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of each applicable Borrower to reimburse each L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly

in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any L/C Issuer or any other Person, whether in connection with this Agreement or by such Letter of Credit, the transactions contemplated hereby or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, endorsement, certificate or other document presented under or in connection with such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by any L/C Issuer of any requirement that exists for such L/C Issuer's protection and not the protection of any Borrower or any waiver by such L/C Issuer which does not in fact materially prejudice the Borrowers;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by any L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under, such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by any L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by such L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might

otherwise constitute a defense available to, or a discharge of, any Borrower or any of its Subsidiaries; or

(ix) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to any Borrower or any Subsidiary or in the relevant currency markets generally;

provided that the foregoing shall not excuse any L/C Issuer from liability to the Borrowers to the extent provided in the second proviso to Section 2.03(f).

The applicable Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with any of such Borrower's instructions or other irregularity, such Borrower will immediately notify the applicable L/C Issuer. The Borrowers shall be conclusively deemed to have waived any such claim against the applicable L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuers. Each Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, the applicable L/C Issuer shall not have any responsibility to obtain any document (other than any sight or time draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence, willful misconduct or bad faith; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrowers' pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable or responsible for any of the matters described in Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrowers may have a claim against any L/C Issuer, and such L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to consequential, special, indirect, punitive or exemplary, damages suffered by the Borrowers which the Borrowers prove, as determined by a final nonappealable judgment of a court of competent jurisdiction, were caused by such L/C Issuer's gross negligence, willful misconduct or bad faith or such L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight or time draft and certificate(s) strictly complying with the terms and conditions of a Letter of

Credit. In furtherance and not in limitation of the foregoing, any L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and no L/C Issuer shall be responsible for the validity or sufficiency of any instrument transferring, endorsing or assigning or purporting to transfer, endorse or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. Any L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) Applicability of ISP and UCP; Limitation of Liability. Unless otherwise expressly agreed by the applicable L/C Issuer and the applicable Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, no L/C Issuer shall be responsible to the Borrowers for, and no L/C Issuer's rights and remedies against the Borrowers shall be impaired by, any action or inaction of such L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where such L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(h) Letter of Credit Fees. The applicable Borrowers shall pay to the Administrative Agent for the account of each Revolving Lender in accordance, subject to Section 2.15, with its Applicable Revolving Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit. Letter of Credit Fees shall be (1) due and payable on the first Business Day following each fiscal quarter end, commencing with the first such date to occur after the issuance of such Letter of Credit on the Letter of Credit Expiration Date and thereafter on demand and (2) computed on a quarterly basis in arrears.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers. The applicable Borrowers shall pay directly to the applicable L/C Issuer for its own account a fronting fee (i) with respect to each commercial Letter of Credit, at a rate per annum equal to 0.125% (or such other rate separately agreed between the applicable Borrowers and the L/C Issuers), computed on the Dollar Equivalent of the amount of such Letter of Credit, and payable upon the issuance thereof, (ii) with respect to any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between the applicable Borrowers and such L/C Issuer, computed on the Dollar Equivalent of the amount of such increase, and payable upon the

effectiveness of such amendment, and (iii) with respect to each standby Letter of Credit, at a rate per annum equal to 0.125% (or such other rate separately agreed between the applicable Borrowers and the L/C Issuers), computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on or prior to the date that is ten (10) Business Days following each fiscal quarter end, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the applicable Borrowers shall pay directly to the applicable L/C Issuer for its own account, in Dollars, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) L/C Issuer Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each L/C Issuer shall, in addition to its notification obligations set forth elsewhere in this Section, provide the Administrative Agent a Letter of Credit Report, as set forth below:

(i) reasonably prior to the time that such L/C Issuer issues, amends, renews, increases or extends a Letter of Credit, the date of such issuance, amendment, renewal, increase or extension and the stated amount of the applicable Letters of Credit after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed);

(ii) on each Business Day on which such L/C Issuer makes a payment pursuant to a Letter of Credit, the date and amount of such payment;

(iii) on any Business Day on which any applicable Borrower fails to reimburse a payment made pursuant to a Letter of Credit required to be reimbursed to such L/C Issuer on such day, the date of such failure and the amount of such payment;

(iv) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such L/C Issuer; and

(v) for so long as any Letter of Credit issued by an L/C Issuer is outstanding, such L/C Issuer shall deliver to the Administrative Agent (A) on the last Business Day of each calendar month, (B) at all other times a Letter of Credit Report is required to be delivered pursuant to this Agreement, and (C) on each

date that (1) an L/C Credit Extension occurs or (2) there is any expiration, cancellation and/or disbursement, in each case, with respect to any such Letter of Credit, a Letter of Credit Report appropriately completed with the information for every outstanding Letter of Credit issued by such L/C Issuer.

(l) Additional L/C Issuers. Any Lender hereunder (that is reasonably acceptable to the Administrative Agent) may become an L/C Issuer upon receipt by the Administrative Agent of a fully executed Notice of Additional L/C Issuer which shall be signed by the Company, the Administrative Agent and each L/C Issuer.

(m) Letters of Credit Issued for Restricted Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Restricted Subsidiary of any Borrower, such Borrower shall be obligated to reimburse each L/C Issuer hereunder for any and all drawings under each Letter of Credit issued by such L/C Issuer. Each Borrower hereby acknowledges that the issuance of Letters of Credit for the account of its Restricted Subsidiaries inures to the benefit of such Borrower, and that such Borrower's business derives substantial benefits from the businesses of such Restricted Subsidiaries.

2.04 Swingline Loans.

(a) The Swingline. Subject to the terms and conditions set forth herein, the Swingline Lender, in reliance upon the agreements of the other Lenders set forth in this Section, may in its sole discretion make loans to the Company (each such loan, a "Swingline Loan"). Each such Swingline Loan may be made, subject to the terms and conditions set forth herein, to the Company, in Dollars, from time to time on any Business Day during the Availability Period for any Class of Revolving Commitments in which the Swingline Lender holds a Revolving Commitment, in an aggregate amount not to exceed at any time outstanding the amount of the Swingline Sublimit, notwithstanding the fact that such Swingline Loans, when aggregated with the Applicable Revolving Percentage of the Outstanding Amount of Revolving Loans and L/C Obligations of the Lender acting as Swingline Lender, may exceed the amount of such Lender's Revolving Commitment; provided, however, that (i) after giving effect to any Swingline Loan, (A) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments at such time, (B) the Revolving Exposure of any Revolving Lender at such time shall not exceed such Lender's Revolving Commitment, and (C) the Revolving Exposure of any Lender under any Class of Revolving Commitments shall not exceed such Lender's Revolving Commitment of such Class, (ii) the Company shall not use the proceeds of any Swingline Loan to refinance any outstanding Swingline Loan, and (iii) the Swingline Lender shall not be under any obligation to make any Swingline Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Company may borrow under this Section, prepay under Section 2.05, and reborrow under this Section. Each Swingline Loan shall bear interest only at a rate based on the Base Rate plus the

Applicable Rate. Immediately upon the making of a Swingline Loan, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swingline Lender a risk participation in such Swingline Loan in an amount equal to the product of such Revolving Lender's Applicable Revolving Percentage (determined without regard to any separate Class or Classes of Revolving Commitments of such Lender) times the amount of such Swingline Loan.

(b) Borrowing Procedures. Subject to the terms and conditions hereof, each Swingline Borrowing shall be made upon the Company's irrevocable notice to the Swingline Lender and the Administrative Agent, which may be given by: (i) telephone or (ii) a Swingline Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Swingline Lender and the Administrative Agent of a Swingline Loan Notice. Each such Swingline Loan Notice must be received by the Swingline Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (A) the amount to be borrowed, which shall be a minimum of \$100,000 and (B) the requested date of the Borrowing (which shall be a Business Day). Promptly after receipt by the Swingline Lender of any Swingline Loan Notice, the Swingline Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swingline Loan Notice and, if not, the Swingline Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swingline Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Lender) prior to 2:00 p.m. on the date of the proposed Swingline Borrowing (1) directing the Swingline Lender not to make such Swingline Loan as a result of the limitations set forth in the proviso to the second sentence of Section 2.04(a), or (2) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swingline Lender may, make the amount of its Swingline Loan available to the Company at its office by crediting the account of the Company on the books of the Swingline Lender in Same Day Funds.

(c) Refinancing of Swingline Loans.

(i) The Swingline Lender at any time in its sole discretion may request, on behalf of the Company (which hereby irrevocably authorizes the Swingline Lender to so request on its behalf), that each Revolving Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Revolving Percentage (determined without regard to any Class or Classes of Revolving Commitments of such Lender) of the amount of Swingline Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Revolving Facility and the conditions set forth in Section 4.02. The Swingline Lender shall furnish the Company with a copy of the applicable Loan Notice

promptly after delivering such notice to the Administrative Agent. Each Revolving Lender shall make an amount equal to its Applicable Revolving Percentage (determined without regard to any Class or Classes of Revolving Commitments of such Lender) of the amount specified in such Loan Notice available to the Administrative Agent in Same Day Funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swingline Loan) for the account of the Swingline Lender at the Administrative Agent's Office for Dollar-denominated payments not later than 1:00 p.m. on the day specified in such Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Company in such amount. The Administrative Agent shall remit the funds so received to the Swingline Lender.

(ii) If for any reason any Swingline Loan cannot be refinanced by such a Revolving Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swingline Lender as set forth herein shall be deemed to be a request by the Swingline Lender that each of the Revolving Lenders fund its risk participation in the relevant Swingline Loan and each Revolving Lender's payment to the Administrative Agent for the account of the Swingline Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swingline Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or funded participation in the relevant Swingline Loan, as the case may be. A certificate of the Swingline Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swingline Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swingline Lender, any Borrower or any other Person for any reason whatsoever, (B) the occurrence or

continuance of a Default, (C) any Class of any such Loans or (D) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Company of a Loan Notice). No such funding of risk participations shall relieve or otherwise impair the obligation of the Company to repay Swingline Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Lender has purchased and funded a risk participation in a Swingline Loan, if the Swingline Lender receives any payment on account of such Swingline Loan, the Swingline Lender will distribute to such Revolving Lender its Applicable Revolving Percentage (determined without regard to any separate Class or Classes of Revolving Commitments of such Lender) thereof in the same funds as those received by the Swingline Lender.

(ii) If any payment received by the Swingline Lender in respect of principal or interest on any Swingline Loan is required to be returned by the Swingline Lender under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the Swingline Lender in its discretion), each Revolving Lender shall pay to the Swingline Lender its Applicable Revolving Percentage (determined without regard to any separate Class or Classes of Revolving Commitments of such Lender) thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight Rate. The Administrative Agent will make such demand upon the request of the Swingline Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swingline Lender. The Swingline Lender shall be responsible for invoicing the Company for interest on the Swingline Loans. Until each Revolving Lender funds its Base Rate Loan or risk participation pursuant to this Section to refinance such Revolving Lender's Applicable Revolving Percentage of any Swingline Loan, interest in respect of such Applicable Revolving Percentage shall be solely for the account of the Swingline Lender.

(f) Payments Directly to Swingline Lender. The Company shall make all payments of principal and interest in respect of the Swingline Loans directly to the Swingline Lender.

2.05 Prepayments.

(a) Optional.

(i) The Borrowers may, upon notice to the Administrative Agent pursuant to delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Revolving Loans in whole or in part without premium or penalty subject to Section 3.05; provided that, unless otherwise agreed by the Administrative Agent, (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three (3) Business Days prior to any date of prepayment of Eurocurrency Rate Loans denominated in Dollars, Euro or Sterling, (2) four (4) Business Days (or five (5), in the case of prepayment of Loans denominated in Special Notice Currencies) prior to any date of prepayment of Eurocurrency Rate Loans denominated in other Alternative Currencies, and (3) on the date of prepayment of Base Rate Loans; (B) any prepayment of Eurocurrency Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date, the currency and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurocurrency Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage). If such notice is given by any Borrower, the applicable Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided, that any notice of prepayment may state that such notice is conditional upon the effectiveness of any facility or instrument refinancing all or a portion of the outstanding Revolving Commitments or upon the consummation of any other debt or equity transaction or event that will generate financing in connection therewith, in which case, such notice may be revoked by the applicable Borrower (by notice to the Administrative Agent on or prior to the specified date) if such condition is not satisfied. Any prepayment of principal shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.15, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages.

(ii) The Company may, upon notice to the Swingline Lender pursuant to delivery to the Swingline Lender of a Notice of Loan Prepayment (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swingline Loans in whole or in part without premium or penalty; provided that, unless otherwise agreed by the Swingline Lender, (A) such notice must be received by the Swingline Lender and the Administrative Agent not later than

1:00 p.m. on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of \$100,000 or a whole multiple of \$100,000 in excess hereof (or, if less, the entire principal thereof then outstanding). Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Company, the Company shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided, that any notice of prepayment may state that such notice is conditional upon the effectiveness of any facility or instrument refinancing all or a portion of the outstanding Revolving Commitments or upon the consummation of any other debt or equity transaction or event that will generate financing in connection therewith, in which case, such notice may be revoked by the Company (by notice to the Administrative Agent on or prior to the specified date) if such condition is not satisfied. Any prepayment of principal shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05.

(b) Mandatory.

(i) If for any reason the Total Revolving Outstandings at any time exceed the Aggregate Revolving Commitment then in effect for the Revolving Facility at such time, the applicable Borrowers shall promptly (and in any event, within one (1) Business Day) prepay Revolving Loans, Swingline Loans and L/C Borrowings (together with all accrued but unpaid interest thereon) and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Borrowers shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b)(i) unless, after the prepayment of the Revolving Loans and Swingline Loans, the Total Revolving Outstandings exceed the Aggregate Revolving Commitment then in effect for the Revolving Facility at such time; provided further, that if any such excess shall result solely from a change in the applicable exchange rates relating to Alternative Currencies, then such prepayment and/or Cash Collateralization shall only be required to be made by the applicable Borrowers upon three (3) Business Days' notice from the Administrative Agent to the Company.

(ii) If the Administrative Agent notifies the Company at any time that, as a result of a change in the applicable exchange rates relating to Alternative Currencies, the Outstanding Amount of all L/C Obligations at such time exceeds an amount equal to 105% of the Letter of Credit Sublimit then in effect, then, within, three (3) Business Days after the Company's receipt of such notice, the applicable Borrowers shall Cash Collateralize Letters of Credit in an aggregate amount sufficient to reduce such Outstanding Amount as of such date of payment to an amount not to exceed 100% of the Letter of Credit Sublimit then in effect.

(iii) If the Administrative Agent notifies the Company at any time that, as a result of a change in the applicable exchange rates relating to Alternative

Currencies, the Total Revolving Outstandings denominated in Alternative Currencies at such time exceeds an amount equal to 105% of the Alternative Currency Sublimit then in effect, then, within three (3) Business Days after the Company's receipt of such notice, the applicable Borrowers shall prepay Revolving Loans and/or Cash Collateralize Letters of Credit, in each case denominated in Alternative Currencies, in an aggregate amount sufficient to reduce Total Revolving Outstandings denominated in Alternative Currencies as of such date of payment to an amount not to exceed 100% of the Alternative Currency Sublimit then in effect; provided, however, that the Borrowers shall not be required to Cash Collateralize such Letters of Credit pursuant to this Section 2.05(b)(iii) unless, after the prepayment of the Revolving Loans denominated in Alternative Currencies, the Total Revolving Outstandings denominated in Alternative Currencies exceed the Alternative Currency Sublimit then in effect.

(iv) Except as otherwise provided in Section 2.15, (A) prepayments of the Revolving Facility made pursuant to Section 2.05(b)(i) (other than by provision of Cash Collateral) first, shall be applied ratably to the L/C Borrowings and the Swingline Loans, and second, shall be applied to the outstanding Revolving Loans, ratably across each outstanding Class of Revolving Loans, and (B) prepayments of the Revolving Facility made pursuant to Section 2.05(b)(iii) (other than by provision of Cash Collateral) shall be applied to the outstanding Revolving Loans denominated in Alternative Currencies, ratably across each outstanding Class of Revolving Loans. Cash Collateral provided pursuant to this Section 2.05(b) shall be applied in accordance with Section 2.14. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from any Loan Party or any Defaulting Lender that has provided Cash Collateral) to reimburse the applicable L/C Issuer or the Revolving Lenders, as applicable.

Within the parameters of the applications set forth above in Section 2.05(b), prepayments pursuant to Section 2.05(b) shall be applied first to Base Rate Loans and then to Eurocurrency Rate Loans in direct order of Interest Period maturities. All prepayments under Section 2.05(b) shall be subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

Notwithstanding anything to the contrary in this Section 2.05, no prepayment by a Designated Foreign Borrower shall be used to pay or be applied against any Guaranteed Obligations of or attributable to any U.S. Loan Party (or any other Domestic Subsidiary).

2.06 Termination or Reduction of Commitments.

(a) Optional. The Company may, upon notice to the Administrative Agent, terminate the Revolving Facility, the Letter of Credit Sublimit, the Swingline Sublimit or the Alternative Currency Sublimit, or from time to time permanently reduce the Revolving Facility, the Letter of Credit Sublimit, the Swingline Sublimit or the

Alternative Currency Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. three (3) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$500,000 in excess thereof and (iii) the Company shall not terminate or reduce (A) the Revolving Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings would exceed the Aggregate Revolving Commitments, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, (C) the Swingline Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swingline Loans would exceed the Swingline Sublimit, or (D) the Alternative Currency Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings denominated in Alternative Currencies would exceed the Alternative Currency Sublimit; and provided, further, that any notice of permanent reduction or termination may state that such notice is conditional upon the effectiveness of any facility or instrument refinancing all or a portion of the outstanding Revolving Commitments or upon the consummation of any other debt or equity transaction or event that will generate financing in connection therewith, in which case such notice may be revoked by the Company (by notice to the Administrative Agent on or prior to the specified date) if such condition is not satisfied.

(b) Mandatory. If after giving effect to any reduction or termination of Revolving Commitments under this Section 2.06, the Letter of Credit Sublimit, the Alternative Currency Sublimit or the Swingline Sublimit exceeds the Aggregate Revolving Commitments at such time, the Letter of Credit Sublimit, the Alternative Currency Sublimit or the Swingline Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, the Alternative Currency Sublimit, the Swingline Sublimit or the Revolving Commitment under this Section 2.06. Upon any reduction of the Revolving Commitments, the Revolving Commitment of each Revolving Lender shall be reduced on a pro rata basis across all Classes of Revolving Commitments by such Lender's Applicable Revolving Percentage of such reduction amount. All fees in respect of the Revolving Facility accrued until the effective date of any termination of the Revolving Facility shall be paid on the effective date of such termination.

2.07 Repayment of Loans

(a) Revolving Loans. The applicable Borrowers shall repay to the relevant Revolving Lenders on the applicable Maturity Date for each Class of Revolving Loans the aggregate principal amount of all Revolving Loans of such Class outstanding on such date made to such Borrower (it being understood and agreed that, subject to the other terms and conditions hereof, the Borrowers may make Borrowings of Revolving Loans

under any remaining Revolving Commitments of any other Class to effect such repayment).

(b) Swingline Loans. The Company shall repay each Swingline Loan on the earlier to occur of (i) the date ten (10) Business Days after such Loan is made (it being understood that the Company may use the proceeds of a Borrowing of Revolving Loans for such repayment, subject to the applicable conditions to such Borrowing hereunder) and (ii) the Latest Maturity Date for any Class of Revolving Commitments maintained by the Swingline Lender (in its capacity as a Revolving Lender).

(c) Reallocation of Applicable Percentages after Maturity. Upon the occurrence of a Maturity Date for any applicable Class of Revolving Loans, the relevant Applicable Percentages with respect to each remaining Class of Revolving Commitments shall be readjusted without any further action or consent of any other party (calculated without regard to the Class of Revolving Commitments as to which the Maturity Date has occurred), to reflect the expiration of the Class of Revolving Commitments as to which the Maturity Date has occurred.

2.08 Interest and Default Rate.

(a) Interest. Subject to the provisions of Section 2.08(b), (i) each Eurocurrency Rate Loan under the Revolving Facility shall bear interest on the outstanding principal amount thereof for each Interest Period from the applicable borrowing date at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan under the Revolving Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swingline Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate. To the extent that any calculation of interest or any fee required to be paid under this Agreement shall be based on (or result in) a calculation that is less than zero, such calculation shall be deemed zero for purposes of this Agreement.

(b) Default Rate.

(i) Upon the occurrence of any Event of Default under Section 8.01(a), whether at stated maturity, by acceleration or otherwise, all outstanding Obligations (including Letter of Credit Fees) shall accrue at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Upon the occurrence of any Event of Default under Section 8.01(f) or Section 8.01(g), all outstanding Obligations (including Letter of Credit Fees) shall accrue at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

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

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

2.09 Fees.

In addition to certain fees described in subsections (h) and (i) of Section 2.03:

(a) Commitment Fee. The Company shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Revolving Percentage, a commitment fee in Dollars equal to the Applicable Rate times the actual daily amount by which the Revolving Facility exceeds the sum of (i) the Outstanding Amount of Revolving Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.15. For the avoidance of doubt, the Outstanding Amount of Swingline Loans shall not be counted towards or considered usage of the Revolving Facility for purposes of determining the commitment fee. The commitment fee shall be calculated quarterly in arrears and shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the third Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period for the Revolving Facility. For purposes of calculating the commitment fee, if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees.

