

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

**FORM 10-Q**

(Mark One)

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

**For the quarterly period ended March 31, 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: 001-38529**

**Verrica Pharmaceuticals Inc.**

**(Exact Name of Registrant as Specified in its Charter)**

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)  
**10 North High Street, Suite 200**  
**West Chester, PA**  
(Address of principal executive offices)

**46-3137900**  
(I.R.S. Employer  
Identification No.)

**19380**  
(Zip Code)

**Registrant's telephone number, including area code: (484) 453-3300**

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

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
Common Stock, \$0.0001 par value	VRCA	The Nasdaq Stock Market LLC

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, 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	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
Emerging growth company	<input checked="" type="checkbox"/>		

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

As of May 4, 2020, the registrant had 25,814,493 shares of common stock, \$0.0001 par value per share, outstanding.

VERRICA PHARMACEUTICALS INC.  
QUARTERLY REPORT ON FORM 10-Q  
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## PART I. FINANCIAL INFORMATION

## Item 1. Unaudited Condensed Financial Statements

**VERRICA PHARMACEUTICALS INC.**  
**CONDENSED BALANCE SHEETS**  
(in thousands, except share and per share amounts)  
(Unaudited)

	March 31, 2020	December 31, 2019
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 54,486	\$ 9,241
Marketable securities	33,896	52,776
Prepaid expenses and other assets	2,265	2,966
Total current assets	90,647	64,983
Property and equipment, net	2,375	2,090
Operating lease right-of-use asset	45	111
Other non-current assets	1,375	1,240
<b>Total assets</b>	<b>\$ 94,442</b>	<b>\$ 68,424</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 1,103	\$ 1,185
Accrued expenses and other current liabilities	2,066	2,036
Operating lease liability	133	130
Total current liabilities	3,302	3,351
Operating lease liability	23	58
Long-term debt, net	34,434	—
Other liabilities	75	—
<b>Total liabilities</b>	<b>37,834</b>	<b>3,409</b>
<b>Commitments and Contingencies</b>		
Stockholders' equity:		
Preferred stock, \$0.0001 par value; 10,000,000 shares authorized; no shares issued and outstanding as of March 31, 2020 and December 31, 2019	—	—
Common stock, \$0.0001 par value; 200,000,000 authorized; 25,919,637 shares issued and 25,814,493 shares outstanding as of March 31, 2020 and 25,912,137 shares issued and 25,786,330 shares outstanding as of December 31, 2019	3	3
Treasury stock, at cost, 105,144 shares as of March 31, 2020 and December 31, 2019	—	—
Additional paid-in capital	127,599	126,594
Subscription receivable	—	(410)
Accumulated deficit	(71,014)	(61,192)
Accumulated other comprehensive gain	20	20
Total stockholders' equity	56,608	65,015
<b>Total liabilities and stockholders' equity</b>	<b>\$ 94,442</b>	<b>\$ 68,424</b>

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

**VERRICA PHARMACEUTICALS INC.**  
**CONDENSED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS**  
(in thousands, except share and per share amounts)  
(Unaudited)

	For the Three Months Ended March 31,	
	2020	2019
<b>Operating expenses:</b>		
Research and development	\$ 4,892	\$ 4,487
General and administrative	4,988	3,539
Total operating expenses	9,880	8,026
<b>Loss from operations</b>	<b>(9,880)</b>	<b>(8,026)</b>
<b>Other income (expense):</b>		
Interest income	278	547
Interest expense	(220)	—
Total other income	58	547
<b>Net loss</b>	<b>\$ (9,822)</b>	<b>\$ (7,479)</b>
Net loss per share, basic and diluted	\$ (0.39)	\$ (0.30)
Weighted average common shares outstanding, basic and diluted	24,964,167	24,857,771
Net loss	\$ (9,822)	\$ (7,479)
Other comprehensive gain:		
Unrealized gain on marketable securities	—	28
Comprehensive loss	<b>\$ (9,822)</b>	<b>\$ (7,451)</b>

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

**VERRICA PHARMACEUTICALS INC.**  
**CONDENSED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(in thousands, except share amounts)  
(Unaudited)

	Common Stock		Additional Paid-in Capital	Subscription Receivable	Accumulated Deficit	Treasury Stock		Accumulated Other Comprehensive Gain (Loss)	Total Stockholders' Equity
	Shares Issued	Amount				Shares	Cost		
<b>January 1, 2020</b>	<b>25,912,137</b>	<b>\$ 3</b>	<b>\$ 126,594</b>	<b>\$ (410)</b>	<b>\$ (61,192)</b>	<b>105,144</b>	<b>\$ —</b>	<b>\$ 20</b>	<b>\$ 65,015</b>
Repayment of subscription receivable	—	—	—	410	—	—	—	—	410
Stock-based compensation	—	—	998	—	—	—	—	—	998
Exercise of stock options	7,500	—	7	—	—	—	—	—	7
Net loss	—	—	—	—	(9,822)	—	—	—	(9,822)
<b>March 31, 2020</b>	<b>25,919,637</b>	<b>\$ 3</b>	<b>\$ 127,599</b>	<b>\$ —</b>	<b>\$ (71,014)</b>	<b>105,144</b>	<b>\$ —</b>	<b>\$ 20</b>	<b>\$ 56,608</b>
<b>January 1, 2019</b>	<b>25,809,900</b>	<b>\$ 3</b>	<b>\$ 122,526</b>	<b>\$ —</b>	<b>\$ (33,083)</b>	<b>105,144</b>	<b>\$ —</b>	<b>\$ (17)</b>	<b>\$ 89,429</b>
Stock-based compensation	—	—	780	—	—	—	—	—	780
Exercise of stock options	3,729	—	3	—	—	—	—	—	3
Net loss	—	—	—	—	(7,479)	—	—	—	(7,479)
Unrealized gain on marketable securities	—	—	—	—	—	—	—	28	28
Adoption of ASU 2018-07 (See Note 2)	—	—	(98)	—	98	—	—	—	—
<b>March 31, 2019</b>	<b>25,813,629</b>	<b>\$ 3</b>	<b>\$ 123,211</b>	<b>\$ —</b>	<b>\$ (40,464)</b>	<b>105,144</b>	<b>\$ —</b>	<b>\$ 11</b>	<b>\$ 82,761</b>

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

**VERRICA PHARMACEUTICALS INC.**  
**CONDENSED STATEMENTS OF CASH FLOWS**  
(in thousands)  
(Unaudited)

	<b>For the Three Months Ended March 31,</b>	
	<b>2020</b>	<b>2019</b>
<b>Cash flows from operating activities</b>		
Net loss	\$ (9,822)	\$ (7,479)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	998	780
Accretion of discounts on marketable securities	(93)	(359)
Depreciation expense	14	11
Non cash interest expense	65	—
Reduction in operating lease right-of-use asset	66	29
Changes in operating assets and liabilities:		
Prepaid expenses and other assets	701	(46)
Other receivable - related party	—	(6)
Accounts payable	(82)	215
Accrued expenses and other current liabilities	279	4
Accounts payable and accrued expenses - related party	—	(38)
Operating lease liability	(32)	(28)
Net cash used in operating activities	<u>(7,906)</u>	<u>(6,917)</u>
<b>Cash flows from investing activities</b>		
Sales and maturities of marketable securities	24,355	42,365
Purchases of marketable securities	(5,382)	(21,295)
Purchases of property and equipment	(699)	—
Net cash provided by investing activities	<u>18,274</u>	<u>21,070</u>
<b>Cash flows from financing activities</b>		
Proceeds from exercise of stock options	7	3
Proceeds from issuance of debt, net	34,460	—
Repayment of subscription receivable	410	—
Net cash provided by financing activities	<u>34,877</u>	<u>3</u>
Net increase in cash and cash equivalents	<u>45,245</u>	<u>14,156</u>
Cash and cash equivalents at the beginning of the period	9,241	10,271
Cash and cash equivalents at the end of the period	<u><u>\$ 54,486</u></u>	<u><u>\$ 24,427</u></u>
<b>Supplemental disclosure of noncash investing and financing activities:</b>		
Property and equipment purchases payable or accrued at period end	\$ 333	\$ 285
Debt discount costs included in accrued expense at period end	\$ 125	\$ —

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

**VERRICA PHARMACEUTICALS INC.**  
**Notes to Condensed Financial Statements**  
**(Unaudited)**

**Note 1—Nature of Business**

Verrica Pharmaceuticals Inc. (the “Company”) was formed on July 3, 2013 and is incorporated in the State of Delaware. The Company is a dermatology therapeutics company committed to the development and commercialization of novel treatments that provide meaningful benefit for people living with skin diseases.