(i) The applicable Borrowers shall pay to the Persons entitled thereto, for their own account, in Dollars, fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The applicable Borrowers shall pay to the Lenders and the Arrangers, such fees as shall have been separately agreed upon in writing and disclosed to the Administrative Agent in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.

(a) Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365 day year), or, in the case of interest in respect of Loans denominated in Alternative Currencies as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error. With respect to all Non-LIBOR Quoted Currencies, the calculation of the applicable interest rate shall be determined in accordance with market practice.

(b) Financial Statement Adjustments or Restatements. If, as a result of any restatement of or other adjustment to the financial statements of the Company and its Subsidiaries or for any other reason, the Company, or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Company as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrowers shall retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the applicable L/C Issuers, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to any Borrower under the Bankruptcy Code, automatically and without further action by the Administrative Agent, any Lender or any L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or any L/C Issuer, as the case may be, under any provision of this Agreement to payment of any Obligations hereunder at the Default Rate or under Article VIII. The Borrowers' obligations under this paragraph shall survive the termination of the Aggregate Revolving Commitments and the repayment of all other Obligations hereunder. Any additional interest or fees under this Section 2.10(b) shall not be due and payable until a demand is made for such payment by the Administrative Agent and accordingly, any nonpayment of such interest or fees as a result of any such inaccuracy shall not constitute a Default (whether retroactively or otherwise), and none of such additional amounts shall be deemed overdue or accrue interest at the Default Rate.

2.11 Evidence of Debt.

(a) Maintenance of Accounts. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrowers shall execute and deliver to such Lender (through the Administrative Agent) a Revolving Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Revolving Note and endorse thereon the date, Type (if applicable), amount, currency and maturity of its Loans and payments with respect thereto.

(b) Maintenance of Records. In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal of and interest on Loans denominated in an Alternative Currency, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder with respect to principal and interest on Loans denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any

reason, any Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, such Borrower shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency payment amount. The Administrative Agent will promptly distribute to each Appropriate Lender its relevant Applicable Percentage (or other applicable share (including on account of Extended Revolving Commitments) as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent (i) after 2:00 p.m., in the case of payments in Dollars or (ii) after the Applicable Time specified by the Administrative Agent, in the case of payments in an Alternative Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. Subject to Section 2.07(a) and as otherwise specifically provided for in this Agreement, if any payment to be made by a Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurocurrency Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such 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 Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the applicable 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 applicable Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing and (B) in the case of a payment to be made by any Borrower, the interest rate applicable to Base Rate Loans or in the case of Alternative Currencies in accordance with such market practice, in each case as applicable. If the applicable Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the applicable Borrower the amount of such interest paid by the applicable Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the applicable Borrower shall be without prejudice to any claim the applicable Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Company prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuers hereunder that the applicable Borrower will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the applicable L/C Issuers, as the case may be, the amount due. In such event, if any applicable Borrower has not in fact made such payment, then each of the Appropriate Lenders or the applicable L/C Issuers, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such L/C Issuer, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

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

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

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

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

(f) Pro Rata Treatment. Except to the extent otherwise provided herein: (i) each Borrowing (other than Swingline Borrowings) shall be made from the Appropriate Lenders, each payment of fees under Sections 2.09(a) and 2.03(h) and shall be made for account of the Appropriate Lenders, and each termination or reduction of the amount of the Revolving Commitments shall be applied to the respective Revolving

Commitments of the Lenders, pro rata according to the amounts of their respective Revolving Commitments; (ii) each Borrowing shall be allocated pro rata among the Lenders according to the amounts of their respective Revolving Commitments (in the case of the making of Revolving Loans) or their respective Loans that are to be included in such Borrowing (in the case of conversions and continuations of Loans); (iii) each payment or prepayment of principal of Loans by the Borrowers shall be made for account of the Appropriate Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by them; and (iv) each payment of interest on Loans by the Borrowers shall be made for account of the Appropriate Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Appropriate Lenders.

2.13 Sharing of Payments by Lenders.

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of the Revolving Facility due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Revolving Facility due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Revolving Facility due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Revolving Facility owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Revolving Facility owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Revolving Facility owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swingline Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Revolving Facility then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

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

(2) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender or Extended Revolving Commitments), (y) the application of Cash Collateral provided for in Section 2.14, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swingline Loans to any assignee or participant, other than an assignment to any Loan Party or any Affiliate thereof (as to which the provisions of this Section shall apply).

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

2.14 Cash Collateral.

(a) Certain Credit Support Events. If (i) any L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) any Borrower shall be required to provide Cash Collateral pursuant to Section 2.05 or 8.02(c) or (iv) there shall exist a Defaulting Lender, the applicable Borrowers shall, solely with respect to their respective outstanding Letters of Credit or L/C Borrowings, as applicable, immediately (in the case of clause (iii) above, except to the extent a longer period is provided under Section 2.05, as applicable) or within one (1) Business Day (in all other cases) following any request by the Administrative Agent or any L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (iv) above, after giving effect to Section 2.15(a)(iv) and any Cash Collateral provided by such Defaulting Lender) or the amount required pursuant to Section 2.05, as applicable.

(b) Grant of Security Interest. Each Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuers and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.14(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuers as herein provided, or that the total amount of such Cash Collateral is less

than the Minimum Collateral Amount, the applicable Borrower or, to the extent provided by any Defaulting Lender, such Defaulting Lender, will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more blocked, interest bearing deposit accounts at Bank of America (it being understood and agreed that Bank of America and the Administrative Agent make no warranty or guarantee as to the level of, or amount (if any) of, interest with respect to such deposit account). The applicable Borrowers shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral. Each Designated Foreign Borrower hereby agrees to take all such further acts and to execute, acknowledge, deliver, record, file and register such documents and instruments as the Administrative Agent may reasonably require to carry out the provisions of this Section 2.14.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.14 or Sections 2.03, 2.05, 2.15 or 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Revolving Lender that is a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein; provided that no Cash Collateral provided in respect of any Obligations of a Designated Foreign Borrower shall be applied to the satisfaction of any Obligations of or attributable to any U.S. Loan Party; provided further, however, that the Borrowers shall cause Cash Collateral to be provided by each applicable Borrower in an amount sufficient to Cash Collateralize the L/C Obligations related to such Borrower, as provided herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving Lender (or, as appropriate, its assignee following compliance with Section 11.06(b)(vi))) or (ii) the determination by the Administrative Agent and the applicable L/C Issuer that there exists excess Cash Collateral; provided, however, (A) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents, and (B) the Person providing Cash Collateral and the applicable L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

(e) Release of Lenders' Obligations. Notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event that (i) any applicable L/C Issuer shall have issued, in accordance with Section 2.03(a)(ii) (B), a Letter of Credit with an expiry date occurring after the Letter of Credit Expiration Date and (ii) the Borrowers shall have Cash Collateralized the Outstanding Amount of all such L/C Obligations in respect of such Letter of Credit pursuant to Section 2.14(a) above, then, upon the provision of such Cash Collateral and without any further action, each Lender hereunder shall be automatically released from any further obligation to such L/C Issuer in respect of such Letter of Credit, including, without limitation, any obligation of any such Lender to reimburse such L/C Issuer for amounts drawn under such Letter of Credit or to purchase any risk participation therein; provided, however, that all such obligations of each Lender hereunder to such L/C Issuer in respect of such Letter of Credit shall be revived if any Cash Collateral provided by the Borrowers in respect of such Letter of Credit is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such L/C Issuer) to be repaid to a trustee, receiver, examiner or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such Cash Collateral had not been provided. The obligations of the Lenders under this paragraph shall survive the Facility Termination Date.

2.15 Defaulting Lenders.

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

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 11.01.

(ii) Defaulting Lender Waterfall. 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) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any L/C Issuer or Swingline Lender hereunder; third, to Cash Collateralize each L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.14; fourth, as the Company 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; fifth, if so determined by the Administrative Agent and the Company, to be held in a deposit account and released pro rata in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (B) Cash Collateralize each L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.14; sixth, to the payment of any amounts owing to the Lenders, the L/C Issuers or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any L/C Issuer or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise as may be required under the Loan Documents in connection with any Lien conferred thereunder or directed by a court of competent jurisdiction; provided that if (1) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (2) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis with respect to any applicable Class prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Classes of the relevant Classes of Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Revolving Commitments (including any applicable Class of Revolving Commitments) hereunder without giving effect to Section 2.15(a)(iv). Any payments, prepayments 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 2.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Fees. No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Letter of Credit Fees. Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Revolving Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.14.

(C) Defaulting Lender Fees. With respect to any fee payable under Section 2.09(a) or any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrowers shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to each L/C Issuer and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Revolving Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Revolving Percentages (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that (x) such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment or the aggregate Revolving Exposure of any Non-Defaulting Lender under any Class of Revolving Commitments to exceed such Non-Defaulting Lender's Revolving Commitment of such Class and (y) no Non-Defaulting Lender is allocated any Class of Revolving Commitments which it does not maintain. Subject to Section 11.20, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the applicable Borrowers shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (A) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure and (B) second, Cash Collateralize each L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.14.

(b) Defaulting Lender Cure. If the Company, the Administrative Agent, Swingline Lender and the L/C Issuers agree in writing that a Lender is no longer 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), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.15(a)(iv)), 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 Borrowers while that 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 that Lender's having been a Defaulting Lender.

2.16 Designated Foreign Borrowers.

(a) Initial Designated Foreign Borrowers. Effective as of the date hereof, Vertex Europe and Vertex Ireland shall each be a "Designated Foreign Borrower" hereunder and may receive Loans and have Letters of Credit issued for its account as a Designated Foreign Borrower on the terms and conditions set forth in this Agreement.

(b) Additional Designated Foreign Borrowers. The Company may at any time, upon not less than fifteen (15) Business Days' notice from the Company to the Administrative Agent (or such shorter period as may be agreed by the Administrative Agent in its sole discretion), request to designate any additional Restricted Subsidiary that is a Foreign Subsidiary of the Company (an "Applicant Foreign Borrower") as a Designated Foreign Borrower to receive Revolving Loans hereunder by delivering to the Administrative Agent (which shall promptly deliver counterparts thereof to each Lender) a duly executed Designated Foreign Borrower Request and Assumption Agreement. The parties hereto acknowledge and agree that prior to any Applicant Foreign Borrower becoming entitled to utilize the credit facilities provided for herein, (i) the Administrative Agent, the Lenders and the L/C Issuers must each agree to such Applicant Foreign Borrower becoming a Designated Foreign Borrower (such consent not to be unreasonably withheld or delayed) and (ii) the Administrative Agent, the Lenders and the L/C Issuers shall have received such supporting resolutions, incumbency certificates, opinions of counsel and other documents or information reasonably requested (including, without limitation and to the extent so requested, (x) to the extent any Applicant Foreign Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification and (y) any other documentation and information regarding such Applicant Foreign Borrower reasonably requested by the Administrative Agent and the Lenders in order to comply with "know your customer"

and anti-money laundering rules and regulations), in form, content and scope reasonably satisfactory to the Administrative Agent, as may be required by the Administrative Agent, and Revolving Notes signed by such new Borrowers to the extent any Lender so requires (the requirements in the foregoing clauses (i) and (ii), the “Designated Foreign Borrower Requirements”). If the Designated Foreign Borrower Requirements are met, the Administrative Agent shall send a Designated Foreign Borrower Notice to the Company, the Lenders and the L/C Issuers specifying the effective date upon which such Applicant Foreign Borrower shall constitute a Designated Foreign Borrower for purposes hereof, whereupon each of the Lenders and L/C Issuers agrees to permit such Designated Foreign Borrower to receive Credit Extensions hereunder, on the terms and conditions set forth herein, and each of the parties agrees that such Designated Foreign Borrower otherwise shall be a Borrower for all purposes of this Agreement; provided that no Loan Notice or Letter of Credit Application may be submitted by or on behalf of such Designated Foreign Borrower until the date that is five (5) Business Days after such effective date.

(c) Obligations. Except as specifically provided herein, the Obligations of each of the Borrowers (including, without limitation, Obligations under Sections 2.07, 2.08 and 2.09) shall be joint and several in nature, regardless of which Person actually receives Credit Extensions hereunder or the amount of such Credit Extensions received or the manner in which the Administrative Agent, the L/C Issuer or any Lender accounts for such Credit Extensions on its books and records; provided, however, that notwithstanding anything contained to the contrary herein or in any other Loan Document, the Designated Foreign Borrowers shall not be liable with respect to any Obligations of the Company.

(d) Appointment. Each Restricted Subsidiary of the Company that is or becomes a Designated Foreign Borrower hereby irrevocably appoints, designates and authorizes the Company to act on its behalf as its agent for all purposes of this Agreement and the other Loan Documents and authorizes the Company to take such actions on its behalf and to exercise such powers as are delegated to the Company by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each Restricted Subsidiary of the Company that is or becomes a Designated Foreign Borrower hereby further agrees that (i) the Company may execute such documents on behalf of such Designated Foreign Borrower as the Company deems appropriate in its sole discretion and each Designated Foreign Borrower shall be obligated by all of the terms of any such document executed on its behalf, (ii) any notice or communication delivered by the Administrative Agent or the Lender to the Company shall be deemed delivered to each Designated Foreign Borrower and (iii) the Administrative Agent or the Lenders may accept, and be permitted to rely on, any document, instrument or agreement executed by the Company on behalf of each of the Loan Parties.

(e) Termination. The Company may from time to time, upon not less than three (3) Business Days’ prior written notice from the Company to the Administrative Agent (or such shorter period as may be agreed by the Administrative Agent in its sole discretion), terminate a Designated Foreign Borrower’s status as such; provided that

(i) there are no outstanding Loans payable by such Designated Foreign Borrower, Letters of Credit issued for the account of such Designated Foreign Borrower or any of its Subsidiaries, or other amounts due and payable by such Designated Foreign Borrower as of the effective date of such termination, (ii) no Event of Default has occurred and is continuing or would result therefrom and (iii) immediately after giving effect to such termination, the aggregate outstanding principal amount of all Priority Indebtedness shall not exceed fifteen percent (15%) of Consolidated Net Worth (determined as of the last day of the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 6.01(a) or 6.01(b) (or, prior to the delivery of any such financial statements, determined as of June 30, 2020)); provided further, that the Administrative Agent, the applicable L/C Issuer and the Lenders shall cooperate with any Designated Foreign Borrower to amend or replace any Letter of Credit in order to name the Company as the applicant or account party with respect to any Letter of Credit issued for the account of such Designated Foreign Borrower or any of its Subsidiaries. The Administrative Agent will promptly notify the Lenders of any such termination of a Designated Foreign Borrower's status.

2.17 Designated Lenders.

Each of the Administrative Agent, each L/C Issuer, each Swingline Lender and each Lender at its option may make any Credit Extension or otherwise perform its obligations hereunder through any Lending Office (each, a "Designated Lender"); provided that any exercise of such option shall not affect the obligation of any Borrower to repay any Credit Extension in accordance with the terms of this Agreement. Any Designated Lender shall be considered a Lender; provided that designation of a Designated Lender is for administrative convenience only and does not expand the scope of liabilities or obligations of any Lender or Designated Lender beyond those of the Lender designating such Person as a Designated Lender as provided in this Agreement.

2.18 Increase in Revolving Commitments.

(a) Increase in Revolving Facility.

(i) Upon notice to the Administrative Agent (which shall promptly notify the Revolving Lenders), the Company may from time to time after the Closing Date, request an increase in the Revolving Facility by an aggregate amount (for all such requests) not to exceed \$500,000,000 (any such increase in the Revolving Facility, an "Incremental Revolving Facility"); provided that (i) any such request for an Incremental Revolving Facility shall be in a minimum amount of \$25,000,000, and in increments of \$5,000,000 in excess thereof, or, if less, the entire remaining amount available for such Incremental Revolving Facility, and (ii) in no event shall the Aggregate Revolving Commitments under the Revolving Facility (after giving effect to all requested increases therein) exceed \$2,500,000,000. Subject to the terms and conditions hereof, the Company may seek commitments from existing Lenders or any other Person that is an Eligible Assignee who shall become a Revolving Lender in connection therewith. At the

time of sending such notice, the Company (in consultation with the Administrative Agent) shall specify the time period within which each Revolving Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Revolving Lenders).

(ii) Revolving Lender Elections to Increase. Each Revolving Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Revolving Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Revolving Lender not responding within such time period shall be deemed to have declined to increase its Revolving Commitment.

(iii) Notification by Administrative Agent; Additional Revolving Lenders. The Administrative Agent shall notify the Company and each Revolving Lender of the Revolving Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase (to the extent the existing Revolving Lenders do not agree to provide the entire amount of the requested increase), and subject to the approval of the Administrative Agent, the L/C Issuers and the Swingline Lender, the Company may also invite additional Eligible Assignees to become Revolving Lenders (together with any existing Revolving Lender participating in such increase, each, an "Increasing Revolving Lender") pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel. Nothing contained herein shall constitute, or otherwise be deemed to be, a commitment on the part of any Revolving Lender to participate in any increase in the Revolving Facility.

(iv) Effective Date and Allocations. If the Revolving Facility is increased in accordance with this Section, the Administrative Agent and the Company shall determine (x) the effective date of any such increase (the "Revolving Facility Increase Effective Date") and (y) the final allocation of such increase among the Increasing Revolving Lenders and Schedule 1.01(b) attached hereto shall be automatically updated to reflect the same. The Administrative Agent shall promptly notify the Company and the Revolving Lenders of the final allocation of such increase and the Revolving Facility Increase Effective Date.

(b) Conditions to Effectiveness of Increase. As a condition precedent to each such increase in the Revolving Facility pursuant to this Section 2.18:

(i) as of the Revolving Facility Increase Effective Date, before and after giving effect to such increase, (A) no Default or Event of Default shall then exist or would exist after giving effect thereto exists, (B) the Company shall demonstrate to the reasonable satisfaction of the Administrative Agent that, after giving effect to such increase on a Pro Forma Basis (as if the entire amount of the Incremental Revolving Facility has been fully-funded), the Company is in Pro Forma Compliance, and (C) the representations and warranties contained in Article V and each other Loan Documents shall be true and correct in all material

respects (or in the case of a representation or warranty that is already subject to a materiality condition, in all respects), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 2.18, the representations and warranties contained in clauses (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(ii) the Company shall have delivered to the Administrative Agent a certificate of each Loan Party dated as of the Revolving Facility Increase Effective Date, signed by a Responsible Officer of such Loan Party (x) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (y) certifying (and attaching calculations, as appropriate, in reasonable detail necessary to demonstrate) that, before and after giving effect to such increase each, of the conditions set forth in clause (i) above are satisfied; and

(iii) the Company shall have delivered, or cause to be delivered, customary legal opinions, officers' certificates, reaffirmation agreements and other documents consistent in all material respects with those delivered on the Closing Date under Section 4.01 with respect to the Company, the other Borrowers and all applicable Subsidiary Guarantors (other than changes to such legal opinions resulting from a change in Law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent) as reasonably requested by the Administrative Agent in connection with each such increase in the Revolving Facility.

The applicable Borrowers shall prepay any Revolving Loans outstanding on the Revolving Facility Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Revolving Loans ratable with any revised Applicable Revolving Percentages arising from any nonratable increase in the Revolving Commitments under this Section 2.18.

(c) Terms of Increase. Any increase in the Revolving Facility shall be made on the same terms (including, without limitation, interest, payment, amortization and maturity terms), and shall be subject to the same conditions as existing Revolving Commitments (or, if more than one Class of Revolving Commitments is then outstanding, the Revolving Commitments with the then Latest Maturity Date) except customary arrangement or commitment fees payable to the Arrangers or one or more Increasing Revolving Lenders may be different from those paid with respect to the existing Revolving Commitments of the existing Lenders on or prior to the Closing Date or with respect to any other Increasing Revolving Lender in connection with any other increase in the Revolving Facility pursuant to this Section 2.18.

(d) Conflicting Provisions. This Section 2.18 shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

2.19 Extension of Maturity Date.

(a) Request for Extended Revolving Commitments. So long as no Event of Default has occurred and is continuing, the Borrowers may at any time and from time to time, upon written request to and the consent of the Administrative Agent, the Swingline Lender and the L/C Issuers, request (each, a “Revolving Extension Request”) that an aggregate principal amount of not less than \$100,000,000 of the then existing Revolving Commitments of any Class (each, an “Existing Revolving Tranche”) be amended to, among other things, extend the applicable Maturity Date with respect thereto (the “Existing Maturity Date”) to a date that is no earlier than the then Latest Maturity Date of any other Revolving Commitment hereunder (any such Revolving Commitments so amended, “Extended Revolving Commitments”); provided that (i) after giving effect to any Extended Revolving Commitments under this Section 2.19, there shall be no more than three (3) Classes of Revolving Commitments outstanding at any time and (ii) any such Extended Revolving Commitments shall be offered on the same terms to each Revolving Lender under the applicable Existing Revolving Tranche on a ratable basis. For the avoidance of doubt, the reference to “on the same terms” in the preceding sentence shall mean that all of the Revolving Lenders holding such Existing Revolving Tranche are offered to be extended for the same amount of time, offered the same type of Revolving Commitment and that the interest rate changes and fees payable with respect to such extension are the same. Promptly after receipt of any Revolving Extension Request, the Administrative Agent shall provide a copy of such request to each of the Revolving Lenders under the applicable Existing Revolving Tranche to be amended, which request shall set forth the proposed terms (which shall be determined in consultation with the Administrative Agent) of the Extended Revolving Commitments to be established. Each Revolving Extension Request shall specify (A) the applicable Class of Revolving Commitments and Revolving Loans hereunder to be extended, (B) the date to which the applicable Maturity Date is sought to be extended, and (C) the changes, if any, to the Applicable Rate to be applied in determining the interest payable on the Revolving Loans of, and fees payable hereunder to, Extending Revolving Lenders in respect of that portion of their Revolving Commitments and Revolving Loans extended to such new Maturity Date; provided, however, that such Extended Revolving Commitments shall, except as to interest rates, fees and any other pricing terms and final maturity, have the same terms (including borrowing terms and payment terms (other than payment on the applicable Maturity Date)) as the existing Class of Revolving Commitments from which they are extended. At the time of sending such notice, the Company (in consultation with the Administrative Agent) shall specify the time period within which each applicable Revolving Lender is requested to respond to such request (which shall in no event be less than fifteen (15) calendar days (or such shorter period as may be agreed by the Administrative Agent) from the date of delivery of such notice to such Revolving Lenders) and shall agree to such procedures, if any, as may be established by, or reasonably acceptable to, the Administrative Agent to accomplish the purposes of this Section 2.19.