***Liquidity and Capital Resources***

The Company has incurred substantial operating losses since inception and expects to continue to incur significant operating losses for the foreseeable future and may never become profitable. As of March 31, 2020, the Company had an accumulated deficit of \$71.0 million.

Since inception, the Company has financed its operations through sales of convertible preferred stock and the sale of common stock in the Company’s initial public offering, with aggregate gross proceeds of \$123.2 million and net proceeds of \$114.9 million and the issuance of debt with aggregate gross proceeds of \$35.0 million and net proceeds of \$34.5 million. As of March 31, 2020, the Company had cash, cash equivalents and marketable securities of \$88.4 million.

**Note 2—Significant Accounting Policies**

***Basis of Presentation***

The accompanying unaudited interim condensed financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America (“GAAP”) as determined by the Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) for interim financial information. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, the unaudited interim condensed financial statements reflect all adjustments, which include only normal recurring adjustments necessary for the fair statement of the balances and results for the periods presented. They may not include all of the information and footnotes required by GAAP for complete financial statements. Therefore, these financial statements should be read in conjunction with the Company’s audited financial statements and notes thereto for the year ended December 31, 2019 filed with the Securities and Exchange Commission (the “SEC”) on March 13, 2020. The results of operations for any interim periods are not necessarily indicative of the results that may be expected for the entire fiscal year or any other interim period.

The Company has been actively monitoring the novel coronavirus (“COVID-19”) situation and its impact globally. Management believes the financial results for the three months ended March 31, 2020 were not significantly impacted by COVID-19. In addition, management believes the remote working arrangements and travel restrictions imposed by various governmental jurisdictions have had limited impact on the Company’s ability to maintain internal operations during the quarter. The full extent to which the COVID-19 pandemic will directly or indirectly impact the Company’s business, results of operations and financial condition will depend on future developments that are highly uncertain, including as a result of new information that may emerge concerning COVID-19 and the actions taken to contain it or treat COVID-19. As a direct result of COVID-19, the Company has decided to delay the initiation of its Phase 3 clinical trials to evaluate VP-102 in subjects with common warts as well as its planned Phase 2 clinical trial to evaluate VP-103 in subjects with plantar warts until conditions are appropriate.

***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. These estimates and assumptions are based on current facts, historical experience as well as other pertinent industry and regulatory authority information, including the potential future effects of COVID-19, the results of which form the basis for making judgments about the carrying values of assets and liabilities and the recording of expenses that are not readily apparent from other sources. Actual results may differ materially and adversely from these estimates. To the extent there are material differences between the estimates and actual results, the Company’s future results of operations will be affected.

***Significant Accounting Policies***

There have been no material changes in the Company’s significant accounting policies to those previously disclosed in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2019.

### Recently Adopted Accounting Pronouncements

In February 2016, the FASB issued Accounting Standard Update (“ASU”) 2016-02, *Leases (Topic 842)* in order to increase transparency and comparability among organizations by, among other provisions, recognizing lease assets and lease liabilities on the balance sheet for those leases classified as operating leases under previous GAAP. For public companies, ASU 2016-02 is effective for fiscal years beginning after December 15, 2018 (including interim periods within those periods) using a modified retrospective approach and early adoption is permitted. In transition, entities may also elect a package of practical expedients that must be applied in its entirety to all leases commencing before the adoption date, unless the lease is modified, and permits entities to not reassess (a) the existence of a lease, (b) lease classification or (c) determination of initial direct costs, as of the adoption date, which effectively allows entities to carryforward accounting conclusions under previous GAAP. In July 2018, the FASB issued ASU 2018-11, *Leases (Topic 842): Targeted Improvements*, which provides entities an optional transition method to apply the guidance under Topic 842 as of the adoption date, rather than as of the earliest period presented. The Company adopted Topic 842 on January 1, 2019, using the optional transition method to apply the new guidance as of January 1, 2019, rather than as of the earliest period presented, and elected the package of practical expedients described above. Based on the analysis, on January 1, 2019, the Company recorded an operating lease right-of-use asset of \$304,000 and an operating lease liability of \$306,000 and eliminated deferred rent of \$2,000. See Note 6 for additional information.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation-Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting*, which simplifies the accounting for share-based payments granted to nonemployees for goods and services. Under the ASU, most of the guidance on such payments to nonemployees would be aligned with the requirements for share-based payments granted to employees. The changes take effect for public companies for fiscal years starting after December 15, 2018, including interim periods within that fiscal year. The Company adopted this ASU as of January 1, 2019 and recorded an adjustment to accumulated deficit and additional paid-in capital of \$98,000.

In August 2018, the FASB issued ASU 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement*, which makes a number of changes meant to add, modify or remove certain disclosure requirements associated with the movement amongst or hierarchy associated with Level 1, Level 2 and Level 3 fair value measurements. This guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. The adoption of this guidance as of January 1, 2020 did not have an impact on the financial statements.

In August 2018, the FASB issued 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*, which aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software (and hosting arrangements that include an internal-use software license). The guidance also requires the entity to expense the capitalized implementation costs of a hosting arrangement that is a service contract over the term of the hosting arrangement, which includes reasonably certain renewals. The guidance becomes effective for the Company in the year ending December 31, 2020. The adoption of this guidance as of January 1, 2020 did not have an impact on the financial statements.

### Net Loss Per Share

Net loss per share of common stock is computed by dividing net loss attributable to common stockholders by the weighted average number of shares of common stock outstanding for the period. Diluted net loss per share excludes the potential impact of common stock options and unvested shares of restricted stock because their effect would be anti-dilutive due to the Company’s net loss. Since the Company had a net loss in each of the periods presented, basic and diluted net loss per common share are the same.

The table below provides potential shares outstanding that were not included in the computation of diluted net loss per common share, as the inclusion of these securities would have been anti-dilutive:

	As of March 31,	
	2020	2019
Shares issuable upon exercise of stock options	2,563,674	2,051,725
Non-vested shares under restricted stock grants	1,148,859	848,859

### Note 3—Investments in Marketable Securities

Investments in marketable securities consisted of the following as of March 31, 2020 and December 31, 2019 (in thousands):

**March 31, 2020**

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. Treasury securities	\$ 6,718	\$ 40	\$ —	\$ 6,758
Commercial paper	17,859	—	(14)	17,845
Asset-backed securities	9,299	—	(6)	9,293
Total marketable securities	<u>\$ 33,876</u>	<u>\$ 40</u>	<u>\$ (20)</u>	<u>\$ 33,896</u>

**December 31, 2019**

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. Treasury securities	\$ 7,397	\$ 3	\$ —	\$ 7,400
Commercial paper	31,913	7	(1)	31,919
Asset-backed securities	13,446	11	—	13,457
Total marketable securities	<u>\$ 52,756</u>	<u>\$ 21</u>	<u>\$ (1)</u>	<u>\$ 52,776</u>

Unrealized gains and losses on marketable securities are recorded as a separate component of accumulated other comprehensive gain included in stockholders' equity. Realized gains (losses) are included in interest income (expense) in the statement of operations and comprehensive loss on a specific identification basis. There were no marketable securities with a maturity of greater than one year for either period presented. To date, the Company has not recorded any impairment charges on marketable securities related to other-than-temporary declines in market value.

Accretion of bond discount on marketable securities and interest income on marketable securities is recorded as interest income on the statement of operations and comprehensive loss.

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Financial assets and liabilities carried at fair value are classified and disclosed in one of the following three categories:

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

Level 2 — Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 — Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The following tables presents fair value of the Company's marketable securities (in thousands):

**Fair Value Measurement as of March 31, 2020**

	Level 1	Level 2	Level 3	Total
<b>Assets</b>				
U.S. treasury securities	\$ 6,758	\$ —	\$ —	\$ 6,758
Commercial paper	—	17,845	—	17,845
Asset-backed securities	—	9,293	—	9,293
Total assets	<u>\$ 6,758</u>	<u>\$ 27,138</u>	<u>\$ —</u>	<u>\$ 33,896</u>

**Fair Value Measurement as of December 31, 2019**

	Level 1	Level 2	Level 3	Total
<b>Assets</b>				
U.S. treasury securities	\$ 7,400	\$ —	\$ —	\$ 7,400
Commercial paper	—	31,919	—	31,919
Asset-backed securities	—	13,457	—	13,457
Total assets	<u>\$ 7,400</u>	<u>\$ 45,376</u>	<u>\$ —</u>	<u>\$ 52,776</u>

**Note 4—Property and Equipment**

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

	As of March 31, 2020	As of December 31, 2019
Leasehold improvements	\$ 68	\$ 68
Office furniture and fixtures	48	48
Office equipment	31	31
Construction in process	2,326	2,027
	<u>2,473</u>	<u>2,174</u>
Accumulated depreciation	(98)	(84)
Total property and equipment, net	<u>\$ 2,375</u>	<u>\$ 2,090</u>

The Company has recorded an asset classified as construction in process associated with the construction of a product assembly and packaging line that would be placed into service for commercial manufacturing upon future regulatory product approval.