(b) Election to Extend. Any Revolving Lender wishing to have all (but not less than all) of its Revolving Commitments under the Existing Revolving Tranche amended into Extended Revolving Commitments (each, including any Additional Commitment Lenders (as defined below), an “Extending Revolving Lender”) specified in the Revolving Extension Request shall notify the Administrative Agent on or prior to the response date specified in such Revolving Extension Request of the Revolving Commitments it has elected to be amended. No Revolving Lender shall have any obligation to agree to provide any Extended Revolving Commitment pursuant to any Revolving Extension Request. Any Revolving Lender that determines not to extend its Revolving Commitments under the Existing Revolving Tranche, and notifies the Administrative Agent as to the same, or does not responding on or prior to such response date shall be deemed to have declined such Revolving Extension Request and, in each case, shall constitute a “Non-Consenting Lender” hereunder. The Administrative Agent shall notify the Company and each Revolving Lender under the applicable Existing Revolving Tranche of responses to such Revolving Extension Request. In the event that the aggregate principal amount of existing Revolving Commitments that the Extending Revolving Lenders have elected to amend pursuant to the relevant Revolving Extension Request exceeds the amount of Extended Revolving Commitments requested by the Borrowers, the principal amount of Extended Revolving Commitments requested by the Borrowers shall be allocated to each Extending Revolving Lender in such manner and in such amounts as may be agreed by Administrative Agent and the Company, in their sole discretion.

(c) Additional Commitment Lenders. The Company shall have the right to replace each Non-Consenting Lender with, and add as “Revolving Lenders” under this Agreement in place thereof, one or more Eligible Assignees (each, an “Additional Commitment Lender”) as provided in Section 11.13; provided that each of such Additional Commitment Lenders shall enter into an Assignment and Assumption in connection with any such Revolving Extension Request pursuant to which such Additional Commitment Lender shall undertake a Revolving Commitment (and, if any such Additional Commitment Lender is already a Lender, its Revolving Commitment shall be in addition to any other Revolving Commitment of such Lender hereunder on such date) from one or more Non-Consenting Lenders.

(d) Revolving Extension Amendment. Extended Revolving Commitments shall be established pursuant to an amendment (each, a “Revolving Extension Amendment”) to this Agreement among the Borrowers, the Administrative Agent and each Extending Revolving Lender, if any, providing an Extended Revolving Commitment, which shall be consistent with the provisions set forth in Sections 2.19(a), (b) and (d) (but which shall not require the consent of any other Lender). The effectiveness of any Revolving Extension Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in Sections 4.02(a) and 4.02(b) (but solely limited to an Event of Default) (with all references in such Sections to a Credit Extension being deemed to be references to such Revolving Extension Request) and receipt of a certificate to that effect and, any other condition as may be agreed among the

Borrowers, the Administrative Agent and the Extending Revolving Lenders. In addition, the Company shall have delivered, or cause to be delivered, customary legal opinions, officers' certificates, reaffirmation agreements and other documents consistent in all material respects with those delivered on the Closing Date under Section 4.01 with respect to the Company, the other Borrowers and all applicable Subsidiary Guarantors (other than changes to such legal opinions resulting from a change in Law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent) as reasonably requested by the Administrative Agent in connection with each such extension. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Revolving Extension Amendment and the matters specified therein. Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to a Revolving Extension Amendment, without the consent of any other Lender, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Extended Revolving Commitments incurred pursuant thereto, and (ii) effect such other 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 Borrowers, to effect the provisions of this Section 2.19, in each case, in a manner consistent with the terms of this Section 2.19, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Revolving Extension Amendment.

(e) Terms of Extended Revolving Commitments. Except as expressly provided herein, all Extended Revolving Commitments effected pursuant to any Revolving Extension Request and Revolving Extension Amendment shall be subject to the same terms, and shall be subject to the same conditions as the Existing Revolving Tranche. After giving effect to any Extended Revolving Commitment, all borrowings under the Revolving Commitments (including any such Extended Revolving Commitments) and repayments thereunder shall be made on a pro rata basis (except for (x) any payments of interest and fees at different rates on any Revolving Extension Series (and related Loans thereunder), (y) repayments required upon the applicable Maturity Date of other Revolving Commitments and (z) except as otherwise expressly set forth herein). If a Revolving Extension Amendment has become effective hereunder, not later than the third Business Day prior to the Existing Maturity Date, the Borrowers shall make prepayments of Revolving Loans and shall Cash Collateralize Letters of Credit, such that, after giving effect to such prepayments and such provision of Cash Collateral, the aggregate Revolving Exposure as of such date will not exceed the aggregate applicable Extended Revolving Commitments of the Extended Revolving Lenders (and the Borrowers shall not be permitted thereafter to request any Revolving Loan or any issuance, amendment, renewal or extension of a Letter of Credit if, after giving effect thereto, the applicable Revolving Exposure would exceed the aggregate amount of the Extended Revolving Commitments then in effect).

(f) Revolving Extension Series. Any Extended Revolving Commitments effected pursuant to a Revolving Extension Request shall be designated a series (each, a "Revolving Extension Series") of Extended Revolving Commitments for all purposes of

this Agreement; provided that any Extended Revolving Commitments effected from an Existing Revolving Tranche may, to the extent provided in the applicable Revolving Extension Amendment, be designated as an increase in any previously established Revolving Extension Series with respect to such Existing Revolving Tranche. In connection with the foregoing, Schedule 1.01(b) attached hereto shall be updated to reflect each applicable Revolving Extension Series, in a manner reasonably satisfactory to the Administrative Agent.

(g) Changes to Applicable Rate. In connection with any extension of the Maturity Date made pursuant to this Section 2.19, the Applicable Rate applicable to Loans made and to be made by Extending Revolving Lenders may be modified without any consent of any other Lender; provided that no such modification shall apply to the Loans of the other Lenders unless the Company and the Administrative Agent (without any requirement of consultation with or approval by any other Lender) determine that such change should apply to the Loans of the other Lenders and either (i) such other Lender has consented to such change (notwithstanding such Lender is not consenting to the applicable extension of the Maturity Date) or (ii) such change represents an increase in the Applicable Rate applicable to the Loans of the other Lenders.

(h) Conflicting Provisions. This Section 2.19 shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

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

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to this Section 3.01.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to this Section 3.01, (B) the

Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including withholdings and deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

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

(iv) A Loan Party shall promptly upon becoming aware that it must make a deduction or withholding for any Taxes from a payment under any Loan Document (or that there is a change in the rate or the basis of such deduction or withholding) notify the Administrative Agent (who shall notify any relevant Lenders) accordingly.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto,

whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the applicable Loan Party by a Lender or an L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an L/C Issuer, shall be conclusive absent manifest error. Each of the Loan Parties shall also, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender or an L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(ii) below.

(ii) Each Lender and each L/C Issuer shall, and does hereby, severally indemnify and shall make payment in respect thereof within ten (10) days after demand therefor, (A) the Administrative Agent against any Indemnified Taxes attributable to such Lender or such L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (B) the Administrative Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (C) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender or such L/C Issuer, in each case, that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender and each L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or such L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority, as provided in this Section 3.01, the applicable Loan Party shall 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 any return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the applicable Borrower and the Administrative Agent, at the time or

times reasonably requested by the applicable Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the applicable 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 applicable Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the applicable Borrower or the Administrative Agent as will enable the applicable 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 Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall 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.

(ii) Without limiting the generality of the foregoing, in the event that the applicable Borrower is a U.S. Person (including the Company),

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

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S.

federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit I-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 Company within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-2 or Exhibit I-3, IRS 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 I-4 on behalf of each such direct and indirect partner;

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or

1472(b) of the Code, as applicable), such Lender shall deliver to the Company and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Company 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 Company or the Administrative Agent as may be necessary for the Company and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

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

(f) An Irish Treaty Lender and the applicable Borrower shall co-operate in completing any procedural formalities necessary for the applicable Borrower to obtain authorization to make a payment to that Irish Treaty Lender without any deduction or withholding of any tax imposed by Ireland.

(g) In respect of Loans advanced to a Loan Party that is within the charge to United Kingdom corporation tax:

(i) Subject to Section 3.01(g)(ii), a UK Treaty Lender and each Loan Party which makes a payment under a Loan Document to which that UK Treaty Lender is entitled shall cooperate in completing any procedural formalities necessary for such Loan Party to obtain authorization to make that payment without a UK Tax Deduction, including making and filing of an appropriate application for relief under an applicable Treaty.

(ii) A UK Treaty Lender that holds a passport under the HMRC Double Taxation Treaty Passport Scheme ("UK DTTP Scheme") and which wishes the UK DTTP Scheme to apply to this Agreement, shall confirm its scheme reference number and jurisdiction of tax residence in: (A) where the UK Treaty Lender is a Lender on the date of this Agreement, Schedule 1.01(d) to this Agreement; or (B) where the UK Treaty Lender becomes a Lender after the date of this Agreement, the relevant Assignment and Assumption, and, having done so, that UK Treaty Lender shall be under no obligation pursuant to Section 3.01(g)(i) to cooperate with the relevant Loan Party but, for avoidance of doubt, such UK Treaty Lender shall have an obligation to cooperate further with the relevant Loan Party in accordance with Section 3.01(g)(iii).

(iii) If a UK Treaty Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with Section 3.01(g)(ii) and:

(A) a Loan Party making a payment to that UK Treaty Lender has not made a UK DTTP Filing in respect of that UK Treaty Lender; or

(B) a Loan Party making a payment to that UK Treaty Lender has made a UK DTTP Filing in respect of that Lender but either (1) that UK DTTP Filing has been rejected by HMRC or (2) HMRC has not given the Loan Party authority to make payments to that UK Treaty Lender without a UK Tax Deduction within forty (40) Business Days of the date of the UK DTTP Filing, and in each case, the relevant Loan Party has notified that UK Treaty Lender in writing, that UK Treaty Lender and the Loan Party shall cooperate in completing any additional procedural formalities necessary for that Loan Party to obtain authorization to make that payment without a UK Tax Deduction.

(iv) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with Section 3.01(g)(ii), no Loan Party shall make a UK DTTP Filing or file any other form relating to the UK DTTP Scheme in respect of that Lender's Revolving Commitment or participation in any Loan unless the Lender otherwise agrees.

(v) A Loan Party shall, promptly after making a UK DTTP Filing, deliver a copy of the UK DTTP Filing to the Administrative Agent for delivery to the relevant Lender.

(vi) A Lender that is a Lender on the date of this Agreement that is a UK Qualifying Lender solely by virtue of sub-paragraph (b) of the definition of UK Qualifying Lender gives a UK Tax Confirmation to Company by entering into the Agreement. A Lender that is a UK Qualifying Lender solely by virtue of sub-paragraph (b) of the definition of UK Qualifying Lender shall promptly notify Company and the Administrative Agent if there is any change in the position from that set out in the UK Tax Confirmation.

(vii) Each Lender which is not a Lender on the date of this Agreement shall indicate in the relevant Assignment and Assumption, for the benefit of the Administrative Agent, but without liability to any Loan Party, whether it is:

(A) not a UK Qualifying Lender;

(B) a UK Qualifying Lender (that is not a UK Treaty Lender); or

(C) a UK Treaty Lender.

If a Lender fails to indicate its status in accordance with this Section 3.01(g)(vii) then such Lender shall be treated for the purposes of this Agreement (including by each Loan Party) as if it is not a UK Qualifying Lender until such time as it notifies the Administrative Agent (and the Administrative Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, an Assignment and Assumption shall not be invalidated by any failure of a Lender to comply with this Section 3.01(g)(vii).

(viii) Each Loan Party which makes a payment under a Loan Document to which DNB Capital LLC (or its member) is entitled shall duly complete and file an HMRC Form DTTP2 with HMRC within thirty (30) Business Days after the date of this Agreement. DNB Capital LLC and each such Loan Party shall cooperate in completing any procedural formalities necessary for that Loan Party to obtain authorization to make that payment without a UK Tax Deduction.

(h) Each Lender which is not a Lender on the date of this Agreement shall indicate in the relevant Assignment and Assumption, for the benefit of the Administrative Agent, but without liability to any Loan Party, whether it is:

- (i) not an Irish Qualifying Lender;
- (ii) an Irish Qualifying Lender (that is not an Irish Treaty Lender); or
- (iii) an Irish Treaty Lender.

If a Lender fails to indicate its status in accordance with this Section 3.01(h) then such Lender shall be treated for the purposes of this Agreement (including by each Loan Party) as if it is not an Irish Qualifying Lender until such time as it notifies the Administrative Agent (and the Administrative Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, an Assignment and Assumption shall not be invalidated by any failure of a Lender to comply with this Section 3.01(h).

(i) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or an L/C Issuer, or have any obligation to pay to any Lender or any L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or such L/C Issuer, as the case may be. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Loan Party, upon the request of the Recipient, agrees to repay the

amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to such Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

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

3.02 Illegality.

(a) If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund or charge interest with respect to any Credit Extension, or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or any Alternative Currency in the applicable interbank market, then, upon notice thereof by such Lender to the Company (through the Administrative Agent), (i) any obligation of such Lender to make or continue Eurocurrency Rate Loans in the affected currency or currencies or, in the case of Eurocurrency Rate Loans in Dollars, to convert Base Rate Loans to Eurocurrency Rate Loans, shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Company that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (A) the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable and such Loans are denominated in Dollars, convert all Eurocurrency Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully

continue to maintain such Eurocurrency Rate Loans and (B) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

(b) If, in any applicable jurisdiction, the Administrative Agent, the applicable L/C Issuer or any Lender or any Designated Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Administrative Agent, the applicable L/C Issuer or any Lender or its applicable Designated Lender to (i) perform any of its obligations hereunder or under any other Loan Document, (ii) to fund, hold a commitment or maintain its participation in any Loan or Letter of Credit or (iii) issue, make, maintain, fund or charge interest or fees with respect to any Credit Extension, such Person shall promptly notify the Administrative Agent, then, upon the Administrative Agent notifying the Company, and until such notice by such Person is revoked, any obligation of such Person to issue, make, maintain, fund or charge interest or fees with respect to any such Credit Extension shall be suspended, and to the extent required by applicable Law, cancelled. Upon receipt of such notice, the Loan Parties shall, (A) repay that Person's participation in the Loans or other applicable Obligations on the last day of the Interest Period for each Loan or other Obligation occurring after the Administrative Agent has notified the Company or, if earlier, the date specified by such Person in the notice delivered to the Administrative Agent (being no earlier than the last day of any applicable grace period permitted by applicable Law), (B) to the extent applicable to the applicable L/C Issuer, Cash Collateralize that portion of applicable L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized and (C) take all reasonable actions requested by such Person to mitigate or avoid such illegality.

3.03 Inability to Determine Rates.

(a) If in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof, (i) the Administrative Agent determines that (A) deposits (whether in Dollars or an Alternative Currency) are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Eurocurrency Rate Loan, (B) (1) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan (whether denominated in Dollars or an Alternative Currency) or in connection with an existing or proposed Base Rate Loan and (2) the circumstances described in Section 3.03(c)(i) do not apply or (C) a fundamental change has occurred in the foreign exchange or interbank markets with respect to such Alternative Currency (including, without limitation, changes in national or

international financial, political or economic conditions or currency exchange rates or exchange controls) (in each case with respect to this clause (i), “**Impacted Loans**”) or (ii) the Administrative Agent or the Required Lenders determine that for any reason Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Company and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended (to the extent of the affected Eurocurrency Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of this Section 3.03(a), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Company may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans in the affected currency or currencies (to the extent of the affected Eurocurrency Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in Dollars in the amount specified therein.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (a)(i) of this Section 3.03, the Administrative Agent in consultation with the Company, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (a)(i) of this Section 3.03, (ii) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Company that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans or (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Company written notice thereof.

(c) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, but without limiting Sections 3.01(a) and (b) above, if the Administrative Agent determines (which determination shall be conclusive and binding upon all parties hereto absent manifest error), or the Company or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Company) that the Company or Required Lenders (as applicable) have determined

(which determination likewise shall be conclusive and binding upon all parties hereto absent manifest error), that:

(i) adequate and reasonable means do not exist for ascertaining LIBOR for any requested Interest Period, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the administrator of the LIBOR Screen Rate or a Governmental Authority having or purporting to have jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans in the applicable currency; provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide LIBOR after such specific date (such specific date, the “Scheduled Unavailability Date”), or

(iii) syndicated loans currently being executed, or that include language similar to that contained in this Section 3.03, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR,

then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Company may amend this Agreement to replace LIBOR in accordance with this Section 3.03 with (x) one or more SOFR-Based Rates (which shall be applicable only to Loans denominated in Dollars) or (y) another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar Dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar Dollar denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated (the “Adjustment”; and any such proposed rate, a “LIBOR Successor Rate”), and any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Company unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders (A) in the case of an amendment to replace LIBOR with a rate described in clause (x), object to the Adjustment; or (B) in the case of an amendment to replace LIBOR with a rate described in clause (y), object to such amendment; provided that for the avoidance of doubt, in the case of clause (A), the Required Lenders shall not be entitled to object to any SOFR-Based Rate contained in any such amendment. Such LIBOR Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the

Administrative Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

If no LIBOR Successor Rate has been determined and the circumstances under clause (c)(i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Company and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended (to the extent of the affected Eurocurrency Rate Loans or Interest Periods), and (ii) the Eurocurrency Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, the Company may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans in the affected currency or currencies (to the extent of the affected Eurocurrency Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing clause (ii)) in Dollars in the amount specified therein.

Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero for purposes of this Agreement.

In connection with the implementation of a LIBOR Successor Rate, the Administrative Agent will have the right to make LIBOR Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such LIBOR Successor Rate Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing LIBOR Successor Rate Conforming Changes to the Company and the Lenders reasonably promptly after such amendment becomes effective.

For purposes hereof:

“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement).

“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal

Reserve Board and/or the Federal Reserve Bank of New York for the purpose of recommending a benchmark rate to replace LIBOR in loan agreements similar to this Agreement.

“SOFR” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source) and, in each case, that has been selected or recommended by the Relevant Governmental Body.

“SOFR-Based Rate” means SOFR or Term SOFR.

“Term SOFR” means the forward-looking term rate for any period that is approximately (as determined by the Administrative Agent) as long as any of the Interest Period options set forth in the definition of “Interest Period” and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion.

3.04 Increased Costs; Reserves on Eurocurrency Rate Loans.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or any L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Excluded Taxes (other than those described in clause (a) of the definition of Excluded Taxes) and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurocurrency Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such L/C Issuer, the Company will pay (or cause the applicable

Designated Foreign Borrower to pay) to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such L/C Issuer's capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Agreement, the Revolving Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy or liquidity), then from time to time the Company will pay (or cause the applicable Designated Foreign Borrower to pay) to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered.

(c) [Reserved].

(d) Certificates for Reimbursement. A certificate of a Lender or an L/C Issuer setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in clause (a) or (b) of this Section 3.04, including the basis and calculation thereof, shall be delivered to the Company and shall be conclusive absent manifest error. The Company shall pay (or cause the applicable Designated Foreign Borrower to pay) such Lender or such L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(e) Reserves on Eurocurrency Rate Loans. The Company shall pay (or cause the applicable Designated Foreign Borrower to pay) to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive) and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Revolving Commitments or the funding of the Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal

places) equal to the actual costs allocated to such Revolving Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which in each case shall be due and payable on each date on which interest is payable on such Loan, provided the Company shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

(f) Delay in Requests. Failure or delay on the part of any Lender or any L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation, provided that the Borrowers shall not be required to compensate a Lender or an L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the Company of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses.

Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, setting forth in reasonable detail the basis for, and manner of calculating such compensation, the Company shall promptly compensate (or cause the applicable Designated Foreign Borrower to compensate) such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

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

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

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

(d) any failure by any Borrower to make payment of any Loan or drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency;

including any foreign exchange losses and any loss or expense (but excluding any loss of anticipated profits) arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained or from the performance of any foreign exchange contract (but excluding any loss of anticipated profits). The Company shall also pay (or cause the applicable Designated Foreign Borrower to pay) any customer administrative fees charged by such Lender in connection with the foregoing.