**Note 5—Accrued Expenses and Other Current Liabilities**

Accrued expenses and other current liabilities consisted of the following (in thousands):

	As of March 31, 2020	As of December 31, 2019
Compensation and related costs	\$ 577	\$ 1,195
Clinical trials and drug development	527	733
Construction in process	333	—
Professional fees	275	89
Interest expense	155	—
Other accrued expenses and other current liabilities	199	19
Total accrued expenses and other current liabilities	<u>\$ 2,066</u>	<u>\$ 2,036</u>

## Note 6—Leases

Effective January 1, 2019, the Company accounts for its leases under ASC 842, *Leases (Topic 842)*. Under this guidance, arrangements meeting the definition of a lease are classified as operating or financing leases and are recorded on the balance sheet as both a right-of-use asset and lease liability, calculated by discounting fixed lease payments over the lease term at the rate implicit in the lease, if available, otherwise at the Company's incremental borrowing rate. Lease liabilities are increased by interest and reduced by payments each period, and the right-of-use asset is amortized over the lease term. For operating leases, interest on the lease liability and the amortization of the right-of-use asset result in straight-line rent expense over the lease term. Variable lease expenses, if any, are recorded when incurred.

In calculating the right-of-use asset and lease liability, the Company elects to combine lease and non-lease components. The Company excludes short-term leases having initial terms of 12 months or less from the new guidance as an accounting policy election and recognizes rent expense on a straight-line basis over the lease term.

The Company leases office space in West Chester, Pennsylvania under an agreement classified as an operating lease that expires in May 2021. The Company does not act as a lessor or have any leases classified as financing leases. On July 1, 2019, the Company entered into a lease for 5,829 square feet of office space located in West Chester, Pennsylvania that is expected to serve as the Company's new headquarters. On March 12, 2020 the Company entered into an amendment to the lease agreement. The amendment expands the original premises to include 5,372 square feet of additional office space increasing the total rentable premise to 11,201 square feet of space. From the commencement date through December 31, 2020 the base rent is based on the square footage of the original premises. The Company anticipates the commencement date to be during the third quarter of 2020, but may be delayed due to impacts of COVID-19 mandates on office building construction activities. The initial term will expire seven years after the commencement date. Base rent over the initial term is approximately \$2.4 million, and the Company is also responsible for its share of the landlord's operating expense. As a result, amortization of the right-of-use asset associated with the current property lease is now amortized over the revised remaining useful life. In addition, the useful life of associated leasehold improvements has been accelerated to reflect the expected abandonment of the property, such that they will be fully amortized when the property is vacated.

As of March 31, 2020, the Company had an operating lease liability of \$156,000, of which \$133,000 was classified as current, and an operating right-of-use asset of \$45,000.

The components of lease expense are as follows (in thousands):

	For the Three Months Ended March 31,	
	2020	2019
Operating lease:		
Operating lease costs	\$ 58	\$ 34
Short-term lease costs	6	5
Total rent expense	\$ 64	\$ 39

Maturities of the Company's operating lease, excluding short-term leases, as of March 31, 2020 are as follows (in thousands):

Remainder of 2020	\$ 105
2021	58
Total lease payments	163
Less imputed interest	(7)
Operating lease liability	\$ 156

The weighted-average remaining term of the Company's operating lease was 1.2 years and the weighted-average discount rate used to measure the present value of the Company's operating lease liability was 6.75% as of March 31, 2020.

## Note 7—Debt

On March 10, 2020 (the "Effective Date"), the Company entered into (i) a mezzanine loan and security agreement (the "Mezzanine Loan Agreement") with Silicon Valley Bank, as administrative agent and collateral agent (the "Agent"), and Silicon Valley Bank and West River Innovation Lending Fund VIII, L.P., as lenders (the "Mezzanine Lenders"), pursuant to which the Mezzanine Lenders have agreed to lend the Company up to \$50.0 million in a series of term loans, and (ii) a loan and security agreement (the "Senior Loan Agreement", and together with the Mezzanine Loan Agreement, the "Loan Agreements") with Silicon Valley Bank, as lender (the "Senior Lender", and together with the Mezzanine Lenders, the "Lenders"), pursuant to which the Senior Lender has agreed to provide the Company a revolving line of credit of up to \$5.0 million. Upon entering into the Loan Agreements, the Company borrowed \$35.0 million in term loans from the Mezzanine Lenders (the "Term A Loan").

Under the terms of the Mezzanine Loan Agreement, the Company may, at its sole discretion, borrow from the Mezzanine Lenders up to an additional \$15.0 million in term loans (the “Term B Loan”, and together with the Term A Loan, the “Term Loans”) upon the Company’s achievement of (i) a specified amount in trailing six-month net revenue and (ii) an equity raise of at least \$40.0 million (the foregoing clauses (i) and (ii), collectively, the “Term B Milestone”). The Company may draw the Term B Loan during the period commencing on the date of the occurrence of the Term B Milestone and ending on the earliest of (i) December 31, 2021 and (ii) the occurrence of an event of default.

Under the terms of the Senior Loan Agreement, the Company may, at its sole discretion, borrow from the Senior Lender one or more advances on the revolving credit line (the “Revolving Loans”, and together with the Term Loans, the “Loans”) in an aggregate amount not to exceed the lesser of (i) 85% of the aggregate amount then-contained in the Company’s eligible accounts receivable and (ii) \$5.0 million. The Senior Loan Agreement provides for the Company to make three anniversary payments of \$25,000 each in addition to the \$25,000 due upon the Effective Date for an aggregate of \$100,000 in total anniversary payments. In the event the Senior Loan Agreement is terminated prior to maturity, any unpaid portion of the total anniversary payments are due immediately. The Company recorded the total anniversary fee payment obligation at inception. As of March 31, 2020, \$25,000 and \$75,000 of anniversary payments were recorded within other current liabilities and other liabilities, respectively, within the Company’s accompanying balance sheet.

The Company’s obligations under the Senior Loan Agreement and the Mezzanine Loan Agreement are secured by, respectively, a first priority perfected security interest and second priority perfected security interest in substantially all of the Company’s current and future assets, other than its intellectual property (except rights to payment from the sale, licensing or disposition of such intellectual property). The Company has also agreed not to encumber its intellectual property assets, except as permitted by the Loan Agreements.

All of the Loans mature on March 1, 2024 (the “Maturity Date”). The Term Loans will be interest-only through March 31, 2022, followed by 24 equal monthly payments of principal and interest; provided that if the Company draws the Term B Loan, the Term Loans will be interest-only through September 30, 2022, followed by 18 equal monthly payments of principal and interest. The Term Loans will bear interest at a floating per annum rate equal to the greater of (i) 7.25% and (ii) the sum of (a) the prime rate reported in The Wall Street Journal on the last business day of the month that immediately precedes the month in which the interest will accrue, plus (b) 2.50%. The Revolving Loans will bear interest at a floating per annum rate equal to the greater of (i) 6.00% and (ii) the sum of (a) the prime rate reported in The Wall Street Journal on the last business day of the month that immediately precedes the month in which the interest will accrue, plus (b) 1.25%.

The Company will be required to make a final payment fee of 7.50% of the original principal amount of the Term Loans drawn payable on the earlier of (i) the Maturity Date, (ii) the acceleration of any Term Loans, or (iii) the prepayment of the Term Loans (the “Final Payment”). The Company is recording the final payment fee using the effective interest rate method over the term of the Term Loan with an increase in long-term debt. The Company may prepay all, or any portion (in increments of at least \$1.0 million), of the Term Loans upon 5 business days’ advance written notice to the Agent, provided that the Company will be obligated to pay a prepayment fee equal to (i) 3.00% of the principal amount of the applicable Term Loan prepaid on or before the first anniversary of the Effective Date, (ii) 2.00% of the principal amount of the applicable Term Loan prepaid between the first and second anniversary of the Effective Date, and (iii) 1.00% of the principal amount of the applicable Term Loan prepaid thereafter, and prior to the third anniversary of the Effective Date (each, a “Prepayment Fee”).

The Company may terminate the revolving credit line under the Senior Loan Agreement at any time upon 3 business days’ advance written notice to the Senior Lender. If the Company terminates the revolving credit line prior to the Maturity Date, it must pay to the Senior Lender an early termination fee of \$50,000 (the “Termination Fee”).

The Company is subject to a number of affirmative and restrictive covenants pursuant to the Loan Agreements, including covenants regarding achieving minimum product revenues, delivery of financial statements, maintenance of inventory, payment of taxes, maintenance of insurance, protection of intellectual property rights, dispositions of property, business combinations or acquisitions, incurrence of additional indebtedness or liens, investments and transactions with affiliates, among other customary covenants. As of March 31, 2020 the Company is in compliance with all covenants.

Upon the occurrence of certain events, including but not limited to the Company’s failure to satisfy its payment obligations under the Loan Agreements, the breach of certain of its other covenants under the Loan Agreements, or the occurrence of a material adverse change, cross defaults to other indebtedness or material agreements, judgment defaults and defaults related to failure to maintain governmental approvals failure of which to maintain could result in a material adverse effect, the Agent and the Lenders will have the right, among other remedies, to declare all principal and interest immediately due and payable, to exercise secured party remedies, to receive the Final Payment and Termination Fee and, if the payment of principal and interest is due prior to the Maturity Date, to receive the applicable Prepayment Fee. The Loan Agreements also include subjective acceleration clauses that permit the

Lenders to accelerate the maturity date under certain circumstances, including a material adverse change in the Company's business, operations, or financial condition or a material impairment of the prospect of repayment of the Company's obligations to the Mezzanine Lenders. Beginning on September 30, 2020 and at any time thereafter, if the balance of the Company's unrestricted cash, cash equivalents, and marketable securities in accounts maintained at Silicon Valley Bank is less than two times the Company's aggregate outstanding obligations to the Mezzanine Lenders, the covenant regarding achieving minimum product revenues would be effective. If the Company's planned commercialization of VP-102 is delayed or adversely affected and the covenant regarding achieving minimum product revenues balance is in effect, the Company may not satisfy the covenant and, absent any waiver granted by the Mezzanine Lenders, the Mezzanine Lenders may call the debt and all outstanding principal, interest, prepayment penalties and final payment obligations are due upon demand. Although the Company believes the acceleration of the due date may be reasonably possible given the current level of uncertainty around the COVID-19 pandemic, it does not believe that it is probable and, therefore, the debt is classified as a non-current liability in the accompanying balance sheet as of March 31, 2020.

Upon entering into the Loan Agreement, the Company received proceeds of \$35.0 million in term loans and incurred debt discount and issuance costs of \$3.3 million, including the final payment fee of \$2.7 million, classified as a contra-liability on the condensed balance sheet. The Company incurred additional debt issuance costs related to the revolving credit line of \$0.1 million, classified as other non-current assets in the condensed balance sheet. These costs will be amortized to interest expense over the life of the loans using the straight-line method.

For the three months ended March 31, 2020, the Company recognized interest expense of \$0.2 million, of which \$155.0 thousand was accrued interest on the term loan and \$65.0 thousand was non-cash interest expense related to the amortization of deferred debt issuance costs and accrual of the final payment fee.

The following table summarizes the composition of debt as reflected on the balance sheet as of March 31, 2020 (in thousands):

Gross proceeds	\$	35,000
Accrued final payment fee		2,625
Unamortized debt discount and issuance costs		(3,191)
Total long-term debt, net	\$	<u>34,434</u>

Aggregate maturities of long-term debt as of March 31, 2020 are as follows (in thousands):

Remainder of 2020	\$	—
2021		—
2022		13,125
2023		17,500
2024 (1)		4,375
	\$	<u>35,000</u>

(1) Excludes the final payment fee due at time of maturity.

#### Note 8—Stock-Based Compensation

Stock-based compensation expense, which includes expense for both employees and non-employees, has been reported in the Company's condensed statements of operations for the three months ended March 31, 2020 and 2019 as follows (in thousands):

	For the Three Months Ended March 31,	
	2020	2019
Research and development	\$ 177	\$ 140
General and administrative	821	640
Total stock-based compensation	<u>\$ 998</u>	<u>\$ 780</u>

#### Stock Options

The following table summarizes the Company's stock option activity for the three months ended March 31, 2020:

	Number of shares	Weighted average exercise price	Weighted average remaining contractual life (in years)	Aggregate intrinsic value
Outstanding as of December 31, 2019	1,914,545	\$ 9.14	8.5	\$ 12,953,956
Granted	660,700	12.76		
Exercised	(7,500)	0.90		
Forfeitures	(4,071)	15.13		
Outstanding as of March 31, 2020	<u>2,563,674</u>	\$ 10.09	8.7	\$ 4,963,331
Options vested and exercisable as of March 31, 2020	<u>788,865</u>	\$ 7.77	7.9	\$ 2,884,381

As of March 31, 2020, the total unrecognized compensation related to unvested stock option awards granted was \$13.1 million, which the Company expects to recognize over a weighted-average period of 3.1 years.

#### **Restricted Stock**

Pursuant to an Amended and Restated Stock Purchase Agreement (the “Amended and Restated Agreement”) between the Company and the former Chief Scientific Officer (“CSO”), 848,859 shares held by the former CSO are subject to repurchase at \$0.0001 per share in the event the CSO ceases to be a consultant. These shares will be released from the repurchase option on the earliest to occur of (i) a change in control, (ii) regulatory approval of the Company’s new drug application for cantharidin, (iii) commercial sale of products and (iv) a covered termination, as defined in the Amended and Restated Agreement.

On November 27, 2019, the Company granted 300,000 restricted stock units to its executive officers. The restricted stock units vest 50% upon receipt of regulatory approval of the Company’s new drug application for VP-102 for the treatment of molluscum (the “Approval Date”) and 50% shall vest on the one year anniversary of the Approval Date subject to the holders’ continuous service through each applicable date.

No compensation expenses have been recognized for these nonvested restricted stock units and the shares subject to the Amended and Restated Agreement as these shares are performance based and the triggering event was not determined to be probable as of March 31, 2020. As of March 31, 2020, the total unrecognized compensation expense related to the restricted stock units and shares subject to the Amended and Restated Agreement was \$5.0 million.

#### **Note 9—Related Party Transactions**

The Company has entered into a services agreement (“SA”) with PBM Capital Group, LLC (“PBM”) an affiliate of PBM Capital Investments, LLC, to engage PBM for certain business development, operations, technical, contract, accounting and back office support services. Paul B. Manning, who is the Chairman and Chief Executive Officer of PBM and the current chairman of the Company’s Board of Directors, and certain entities affiliated with Mr. Manning, continue to be the Company’s largest stockholder on a collective basis.

On January 1, 2019 and October 1, 2019, the SA was amended to reduce the monthly management fee to \$26,333 and \$5,000, respectively, as a result of a reduction in services provided by PBM.

For the three months ended March 31, 2020 and 2019, the Company incurred expenses under the SA of \$15,000 and \$79,000, respectively.

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

*You should read the following discussion and analysis of our financial condition and results of operations in conjunction with (i) our unaudited interim condensed financial statements and the related notes thereto included elsewhere in this Quarterly Report on Form 10-Q and (ii) our audited condensed financial statements and notes thereto and management’s discussion and analysis of financial condition and results of operations for the years ended December 31, 2018 and 2019 included in our Annual Report on Form 10-K for the year ended December 31, 2019, filed with the Securities and Exchange Commission (the “SEC”) on March 13, 2020. Our financial statements have been prepared in accordance with U.S. GAAP.*

### Forward-Looking Statements

*This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 (the “Exchange Act”), including, without limitation, statements regarding our expectations, beliefs, intentions or future strategies that are signified by the words “expect,” “anticipate,” “intend,” “believe,” “may,” “plan,” “seek” or similar language. All forward-looking statements included in this document are based on information available to us on the date hereof, and we assume no obligation to update any such forward-looking statements. Our business and financial performance are subject to substantial risks and uncertainties. Our actual results could differ materially from those discussed in these forward-looking statements. In evaluating our business, you should carefully consider the information set forth in this Quarterly Report under Part II - Item 1A “Risk Factors,” and in our other filings with the SEC.*

### Overview

We are a dermatology therapeutics company committed to the development and commercialization of novel treatments that provide meaningful benefit for people living with skin diseases. Our lead product candidate, VP-102, is a proprietary drug-device combination of our topical solution of cantharidin, a widely recognized, naturally sourced agent to treat topical dermatological conditions, administered through our single-use precision applicator. We are initially developing VP-102 for the treatment of molluscum contagiosum, or molluscum, a highly contagious and primarily pediatric viral skin disease, and common warts. There are currently no products approved by the U.S. Food and Drug Administration, or FDA, nor is there an established standard of care for either of these diseases, resulting in significant undertreated populations in two of the largest unmet needs in dermatology. In addition to patent protection we are seeking, VP-102 has the potential to be the first FDA-approved product for molluscum and for its active pharmaceutical ingredient, or API, to be characterized as a new chemical entity, or NCE, with the five years of non-patent regulatory exclusivity associated with that designation. We believe VP-102 has the potential to qualify for pediatric exclusivity in common warts, which would provide for an additional six months of non-patent exclusivity.