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

3.06 Mitigation Obligations; Replacement of Lenders.

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

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

3.07 Survival.

All of the Borrowers' obligations under this Article III and the Lenders' obligations under Section 3.01(c)(ii) shall, in each case, survive termination of the Aggregate Revolving

Commitments, repayment of all other Obligations hereunder, resignation of the Administrative Agent and the Facility Termination Date.

ARTICLE IV

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Initial Credit Extension.

The obligation of each L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction or waiver (in accordance with Section 11.01) of the following conditions precedent:

(a) Execution of Credit Agreement; Loan Documents. The Administrative Agent (or its counsel) shall have received (i) counterparts of this Agreement, executed by a Responsible Officer of each Loan Party and a duly authorized officer of each Lender, L/C Issuer and the Administrative Agent, (ii) for the account of each Lender requesting a Revolving Note reasonably in advance of the Closing Date, a Revolving Note executed by a Responsible Officer of each Borrower and (iii) counterparts of the Intercompany Subordination Agreement, executed by a Responsible Officer of each Loan Party and a duly authorized officer of each other Person party thereto, each of which shall be in form and substance reasonably satisfactory to the Administrative Agent, the Arrangers and each of the Lenders.

(b) Officer's Certificate. The Administrative Agent (or its counsel) shall have received a certificate of a Responsible Officer of each Loan Party dated the Closing Date, certifying as to (i) the Organization Documents of such Loan Party (which, to the extent filed with a Governmental Authority in the United States, shall be certified as of a recent date by such Governmental Authority), (ii) the resolutions of the board of directors or other governing body of such Loan Party, (iii) in the case of Vertex Europe only, a resolution signed by all of the holders of the issued shares in Vertex Europe, (iv) the good standing of such Loan Party (to the extent the concept is relevant and customarily certified in the applicable jurisdiction) by attaching a good standing certificate, certified as of a recent date by such Governmental Authority, (v) the incumbency (including specimen signatures) of the Responsible Officers of such Loan Party and (vi) in the case of Vertex Europe and Vertex Ireland only, that the borrowing or guaranteeing (as applicable) of the aggregate of the Revolving Commitments would not cause any borrowing, guarantee or similar limit binding on it to be exceeded, each in form and substance reasonably satisfactory to the Administrative Agent.

(c) Legal Opinions of Counsel. The Administrative Agent shall have received favorable opinions of counsel to the Borrowers (including appropriate local counsel), in each case, dated the Closing Date and addressed to the Administrative Agent and the Lenders, in form and substance reasonably satisfactory to the Administrative Agent, covering such matters relating to the Loan Documents and the transactions contemplated thereby as the Administrative Agent and the Lenders shall reasonably request.

(d) Insurance. The Administrative Agent shall have received customary certificates evidencing insurance meeting the requirements set forth herein.

(e) Officer's Closing Certificate. The Administrative Agent (or its counsel) shall have received a certificate or certificates executed by a Responsible Officer (i) of the Company as of the Closing Date, certifying as to the matters set forth in clause (h) of this Section 4.01, the matters set forth in Section 4.02(a) and (b) and, (ii) in respect of Vertex Ireland only, of Vertex Ireland as of the Closing Date, that (A) its entry into the Loan Documents and performance of the transactions thereby contemplated would not constitute "financial assistance" within the meaning of section 82 of the Companies Act 2014 of Ireland and (B) the Loan Parties are members of the same group of companies consisting of a holding company and its subsidiaries (within the meanings of sections 7 and 8 of the Companies Act 2014 of Ireland) for the purposes of section 243 of the Companies Act 2014 of Ireland.

(f) Loan Notice. The Administrative Agent shall have received a Loan Notice with respect to any Loans to be made on the Closing Date.

(g) [Reserved].

(h) Material Adverse Effect. There shall have been no event or circumstance since the date of the Audited Financial Statements (including any action, suit, investigation or proceeding pending or, to the knowledge of the Borrowers, threatened in writing) that has had or would be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect.

(i) Anti-Money-Laundering; Beneficial Ownership. (x) The Administrative Agent shall have received, at least three (3) Business Days prior to the Closing Date, the documentation and other information regarding the Borrowers requested by the Administrative Agent and the Lenders in order to comply with "know your customer" and anti-money laundering rules and regulations, including without limitation, the Patriot Act, to the extent requested in writing by the Administrative Agent on behalf of the Lenders at least ten (10) days prior to the Closing Date and (y) to the extent any Borrower qualifies as a "legal entity customer" under 31 C.F.R. § 1010.230 (the "Beneficial Ownership Regulation"), at least three (3) Business Days prior to the Closing Date, any Lender that has requested in a written notice to the Company at least ten (10) days prior to the Closing Date, a certification regarding beneficial ownership required by the Beneficial Ownership Regulation (the "Beneficial Ownership Certification") in relation to the Borrowers shall have received such Beneficial Ownership Certification (provided that, execution and delivery of a Beneficial Ownership Certification in the form published by The Loan Syndication and Trading Association is acceptable to all Lenders for purposes of satisfying the condition set forth in this clause (y) of Section 4.01(i)).

(j) Consents. The Administrative Agent (or its counsel) shall have received a certificate of a Responsible Officer of the Company either (i) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and

performance by each Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect or (ii) stating that no such consents, licenses or approvals are so required.

(k) Fees and Expenses. The Administrative Agent, the Lenders and the Arrangers shall have received all reasonable, documented and out-of-pocket fees and expenses (including the reasonable, document and out-of-pocket fees and expenses of one primary counsel and one local counsel as necessary in each appropriate jurisdiction for the Administrative Agent, the Lenders and the Arrangers, taken as a whole) owing pursuant to the Loan Documents; provided that in the case of any such expenses, such expenses shall be invoiced at least three (3) Business Days prior to the Closing Date (except as otherwise agreed by the Company).

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto. The Administrative Agent shall promptly notify the Lenders and the Borrowers in writing of the occurrence of the Closing Date and each of the Lenders hereby agrees that the receipt of such notification shall be conclusive and binding.

4.02 Conditions to all Credit Extensions

The obligation of each Lender and each L/C Issuer to honor any Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) is subject to the following conditions precedent:

(a) Representations and Warranties. The representations and warranties of the Company and each other Loan Party contained in Article V (other than, solely with respect to Credit Extensions after the Closing Date, Section 5.05(c)) shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and, further, except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively.

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

(c) Request for Credit Extension. The Administrative Agent and, if applicable, the applicable L/C Issuer or the Swingline Lender, shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) Designated Foreign Borrower. If the applicable Borrower is a Designated Foreign Borrower pursuant to Section 2.16(b) (other than Vertex Europe or Vertex Ireland), then the Designated Foreign Borrower Requirements shall have been met to the reasonable satisfaction of the Administrative Agent.

(e) Alternative Currency. In the case of a Credit Extension to be denominated in an Alternative Currency, such currency remains an Eligible Currency.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Company shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent and the Lenders, as of the date made or deemed made, that:

5.01 Existence, Qualification and Power.

Each Loan Party and each of its Restricted Subsidiaries (a) is duly organized, formed or incorporated, validly existing and, as applicable, in good standing (to the extent that such concept exists in such jurisdiction) under the Laws of the jurisdiction of its organization, formation or incorporation, (b) has all requisite power and authority to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and consummate the transactions contemplated thereby, and (c) is duly qualified and, as applicable, in good standing (to the extent that such concept exists in such jurisdiction) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification; except in each case referred to in clause (a) (other than with respect to any Loan Party), (b)(i) (other than with respect to any Borrower) or (c), to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (with the passage of time) (a) contravene the terms of any of such Person's Organization Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (c) violate any applicable Law, except in the case of this clauses (b) and (c) above, with respect to any conflict, breach or violation to the extent that such conflict, breach or violation would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

5.03 Governmental Authorization; Other Consents.

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for (a) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and which are in full force and effect, (b) filings with the SEC, including a Current Report on Form 8-K and (c) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect.

5.04 Binding Effect.

This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, examinership, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5.05 Financial Statements; No Material Adverse Effect.

(a) Audited Financial Statements. The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (ii) fairly present in all material respects the financial condition of the Company and its Restricted Subsidiaries as of the date thereof and their results of operations, cash flows and changes in shareholder's equity for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) Quarterly Financial Statements. The unaudited Consolidated balance sheets of the Company and its Restricted Subsidiaries dated March 31, 2020 and June 30, 2020, and the related Consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarters ended on such dates (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Company and its Restricted Subsidiaries as of the dates thereof and their results of operations, cash flows and changes in shareholders' equity for the periods covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

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

(d) Forecasted Financials. The Consolidated forecasted balance sheets, statements of income and cash flows of the Company and its Restricted Subsidiaries delivered pursuant to Section 6.01 were prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed by management of the Company to be reasonable at the time made; it being understood and recognized by the Administrative Agent and the Lenders that such projections are as to future events and are not to be viewed as facts, the forecasts and projections are as to future events, and not to be viewed as facts and are subject to significant uncertainties and contingencies, many of which are beyond the control of the Company and its Restricted Subsidiaries, that no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ significantly from the projected results and such differences may be material.

5.06 Litigation.

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Company or any Restricted Subsidiary or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document or any of the transactions contemplated hereby, or (b) that are reasonably likely to be adversely determined and, if so determined, either individually or in the aggregate would reasonably be expected to have a Material Adverse Effect.

5.07 No Default.

No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property.

Each Loan Party and each of its Restricted Subsidiaries has good and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or material to the present conduct of its business, in each case, except for defects in title that do not materially interfere with its ability to conduct its business or to utilize such properties for their intended purposes or where the failure to have such title or interests would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.09 Environmental Compliance.

The Loan Parties and their respective Restricted Subsidiaries (a) are in compliance with applicable Environmental Laws, which compliance includes possession of and compliance with all required Environmental Permits, (b) are not subject to any Environmental Liability, and (c) have not received written notice of any claim pursuant to Environmental Laws or with respect to the release of or exposure to Hazardous Materials, excluding any matters with respect to the foregoing that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.10 Insurance.

The properties of the Company and its Restricted Subsidiaries are insured with financially sound and reputable insurance companies, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies of a similar size engaged in similar businesses and owning similar properties.

5.11 Taxes.

Each Loan Party and their respective Restricted Subsidiaries have filed all material federal income Tax and other material Tax returns and reports required to be filed, and have paid, caused to be paid or made a provision for the payment of, all material federal income Taxes and other material Taxes required to be paid by it except (a) those which are not overdue for a period of more than thirty (30) days, so long as the failure to make any such payment during such thirty (30) day period would not reasonably be expected to have a Material Adverse Effect, or (b) those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Loan Party or any of their respective Restricted Subsidiaries that would, if made, have a Material Adverse Effect, nor is there any tax sharing agreement applicable to any Loan Party or any of their respective Restricted Subsidiaries other than an agreement solely among any of the Company and its Subsidiaries.

The Company is not required to make any deduction on account of Irish tax from any payment it may make under any Loan Document to a Lender which is an Irish Qualifying Lender subject, in the case of an Irish Treaty Lender, to the completion of any necessary procedural formalities.

No Loan Party is required to make any UK Tax Deduction from any payment it may make under a Loan Document to a Lender which is (a) a UK Qualifying Lender (i) falling within paragraph (a) of the definition of “UK Qualifying Lender” or (ii) except where a UK Direction has been given under Section 931 of the UK Taxes Act in relation to the payment concerned, falling within paragraph (b) of the definition of “UK Qualifying Lender”, or (b) a UK Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue and Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).

5.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state laws except for instances of noncompliance that, either individually or in the aggregate, have not resulted or would not reasonably be expected to result in a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or is subject to a favorable opinion letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS. To the best knowledge of the Loan Parties, nothing has occurred that would prevent or cause the loss of such tax-qualified status other than qualification defects that can be corrected under the Employee Plans Compliance Resolution System described in IRS Revenue Procedure 2019-19 where such correction would not be expected to result in a Material Adverse Effect.

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

(c) Except as would not, either individually or in the aggregate, reasonably be expected to result in, a Material Adverse Effect: (i) no ERISA Event has occurred, and no Loan Party nor any ERISA Affiliate is aware of any fact, event or circumstance that would reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan or Multiemployer Plan; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and no Loan Party nor any ERISA Affiliate knows of any facts or circumstances that would reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iii) no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (iv) neither the Company nor any ERISA

Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (v) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that would reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) With respect to each scheme or arrangement mandated by a government other than the United States (a “Foreign Government Scheme or Arrangement”) and with respect to each employee benefit plan maintained or contributed to by any Loan Party or any of their respective Restricted Subsidiaries that is not subject to United States Law (a “Foreign Plan”), except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect:

(i) any employer and employee contributions required by law or by the terms of any Foreign Government Scheme or Arrangement or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices of the jurisdiction in which such plan is maintained;

(ii) the Fair Market Value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the date hereof, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles of the jurisdiction in which such plan is maintained; and

(iii) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

5.13 Margin Regulations; Investment Company Act.

(a) Margin Regulations. None of the Borrowers is engaged, nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock, and the proceeds of the Loans will not be used, in each case, in a manner that would violate Regulation U.

(b) Investment Company Act. None of the Loan Parties is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.14 Disclosure.

No report, financial statement, certificate or other information furnished in writing by or on behalf of any Loan Party (other than projected financial information, other forward-looking

information and information of a general economic or industry nature) to the Administrative Agent or any Lender in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby or delivered hereunder or thereunder (in each case as modified or supplemented by other information so furnished) when taken as a whole, together with disclosures made by the Company in filings with the SEC that are made available to the Administrative Agent and the Lenders pursuant to the terms of this Agreement, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time made; it being understood (a) that such projections and forecasts are as to future events and are not to be viewed as facts, that such projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Company and its Subsidiaries, that no assurance can be given that any particular projection or forecast will be realized and that actual results during the period or periods covered by any such projections or forecasts may differ significantly from the projected results and such differences may be material and that such projections and forecast are not a guarantee of future financial performance and (b) that no representation is made with respect to information of a general economic or general industry nature.

5.15 Compliance with Laws.

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

5.16 Solvency.

The Company, together with its Restricted Subsidiaries, on a Consolidated basis are Solvent.

5.17 Sanctions Concerns and Anti-Corruption Laws.

(a) Sanctions Concerns. No Loan Party, nor any Restricted Subsidiary, nor, to the knowledge of the Company and its Restricted Subsidiaries, any director, officer, employee, agent, or affiliate thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) included on OFAC's List of Specially Designated Nationals and HMT's Consolidated List of Financial Sanctions Targets, or (ii) located, organized or resident in a Designated Jurisdiction (such Persons referred to herein as "Sanctioned Persons").

(b) Anti-Corruption Laws; Sanctions. The Loan Parties and their Restricted Subsidiaries have conducted their business in compliance in all material respects with the

United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, other similar anti-corruption legislation in other jurisdictions and applicable Sanctions, and have instituted and maintained policies and procedures designed to promote and achieve compliance in all material respects with such laws and applicable Sanctions.

5.18 Subsidiaries; Equity Interests; Loan Parties.

(a) Subsidiaries. Set forth on Schedule 5.18(a), is the following information which is true and complete in all respects as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02: (i) a complete and accurate list of all Subsidiaries of the Loan Parties, (ii) the number of shares of each class of Equity Interests in each Subsidiary outstanding, (iii) the number and percentage of outstanding shares of each class of Equity Interests owned by the Loan Parties and their Subsidiaries and (iv) the class or nature of such Equity Interests (i.e. voting, non-voting, preferred, etc.).

(b) Loan Parties. Set forth on Schedule 5.18(b) is a complete and accurate list of all Loan Parties, showing as of the Closing Date, or as of the last date such Schedule was required to be updated in accordance with Section 6.02, (as to each Loan Party) (i) the exact legal name, (ii) any former legal names of such Loan Party in the four (4) months prior to the Closing Date, (iii) the jurisdiction of its incorporation or organization, as applicable, (iv) the type of organization, (v) the address of its chief executive office, (vi) its U.S. federal taxpayer identification number (if any), (vii) the organization identification number, and (viii) ownership information (e.g. publicly held or if private or partnership, the owners and partners of each of the Loan Parties).

5.19 Covered Entities.

No Loan Party is a Covered Entity.

5.20 [Reserved].

5.21 Intellectual Property; Licenses, Etc.

Each Loan Party and each of its Restricted Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that consist of the Material Intellectual Property or other IP Rights reasonably necessary for the operation of their respective businesses, except where the failure to own or possess the right to use such IP Rights would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Loan Parties, no slogan or other advertising device, product, process, method, substance, part or other material now employed, by any Loan Party or any of their Restricted Subsidiaries infringes upon any rights held by any other Person, except in each case, to the extent that such infringement would not reasonably be expected to result in a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Loan Parties, threatened in writing, against the Loan Parties or any of their Restricted Subsidiaries which,

either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

5.22 Affected Financial Institutions.

No Loan Party is an Affected Financial Institution.

5.23 Representations as to Designated Foreign Borrowers.

(a) Each Designated Foreign Borrower is subject to civil and commercial Laws with respect to its obligations under this Agreement and the other Loan Documents to which it is a party (collectively as to such Designated Foreign Borrower, the “Applicable Designated Foreign Borrower Documents”), and the execution, delivery and performance by such Designated Foreign Borrower of the Applicable Designated Foreign Borrower Documents constitute and will constitute private and commercial acts and not public or governmental acts. Neither such Designated Foreign Borrower nor any of its property has any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) under the Laws of the jurisdiction in which such Designated Foreign Borrower is organized and existing in respect of its obligations under the Applicable Designated Foreign Borrower Documents.

(b) The Applicable Designated Foreign Borrower Documents are in proper legal form under the Laws of the jurisdiction in which such Designated Foreign Borrower is organized and existing for the enforcement thereof against such Designated Foreign Borrower under the Laws of such jurisdiction, and to ensure the legality, validity, enforceability, priority or admissibility in evidence of the Applicable Designated Foreign Borrower Documents. It is not necessary to ensure the legality, validity, enforceability, priority or admissibility in evidence of the Applicable Designated Foreign Borrower Documents that the Applicable Designated Foreign Borrower Documents be filed, registered or recorded with, or executed or notarized before, any court or other authority in the jurisdiction in which such Designated Foreign Borrower is organized and existing or that any registration charge or stamp or similar tax be paid on or in respect of the Applicable Designated Foreign Borrower Documents or any other document, except for (i) any such filing, registration, recording, execution or notarization as has been made or is not required to be made until the Applicable Designated Foreign Borrower Document or any other document is sought to be enforced and (ii) any charge or tax as has been timely paid.

(c) For purposes of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (the “Regulation”), the centre of main interest (as that term is used in Article 3(1) of the Regulation) for Vertex Europe and Vertex Ireland is situated in its jurisdiction of incorporation and, in each case, neither Vertex Europe nor Vertex Ireland has any “establishment” (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

ARTICLE VI

AFFIRMATIVE COVENANTS

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, such Loan Party shall, and shall cause each of their Restricted Subsidiaries to:

6.01 Financial Statements.

Deliver to the Administrative Agent for further distribution to each Lender:

(a) Audited Financial Statements. As soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Company, a Consolidated balance sheet of the Company and its Restricted Subsidiaries as at the end of such fiscal year, and the related Consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (except for any qualification pertaining to a maturity occurring under this Revolving Facility within twelve (12) months of the relevant audit).

(b) Quarterly Financial Statements. As soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Company (commencing with the fiscal quarter ended September 30, 2020), a Consolidated balance sheet of the Company and its Restricted Subsidiaries as at the end of such fiscal quarter, and the related Consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal quarter and for the portion of the Company's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such Consolidated statements to be certified by the chief executive officer, chief financial officer, treasurer or controller who is a Responsible Officer of the Company as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Company and its Restricted Subsidiaries, subject only to normal year-end audit adjustments and the absence of footnotes.

(c) Budget. As soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Company, an annual budget of the Company and its Restricted Subsidiaries on a Consolidated basis, including forecasts prepared by management of the Company, in a form reasonably satisfactory to the Administrative

Agent, of projected Consolidated statements of income or operations and projected cash flows of the Company and its Restricted Subsidiaries on a quarterly basis for the immediately following fiscal year.

As to any information contained in materials furnished pursuant to Section 6.02(c), the Company shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Company to furnish the information and materials described in Sections 6.01(a) and (b) above at the times specified therein.

6.02 Certificates; Other Information.

Deliver to the Administrative Agent for further distribution to each Lender:

(a) Compliance Certificate. Within five (5) Business Days of delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller which is a Responsible Officer of the Company.

(b) Updated Schedules. Within fifteen (15) days of delivery of the financial statements referred to in Section 6.01(a), updated Schedules 5.18(a) and 5.18(b) (which may, if delivered earlier, be attached to the Compliance Certificate) to the extent required to make the representation related to such Schedule true and correct in all material respects as of the date of such update is provided.

(c) Annual Reports; Etc. Promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Company may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto.

(d) Anti-Money-Laundering; Beneficial Ownership Regulation. Promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender in writing for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act.

(e) Beneficial Ownership. To the extent any Loan Party qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, an updated Beneficial Ownership Certification promptly following any change in the information provided in the Beneficial Ownership Certification delivered to any Lender in relation to such Loan Party that would result in a change to the list of beneficial owners identified in such certification.