In January 2019, we reported positive top-line results from our Phase 3 CAMP-1 and CAMP-2 pivotal trials with VP-102 for the treatment of molluscum. Both clinical trials evaluated the safety and efficacy of VP-102 compared to placebo. In each trial, we observed that a clinically and statistically significant proportion of subjects treated with VP-102 achieved complete clearance of all treatable molluscum lesions compared to subjects treated with placebo. VP-102 was well-tolerated in both trials, with no serious adverse events reported in VP-102 treated subjects. Based on the results from these trials, we submitted a new drug application, or NDA, to the FDA for VP-102 for the treatment of molluscum in September 2019. In November 2019, we received notice that the FDA accepted the NDA for filing, with a Prescription Drug User Fee Act, or PDUFA, goal date of July 13, 2020. CAMP-1 was conducted under a special protocol assessment, or SPA, agreement with the FDA. In June 2019, we announced positive topline results from our COVE-1 Phase 2 open label clinical trial of VP-102 for the treatment of verruca vulgaris, or common warts. Based on the results of the COVE-1 trial, and following an End-of-Phase 2 meeting with the FDA we planned to initiate two Phase 3 clinical trials in the first half of 2020. However, as previously disclosed, in light of the COVID-19 pandemic, we are monitoring the situation very closely and intend to launch those Phase 3 clinical trials when conditions are appropriate.

In addition, we are also developing VP-102 for the treatment of external genital warts. We initiated a Phase 2 clinical trial evaluating the optimal dose regimen, efficacy, safety and tolerability of VP-102 in patients with external genital warts in June 2019. We expect to report topline data results from this trial in the second half of 2020. In addition, we are conducting necessary preclinical activities for VP-103, our second cantharidin-based product candidate, and planned to initiate a Phase 2 clinical trial in subjects with plantar warts in mid-2020. However, as previously disclosed, in light of the COVID-19 pandemic, we are monitoring the situation very closely and intend to launch the Phase 2 clinical trial when conditions are appropriate. We retain exclusive, royalty-free rights to our product candidates across all indications.

Our strategy is to advance VP-102 through regulatory approval and self-commercialize in the United States for the treatment of several skin diseases. We intend to build a specialized sales organization in the United States focused on pediatric dermatologists, dermatologists, and select pediatricians. In the future, we also intend to develop VP-102 for commercialization in additional geographic regions, either alone or together with a strategic partner.

We have a limited operating history. Since our inception in 2013, our operations have focused on developing VP-102, organizing and staffing our company, business planning, raising capital, establishing our intellectual property portfolio and conducting clinical trials. We do not have any product candidates approved for sale and have not generated any revenue from product sales. We have funded our operations primarily through the sale of equity and equity-linked securities and through borrowing under our loan agreement with Silicon Valley Bank.

On June 19, 2018, we completed an IPO of common stock, which resulted in the issuance and sale of 5,750,000 shares of common stock at a public offering price of \$15.00 per share, generating net proceeds of \$78.4 million after deducting underwriting discounts and other offering costs. On March 10, 2020, we entered into (i) a mezzanine loan and security agreement, or the Mezzanine Loan Agreement, with Silicon Valley Bank, as administrative agent and collateral agent, or the Agent, and Silicon Valley Bank and West River Innovation Lending Fund VIII, L.P., as lenders, or the Mezzanine Lenders, pursuant to which the Mezzanine Lenders have agreed to lend us up to \$50.0 million in a series of term loans, and (ii) a loan and security agreement, or the Senior Loan Agreement, and together with the Mezzanine Loan Agreement, the Loan Agreements, with Silicon Valley Bank, as lender, or the Senior Lender, and together with the Mezzanine Lenders, the Lenders, pursuant to which the Senior Lender has agreed to provide us a revolving line of credit of up to \$5.0 million. Upon entering into the Loan Agreements, we borrowed \$35.0 million in term loans from the Mezzanine Lenders. The availability for the remaining \$15.0 million in term loans is subject to our achievement of (i) a specified amount in trailing six-month net revenue and (ii) a specified amount raised in equity.

We believe that our existing cash, cash equivalents and marketable securities as of March 31, 2020 will be sufficient to support our planned operations, which include expenses for the commercialization of YCANTH™, if approved, and continued development of VP-102 for additional indications, including common warts and external genital warts, as well as VP-103 for plantar warts, at least through the second quarter of 2021.

Since inception, we have incurred significant operating losses. For the three months ended March 31, 2020 and 2019, our net loss was \$9.8 million and \$7.5 million, respectively. As of March 31, 2020, we had an accumulated deficit of \$71.0 million. We expect to continue to incur significant expenses and operating losses for the foreseeable future. We anticipate that our expenses will increase significantly in connection with our ongoing activities, as we:

- continue our ongoing clinical programs evaluating VP-102 for the treatment of common warts and external genital warts as well as initiate and complete additional clinical trials, as needed;
- initiate clinical trials evaluating VP-103 for the treatment of plantar warts;
- pursue regulatory approvals for VP-102 for the treatment of molluscum, and eventually for the treatment of common warts, external genital warts or any other indications we may pursue for VP-102, as well as for VP-103;
- seek to discover and develop additional product candidates;
- ultimately establish a commercialization infrastructure and scale up external manufacturing and distribution capabilities to commercialize any product candidates for which we may obtain regulatory approval, including VP-102 and VP-103;
- seek to in-license or acquire additional product candidates for other dermatological conditions;
- adapt our regulatory compliance efforts to incorporate requirements applicable to marketed products;
- maintain, expand and protect our intellectual property portfolio;
- hire additional clinical, manufacturing and scientific personnel;
- add operational, financial and management information systems and personnel, including personnel to support our product development and planned future commercialization efforts; and
- incur additional legal, accounting and other expenses in operating as a public company.

#### **Services Agreement with PBM Capital Group, LLC**

We have entered into a services agreement (“SA”) with PBM Capital Group, LLC (“PBM”) an affiliate of PBM Capital Investments, LLC, to engage PBM for certain business development, operations, technical, contract, accounting and back office support services. Paul B. Manning, who is the Chairman and Chief Executive Officer of PBM and the current chairman of our Board of Directors, and certain entities affiliated with Mr. Manning, continue to be our largest stockholder on a collective basis.

On January 1, 2019 and October 1, 2019, the SA was amended to reduce the monthly management fee to \$26,333 and \$5,000, respectively, as a result of a reduction in services provided by PBM.

For the three months ended March 31, 2020 and 2019, we incurred expenses under the SA of \$15,000 and \$79,000, respectively.

## Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these financial statements requires us to make estimates, judgments and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities as of the dates of the balance sheets and the reported amounts of expenses during the reporting periods. In accordance with GAAP, we evaluate our estimates and judgments on an ongoing basis.

There have been no material changes in our significant accounting policies to those previously disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019 other than the adoption of two FASB Accounting Standards Updates. See Note 2 to our condensed financial statements for a description of recent accounting pronouncements applicable to our condensed financial statements.

## Components of Results of Operations

### Revenue

We have not generated any revenue since inception.

### Operating Expenses

#### *Research and Development Expenses*

Research and development expenses consist of expenses incurred in connection with the discovery and development of our product candidates. We expense research and development costs as incurred. These expenses include:

- expenses incurred under agreements with contract research organizations, or CROs, as well as investigative sites and consultants that conduct our clinical trials and preclinical studies;
- manufacturing and supply scale-up expenses and the cost of acquiring and manufacturing preclinical and clinical trial supply and commercial supply, including manufacturing validation batches;
- outsourced professional scientific development services;
- employee-related expenses, which include salaries, benefits and stock-based compensation;
- expenses relating to regulatory activities; and
- laboratory materials and supplies used to support our research activities.

Research and development activities are central to our business model. Product candidates in later stages of clinical development generally have higher development costs than those in earlier stages of clinical development, primarily due to the increased size and duration of later-stage clinical trials. We expect our research and development expenses to increase over the next several years as we increase personnel costs, including stock-based compensation, initiate and conduct Phase 3 clinical trials of VP-102 in patients with common warts, conduct our ongoing Phase 2 trial with VP-102 in external genital warts, initiate a Phase 2 trial with VP-103 in plantar warts and conduct other clinical trials and prepare regulatory filings for our product candidates.

The successful development of our product candidates is highly uncertain. At this time, we cannot reasonably estimate or know the nature, timing and costs of the efforts that will be necessary to complete the remainder of the development of, or when, if ever, material net cash inflows may commence from our product candidates. This uncertainty is due to the numerous risks and uncertainties associated with the duration and cost of clinical trials, which vary significantly over the life of a project as a result of many factors, including:

- the impact on the timing of our clinical trials due to the COVID-19 pandemic;
- the number of clinical sites included in the trials;
- the length of time required to enroll suitable patients;
- the number of patients that ultimately participate in the trials;
- the number of doses patients receive;
- the duration of patient follow-up; and
- the results of our clinical trials.

Our expenditures are subject to additional uncertainties, including the manufacturing process for our product candidates, the terms and timing of regulatory approvals, and the expense of filing, prosecuting, defending and enforcing any patent claims or other intellectual property rights. We may never succeed in achieving regulatory approval for our product candidates. We may obtain unexpected results from our clinical trials. We may elect to discontinue, delay or modify clinical trials of our product candidates. A change in the outcome of any of these variables with respect to the development of a product candidate could mean a significant change in the costs and timing associated with the development of that product candidate. For example, if the FDA or other regulatory authorities were to require us to conduct clinical trials beyond those that we currently anticipate, or if we experience significant delays in enrollment in any of our clinical trials, we could be required to expend significant additional financial resources and time on the completion of clinical development.

#### *General and Administrative Expenses*

General and administrative expenses consist principally of salaries and related costs for personnel in executive and administrative functions, including stock-based compensation, travel expenses and recruiting expenses. Other general and administrative expenses include market research costs, insurance costs, and professional fees for audit, tax and legal services.

We anticipate that our general and administrative expenses, including payroll and related expenses, will increase in the future as we continue to increase our headcount to support the expected growth in our business, expand our operations and organizational capabilities, and prepare for potential commercialization of VP-102 for the treatment of molluscum, if successfully developed and approved. We also anticipate increased expenses associated with general operations, including costs related to audit, tax and legal services, director and officer insurance premiums, and investor relations costs.

#### **Results of Operations for the three months ended March 31, 2020 and 2019**

The following table summarizes our results of operations for the three months ended March 31, 2020 and 2019 (in thousands):

	<u>For the Three Months Ended March 31,</u>		<u>Change</u>
	<u>2020</u>	<u>2019</u>	
<b>Operating expenses:</b>			
Research and development	\$ 4,892	\$ 4,487	\$ 405
General and administrative	4,988	3,539	1,449
Total operating expenses	<u>9,880</u>	<u>8,026</u>	<u>1,854</u>
<b>Loss from operations</b>	<u>(9,880)</u>	<u>(8,026)</u>	<u>(1,854)</u>
<b>Other income (expense):</b>			
Interest income	278	547	(269)
Interest expense	(220)	—	(220)
Total other income	<u>58</u>	<u>547</u>	<u>(489)</u>
<b>Net loss</b>	<u>\$ (9,822)</u>	<u>\$ (7,479)</u>	<u>\$ (2,343)</u>

#### *Research and Development Expenses*

Research and development expenses were \$4.9 million for the three months ended March 31, 2020, compared to \$4.5 million for the three months ended March 31, 2019. The increase of \$0.4 million was primarily attributable to increased compensation costs and increased clinical costs related to our development of VP-102 for external genital warts, partially offset by a decrease in clinical costs related to our development of VP-102 for molluscum.

#### *General and Administrative Expenses*

General and administrative expenses were \$5.0 million for the three months ended March 31, 2020, compared to \$3.5 million for the three months ended March 31, 2019. The increase of \$1.5 million was primarily a result of expenses related to increased headcount, an increase in insurance, professional fees and other operating costs, and an increase in expenses related to pre-commercial activities for VP-102.

#### *Interest Income*

Interest income for the periods presented consisted primarily of interest earned on our cash, cash equivalents and marketable securities.

### Interest Expense

Interest expense for the period presented consisted of interest expense on the Mezzanine Loan Agreement as noted in Note 7 to our condensed financial statements.

### Liquidity and Capital Resources

Since our inception, we have not generated any revenue and have incurred net losses and negative cash flows from our operations. We have financed our operations since inception through sales of our convertible preferred stock and the sale of our common stock in our IPO, receiving aggregate gross proceeds of \$123.2 million and net proceeds of \$114.9 million and most recently, \$35.0 million of gross proceeds from the Mezzanine Loan Agreement noted below.

As of March 31, 2020, we had cash, cash equivalents and marketable securities of \$88.4 million. Cash in excess of immediate requirements is invested in accordance with our investment policy, primarily with a view to liquidity and capital preservation.

On March 10, 2020, we entered into (i) the Mezzanine Loan Agreement with the Agent and the Mezzanine Lenders, pursuant to which the Mezzanine Lenders have agreed to lend us up to \$50.0 million in a series of term loans, and (ii) the Senior Loan Agreement with the Senior Lender, pursuant to which the Senior Lender has agreed to provide us a revolving line of credit of up to \$5.0 million. Upon entering into the Loan Agreements, we borrowed \$35.0 million in term loans from the Mezzanine Lenders. The availability for the remaining \$15.0 million in term loans is subject to our achievement of (i) a specified amount in trailing six-month net revenue and (ii) a specified amount raised in equity. See Note 7 to our condensed financial statements for additional information.

We are subject to a number of affirmative and restrictive covenants pursuant to the Loan Agreements, including covenants regarding achieving minimum product revenues, delivery of financial statements, maintenance of inventory, payment of taxes, maintenance of insurance, protection of intellectual property rights, dispositions of property, business combinations or acquisitions, incurrence of additional indebtedness or liens, investments and transactions with affiliates, among other customary covenants. As of March 31, 2020, we are in compliance with all covenants.

Upon the occurrence of certain events, including but not limited to our failure to satisfy our payment obligations under the Loan Agreements, the breach of certain of our other covenants under the Loan Agreements, or the occurrence of a material adverse change, cross defaults to other indebtedness or material agreements, judgment defaults and defaults related to failure to maintain governmental approvals failure of which to maintain could result in a material adverse effect, the Agent and the Lenders will have the right, among other remedies, to declare all principal and interest immediately due and payable, to exercise secured party remedies, to receive the Final Payment and Termination Fee and, if the payment of principal and interest is due prior to the Maturity Date, to receive the applicable Prepayment Fee.

### Cash Flows

The following table summarizes our cash flows for the three months ended March 31, 2020 and 2019 (in thousands):

	For the Three Months Ended March 31,	
	2020	2019
Net cash used in operating activities	\$ (7,906)	\$ (6,917)
Net cash provided by investing activities	18,274	21,070
Net cash provided by financing activities	34,877	3
Net increase in cash and cash equivalents	\$ 45,245	\$ 14,156

### Operating Activities

During the three months ended March 31, 2020, operating activities used \$7.9 million of cash, primarily resulting from a net loss of \$9.8 million partially offset by non-cash stock-based compensation of \$1.0 million. Net cash provided by changes in operating assets and liabilities consisted primarily of a decrease in prepaid expenses of \$0.6 million as a result of up-front payments made in 2019 for research and development activities.

During the three months ended March 31, 2019, operating activities used \$6.9 million of cash, primarily resulting from a net loss of \$7.5 million partially offset by non-cash stock-based compensation of \$0.8 million.

### Investing Activities

During the three months ended March 31, 2020, net cash provided by investing activities of \$18.3 million was primarily due to sales and maturities of marketable securities of \$24.4 million partially offset by purchases of marketable securities of \$5.4 million.

During the three months ended March 31, 2019, net cash provided by investing activities of \$21.1 million was due to sales and maturities of marketable securities of \$42.4 million partially offset by purchases of marketable securities of \$21.3 million.

### *Financing Activities*

During the three months ended March 31, 2020, net cash provided by financing activities of \$34.9 million was primarily due to the proceeds from issuance of debt of \$34.5 million, net of third-party fees and issuance costs.

During the three months ended March 31, 2019, net cash provided by financing activities of \$3,000 was the result of proceeds from exercises of common stock options.

### *Funding Requirements*

We expect our expenses to increase in connection with our ongoing activities, particularly as we continue the research and development of, continue or initiate clinical trials of, and seek marketing approval for, our product candidates. In addition, if we obtain marketing approval for any of our product candidates, we expect to incur significant commercialization expenses related to sales, marketing, manufacturing and distribution. Furthermore, we expect to incur additional costs associated with operating as a public company. Accordingly, we may need to obtain additional funding in connection with our continuing operations. If we are unable to raise capital when needed or on attractive terms, we would be forced to delay, reduce or eliminate our research and development programs or future commercialization efforts.