(f) Additional Information. Promptly, such additional information regarding the business, financial, legal or corporate affairs of the Company or any of its Restricted Subsidiaries, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are (a) available via the SEC's Electronic Data Gathering, Analysis and Retrieval system on the internet or (b) posted on the Company's website on the Internet at the website address listed on Schedule 1.01(a); or on the Company'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 Company shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Company to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Company shall notify the Administrative Agent (by fax transmission or e-mail transmission) of the posting of any such documents and provide to the Administrative Agent by e-mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Company with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrowers hereby acknowledge that (A) the Administrative Agent and/or an Affiliate thereof may, but shall not be obligated to, make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar or a substantially similar electronic transmission system (the "Platform") and (B) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Company or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrowers hereby agree that they will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (1) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (2) by marking Borrower Materials "PUBLIC," the Borrowers shall be deemed to have authorized the Administrative Agent, any Affiliate thereof, the Arrangers, the L/C Issuers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrowers or their securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (3) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the

Platform designated “Public Side Information;” and (4) the Administrative Agent and any Affiliate thereof and the Arrangers shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.” Notwithstanding the foregoing, the Borrowers shall be under no obligation to mark any Borrower Materials “PUBLIC”.

Notwithstanding anything to the contrary in this Section 6.02, no Loan Party shall be required to provide any information in respect of which disclosure is prohibited by any applicable Laws binding on such Loan Party.

6.03 Notices.

Promptly, but in any event within three (3) Business Days of a Responsible Officer of any Borrower obtaining actual knowledge thereof, notify the Administrative Agent (which will promptly furnish such information to each Lender):

- (a) of the occurrence of any Default;
- (b) of any matter that has resulted or would reasonably be expected to result in a Material Adverse Effect; and
- (c) of the occurrence of any ERISA Event that has resulted or would reasonably be expected to result in a Material Adverse Effect.

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

6.04 Payment of Taxes.

The Company and its Restricted Subsidiaries will pay all material federal income Taxes and other material Taxes required to be paid by them, unless the same are being contested in good faith by appropriate proceedings and adequate reserves in accordance with GAAP are being maintained by the Company or such Restricted Subsidiary.

6.05 Preservation of Existence, Etc.

- (a) Except as otherwise permitted under Section 7.04, preserve, renew and maintain in full force and effect its legal existence and good standing (to the extent that such concept exists in such jurisdiction) under the Laws of the jurisdiction of its organization, formation or incorporation, as applicable, except, in the case of any Restricted Subsidiary of the Company that is not a Loan Party, to the extent the failure to do so would not reasonably be expected to result in a Material Adverse Effect; and

(b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary in the normal conduct of its business, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect, or as otherwise permitted hereunder.

6.06 Maintenance of Properties; Intellectual Property.

(a) Except if the failure to do so would not reasonably be expected to have a Material Adverse Effect, maintain, preserve and protect all of its material tangible properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and casualty excepted.

(b) Except as may be permitted pursuant to Section 7.04, take all reasonable actions necessary to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of its Material Intellectual Property (now or hereafter existing) of the Loan Parties and their Restricted Subsidiaries, including, where appropriate, the filing of applications for renewal, affidavits of use, affidavits of non-contestability and opposition and interference and cancellation proceedings.

6.07 Maintenance of Insurance.

Maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried by companies of a similar size engaged in similar businesses.

6.08 Compliance with Laws.

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

6.09 Books and Records.

Maintain proper books of record and account, in which full, true and correct entries in conformity, in all material respects, with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Loan Party or such Restricted Subsidiary, as the case may be.

6.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and

make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its officers, and independent public accountants, all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Company, in each case, subject to reasonable requirements of confidentiality and attorney-client privilege, including requirements imposed by law or by contract; provided that in the event that information is withheld as a result of any confidentiality or attorney-client privilege, the Company shall (a) use commercially reasonable efforts to obtain waivers of such confidentiality obligations or eliminate any such restriction and to communicate, to the extent permitted, the applicable information in a way that would not violate such restrictions and (b) notify the Administrative Agent to the extent the Company and its Restricted Subsidiaries are not providing otherwise requested information; provided, however, that (i) except during the occurrence and continuance of an Event of Default, the Borrowers shall not be required to reimburse the Administrative Agent for the charges, costs and expenses in connection with such visits or inspections and the Administrative Agent shall not exercise rights under this Section 6.10 more often than one (1) time per year and (ii) after the occurrence and during the continuance of an Event of Default, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrowers at any time during normal business hours and without advance notice.

6.11 Use of Proceeds.

Use the proceeds of the Credit Extensions for working capital and any other general corporate purpose not in contravention of any Law or of any Loan Document.

6.12 Covenant to Guarantee Obligations.

The Loan Parties will cause each of their Restricted Subsidiaries (other than any Excluded Subsidiary) whether newly formed, after acquired or otherwise existing to promptly (and in any event within forty-five (45) days thereafter (or such longer period of time as agreed to by the Administrative Agent in its reasonable discretion)) become a Guarantor hereunder by way of execution of a Joinder Agreement. In connection with the foregoing, the Loan Parties shall deliver to the Administrative Agent, with respect to each new Subsidiary Guarantor to the extent applicable, (i) substantially the same documentation required pursuant to Sections 4.01(b), (c) and (d), and (ii) such information necessary to complete any required “know your customer”, Patriot Act, Sanctions, OFAC and FCPA diligence, in scope, and with results, reasonably satisfactory to the Administrative Agent.

6.13 Further Assurances.

Promptly upon the reasonable request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any objective material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, and deliver any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Loan Documents.

6.14 Compliance with Environmental Laws.

Comply and make all reasonable efforts to cause all lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits, except to the extent that such non-compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; obtain and renew all Environmental Permits necessary for its operations and properties, except to the extent that such failure to have obtained or renewed such permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and to the extent required by Environmental Laws, conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws, except for the failure to conduct any such action that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; provided, however, that neither the Company nor any of its Restricted Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

6.15 Approvals and Authorizations.

Without limiting the generality of Section 6.08, the Company and each Restricted Subsidiary shall maintain all authorizations, consents, approvals and licenses from, exemptions of, and filings and registrations with, each Governmental Authority of the jurisdiction in which each Loan Party is organized and existing, and all approvals and consents of each other Person in such jurisdiction, in each case that are required in connection with the Loan Documents, unless the failure to do so would not reasonably be expected to have a Material Adverse Effect.

6.16 Anti-Corruption Laws.

Conduct its business in material compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar applicable anti-corruption legislation in other jurisdictions and maintain policies and procedures reasonably designed to promote and achieve such compliance with such laws.

6.17 Conduct of Business.

Continue to engage in lines of business consistent with the activities of a biotechnology company.

ARTICLE VII

NEGATIVE COVENANTS

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, no Loan Party shall, nor shall it permit any of its Restricted Subsidiaries to, directly or indirectly:

7.01 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, except for the following (the “Permitted Liens”):

(a) Liens (if any) pursuant to any Loan Document (including Liens on Cash Collateral);

(b) Liens existing on the Closing Date and listed on Schedule 7.01 and any amendments, modifications, replacements, renewals, or extensions thereof; provided that (i) the Lien does not encumber any property other than (A) property encumbered on the Closing Date, (B) after-acquired property that is affixed or incorporated into the property encumbered by such Lien on the Closing Date, (C) proceeds and products thereof, (ii) the replacement, renewal, extension or refinancing of the obligations secured or benefited by such Liens, to the extent constituting Indebtedness, is permitted by Section 7.02(b), and (iii) the direct or any contingent obligor with respect thereto is not changed;

(c) (i) Liens for Taxes which are not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP (or, for Foreign Subsidiaries, in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of organization) and (ii) other Liens for Taxes (securing Tax liabilities in an aggregate amount not in excess of \$2,500,000 at any time outstanding) which are not yet delinquent for a period of more than forty-five (45) days;

(d) Liens imposed by law such as carriers’, landlords’, warehousemen’s, mechanics’, materialmen’s, repairmen’s construction, or other like Liens arising in the ordinary course of business which are not overdue for a period of more than sixty (60) days or which are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(e) (i) pledges or deposits in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA; (ii) pledges and deposits to secure insurance premiums or reimbursement obligations under insurance policies or (iii) obligations in respect of letters of credit or bank guarantees that have been posted by the Company or any of its Restricted Subsidiaries to support the payments of the items set forth in the foregoing clauses (i) and (ii);

(f) (i) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business and (ii) obligations in respect of letters of credit or bank guarantees that have been posted to support payment of the items set forth in the foregoing clause (i);

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments) not constituting an Event of Default under Section 8.01(h);

(i) Liens securing Indebtedness permitted under Section 7.02(c); provided that such Liens do not at any time encumber any property other than the property financed by such Indebtedness except for accessions to such property and the proceeds and the products thereof; provided that individual financings of equipment permitted to be secured hereunder provided by one Person (or its Affiliates) may be cross collateralized to other financings of equipment under Section 7.02(c) provided by such Person (or its Affiliates);

(j) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Company or any of its Restricted Subsidiaries, in each case in the ordinary course of business in favor of the bank or banks with which such accounts are maintained; provided, that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness for borrowed money;

(k) any interest or title of a lessor, licensor, sublicensor, or sublessor under any lease, license, sublicense or sublease entered into by any Loan Party or any Restricted Subsidiary thereof in the ordinary course of business and covering only the assets so leased, licensed, sublicensed or subleased;

(l) Liens (i) of a collection bank arising under Section 4-208 or 4-210 of the UCC on items in the course of collection, (ii) attaching to commodities trading accounts or other commodities brokerage accounts in the ordinary course of business or (iii) in favor of a banking institution or securities intermediary arising as a matter of law or under the banking institution's general terms of business encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry; provided, that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness for borrowed money;

(m) any zoning, building or similar laws or rights reserved to or vested in any Governmental Authority;

(n) [reserved];

(o) leases, licenses, subleases or sublicenses to the extent permitted under Section 7.04(b);

(p) 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 in the ordinary course of business;

(q) Liens (i) on cash or Cash Equivalent advances or escrow deposits in favor of the seller of any property to be acquired in an Investment to be applied against the purchase price for such Investment or otherwise in connection with any escrow arrangements with respect to any such Investment or any Disposition not prohibited by this Agreement (including any letter of intent or purchase agreement with respect to such Investment or Disposition), or (ii) consisting of an agreement to dispose of any property in a Disposition not prohibited by this Agreement, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(r) Liens granted by (i) a Restricted Subsidiary that is not a Loan Party in favor of the Company or any other Restricted Subsidiary, (ii) a Loan Party in favor of a U.S. Loan Party or (iii) a Designated Foreign Borrower in favor of a Designated Foreign Borrower;

(s) Liens existing on property (other than Liens on the Equity Interests of any Person that becomes a Restricted Subsidiary) at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than as a result of a Subsidiary Redesignation), in each case, after the date hereof securing Indebtedness permitted under Section 7.02(i); provided that (i) such Lien was not created in contemplation of such Acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property of such Person (other than improvements thereon, replacements and products thereof, additions and accessions thereto or proceeds thereof and other after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are not prohibited hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property), and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Restricted Subsidiary, as the case may be (and amendments, modifications, extensions, refinancings, renewals and replacements thereof that do not increase the outstanding principal amount thereof (other than as not prohibited by this Agreement));

(t) Liens deemed to exist in connection with Investments in repurchase agreements related to Cash Equivalents;

(u) [reserved];

- (v) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto and deposits made in the ordinary course of business to secure liability to insurance carriers;
- (w) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the purchase or sale of goods entered into by the Company or any Restricted Subsidiary in the ordinary course of business;
- (x) Liens that are contractual rights of set-off relating to purchase orders and other agreements entered into with customers and other counterparties of the Company or any of its Restricted Subsidiaries in the ordinary course of business;
- (y) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;
- (z) Liens arising from precautionary UCC financing statements regarding operating leases or other obligations not constituting Indebtedness;
- (aa) Liens securing insurance premiums financing arrangements; provided that such Liens are limited to the applicable unearned insurance premiums;
- (bb) (i) Liens on cash and Cash Equivalents in connection with a Guaranteed Hedge Agreement securing customary initial deposits and margin deposits which are required as a matter of Law and (ii) pledges or transfers of collateral to support bilateral mark-to-market security arrangements in respect of uncleared swap or derivative transactions;
- (cc) Liens consisting of pledges or deposits of cash or Cash Equivalents securing obligations in respect of customary (i) letters of credit or bank guarantees permitted under Section 7.02(m) or (ii) warehouse receipts or similar obligations permitted hereunder and, in each case, incurred in the ordinary course of business or consistent with past practice (provided that no such letters of credit, bank guarantees, warehouse receipts or similar obligations support obligations in respect of Indebtedness);
- (dd) Liens of sellers of goods to any Loan Party and any of their respective Subsidiaries arising under Article 2 of the UCC or similar provisions of applicable law in the ordinary course of business, covering only the goods sold and securing only the unpaid purchase price for such goods and related expenses;
- (ee) in the case of any joint venture, any put and call arrangements related to its Equity Interests set forth in its organizational documents or any related joint venture or similar agreement;
- (ff) Liens on cash collateral provided by the Borrowers to an issuing bank in respect of collateralized letters of credit as contemplated by Section 2.14(b) of the Existing Credit Agreement; and

(gg) Liens securing Indebtedness and other obligations of the Company or any Restricted Subsidiary; provided that immediately after giving effect to the incurrence of any Indebtedness or obligations secured by Liens in reliance on this clause (gg), the aggregate outstanding principal amount of all Priority Indebtedness shall not exceed fifteen percent (15%) of Consolidated Net Worth (determined as of the last day of the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 6.01(a) or 6.01(b) (or, prior to the delivery of any such financial statements, determined as of June 30, 2020)).

For purposes of determining compliance with this Section 7.01, in the event that a Lien securing an item of Indebtedness (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens (or any portion thereof) described in this Sections 7.01, the Borrowers may, in their sole discretion, classify or divide such Lien securing such item of Indebtedness (or any portion thereof) in any manner that complies with this Section 7.01 and will be entitled to only include the amount and type of such Lien or such item of Indebtedness secured by such Lien (or any portion thereof) in one of the above clauses and such Lien securing such item of Indebtedness (or portion thereof) will be treated as being incurred or existing pursuant to only such clause or clauses (or any portion thereof).

Notwithstanding the foregoing to the contrary, no Loan Party shall, nor shall it permit any of its Restricted Subsidiaries to, directly or indirectly create, incur, assume or suffer to exist any Lien upon any Cystic Fibrosis Drug Franchise Assets to secure any Indebtedness.

7.02 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 and any amendments, refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing (including upfront fees and original issue discount thereon) and by an amount equal to any existing commitments unutilized thereunder and the direct or any contingent obligor with respect thereto is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension; and, still further, that the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination, standstill and related terms (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or the Lenders (as determined in good faith by a Responsible Officer of the Company) than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended;

(c) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(i); provided, however, that the aggregate amount of all such Indebtedness shall not exceed \$30,000,000 in any fiscal year;

(d) Indebtedness of (i) a Loan Party to any other Loan Party, (ii) a Loan Party to any Restricted Subsidiary that is not a Loan Party and (iii) any Restricted Subsidiary that is not a Loan Party to any Loan Party or any other Restricted Subsidiary; provided that, in the case of Indebtedness owed by any Loan Party to any Restricted Subsidiary that is not a Loan Party, such Indebtedness shall be unsecured and, to the extent all such Indebtedness exceeds \$1,000,000 at any time outstanding, be subordinated in right of payment to the Guaranteed Obligations on the terms set forth in the Intercompany Subordination Agreement or otherwise on terms reasonably satisfactory to the Administrative Agent ("Intercompany Debt");

(e) Guarantees of Indebtedness of the Company or any Subsidiary Guarantor otherwise permitted hereunder;

(f) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates;

(g) [reserved];

(h) to the extent constituting Indebtedness, Warrant Transactions not otherwise prohibited by this Agreement;

(i) Indebtedness of any Person that becomes a Restricted Subsidiary of the Company (or of any Person not previously a Subsidiary that is merged, amalgamated or consolidated with or into the Company or a Restricted Subsidiary) after the Closing Date as a result of an Acquisition, or Indebtedness of any Person that is assumed by the Company or any of its Restricted Subsidiaries in connection with an Acquisition of assets by the Company or such Restricted Subsidiary in an Acquisition; provided that (A) such Indebtedness is not incurred in contemplation of such Acquisition and (B) that the aggregate principal amount of Indebtedness that is outstanding in reliance on this clause (i) shall not, at any time outstanding, exceed \$50,000,000;

(j) [reserved];

(k) obligations of the Company or any of its Restricted Subsidiaries in respect of any overdraft and related liabilities arising from treasury, depository, credit card, purchasing card and cash management services or any automated clearing house transfers of funds and other Indebtedness in respect of netting services, overdraft protections, cash pooling, employee credit cards and similar arrangements, in each case, in connection with deposit accounts in the ordinary course of business;

(l) Indebtedness consisting of obligations in respect of surety, stay, customs and appeal bonds, performance bonds and performance and completion guarantees provided by the Company or any of its Restricted Subsidiaries, in each case in the ordinary course of business or consistent with past practice;

(m) Indebtedness under letters of credit or bank guarantees issued on behalf of Foreign Subsidiaries (and not issued under this Agreement) in an aggregate amount not to exceed \$10,000,000 at any one time outstanding;

(n) Indebtedness representing deferred compensation or stock-based compensation or severance, pension and health and welfare benefits to employees and former employees, as applicable, of the Company and its Restricted Subsidiaries incurred in the ordinary course of business;

(o) Indebtedness constituting indemnification obligations or obligations for the payment of the purchase price (pending the consummation of such transaction) or other contingent purchase price adjustments incurred in an Investment or any Disposition permitted under this Agreement;

(p) Indebtedness consisting of obligations under deferred consideration (earnouts, royalty payments, indemnifications, incentive non-competes, milestone payments and other contingent obligations) incurred in connection with any Acquisition or other Investment or otherwise in connection with research and development licensing agreements, collaboration agreements or development agreements;

(q) Indebtedness consisting of insurance premium financing and take or pay obligations contained in supply agreements in the ordinary course of business;

(r) Guarantees by the Company with respect to any operating lease payment obligations of any Subsidiaries of the Company;

(s) to the extent constituting Indebtedness, obligations that are being contested in accordance with Section 6.04;

(t) customer advances or deposits or other endorsements for collection, deposit or negotiation and warranties of products or services, in each case received or incurred in the ordinary course of business; and

(u) other Indebtedness of the Company or any Restricted Subsidiary; provided that immediately after giving effect to the incurrence of any Indebtedness in reliance on this clause (u), (i) the aggregate outstanding principal amount of all Priority Indebtedness shall not exceed fifteen percent (15%) of Consolidated Net Worth (determined as of the last day of the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 6.01(a) or 6.01(b) (or, prior to the delivery of any such financial statements, determined as of June 30, 2020)) and (ii) the Loan Parties are in Pro Forma Compliance.

For purposes of determining compliance with this Section 7.02, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of one or more of the categories of permitted Indebtedness (or any portion thereof) described in this Section 7.02, the Borrowers may, in their sole discretion, classify or divide such item of Indebtedness (or any portion thereof) in any manner that complies with this Section 7.02 and will be entitled to only include the amount and type of such item of Indebtedness (or any portion thereof) in one of the above clauses (or any portion thereof) and such item of Indebtedness (or any portion thereof) shall be treated as having been incurred or existing pursuant to only such clause or clauses (or any portion thereof); provided that all Indebtedness outstanding under this Agreement shall at all times be deemed to have been incurred pursuant to clause (a) of this Section 7.02.

Notwithstanding the foregoing to the contrary, the CF Asset Subsidiaries shall not create, incur, assume or suffer to exist any Indebtedness (other than (x) Intercompany Debt, except Intercompany Debt owed by any CF Asset Subsidiary to any Restricted Subsidiary that is not a Loan Party, (y) Indebtedness of any Designated Foreign Borrower or any Subsidiary Guarantor hereunder and (z) Indebtedness of any “Designated Foreign Borrower” or any “Subsidiary Guarantor” (in each case, under and as such term is defined in the Existing Credit Agreement)) in an aggregate amount in excess of \$100,000,000 at any one time outstanding.

7.03 [Reserved].