We believe that our existing cash, cash equivalents, and marketable securities as of March 31, 2020 will be sufficient to support our planned operations, which include expenses for the commercialization of YCANTH™, if approved, and continued development of VP-102 for additional indications, including common warts and external genital warts, as well as VP-103 for plantar warts, at least through the second quarter of 2021. Our future capital requirements will depend on many factors, including:

- the scope, progress, results and costs of our clinical trials;
- the scope, prioritization and number of our research and development programs;
- the costs, timing and outcome of regulatory review of our product candidates;
- the costs of preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending intellectual property-related claims;
- our ability to maintain compliance with covenants under our loan agreements;
- the extent to which we acquire or in-license other product candidates and technologies;
- the impact on the timing of our clinical trials and our business due to the COVID-19 pandemic;
- the costs to scale up and secure manufacturing arrangements for commercial production; and
- the costs of establishing or contracting for sales and marketing capabilities if we obtain regulatory approvals to market our product candidates.

Identifying potential product candidates and conducting preclinical studies and clinical trials is a time-consuming, expensive and uncertain process that takes many years to complete, and we may never generate the necessary data or results required to obtain marketing approval and achieve product sales. In addition, our product candidates, if approved, may not achieve commercial success. Our commercial revenues, if any, will be derived from sales of a product candidate that we do not expect to be commercially available in the near term, if at all. We may not achieve significant revenue from product sales prior to the use of the net proceeds from our IPO. Accordingly, we may need to continue to rely on additional financing to achieve our business objectives. Adequate additional financing may not be available to us on acceptable terms, or at all.

Until such time, if ever, as we can generate substantial product revenues, we expect to finance our cash needs through a combination of equity offerings, debt financings, collaborations, strategic alliances and licensing arrangements. Our ability to raise additional capital may be adversely impacted by potential worsening global economic conditions and the recent disruptions to, and volatility in, the credit and financial markets in the United States and worldwide resulting from the ongoing COVID-19 pandemic. To the extent that we raise additional capital through the sale of equity or convertible debt securities, ownership interests of existing stockholders may be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect our existing stockholders' rights. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends.

If we raise funds through additional collaborations, strategic alliances or licensing arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs or product candidates or to grant licenses on terms that may not be favorable to us. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or future commercialization efforts or grant rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

### ***Off-Balance Sheet Arrangements***

We did not have during the periods presented, and we do not currently have, any off-balance sheet arrangements, as defined under SEC rules.

### **Contractual Obligations and Commitments**

As of March 31, 2020, there have been no material changes to our contractual obligations and commitments as previously disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019 except as discussed below.

On March 12, 2020 the Company entered into an amendment to the lease agreement dated July 1, 2019 for office space in West Chester, Pennsylvania. The amendment expands the original premises to include 5,372 square feet of additional office space increasing the total rentable premise to 11,201 square feet of space. From the commencement date through December 31, 2020 the base rent is based on the square footage of the original premises. We anticipate the commencement date to be during the third quarter of 2020 but may be delayed due to impacts of COVID-19 mandates on office building construction activities. The initial term will expire seven years after the commencement date. Base rent over the initial lease term is \$2.4 million, and we are also responsible for our share of the landlord's operating expense.

### **JOBS Act Transition Period**

In April 2012, the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, was enacted. Section 107 of the JOBS Act provides that an "emerging growth company" can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. Thus, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this extended transition period and, as a result, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies.

We are in the process of evaluating the benefits of relying on other exemptions and reduced reporting requirements under the JOBS Act. Subject to certain conditions, as an emerging growth company, we may rely on certain of these exemptions, including without limitation, (i) providing an auditor's attestation report on our system of internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act and (ii) complying with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements, known as the auditor discussion and analysis. We will remain an emerging growth company until the earlier to occur of (1) the last day of the fiscal year (a) December 31, 2023, which is the end of the fiscal year following the fifth anniversary of the completion of our IPO, (b) in which we have total annual gross revenues of at least \$1.07 billion or (c) in which we are deemed to be a "large accelerated filer" under the rules of the U.S. Securities and Exchange Commission, which means the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the prior June 30th, and (2) the date on which we have issued more than \$1.0 billion in non-convertible debt during the prior three-year period.

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

There have been no material changes to our quantitative and qualitative disclosures about market risk as previously disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019.

The uncertainty that exists with respect to the economic impact of the global COVID-19 pandemic has introduced significant volatility in the financial markets subsequent to our quarter ended March 31, 2020.

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

### *Disclosure Controls and Procedures*

The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), refers to controls and procedures that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that such information is accumulated and communicated to a company’s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

In designing and evaluating our disclosure controls and procedures, management recognizes that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Additionally, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a control system, misstatements due to error or fraud may occur and not be detected.

As previously disclosed under “Item 9A. Controls and Procedures” in our Annual Report on Form 10-K for our fiscal year ended December 31, 2019, we identified the following deficiencies that existed as of December 31, 2019 and continued to exist at March 31, 2020. A material weakness is a control deficiency or a combination of control deficiencies that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected.

- We identified a material weakness in our information technology (“IT”) general controls (collectively, “ITGCs”) and related IT-dependent process level controls, which are part of our internal control over financial reporting. Based on this evaluation, management identified a deficiency within our ITGCs related to ineffective segregation of duties within one of our IT systems, which is part of our internal control over financial reporting. Process-level controls that were dependent upon information derived from this IT system were also determined to be ineffective. These deficiencies were the result of an inadequate IT risk assessment process that did not identify the risks associated with ineffective segregation of duties within the IT system.

Because of the deficiencies noted above, in consultation with management, our principal executive officer and principal financial officer concluded that we did not maintain effective internal control over financial reporting and our disclosure controls and procedures were not effective as of both December 31, 2019 and March 31, 2020, based on the criteria in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

### *Remediation of Material Weakness*

Our Board of Directors and management take internal control over financial reporting and the integrity of our financial statements seriously. We have taken steps to remediate the deficiency related to ineffective segregation of duties within this IT system in 2020 by transferring key administrative access to a third-party IT vendor in April 2020. Management believes that this effort will remediate the material weakness. However, the material weakness in our internal control over financial reporting will not be considered remediated until other ITGCs and process-level controls that were dependent upon information derived from the general ledger application operate for a sufficient period of time and can be tested and concluded by management to be designed and operating effectively. We cannot provide any assurance that these remediation efforts will be successful or that our internal control over financial reporting will be effective as a result of these efforts. In addition, as we continue to evaluate and work to improve our internal control over financial reporting related to the identified material weakness, management may determine to take additional measures to address control deficiencies or determine to modify the remediation plan described above.

### *Changes in Internal Control over Financial Reporting*

Other than in connection with remediation plan outline above, there were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the fiscal quarter ended March 31, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### Item 1. Legal Proceedings

None.

### Item 1A. Risk Factors

Our business is subject to risks and events that, if they occur, could adversely affect our financial condition and results of operations and the trading price of our securities. In addition to the other information set forth in this quarterly report on Form 10-Q, you should carefully consider the factors described in Part I, Item 1A. "Risk Factors" of our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, filed with the Securities and Exchange Commission on March 13, 2020. Except as described below, there have been no material changes to the risk factors described in that report.

#### *COVID-19 has adversely impacted and could continue to adversely impact our business.*

In December 2019, a novel strain of coronavirus, COVID-19, was reported to have surfaced in Wuhan, China. Since then, COVID-19 has spread to multiple countries, including the United States. As a direct result of COVID-19, we have decided to delay the initiation of our Phase 3 clinical trials to evaluate VP-102 in subjects with common warts as well as our planned Phase 2 clinical trial to evaluate VP-103 in subjects with plantar warts until conditions are appropriate. As COVID-19 continues to rapidly evolve in the United States, we may experience continued and additional disruptions or impairments that could severely impact our business, supply chain, clinical trials, or ability to obtain regulatory approval for, or commercialize, VP-102, including:

- delays or inability to obtain raw material, ingredients, or components;
- possible capacity constraints at key suppliers and service providers which could impact process validation schedules or ability to build launch stock;
- further delays or difficulties in enrolling patients in our clinical trials;
- further delays or difficulties in clinical site initiation, including difficulties in recruiting clinical site investigators and clinical site staff;
- diversion of healthcare resources away from the conduct of clinical trials, including the diversion of hospitals serving as our clinical trial sites and hospital staff supporting the conduct of our clinical trials;
- delays in review of regulatory filings by regulatory authorities or our ability to generate responses to FDA inquiries on our filed NDA;
- delays or limitations in our ability to commercialize VP-102, regardless of regulatory approval, including challenges involving the healthcare providers who would prescribe and administer VP-102, delays in launch preparation activities, or delays in establishing, and subsequently deploying, a commercial field force;
- limitations on travel or access to third-party facilities imposed or recommended by federal or state governments, employers, suppliers, and others; and
- limitations of internal and third-party employee resources that would otherwise be focused on the above activities, including sickness of employees or their families, travel restrictions or social distancing, or the desire of employees to avoid contact with large groups of people.