7.04 Fundamental Changes.

(a) Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

(i) any Restricted Subsidiary that is a Domestic Subsidiary may merge or consolidate with or dissolve or liquidate into (A) the Company; provided that the Company shall be the continuing or surviving Person, or (B) so long as no Event of Default would result therefrom, any one or more other Restricted Subsidiaries that are Domestic Subsidiaries; provided that (x) in any such transaction involving a Subsidiary Guarantor, such Subsidiary Guarantor shall be the continuing or surviving Person, and (y) no such transaction shall cause any then-existing Subsidiary Guarantor to become a Subsidiary that would not be required to be a Subsidiary Guarantor pursuant to Section 6.12;

(ii) any Designated Foreign Borrower may merge or consolidate with or dissolve or liquidate into any other Designated Foreign Borrower which is organized or existing under the Laws of the jurisdiction in which the first Designated Foreign Borrower is organized;

(iii) any Restricted Subsidiary that is a Foreign Subsidiary (other than a Designated Foreign Borrower) may merge or consolidate with or dissolve or liquidate into (A) a Designated Foreign Borrower which is organized or existing

under the Laws of the jurisdiction in which the first Designated Foreign Borrower is organized; provided that such Designated Foreign Borrower shall be the continuing or surviving Person, or (B) so long as no Event of Default would result therefrom, any one or more other Restricted Subsidiaries that are Foreign Subsidiaries;

(iv) (A) any Subsidiary Guarantor may Dispose of all or substantially all of its assets (including any Disposition that is in the nature of a liquidation) to any other U.S. Loan Party, (B) any Designated Foreign Borrower may Dispose of all or substantially all of its assets (including any Disposition that is in the nature of a liquidation) to any other Loan Party, and (C) any Restricted Subsidiary that is not a Loan Party may Dispose of all or substantially all of its assets (including any Disposition that is in the nature of a liquidation) to any Loan Party or, so long as no Event of Default would result therefrom, any other Restricted Subsidiary;

(v) so long as no Event of Default shall exist or would result therefrom, each of the Company and any of its Restricted Subsidiaries may merge into or consolidate with any other Person (other than the Company or any of its Subsidiaries) or permit any other Person (other than the Company or any of its Subsidiaries) to merge into or consolidate with it; provided, however, that in each case, immediately after giving effect thereto (i) in the case of any such merger or consolidation to which a Borrower is a party (the "Existing Borrower"), (x) the Existing Borrower is the surviving Person (and if the Company is a party to such merger or consolidation, the Company is the surviving Person) or (y) if the Person formed by or surviving any such merger or consolidation is not the Existing Borrower (any such Person, the "Successor Borrower"), (A) (1) if the Existing Borrower is the Company, the Successor Borrower shall be an entity organized or existing under the Laws of the United States, any state thereof or the District of Columbia, and (2) if the Existing Borrower is a Designated Foreign Borrower, the Successor Borrower shall be an entity organized or existing under the Laws of the jurisdiction in which the Existing Borrower is organized, (B) the Successor Borrower shall expressly assume all the obligations of the Existing Borrower under this Agreement and the other Loan Documents to which the Existing Borrower is a party pursuant to documents in form and substance reasonably satisfactory to the Administrative Agent, (C) each applicable Guarantor shall have confirmed that its Guarantee shall apply to the Successor Borrower's obligations under the Loan Documents (to the same extent as such Guarantee applied to the Existing Borrower's obligations under the Loan Documents) pursuant to documents in form and substance reasonably satisfactory to the Administrative Agent, (D) the Company shall have delivered to the Administrative Agent such supporting resolutions, incumbency certificates, opinions of counsel and other documents or information, in form, content and scope reasonably satisfactory to the Administrative Agent, as may be required by the Administrative Agent and (E) the Administrative Agent and the Lenders shall have received satisfactory results of "know your customer", Sanctions, Act and other similar due diligence

reasonably requested by the Administrative Agent and the Lenders, (ii) in the case of any such merger or consolidation to which any Subsidiary Guarantor is a party, such Subsidiary Guarantor is the surviving Person, and (iii) in the case of any such merger or consolidation to which any Restricted Subsidiary (other than a Loan Party) is a party, such Restricted Subsidiary is the surviving Person; and

(vi) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, the Company and its Restricted Subsidiaries may consummate Permitted Restructurings.

(b) Make any Disposition (including, for avoidance of doubt and without limitation, by way of Investment, Restricted Payment, sale, transfer or other Disposition) of any Cystic Fibrosis Drug Franchise Assets, except:

(i) (A) Dispositions of inventory in the ordinary course of business and (B) Dispositions of cash and Cash Equivalents;

(ii) Dispositions of equipment or real 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 reasonably promptly applied to the purchase price of such replacement property;

(iii) Dispositions of property by a Restricted Subsidiary to the Company or to a Wholly Owned Subsidiary of the Company; provided that (A) if the transferor of such property is a Subsidiary Guarantor, the transferee thereof must be a U.S. Loan Party, and (B) if the transferor of such property is a Designated Foreign Borrower, the transferee thereof must be a Loan Party;

(iv) Dispositions of accounts receivable in connection with the collection, discounting, settlement or compromise thereof in the ordinary course of business;

(v) Dispositions in the ordinary course of business consisting of the abandonment, or allowing to lapse, of Intellectual Property which, in the reasonable good faith determination of the Borrowers, is uneconomical to maintain, non-strategic, negligible, obsolete or otherwise not material to the value of the Cystic Fibrosis Drug Franchise Assets (taken as a whole) or the conduct of their business (taken as a whole);

(vi) Dispositions of Intellectual Property owned by a Loan Party to a Foreign Subsidiary of a Borrower that is a Restricted Subsidiary, to the extent the Administrative Agent (acting in its reasonable credit judgment) approves such Disposition; provided that (A) the Foreign Subsidiary receiving such Intellectual Property shall covenant and agree not to pledge any interest in such Intellectual Property to any Person (other than a Loan Party); (B) any such transferred Intellectual Property shall be subject to a perpetual exclusive license in favor of the Loan Parties for use in the North America in form and substance reasonably

satisfactory to the Administrative Agent, and which license shall (1) not be subject to any anti-assignment or change of control provisions (in each case limiting the Loan Party), (2) expressly permit the creation, continuation and performance of any Lien thereon securing the Guaranteed Obligations (as such Guaranteed Obligations may be modified, increased, extended, refinanced, renewed or replaced from time to time), (3) be terminable at will by the Loan Parties (which termination shall require the Administrative Agent's consent), (4) require the Administrative Agent's consent for any amendment of the license agreement that alters the terms and conditions of the license agreement in any manner adverse to the interests of a Loan Party or the Lenders, (5) specify that it may not be terminated in connection with a Loan Party's bankruptcy, (6) include the right of any Loan Party that is a party thereto to assume and assign the license in the event of its bankruptcy or insolvency, and (7) include a covenant by the Foreign Subsidiary not to move for, or consent to, the termination of or rejection of the license in a bankruptcy or insolvency of the Foreign Subsidiary; and (C) any Foreign Subsidiary receiving such Intellectual Property shall at all times remain a Restricted Subsidiary and shall not conduct any other material business other than (1) holding such Intellectual Property, (2) entering into license agreements in the ordinary course of business with Foreign Subsidiaries that are Restricted Subsidiaries for use of such Intellectual Property in foreign jurisdictions in the ordinary course of business and (3) entering into license agreements with third parties for use in foreign jurisdictions in the ordinary course of business, on customary terms for fair value; and

(vii) Dispositions consisting of (A) non-exclusive licenses or sublicenses of (or other non-exclusive grants of rights to use or exploit) Intellectual Property in the ordinary course of business (including inter-company agreements between or among any Loan Parties and Restricted Subsidiaries), (B) outside of the United States, Canada, Ireland, the United Kingdom, France, Germany, Italy, Spain, Australia and the Netherlands, exclusive licenses or sublicenses of (or other exclusive grants of rights to use or exploit) Intellectual Property of the Loan Parties and their Restricted Subsidiaries to third parties, in the ordinary course of business consistent with past practices, to the extent necessary to facilitate the commercial distribution of products and services in regions and territories in which the Loan Parties and their Restricted Subsidiaries do not distribute their products directly, provided that none of the licenses or sublicenses described in the foregoing clauses (A) and (B) (either individually or in the aggregate) could reasonably be expected to (x) result in a Material Adverse Effect, (y) materially interfere with the business of the Loan Parties and their Restricted Subsidiaries, taken as a whole, or (z) solely with respect to clause (B), impair in any material respect the value of the Intellectual Property licensed or granted and (C) licenses or sublicenses of (or other exclusive grants of rights to use or exploit) Intellectual Property approved by the Administrative Agent (acting in its reasonable credit judgment);

provided, that any Disposition pursuant to this Section 7.04(b) (other than Section 7.04(b)(i)(A), (b)(iv), (b)(vi) and (b)(vii)) shall be for Fair Market Value; provided further, that nothing herein shall preclude the Company or any Restricted Subsidiary from consummating any Permitted Restructuring so long as no Default or Event of Default has occurred and is continuing or would result therefrom.

7.05 [Reserved].

7.06 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, or issue or sell any Equity Interests, except:

(a) each Restricted Subsidiary may make, either directly or indirectly, Restricted Payments to the Company, the Subsidiary Guarantors and any other Person that owns an Equity Interest in such Restricted Subsidiary, provided that, in the case of any Restricted Subsidiary that is not a Wholly Owned Subsidiary, such Restricted Payments are made to the holders of such Equity Interests ratably (or on a more favorable basis from the perspective of the Company and its Wholly Owned Subsidiaries, taken as a whole) according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) the Company and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock, other common Equity Interests of such Person or Qualified Stock of such Person;

(c) the Company may issue and sell any warrants or options with respect to its Qualified Stock pursuant to any executive compensation or stock option plan;

(d) the Company may issue and sell its Equity Interests constituting Qualified Stock;

(e) the Company and each Restricted Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new shares of its common stock or other Qualified Stock;

(f) the Company and each Restricted Subsidiary may make Restricted Payments to shareholders of any Person (other than an Affiliate of the Company) acquired by merger pursuant to an Investment, at the time of such Investment;

(g) the Company and each of its Restricted Subsidiaries may (i) repurchase, retire, or otherwise acquire or retire at value, Equity Interests held by former directors, officers, employees and consultants; (ii) pay withholding or similar Taxes payable by present or former directors, officers, employees or consultants in respect of their Equity Interests; (iii) repurchase Equity Interests deemed to occur upon a cashless exercise of

options or warrants and (iv) pay withholding amounts in respect of Equity Interests of present or former directors, officers, employees or consultants in cash and Cash Equivalents;

(h) the Company may make Restricted Payments to implement Capped Call Transactions and Convertible Bond Hedge Transactions in connection with the issuance of Convertible Bond Indebtedness, provided such Restricted Payments are made solely with the proceeds of such related Convertible Bond Indebtedness and any Warrant Transactions;

(i) the Company may declare and make other Restricted Payments not otherwise permitted by this Section 7.06 (including, making Restricted Payments to exercise, settle, unwind or terminate any Convertible Bond Hedge Transaction, Capped Call Transaction or Warrant Transaction, as applicable, or honor any request in connection with any conversion of Convertible Bond Indebtedness and make cash payments in lieu of fractional shares in connection therewith), provided that (x) no Event of Default shall exist or would result therefrom and (y) immediately after giving effect to such Restricted Payment, the Company shall be in Pro Forma Compliance, provided that the Consolidated Leverage Ratio shall not exceed, on a Pro Forma Basis, 3.00 to 1.00;

(j) the Company and any Restricted Subsidiary may pay cash in lieu of fractional shares in connection with any dividend, split or combination of its Equity Interests;

(k) the Company or any Restricted Subsidiary may make Restricted Payments pursuant to and in accordance with equity compensation plans or programs and other benefit and compensation plans, programs or agreements for directors, officers, employees, consultants or advisors of the Company and its Subsidiaries; and

(l) the Company may pay any dividend or distribution or make any irrevocable Restricted Payment within sixty (60) days after the date of declaration of such dividend or distribution or giving irrevocable notice with respect to such Restricted Payment, as the case may be, if at the date of declaration or notice such Restricted Payment would have complied with the provisions of this Agreement (including the other provisions of this Section 7.06).

7.07 [Reserved].

7.08 Transactions with Affiliates.

Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person other than (a) transactions among the Loan Parties and their Restricted Subsidiaries (or any entity that becomes a Restricted Subsidiary as a result of such transaction not prohibited by this Agreement); (b) Investments by the Loan Parties and their Restricted Subsidiaries in any other Loan Party or any Subsidiary; (c) R&D Collaboration Payments; (d) customary directors' fees, indemnification (including the provision of directors

and officers insurance), expense reimbursement and similar arrangements, consulting fees, employee salaries, bonuses or employment agreements, compensation or employee benefit arrangements, incentive and severance arrangements with any past, present or future officer, director or employee of a Loan Party or a Restricted Subsidiary entered into in the ordinary course of business; (e) Restricted Payments permitted under Section 7.06; (f) advances of payroll payments to employees of the Company or any Restricted Subsidiary in the ordinary course of business; (g) advances to officers, directors, managers, consultants and employees (or, in the case of the following clause (g)(ii), any future or present officer, director, manager, consultant or employee (or their respective estates, heirs, family members, spouses and former spouses, domestic partners and former domestic partners or beneficiaries under their estates)) of the Company or any Restricted Subsidiary (i) for relocation, (ii) in connection with such Person's purchase of Equity Interests of the Company; provided that no cash is actually advanced pursuant to this clause (g)(ii), and (iii) for entertainment, travel and similar purposes in the ordinary course of business; (h) written agreements entered into or assumed in connection with acquisitions of other businesses with Persons who were not Affiliates prior to such transactions approved by a majority of the Board of Directors of the Company; (i) transactions undertaken in connection with the consummation of any Permitted Restructuring; (j) issuances of Equity Interests to Affiliates and the registration rights and other customary rights associated therewith; (k) transactions with joint ventures for the purchase or sale of property or other assets and services entered into in the ordinary course of business and investments in joint ventures; (l) transactions approved by (i) a majority of disinterested directors of the Company or of the applicable Restricted Subsidiary in good faith or (ii) a committee of the board of directors (or other governing body) of such Person that is comprised of disinterested directors (or such committee otherwise approves such transactions by action of disinterested directors); (m) any transaction or series of related transactions with respect to which the aggregate consideration paid, or fair market value of property Disposed of, by the Company and its Restricted Subsidiaries is less than \$5,000,000 for any such individual transaction or series of related transactions; (n) any transaction in respect of which the Company delivers to the Administrative Agent (for delivery to the Lenders) a letter addressed to the board of directors of the Company (or the board of directors or other relevant governing body of the relevant Restricted Subsidiary) from an accounting, appraisal or investment banking firm that is in the good faith determination of the Company qualified to render such letter, which letter states that such transaction is on terms that are no less favorable to the Company or the relevant Restricted Subsidiary, as applicable, than would be obtained on an arm's-length basis from a Person that is not an Affiliate for a comparable transaction; (o) any transaction with an Affiliate where the only consideration paid consists of Equity Interests of the Company; and (p) except as otherwise specifically limited in this Agreement, other transactions which are entered into in the ordinary course of such Person's business on fair and reasonable terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arm's length transaction with a Person other than an officer, director or Affiliate.

7.09 Burdensome Agreements.

Enter into, or permit to exist, any Contractual Obligation (except for this Agreement, the other Loan Documents and the "Loan Documents" (as defined in the Existing Credit

Agreement)) that (a) restricts the ability of any Loan Party or its Restricted Subsidiaries to (i) make Restricted Payments to any Loan Party or Restricted Subsidiary except for (A) any agreement in effect on the date hereof and set forth on Schedule 7.09, (B) any agreement in effect at the time any Restricted Subsidiary becomes a Restricted Subsidiary of the Company, so long as such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary of the Company, or (C) any reimbursement agreement entered into in the ordinary course of business, to the extent necessary, to effect periodic settlements mandated by such Loan Parties or Restricted Subsidiaries pursuant to such reimbursement agreements, or (ii) create any Lien upon any of their properties or assets to secure the Guaranteed Obligations, except, in the case of clause (a)(ii) only, for (A) any document or instrument governing Indebtedness incurred pursuant to Section 7.02(c), provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (B) any negative pledge contained in secured Indebtedness incurred pursuant to Section 7.02 so long as such negative pledge does not restrict Liens on the Cystic Fibrosis Drug Franchise Assets of the Loan Parties securing the Guaranteed Obligations (as such Guaranteed Obligations may be modified, increased, extended, refinanced, renewed or replaced from time to time), (C) Contractual Obligations that (1) are customary restrictions that arise in connection with any Disposition not prohibited by this Agreement, so long as such Contractual Obligations relate only to the asset or Person subject to such Disposition, (2) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures, so long as such Contractual Obligations are applicable only to such joint venture, (3) are customary restrictions on leases, subleases, in-licenses (including sublicenses thereof) or asset sale agreements otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto or (4) are contained in sales agreements, purchase agreements, acquisition agreements (including by way of merger, acquisition or consolidation) entered into by the Company or any Restricted Subsidiary and solely to the extent in effect pending the closing of such transaction and with respect to the assets covered thereby, (D) restrict subletting or assignment of any lease governing a leasehold interest, and (E) restrictions imposed by applicable Law; or (b) requires the grant of any Lien on property for any obligation if a Lien on such property is given as security for the Guaranteed Obligations.

7.10 Use of Proceeds.

Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to (a) purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose or (b) finance any hostile Acquisition (as evidenced by a calculation of cash and Cash Equivalents on hand at the Company immediately after giving effect to the consummation of such Acquisition and reflecting the application of all cash and Cash Equivalents utilized in connection with the consummation of such Acquisition).

7.11 Financial Covenants.

(a) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio as of the end of any Measurement Period (commencing with the Measurement Period ending December 31, 2020) to be greater than 3.50 to 1.00 (such ratio, the “Stated Ratio”); provided, however, that upon consummation of a Material Acquisition and upon the written election of the Company (which may be exercised not more than three (3) times during the term of this Agreement) to the Administrative Agent (which shall promptly notify the Lenders), the Company may increase the maximum Consolidated Leverage Ratio to 4.00 to 1.00 (the “Adjusted Consolidated Leverage Ratio”). The Adjusted Consolidated Leverage Ratio shall be effective as of the date of consummation of the Material Acquisition (including, without limitation, for determining Pro Forma Compliance with the requirements of this Agreement for such Material Acquisition) and (i) shall step down by 0.25x (*i.e.*, a quarter turn) after two (2) full fiscal quarters following the date of the consummation of such Material Acquisition and (ii) shall step down by an additional 0.25x (*i.e.*, a quarter turn) and return to the Stated Ratio after four (4) full fiscal quarters following the date of the consummation of such Material Acquisition. Notwithstanding anything in the foregoing to the contrary, in the event that the Company makes any such election to adjust the Consolidated Leverage Ratio as set forth above during concurrent periods for Material Acquisitions occurring within any period of four (4) full fiscal quarters following the date of the consummation of such Material Acquisitions, the step downs (as set forth above) shall occur after the end of the two (2) and four (4) (respectively) full fiscal quarters following the date of consummation of the most recent Material Acquisition (on account of which the Consolidated Leverage Ratio was adjusted).

(b) Consolidated Interest Coverage Ratio. Permit the Consolidated Interest Coverage Ratio as of the end of any Measurement Period (commencing with the Measurement Period ending December 31, 2020) to be less than 2.50 to 1.00.

7.12 Amendments of Organization Documents; Fiscal Year; Legal Name, State of Formation; Form of Entity and Accounting Changes.

(a) Amend any Organization Documents of the Company or any of its Restricted Subsidiaries, in a manner adverse to the Lenders in any material respect;

(b) change the fiscal year of the Company or any of its Restricted Subsidiaries, provided, however, that any Person that becomes a Restricted Subsidiary after the date hereof may change its fiscal year to be the same as the Company;

(c) without providing prompt prior written notice to the Administrative Agent following any change in the name, state of formation or organization, form of organization or principal place of business of any Loan Party; or

(d) make any other change in accounting policies or reporting practices of the Company or any of its Restricted Subsidiaries, except as required by GAAP.

7.13 **[Reserved]**.

7.14 **[Reserved]**.

7.15 **[Reserved]**.

7.16 **Sanctions.**

Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, to fund any activities of or business with any Sanctioned Person, or in any Designated Jurisdiction, in each case, in violation of applicable Sanctions, or in any other manner that will result in a violation by any Person party hereto (including any Person participating in the transaction, whether as Lender, as Arranger, Administrative Agent, L/C Issuer, Swingline Lender, or otherwise) of Sanctions.

7.17 **Anti-Corruption Laws.**

Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions.

7.18 **Massachusetts Security Corporation.**

With regard to any Restricted Subsidiary that is a Massachusetts Security Corporation, conduct, transact or otherwise engage in any material operating or business activities other than investment activities that would not reasonably be expected to result in the loss of such Person's qualification as a Massachusetts "security corporation" under Mass. Gen. L. c. 63, §38B.

7.19 **Unrestricted Subsidiaries.**

Permit any Unrestricted Subsidiary to (a) own, or possess the right to use, any Intellectual Property, or (b) own any of the material economic rights derived from any Intellectual Property, in each case with respect to clause (a) or (b), covering the Cystic Fibrosis Drug Franchise Assets.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

8.01 **Events of Default.**

Any of the following shall constitute an event of default (each, an "Event of Default"):

(a) **Non-Payment.** Any Borrower or any other Loan Party fails to pay, in the currency required hereunder, (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation or deposit any funds as Cash Collateral in respect of L/C Obligations, (ii) within three (3) Business Days after the same becomes

due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five (5) Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02(a), 6.03(a), 6.05(a), 6.10, 6.11, 6.12, Article VII or Article X; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the earlier of (x) any Responsible Officer of any Loan Party becoming aware thereof and (y) the Administrative Agent providing the Company written notice thereof; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any other Loan Party herein, in any other Loan Document, or in any Compliance Certificate or other certificate delivered pursuant to or in connection with this Agreement or any other Loan Document shall be incorrect or misleading in any material respect (except that such materiality qualifier shall not be applicable to any representations, warranties, certificates or statement of fact that already are qualified or modified by materiality in the text thereof) when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Restricted Subsidiary thereof (other than an Immaterial Subsidiary) (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder, Intercompany Debt owing to a Loan Party and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to require, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to require, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity (it being understood, for the avoidance of any doubt, the occurrence of events causing Convertible Bond Indebtedness to become convertible, or conversions of Convertible Bond Indebtedness in accordance with its terms and the satisfaction by the Company of its obligations in connection with conversions of Convertible Bond Indebtedness through (x) the issuance of Qualified

Stock and (y) cash payments in lieu of fractional shares required to be paid upon such conversions, shall not constitute an Event of Default under this clause (e)(i)(B)), or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Restricted Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Restricted Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Restricted Subsidiary as a result thereof is greater than the Threshold Amount; or (iii) any Loan Party or any Restricted Subsidiary thereof fails to make any payment beyond the applicable grace period with respect thereto under any lease for the Specified Leased Locations (or contained in any instrument or agreement evidencing or relating thereto), the effect of which payment default is to cause, or to permit the landlord under such lease to cause, with the giving of notice if required, such lease to be terminated; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Restricted Subsidiary thereof (other than an Immaterial Subsidiary) institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, examiner, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, administrator, administrative receiver, compulsory manager, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Restricted Subsidiary (other than an Immaterial Subsidiary) thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within forty-five (45) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Restricted Subsidiary (other than an Immaterial Subsidiary) thereof one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not paid, fully bonded or covered by independent third-party insurance as to which the insurer has been notified of the potential claim and has not denied coverage) and (i) enforcement proceedings are commenced by any creditor upon such judgment or order or (ii) there is a period of sixty

(60) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or would reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Company or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidation of Loan Documents. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations arising under the Loan Documents, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document other than in connection with the release of a Subsidiary Guarantor in accordance with the terms hereof; any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or it is or becomes unlawful for a Loan Party to perform any of its obligations under the Loan Documents; or

(k) Change of Control. There occurs any Change of Control.

8.02 Remedies upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the Revolving Commitment of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers;

(c) require that the Borrowers Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuers all rights and remedies available to it, the Lenders and the L/C Issuers under the Loan Documents or applicable Law or equity;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrowers under the Bankruptcy Code, the obligation of each Lender to make Loans and any obligation of any L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrowers to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

8.03 Application of Funds.

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02) or if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all Guaranteed Obligations then due hereunder, any amounts received on account of the Guaranteed Obligations shall, subject to the provisions of Sections 2.14 and 2.15, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Guaranteed Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Guaranteed Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders, and the L/C Issuers (including fees, charges and disbursements of counsel to the respective Lenders, and the L/C Issuers arising under the Loan Documents and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Guaranteed Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Guaranteed Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Guaranteed Obligations constituting unpaid principal of the Loans and L/C Borrowings and to the Administrative Agent for the account of the L/C Issuers, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrowers pursuant to Sections 2.03 and 2.14, in each case ratably among the Administrative Agent, the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to payment of that portion of the Guaranteed Obligations then owing under the Guaranteed Hedge Agreements and Guaranteed Cash Management Agreements, in each case ratably among the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fifth held by them; and

Last, the balance, if any, after all of the Guaranteed Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.14, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Guaranteed Obligations, if any, in the order set forth above. Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Guaranteed Obligations otherwise set forth above in this Section.

Notwithstanding the foregoing, (a) Guaranteed Obligations arising under Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received a Guaranteed Party Designation Notice, together with such supporting documentation as the Administrative Agent may reasonably request, from the applicable Cash Management Bank or Hedge Bank, as the case may be, and (b) no amounts received from or on account of a Designated Foreign Borrower shall be used to pay or applied against any Guaranteed Obligations of or attributable to any U.S. Loan Party or any other Domestic Subsidiary. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX for itself and its Affiliates as if a “Lender” party hereto.

ARTICLE IX

ADMINISTRATIVE AGENT

9.01 Appointment and Authority.

Each of the Lenders and each of the L/C Issuers hereby irrevocably appoints, designates and authorizes Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and neither the Borrowers nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with

reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

9.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial, advisory, underwriting or other business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

9.03 Exculpatory Provisions.

(a) The Administrative Agent or the Arrangers, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent or the Arrangers, as applicable, and their Related Parties:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or any L/C Issuer any credit or other information concerning the business, prospects, operations, property,

financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates that is communicated to, or in the possession of, the Administrative Agent, Arranger or any of their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein.

(b) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary), or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02 or (ii) in the absence of its own gross negligence, willful misconduct or bad faith as determined by a court of competent jurisdiction by final and non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Company, a Lender or an L/C Issuer.

(c) Neither the Administrative Agent nor any of its Related Parties have any duty or obligation to any Lender or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) 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.

(d) Neither the Administrative Agent nor any of its Related Parties shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (i) be obligated to ascertain, monitor or inquire as to whether any Lender or prospective Lender is a Disqualified Institution or (ii) have any liability with respect to or arising out of any assignment of Loans, or disclosure of confidential information, to any Disqualified Institution.

9.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be

genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objections.

9.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Revolving Facility as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence, willful misconduct or bad faith in the selection of such sub-agents.

9.06 Resignation of Administrative Agent.

(a) Notice. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Company. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Company, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States, and in each case such successor shall require the consent of the Company at all times other than during the existence of an Event of Default under Section 8.01(a) or 8.01(f) (such consent not to be unreasonably withheld or delayed). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within

thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any successor Administrative Agent be a Defaulting Lender or a Disqualified Institution. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) Defaulting Lender. If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable Law, by notice in writing to the Company and such Person remove such Person as Administrative Agent and, in consultation with the Company, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) Effect of Resignation or Removal. With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuers under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 3.01(j) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Company to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Company and such successor, and the retiring or removed Administrative Agent shall cease to be entitled to all such fees upon the effectiveness of its resignation or removal as Administrative Agent, except to the extent it continues to act in any capacity hereunder or under the other Loan Documents after such resignation or removal. After the retiring or

removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article XI and Section 11.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (A) while the retiring or removed Administrative Agent was acting as Administrative Agent and (B) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including, without limitation, (1) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Credit Parties and (2) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(d) L/C Issuer and Swingline Lender. Any resignation or removal by Bank of America as Administrative Agent pursuant to this Section 9.06 shall also constitute its resignation as an L/C Issuer and Swingline Lender. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuers hereunder with respect to all Letters of Credit issued by it outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment by the Company of a successor L/C Issuer or Swingline Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender, as applicable, (ii) the retiring L/C Issuer and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

9.07 Non-Reliance on Administrative Agent, the Arrangers and the Other Lenders.

Each Lender and each L/C Issuer expressly acknowledges that none of the Administrative Agent nor the Arrangers has made any representation or warranty to it, and that no act by the Administrative Agent or any Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or any Arranger to any Lender or each L/C Issuer as to any matter, including whether the Administrative Agent or any Arranger has disclosed material information in their (or their Related Parties') possession. Each Lender and each L/C Issuer represents to the Administrative Agent and the Arrangers that it has, independently and without reliance upon the Administrative

Agent, the Arrangers, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Arrangers, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and each L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or L/C Issuer for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and each L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and each L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

9.08 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, none of the titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an L/C Issuer hereunder.

9.09 Administrative Agent May File Proofs of Claim.

(a) In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C 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 Borrowers) 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 the Loans, L/C Obligations and all other Guaranteed 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 L/C Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and the Administrative Agent under Sections 2.03(h) and (i), 2.09, 2.10(b) and 11.04) 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 any custodian, receiver, examiner, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09, 2.10(b) and 11.04.

(b) 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 any L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Guaranteed Obligations or the rights of any Lender or any L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or any L/C Issuer or in any such proceeding.

9.10 Guaranty Matters.

(a) Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and each of the L/C Issuers irrevocably authorize the Administrative Agent, at its option and in its discretion,

(i) to release any Guarantor from its obligations under the Guaranty if (A) such Person ceases to be a Subsidiary or a Loan Party as a result of a transaction permitted under the Loan Documents (including pursuant to Section 7.04) or (B) such Person is designated as an Unrestricted Subsidiary hereunder; and

(ii) to release any Designated Foreign Borrower from its obligations under each Loan Document if such Person ceases to be a Designated Foreign Borrower as provided in Section 2.16(e).

(b) Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Guarantor from its obligations under the Guaranty and/or any Designated Foreign Borrower from its obligations under the Loan Documents pursuant to this Section 9.10.

In each case as specified in this Section 9.10, the Administrative Agent will promptly, at the Borrowers' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such Guarantor from its obligations under the Guaranty and/or such Designated Foreign Borrower from its obligations under the Loan Documents, in each case, in accordance with the terms of the Loan Documents and this Section 9.10. The Administrative Agent shall have no liability whatsoever to any Credit Party as the result of effectuating or executing any document evidencing any release of any Loan Party by it as permitted (or which the Administrative Agent in good faith believes to be permitted) by this Section 9.10 and any execution and delivery of documents pursuant to this Section 9.10 shall be without recourse or warranty by the Administrative Agent.

9.11 Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements.

Except as otherwise expressly set forth herein, no Cash Management Bank or Hedge Bank that obtains the benefit of the provisions of Section 8.03 or the Guaranty by virtue of the provisions hereof shall have any right to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof of or the Guaranty) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents (it being understood that Administrative Agent may take any and all action expressly specified in Section 9.10). Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Guaranteed Obligations arising under Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements except to the extent expressly provided herein and unless the Administrative Agent has received a Guaranteed Party Designation Notice of such Guaranteed Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Guaranteed Obligations arising under Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements in the case of a Facility Termination Date. Each Lender hereby acknowledges and agrees (including on behalf of any of its Affiliates that may be a Cash Management Bank or a potential Hedge Bank) that (x) obligations of the Company or any of its Subsidiaries under any Guaranteed Cash Management Agreement or Guaranteed Hedge Agreement shall be guaranteed pursuant to the Guaranty only until such time as the Guaranty terminates pursuant to Section 10.06 and (y) any release of Guarantors and/or Designated Foreign Borrowers effected in a manner not prohibited by this Agreement and the other Loan Documents shall not require the consent of holders of obligations under Guaranteed Cash Management Agreements or Guaranteed Hedge Agreements.

9.12 Certain ERISA Matters.

(a) 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, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Company or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more benefit plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments, or this Agreement;

(ii) 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 with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments and this Agreement;

(iii) (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 Letters of Credit, the Revolving Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving 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 with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with 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 Administrative Agent and not, for the avoidance of doubt, to or for

the benefit of the Company or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

ARTICLE X

CONTINUING GUARANTY

10.01 Guaranty.

Each Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as primary obligor and as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all Obligations and Additional Obligations (or, if the scope of such Guarantor's Guaranty is limited to a portion of the Obligations and/or Additional Obligations under the definition of "Guarantors", such portion) (collectively, for each Guarantor, subject to the proviso in this sentence, its "Guaranteed Obligations"); provided that (a) the Guaranteed Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor, (b) the liability of each Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code or any comparable provisions of any applicable state law or other applicable Law, (c) for avoidance of doubt, the Designated Foreign Borrowers shall not be liable under this Guaranty for any Obligations or Additional Obligations of or attributable to any U.S. Loan Party or any other Domestic Subsidiary, (d) the guaranty given by a Guarantor which is incorporated in England and Wales does not apply to any liability to the extent that it would result in this Guaranty constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006, and (e) notwithstanding anything contrary in this Section 10.1, the guaranty under this Section 10.1 of any Guarantor incorporated in Ireland does not apply to any liability to the extent that it would (A) result in this Guaranty constituting unlawful financial assistance within the meaning of section 82 of the Companies Act 2014 of Ireland; or (B) constitute a breach of section 239 of the Companies Act 2014 of Ireland. Without limiting the generality of the foregoing, the Guaranteed Obligations shall include any such indebtedness, obligations, and liabilities with respect to Guaranteed Obligations, or portion thereof, which may be or hereafter become unenforceable or compromised or shall be an allowed or disallowed claim under any proceeding or case commenced by or against any Debtor under any Debtor Relief Laws. The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive for the purpose of establishing the amount of the Guaranteed Obligations absent manifest error. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any instrument or agreement evidencing any Guaranteed Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or

circumstance relating to the Guaranteed Obligations which might otherwise constitute a defense to the obligations of the Guarantors, or any of them, under this Guaranty, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

10.02 Rights of Lenders.

Each Guarantor consents and agrees that the Credit Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Guaranteed Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Guaranteed Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent, the L/C Issuers and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

10.03 Certain Waivers.

Each Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrowers or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Credit Party) of the liability of the Borrowers or any other Loan Party; (b) any defense based on any claim that such Guarantor's obligations exceed or are more burdensome than those of the Borrowers or any other Loan Party; (c) the benefit of any statute of limitations affecting any Guarantor's liability hereunder; (d) any right to proceed against the Borrowers or any other Loan Party, proceed against or exhaust any security for the Guaranteed Obligations, or pursue any other remedy in the power of any Credit Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Credit Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties other than the occurrence of the Facility Termination Date and the payment in full in cash (or other arrangement satisfactory to the applicable Cash Management Bank or Hedge Bank) of all Additional Obligations to the extent then due and payable. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Guaranteed Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Guaranteed Obligations.

10.04 Obligations Independent.

The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Guaranteed Obligations and the obligations of any other

guarantor, and a separate action may be brought against each Guarantor to enforce this Guaranty whether or not the Borrowers or any other person or entity is joined as a party.

10.05 Subrogation.

No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Guaranteed Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full and the Revolving Commitments and the Revolving Facility are terminated. If any amounts are paid to a Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Credit Parties to reduce the amount of the Guaranteed Obligations, whether matured or unmatured.

10.06 Termination; Reinstatement.

This Guaranty is a continuing and irrevocable guaranty of all Guaranteed Obligations now or hereafter existing and shall remain in full force and effect until the Facility Termination Date and the payment in full in cash (or other arrangement satisfactory to the applicable Cash Management Bank or Hedge Bank) of all Additional Obligations to the extent then due and payable. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrowers or a Guarantor is made, or any of the Credit Parties exercises its right of setoff, in respect of the Guaranteed Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Credit Parties in their discretion) to be repaid to a trustee, receiver, examiner or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Credit Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this Section 10.06 shall survive termination of this Guaranty.

10.07 Stay of Acceleration.

If acceleration of the time for payment of any of the Guaranteed Obligations is stayed, in connection with any case commenced by or against a Guarantor or the Borrowers under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by each Guarantor, jointly and severally, immediately upon demand by the Credit Parties.

10.08 Condition of Borrowers.

Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrowers and any other guarantor such information concerning the financial condition, business and operations of the Borrowers and any such other guarantor as such Guarantor requires, and that none of the Credit Parties has any duty, and such Guarantor is not relying on the Credit Parties at any time, to disclose to it any information

relating to the business, operations or financial condition of the Borrowers or any other guarantor (each Guarantor waiving any duty on the part of the Credit Parties to disclose such information and any defense relating to the failure to provide the same).

10.09 Appointment of Company.

Each of the Loan Parties hereby appoints the Company to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Company may execute such documents and provide such authorizations on behalf of such Loan Parties as the Company deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent, an L/C Issuer or a Lender to the Company shall be deemed delivered to each Loan Party and (c) the Administrative Agent, the L/C Issuers or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Company on behalf of each of the Loan Parties.

10.10 Right of Contribution.

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable Law.

10.11 Keepwell.

Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article X voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 10.11 shall remain in full force and effect until the Guaranteed Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section 10.11 to constitute, and this Section 10.11 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

ARTICLE XI

MISCELLANEOUS

11.01 Amendments, Etc.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Company or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and the Company or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(i) waive any condition set forth in Section 4.01, or, in the case of the initial Credit Extension, Section 4.02, in each case, except as expressly provided therein, without the written consent of each Lender;

(ii) without limiting the generality of clause (a) above, waive any condition set forth in Section 4.02 without the written consent of the Required Lenders;

(iii) extend or increase the Revolving Commitment of any Lender (or reinstate any Revolving Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver (or amendment to the terms of) of any condition precedent in Section 4.02 or of any Default or Event of Default or a mandatory reduction in Revolving Commitments shall not constitute an extension or increase in Revolving Commitments of any Lender);

(iv) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender directly and adversely affected thereby, provided, however, that only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate;

(v) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(vi) change (A) Section 8.03 or Section 2.13 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender or (B) Section 2.12(f) in a manner that would alter the pro rata application required thereby without the written consent of each Lender directly affected thereby;

(vii) change (i) any provision of this Section 11.01 or the definition of “Required Lenders” or any other provision of any Loan Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or thereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(viii) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(ix) amend Section 1.06 or the definition of “Alternative Currency” without the written consent of each Lender and each L/C Issuer;

(x) release any Borrower or permit any Borrower to assign or transfer any of its rights or obligations under this Agreement or the other Loan Documents without the consent of each Lender, except to the extent the release of any Designated Foreign Borrower is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone); or

(xi) amend Section 2.16(b) to permit the designation of a Designated Foreign Borrower without the consent of the Administrative Agent, the Lenders and the L/C Issuers to such designation, without the written consent of each Lender;

and provided, further, that (A) no amendment, waiver or consent shall, unless in writing and signed by the applicable L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (B) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (C) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (D) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, (A) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender, may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (1) the Revolving Commitment of any Defaulting Lender may not be increased or extended without the consent of

such Lender and (2) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender, that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender; (B) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein and (C) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

(b) Notwithstanding anything to the contrary herein (including the other provisions of this Section 11.01) (i) the Administrative Agent may, with the prior written consent of the Company only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any omission, mistake, defect or inconsistency, and (ii) this Agreement may be amended, amended and restated or otherwise supplemented or modified without the consent of any Lender (but with the consent of Company and the Administrative Agent) if, upon giving effect to such amendment, amendment and restatement or other supplement or modification, such Lender shall no longer be a party to this Agreement (as so amended, amended and restated or otherwise supplemented or modified), the Revolving Commitments of such Lender shall have terminated (but such Lender shall be entitled to the benefits of the provisions of this Agreement which expressly survive the termination of such Lender's Revolving Commitments), such Lender shall have no other obligation to provide additional Credit Extensions to the Borrowers under this Agreement and such Lender shall have been paid in full all Obligations (other than (A) contingent indemnification and expense reimbursement obligations as to which no claim has been asserted and (B) for the avoidance of any doubt, any Additional Obligations) owing to it or accrued for its account under this Agreement.

The Lenders hereby authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents with the Company as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Company in order to give effect to, and the reflect the existence of, any Incremental Revolving Facility pursuant to Section 2.18 or any Revolving Extension Series pursuant to Section 2.19.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Company may replace such Non-Consenting Lender in accordance with Section 11.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Company to be made pursuant to this paragraph).

11.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in

subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or e-mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Company or any other Loan Party, the Administrative Agent, Bank of America as an L/C Issuer, or the Swingline Lender, to the address, fax number (to the extent applicable), e-mail address or telephone number specified for such Person on Schedule 1.01(a); and

(ii) if to any other Lender or any other L/C Issuer, to the address, fax number, e-mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrowers).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications.

(i) Notices and other communications to the Administrative Agent, the Lenders, the Swingline Lender and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail, FPML messaging 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, the Swingline Lender or any L/C Issuer pursuant to Article II if such Lender, the Swingline Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article II by electronic communication. The Administrative Agent, the Swingline Lender, any L/C Issuer or the Borrowers may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

(ii) Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written

acknowledgement) and (B) notices and other communications posted to an Internet or intranet website shall be deemed received by the intended recipient upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail address or other written acknowledgement) indicating that such notice or communication is available and identifying the website address therefor; provided that for both clauses (A) and (B), if such notice or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrowers, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, except with respect to such losses, claims, damages, liabilities or expenses of the Borrowers only that are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party with respect to any such transmission of Borrower Materials or notices through the Platform by such Agent Party.

(d) Change of Address, Etc. Each of the Borrowers, the Administrative Agent, the L/C Issuers and the Swingline Lender may change its address, fax number (to the extent applicable) or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the Company, the Administrative Agent, the L/C Issuers and the Swingline Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, fax number and e-mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one (1) individual at or on behalf of such Public Lender to at all times have selected the

“Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Company or its securities for purposes of United States federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuers and Lenders. The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices, Loan Notices, Letter of Credit Applications, Notice of Loan Prepayment and Swingline Loan Notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, each L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies; Enforcement.

(a) No failure by any Lender, any L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuers; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any L/C Issuer or the Swingline Lender from exercising the rights and remedies that

inure to its benefit (solely in its capacity as an L/C Issuer or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders. Each Credit Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Guarantees of the Guaranteed Obligations provided under the Loan Documents, to have agreed to the foregoing provisions.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Loan Parties shall pay (i) all reasonable and documented or invoiced out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented or invoiced out-of-pocket fees, charges and disbursements of one primary counsel for the Administrative Agent and the Arrangers, taken as a whole, and, after consultation with the Company, one local counsel as necessary in each appropriate jurisdiction for the Administrative Agent and the Arrangers, taken as a whole), in connection with the syndication of the credit facilities provided for herein, the preparation, due diligence, negotiation, execution, delivery, closing and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented or invoiced out-of-pocket expenses incurred by each L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Lender or any L/C Issuer (including reasonable and invoiced out-of-pocket fees, charges and disbursements of (x) one primary counsel for the Administrative Agent, the Lenders and the L/C Issuers, (y) to the extent deemed reasonably necessary by the Administrative Agent, the Lenders and the L/C Issuers, one local counsel as reasonably necessary in each appropriate jurisdiction for the Administrative Agent, the Lenders and the L/C Issuers, taken as a whole, and (z) solely in the event of a conflict of interest where the Administrative Agent, Lender or applicable L/C Issuer informs the Company of such conflict, one additional counsel in each relevant jurisdiction to each group of similarly situated parties, taken as a whole), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all

such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Administrative Agent (and any sub-agent thereof), the Arrangers, each Lender, the Swingline Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable and invoiced out-of-pocket fees, charges and disbursements of one primary counsel for the Indemnitees and one local counsel as necessary in each appropriate jurisdiction for the Indemnitees, taken as a whole, and, solely in the event of a conflict of interest (where the indemnitees inform the Company of such conflict), one additional counsel in each relevant jurisdiction to each group of similarly situated Indemnitees, taken as a whole, and settlement costs), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Company or any other Loan Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by a Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to a Loan Party or any of its Subsidiaries to the extent such losses, claims, damages, liabilities or related expenses of any Indemnitee result (directly or indirectly) from (or is incidental to) the Indemnitees’ relationship with the Loan Parties and their Subsidiaries under the Loan Documents and the transactions contemplated hereunder, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Company or any other Loan Party or any of the Company’s or such Loan Party’s directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE**; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, willful misconduct or bad faith of such Indemnitee, (y) result from a claim brought by the Company or any other Loan Party against an Indemnitee for a material breach of such Indemnitee’s material obligations hereunder or under any other Loan Document, if the

Company or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) arise from a dispute solely among Indemnitees that does not involve, result from, or relate to, directly or indirectly, any act or omission by the Loan Parties or their respective Affiliates (other than a Claim against a party hereto solely in its capacity as Swingline Lender, an L/C Issuer, Arranger or Administrative Agent or any other Person performing a similar role under the Loan Documents). Without limiting the provisions of Section 3.01(c), this Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), each L/C Issuer, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), each L/C Issuer, the Swingline Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Revolving Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), each L/C Issuer or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), each L/C Issuer or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, none of the parties hereto shall assert, and each party hereto hereby waives, and acknowledges that no other Person shall have, any claim against any other party hereto or any Indemnatee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof; provided, that nothing contained in this sentence shall limit the Loan Parties' indemnity obligations to the extent set forth in Section 11.04(b). No Indemnatee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnatee 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.

(e) Payments. All amounts due under this Section 11.04 shall be payable not later than ten (10) Business Days after demand therefor. Notwithstanding anything to the contrary herein, the Designated Foreign Borrowers shall not be required to make any payment under this Section 11.04 in respect of any Obligations of or attributable to any U.S. Loan Party, and all other payments under this Section 11.04 shall be made by the Company and/or the U.S. Loan Parties.

(f) Survival. The agreements in this Section 11.04 and the indemnity provisions of Section 11.02(e) shall survive the resignation of the Administrative Agent, each L/C Issuer and the Swingline Lender, the replacement of any Lender, the termination of the Aggregate Revolving Commitments and the repayment, satisfaction or discharge of all the other Guaranteed Obligations.

11.05 Payments Set Aside

To the extent that any payment by or on behalf of the Company is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver, examiner or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 Successors and Assigns

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except neither the Company nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 11.06(b), (ii) by way of participation in accordance with the provisions of Section 11.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or

implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 11.06(d) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Revolving Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swingline Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in Section 11.06(b)(i)(B) in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in Section 11.06(b)(i)(A), the aggregate amount of the Revolving Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Revolving Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Company otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement and the other Loan Documents with respect to the Loans and/or the Revolving Commitment assigned, except that this Section 11.06(b)(ii) shall not apply to the Swingline Lender's rights and obligations in respect of Swingline Loans.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 11.06(b)(i)(B) and, in addition:

(A) the consent of the Company (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Company shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Revolving Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of the L/C Issuers and the Swingline Lender shall be required for any assignment in respect of the Revolving Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to any Borrower or any of the Borrowers' Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person) or (D) any holder of subordinated Indebtedness.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Company and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, any L/C Issuer or

any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this Section 11.06(b)(vi), then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 11.06(c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrowers (at their expense) shall execute and deliver a Revolving Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 11.06(b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office, or if the Administrative Agent's Office is not located in the United States, at such other office of the Administrative Agent that is located within the United States, a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations 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 Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. Any assignment of any Loans or other obligations hereunder shall be effective only upon appropriate entries with respect thereto being made in the Register.

The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations.

(i) Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person, a Defaulting Lender or any Borrower or any of the Borrowers' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swingline 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 Borrowers, the Administrative Agent, the Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participations.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirements under Section 3.01(e), 3.01(f), 3.01(g) and 3.01(h) (it being understood that the documentation required under Section 3.01(e), 3.01(f), 3.01(g) and 3.01(h) shall be delivered to the Lender who sells the participation)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.06(b); provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under Section 11.06(b) and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 3.06 with respect to any Participant. To the

extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 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 Borrowers, 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 or to comply with Section 3.01(g) or 3.01(h). 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.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Revolving Note or Revolving Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Resignation as L/C Issuer or Swingline Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Commitment and Revolving Loans pursuant to Section 11.06(b), Bank of America may, (i) upon thirty (30) days' notice to the Company and the Lenders, resign as L/C Issuer and/or (ii) upon thirty (30) days' notice to the Company, resign as Swingline Lender. In the event of any such resignation as L/C Issuer or Swingline Lender, the Company shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swingline Lender hereunder; provided, however, that no failure by the Company to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swingline Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as

Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swingline Lender, (A) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender, as the case may be, and (B) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

(g) [Reserved].

(h) Disqualified Institutions.

(i) No assignment shall be made to any Person that was a Disqualified Institution as of the "Trade Date" on which the applicable Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Company has consented to such assignment as otherwise contemplated by this Section 11.06, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Institution after the applicable Trade Date (including as a result of the delivery of a notice pursuant to, and/or the expiration of the notice period referred to in, the definition of "Disqualified Institution"), such assignee shall not retroactively be considered a Disqualified Institution. Any assignment in violation of this Section 11.06(h)(i) shall not be void, but the other provisions of this Section 11.06(h) shall apply.

(ii) If any assignment is made to any Disqualified Institution without the Company's prior consent in violation of Section 11.06(h)(i), the Borrowers may, at their effort and the sole expense of the assigning institution, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Revolving Commitment of such Disqualified Institution and repay all obligations of the Borrowers owing to such Disqualified Institution in connection with such Revolving Commitment, and/or (B) require such Disqualified Institution to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in this Section 11.06), all of its interest, rights and obligations under this Agreement and related Loan Documents to an Eligible Assignee that shall assume such obligations at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it

hereunder and other the other Loan Documents; provided that such assignment does not conflict with applicable Laws.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Company, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter and (y) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws (“Plan of Reorganization”), each Disqualified Institution party hereto hereby agrees (1) not to vote on such Plan of Reorganization, (2) if such Disqualified Institution does vote on such Plan of Reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan of Reorganization in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(iv) The Administrative Agent shall, and the Borrowers hereby expressly authorize the Administrative Agent, to (A) post the list of Disqualified Institutions provided by the Company and any updates thereto from time to time (collectively, the “DQ List”) on the Platform, including that portion of the Platform that is designated for “public side” Lenders or (B) provide the DQ List to each Lender requesting the same.

11.07 Treatment of Certain Information; Confidentiality.

(a) Treatment of Certain Information. Each of the Administrative Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates, auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent required or requested by any regulatory

authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners) (in which case, such Person agrees to inform the Company promptly thereof prior to such disclosure unless (x) such Person is prohibited from doing so under applicable Law or (y) such disclosure is pursuant to a regulatory audit or exam conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority), (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process (in which case, such Person agrees to inform the Company promptly thereof prior to such disclosure unless such Person is prohibited from doing so under applicable Law), (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section 11.07, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.18 or Section 11.01 or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrowers and their obligations, this Agreement or payments hereunder (it being understood that the DQ List may be disclosed to any assignee, or prospective assignee, in reliance on this clause (vi)), (vii) on a confidential basis to (A) the provider of any Platform or other electronic delivery service used by the Administrative Agent, any L/C Issuer and/or the Swingline Lender to deliver Borrower Materials or notices to the Lenders or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, or (viii) with the consent of the Company or to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section 11.07 or (2) becomes available to the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrowers, their Subsidiaries or their attorneys or accountants. For purposes of this Section 11.07, “Information” means all information received from the Company or any Subsidiary relating to the Company or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the Company or any Subsidiary; provided that, in the case of information received from the Company or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 11.07 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to

the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Revolving Commitments.

(b) Non-Public Information. Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (i) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Law, including United States federal and state securities Laws.

11.08 Right of Setoff

If an Event of Default shall have occurred and be continuing, each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Company or any other Loan Party against any and all of the obligations of the Company or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, such L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Company or such Loan Party may be contingent or unmaturing, secured or unsecured, or are owed to a branch, office or Affiliate of such Lender or such L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuers and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Guaranteed Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each L/C Issuer and their respective Affiliates under this Section 11.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and each L/C Issuer agrees to notify the Company and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application. Notwithstanding the provisions of this Section 11.08, if at any time any Lender, any L/C Issuer or any of their respective Affiliates maintains one or more deposit accounts for the Company or any other Loan Party into which Medicare and/or Medicaid receivables are deposited, such Person shall waive the right of setoff set forth herein.

11.09 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Counterparts; Integration; Effectiveness.

This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent or any L/C Issuer, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or any other Loan Document, or any certificate delivered thereunder, by fax transmission or e-mail transmission (*e.g.*, “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement or such other Loan Document or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Loan Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

11.11 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

11.12 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuers or the Swingline Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 Replacement of Lenders.

(a) If the Company is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender or if any other circumstance exists hereunder that gives the Company the right to replace a Lender as a party hereto, then the Company may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) the Company shall have paid (or caused a Designated Foreign Borrower to pay) to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);

(ii) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Company or applicable Designated Foreign Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable Laws; and

(v) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

(b) A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Company to require such assignment and delegation cease to apply. Each Lender agrees that, if the Company elects to replace such Lender in accordance with this Section 11.13, it shall (subject to the Company's compliance with the provisions of this Section 11.13) promptly execute and deliver to the Administrative Agent an Assignment and Assumption to evidence the assignment and shall deliver to the Administrative Agent any Revolving Note (if Revolving Notes have been issued in respect of such Lender's Loans and/or Revolving Commitments) subject to such Assignment and Assumption; provided that the failure of any such Lender to execute an Assignment and Assumption shall not render such assignment invalid and such assignment shall be recorded in the Register.

11.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE COMPANY AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, ANY L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH

NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE COMPANY OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE COMPANY AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. THE COMPANY AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS; PROCESS AGENT. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW. WITHOUT LIMITING THE FOREGOING, EACH LOAN PARTY THAT IS A FOREIGN SUBSIDIARY IRREVOCABLY DESIGNATES AND APPOINTS THE COMPANY AS SUCH LOAN PARTY'S AUTHORIZED AGENT, TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF, SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY ACTION, LITIGATION OR PROCEEDING, AND AGREES THAT THE FAILURE OF THE COMPANY TO GIVE ANY NOTICE OF ANY SUCH SERVICE SHALL NOT IMPAIR OR AFFECT THE VALIDITY OF SUCH SERVICE OR OF ANY JUDGMENT RENDERED IN ANY ACTION, LITIGATION OR PROCEEDING BASED THEREON. THE COMPANY HEREBY CONFIRMS THAT IT HAS AGREED TO ACCEPT SUCH APPOINTMENT (AND ANY SIMILAR APPOINTMENT BY A LOAN PARTY THAT IS A FOREIGN SUBSIDIARY). SAID DESIGNATION AND APPOINTMENT SHALL BE IRREVOCABLE BY THE COMPANY AND EACH LOAN PARTY THAT IS A FOREIGN SUBSIDIARY. TO THE EXTENT THAT ANY LOAN PARTY THAT IS A FOREIGN SUBSIDIARY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY

FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION, EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, SUCH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

11.15 WAIVER OF JURY TRIAL.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.15.

11.16 Subordination.

Each Loan Party (a “Subordinating Loan Party”) hereby subordinates the payment of all obligations and indebtedness of any other Loan Party owing to it, whether now existing or hereafter arising, including but not limited to any obligation of any such other Loan Party to the Subordinating Loan Party as subrogee of the Credit Parties or resulting from such Subordinating Loan Party’s performance under Article X, to the occurrence of the Facility Termination Date and the indefeasible payment in full in cash (or other arrangement satisfactory to the applicable Cash Management Bank or Hedge Bank) of all Additional Obligations to the extent then due and payable. If the Credit Parties so request, any such obligation or indebtedness of any such other Loan Party to the Subordinating Loan Party shall be enforced and performance received by the Subordinating Loan Party as trustee for the Credit Parties and the proceeds thereof shall be paid over to the Credit Parties on account of the Guaranteed Obligations, but without reducing or affecting in any manner the liability of the Subordinating Loan Party under this Agreement. Without limitation of the foregoing, so long as no Event of Default has occurred and is continuing, the Loan Parties may make and receive payments with respect to Intercompany Debt; provided, that in the event that any Loan Party receives any payment of any Intercompany Debt at a time when such payment is prohibited by this Section 11.16, such payment shall be held by such Loan Party, in trust for the benefit of, and shall be paid forthwith over and delivered, upon written request, to the Administrative Agent.

11.17 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 Company and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent and any Affiliate thereof, the Arrangers and the Lenders are arm's-length commercial transactions between the Company, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent and, as applicable, its Affiliates (including any Affiliate that is an Arranger) and the Lenders and their Affiliates (including any Affiliate that is an Arranger) (collectively, solely for purposes of this Section, the "Lenders"), on the other hand, (ii) each of the Company and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Company and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b) (i) the Administrative Agent and its Affiliates (including any Affiliate that is an Arranger) and each Lender 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 Company, any other Loan Party or any of their respective Affiliates, or any other Person and (ii) neither the Administrative Agent, any of its Affiliates (including any Affiliate that is an Arranger) nor any Lender has any obligation to the Company, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent and its Affiliates (including any Affiliate that is an Arranger) and the Lenders may be engaged in a broad range of transactions that involve interests that differ from those of the Company, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, any of its Affiliates (including any Affiliate that is an Arranger) nor any Lender has any obligation to disclose any of such interests to the Company, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Company and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, any of its Affiliates (including any Affiliate that is an Arranger) or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

11.18 Electronic Execution; Electronic Records.

(a) The words "delivery," "execute," "execution," "signed," "signature," and words of like import in any Loan Document or any other document executed in connection herewith (including without limitation Assignment and Assumptions, amendments or other Loan Notices, Swingline Loan Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as

provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; ***provided that, notwithstanding anything contained herein to the contrary, after the Closing Date, the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided, further, that without limiting the foregoing, upon the request of the Administrative Agent, any electronic signature shall be promptly followed by such manually executed counterpart.*** For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent and each of the Lenders of a manually signed paper document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a “Communication”) which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention.

(b) The Borrowers hereby acknowledge the receipt of a copy of this Agreement and all other Loan Documents. The Administrative Agent and each Lender may, on behalf of the Borrowers, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the other Loan Documents. The Administrative Agent and each Lender may store the electronic image of this Agreement and the other Loan Documents in its electronic form and then destroy the paper original as part of the Administrative Agent’s and each Lender’s normal business practices, with the electronic image deemed to be an original and of the same legal effect, validity and enforceability as the paper originals.

11.19 USA PATRIOT Act Notice.

Each Lender that is subject to the Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Company and the other Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107–56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify and record information that identifies the Company and each other Loan Party, which information includes the name and address of the Company and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Company and each other Loan Party in accordance with the Patriot Act. The Company and each other Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all such other documentation and information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act.

11.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Solely to the extent any Lender or L/C issuer that is an Affected Financial Institution is a party to this Agreement and 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 Lender or L/C Issuer that is an Affected 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 the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or L/C Issuer that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

11.21 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States): In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered

Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

11.22 [Reserved].

11.23 Judgment Currency.

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from any Loan Party in the Agreement Currency, such Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Loan Party (or to any other Person who may be entitled thereto under applicable Law).

11.24 ENTIRE AGREEMENT.

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

COMPANY: VERTEX PHARMACEUTICALS INCORPORATED, as a Borrower and a Guarantor

By: /s/ Charles F. Wagner, Jr.

Name: Charles F. Wagner, Jr.

Title: Executive Vice President and Chief Financial Officer

DESIGNATED FOREIGN

BORROWERS: VERTEX PHARMACEUTICALS (EUROPE) LIMITED, as a Borrower

By: /s/ Klas Holmlund

Name: Klas Holmlund

Title: Director

VERTEX PHARMACEUTICALS (IRELAND) LIMITED, as a Borrower

By: /s/ Klas Holmlund

Name: Klas Holmlund

Title: Director

[Signature Page to Credit Agreement]

SUBSIDIARY GUARANTORS: VERTEX PHARMACEUTICALS (SAN DIEGO) LLC, as a Subsidiary Guarantor

By: /s/ Charles F. Wagner, Jr.
Name: Charles F. Wagner, Jr.
Title: Treasurer

VERTEX HOLDINGS, INC., as a Subsidiary Guarantor

By: /s/ Charles F. Wagner, Jr.
Name: Charles F. Wagner, Jr.
Title: Treasurer

VERTEX PHARMACEUTICALS (DISTRIBUTION) INCORPORATED, as a Subsidiary Guarantor

By: /s/ Charles F. Wagner, Jr.
Name: Charles F. Wagner, Jr.
Title: Treasurer

VERTEX PHARMACEUTICALS (PUERTO RICO) LLC, as a Subsidiary Guarantor

By: /s/ Charles F. Wagner, Jr.
Name: Charles F. Wagner, Jr.
Title: Treasurer

[Signature Page to Credit Agreement]

GUARANTORS: VERTEX PHARMACEUTICALS (EUROPE) LIMITED, as a Guarantor

By: /s/ Klas Holmlund
Name: Klas Holmlund
Title: Director

VERTEX PHARMACEUTICALS (IRELAND) LIMITED, as a Guarantor

By: /s/ Klas Holmlund
Name: Klas Holmlund
Title: Director

[Signature Page to Credit Agreement]

ADMINISTRATIVE AGENT: BANK OF AMERICA, N.A., as Administrative Agent

By: /s/ Elizabeth Uribe
Name: Elizabeth Uribe
Title: Assistant Vice President

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LENDERS:

BANK OF AMERICA, N.A., as a Lender, a L/C Issuer and Swingline Lender

By: /s/ Linda E. Alto

Name: Linda E. Alto

Title: Senior Vice President

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CITIBANK, N.A., as a Lender

By: /s/ Eugene Yermash
Name: Eugene Yermash
Title: Vice President

[Signature Page to Credit Agreement]

TRUIST BANK, as a Lender

By: /s/ Matthew J. Davis
Name: Matthew J. Davis
Title: Senior Vice President

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SOCIÉTÉ GÉNÉRALE, as a Lender

By: /s/ Jonathan Logan
Name: Jonathan Logan
Title: Director

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WELLS FARGO BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Kirk Tesch

Name: Kirk Tesch

Title: Managing Director

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JPMORGAN CHASE BANK, N.A., as a Lender

By: /s/ Stacey Zoland
Name: Stacey Zoland
Title: Executive Director

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MIZUHO BANK, LTD., as a Lender

By: /s/ Tracy Rahn

Name: Tracy Rahn

Title: Executive Director

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MUFG BANK, LTD., as a Lender

By: /s/ Jack Lonker
Name: Jack Lonker
Title: Director

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PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Robert Novak

Name: Robert Novak

Title: Vice President

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SUMITOMO MITSUI BANKING CORPORATION, as a Lender

By: /s/ Michael Maguire

Name: Michael Maguire

Title: Managing Director

[Signature Page to Credit Agreement]

U.S. BANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Maria Massimino

Name: Maria Massimino
Title: Senior Vice President

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BARCLAYS BANK PLC, as a Lender

By: /s/ Ronnie Glenn

Name: Ronnie Glenn

Title: Director

[Signature Page to Credit Agreement]

CITIZENS BANK, N.A., as a Lender

By: /s/ Kristen Morse
Name: Kristen Morse
Title: Managing Director

[Signature Page to Credit Agreement]

DNB CAPITAL LLC, as a Lender

By: /s/ Magdalena Brzostowska
Name: Magdalena Brzostowska
Title: Senior Vice President

By: /s/ Ahelia Singh
Name: Ahelia Singh
Title: Assistant Vice President

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HSBC BANK USA, NATIONAL ASSOCIATION, as a Lender

By: /s/ Shaun Kleinman
Name: Shaun Kleinman
Title: Senior Vice President

[Signature Page to Credit Agreement]

KEYBANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Neil C. Buitenhuis
Name: Neil C. Buitenhuis
Title: Senior Vice President

[Signature Page to Credit Agreement]

SANTANDER BANK, N.A., as a Lender

By: /s/ Daniel Wilansky

Name: Daniel Wilansky

Title: Vice President

[Signature Page to Credit Agreement]

CERTIFICATION

I, Reshma Kewalramani, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Vertex Pharmaceuticals Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 30, 2020

/s/ Reshma Kewalramani

Reshma Kewalramani
Chief Executive Officer and President

CERTIFICATION

I, Charles F. Wagner, Jr., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Vertex Pharmaceuticals Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 30, 2020

/s/ Charles F. Wagner, Jr.

Charles F. Wagner, Jr.
Executive Vice President and Chief Financial Officer

SECTION 906 CEO/CFO CERTIFICATION

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) each of the undersigned officers of Vertex Pharmaceuticals Incorporated, a Massachusetts corporation (the "Company"), does hereby certify, to such officer's knowledge, that the Quarterly Report on Form 10-Q for the quarter ended September 30, 2020 (the "Form 10-Q") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: October 30, 2020

/s/ Reshma Kewalramani

Reshma Kewalramani
Chief Executive Officer and President

Date: October 30, 2020

/s/ Charles F. Wagner, Jr.

Charles F. Wagner, Jr.
Executive Vice President and Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.