We are closely monitoring the situation and do not yet know the extent to which COVID-19 may materially impact our business, supply chain, clinical trials and regulatory filings, which will depend on future developments which are highly uncertain and cannot be predicted with confidence, such as the ultimate geographic spread of the disease, the duration of the outbreak, travel restrictions and social distancing in the United States and other countries, business closures or business disruptions and the effectiveness of actions taken in the United States and other countries to contain and treat the disease.

**Item 2. Recent Sales of Unregistered Securities and Use of Proceeds**

**(a) Recent Sales of Unregistered Equity Securities**

None.

**(b) Use of Proceeds from Initial Public Offering of Common Stock**

On June 14, 2018, our Registration Statement on Form S-1, as amended (File No. 333-225104) was declared effective in connection with our IPO, pursuant to which we sold 5,750,000 shares of our common stock, including the full exercise of the underwriters' option to purchase additional shares, at a price to the public of \$15.00 per share. The IPO closed on June 19, 2018. We received net proceeds from the IPO of \$78.4 million (after deducting underwriters' discounts and commissions and additional offering related costs of \$7.9 million). The joint book-running underwriters of the offering were Merrill Lynch, Pierce, Fenner & Smith Incorporated, Jefferies LLC and Cowen and Company, LLC.

No expenses incurred by us in connection with our IPO were paid directly or indirectly to (i) any of our officers or directors or their associates, (ii) any persons owning 10% or more of any class of our equity securities, or (iii) any of our affiliates, other than payments in the ordinary course of business to officers for salaries and to non-employee directors as compensation for board or board committee service.

There has been no material change in the planned use of proceeds from our IPO from those disclosed in the final prospectus for our IPO dated as of June 14, 2018 and filed with the SEC on June 15, 2018 pursuant to Rule 424(b)(4).

**(c) Issuer Purchases of Equity Securities**

None.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Other Information**

Not applicable.

**Item 6. Exhibits**

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
3.1 (1)	<a href="#"><u>Amended and Restated Certificate of Incorporation.</u></a>
3.2 (2)	<a href="#"><u>Amended and Restated Bylaws.</u></a>
10.1#	<a href="#"><u>Loan and Security Agreement, by and between the Company and Silicon Valley Bank, dated as of March 10, 2020.</u></a>
10.2#	<a href="#"><u>Mezzanine Loan and Security Agreement, by and among the Company, Silicon Valley Bank and WestRiver Innovation Lending Fund VIII, L.P., dated as of March 10, 2020.</u></a>
10.3(3)	<a href="#"><u>Amended and Restated Employment Agreement, by and between the Registrant and Ted White, dated as of January 10, 2020.</u></a>
10.4(4)	<a href="#"><u>Amended and Restated Employment Agreement, by and between the Registrant and Joe Bonaccorso, dated as of January 10, 2020.</u></a>
10.5	<a href="#"><u>First Amendment to Lease Agreement, by and between the Registrant and 44 West Gay LLC, dated as of March 12, 2020.</u></a>
31.1	<a href="#"><u>Certification of Chief Executive Officer and President (Principal Executive Officer), pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).</u></a>
31.2	<a href="#"><u>Certification of Chief Financial Officer (Principal Financial Officer), pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).</u></a>
32.1*	<a href="#"><u>Certifications of Chief Executive Officer and President (Principal Executive Officer) and Chief Financial Officer (Principal Financial Officer), pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (furnished herewith).</u></a>
101	The following financial information from the Company's Quarterly Report on Form 10-Q for the period ended March 31, 2020, formatted in Extensible Business Reporting Language (XBRL): (i) the Condensed Balance Sheets, (ii) the Condensed Statements of Operations, (iii) the Condensed Statement of Stockholders' Equity, (iv) the Condensed Statements of Cash Flows, and (v) Notes to the Condensed Financial Statements (filed herewith).
(1)	Previously filed as Exhibit 3.3 to the Company's Registration Statement on Form S-1 (File No. 333-225104), filed with the Securities and Exchange Commission on May 22, 2018, and incorporated herein by reference.
(2)	Previously filed as Exhibit 3.4 to the Company's Registration Statement on Form S-1 (File No. 333-225104), filed with the Securities and Exchange Commission on May 22, 2018, and incorporated herein by reference.
(3)	Previously filed as Exhibit 10.18 to the Company's Current Report on Form 10-K (File No. 001-38529), filed with the Securities and Exchange Commission on March 13, 2020, and incorporated herein by reference.
(4)	Previously filed as Exhibit 10.19 to the Company's Current Report on Form 10-K (File No. 001-38529), filed with the Securities and Exchange Commission on March 13, 2020, and incorporated herein by reference.
#	Certain portions of this exhibit, indicated by asterisks, have been omitted pursuant to Item 601(b)(10) of Regulation S-K because they are not material and would likely cause competitive harm to the registrant if publicly disclosed.
*	These certifications are being furnished solely to accompany this quarterly report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and are not to be incorporated by reference into any filing of the registrant, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

## 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.

May 7, 2020

### **VERRICA PHARMACEUTICALS INC.**

By: /s/ Ted White  
Ted White  
Chief Executive Officer and President  
(Principal Executive Officer)

By: /s/ A. Brian Davis  
A. Brian Davis  
Chief Financial Officer  
(Principal Financial Officer)

## LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this "**Agreement**") dated as of March 10, 2020 (the "**Effective Date**") between SILICON VALLEY BANK, a California corporation ("**Bank**"), and VERRICA PHARMACEUTICALS INC., a Delaware corporation ("**Borrower**"), provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank. The parties agree as follows:

### 1 ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP; *provided* that if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either Borrower or Bank shall so request, Borrower and Bank shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided further, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrower shall provide Bank with 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. In addition, no effect shall be given to Accounting Standards Codification 842, Leases (or any other Accounting Standards Codification having similar result or effect) (and related interpretations) to the extent any lease (or similar arrangement) would be required to be treated as a capital lease thereunder where such lease (or arrangement) would have been treated as an operating lease under GAAP as in effect immediately prior to the effectiveness of such Accounting Standards Codification. Notwithstanding the foregoing, all financial covenant and other financial calculations shall be computed with respect to Borrower only, and not on a consolidated basis. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

### 2 LOAN AND TERMS OF PAYMENT

**2.1 Promise to Pay.** Borrower hereby unconditionally promises to pay Bank the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

#### **2.2 Revolving Line.**

(a) Availability. Subject to the terms and conditions of this Agreement and to deduction of Reserves, Bank shall make Advances not exceeding the Availability Amount. Amounts borrowed under the Revolving Line may be repaid and, prior to the Revolving Line Maturity Date, reborrowed, subject to the applicable terms and conditions precedent herein.

(b) Termination; Repayment. The Revolving Line terminates on the Revolving Line Maturity Date, when the principal amount of all Advances, the unpaid interest thereon, and all other Obligations relating to the Revolving Line shall be immediately due and payable. Borrower may terminate the Revolving Line pursuant to the terms of Section 12.1 of this Agreement.

**2.3 Overadvances.** If, at any time, the outstanding principal amount of any Advances exceeds the lesser of either the Revolving Line or the Borrowing Base, Borrower shall immediately pay to Bank in cash the amount of such excess (such excess, the "**Overadvance**"). Without limiting Borrower's obligation to repay Bank any Overadvance, Borrower agrees to pay Bank interest on the outstanding amount of any Overadvance, on demand, at a per annum rate equal to the rate that is otherwise applicable to Advances plus four percent (4.0%).

#### **2.4 Payment of Interest on the Credit Extensions.**

(a) Interest Rate. Subject to Section 2.4(b), the principal amount outstanding under the Revolving Line shall accrue interest at a floating per annum rate equal to the greater of (A) one and one-quarter of one percent (1.25%) above the Prime Rate and (B) six percent (6.0%), which interest, in each case, shall be payable monthly in accordance with Section 2.5(d) below.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is four percent (4.0%) above the rate that is otherwise applicable thereto (the "**Default Rate**"). Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2.4(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

(c) Adjustment to Interest Rate. Changes to the interest rate of any Credit Extension based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of any such change.

(d) Payment; Interest Computation. Interest is payable monthly on the Payment Date of each month and shall be computed on the basis of a 360-day year for the actual number of days elapsed. In computing interest, (i) all payments received after 12:00 p.m. Eastern time on any day shall be deemed received at the opening of business on the next Business Day, and (ii) the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension.

## 2.5 Fees. Borrower shall pay to Bank:

(a) Revolving Line Commitment Fee. A fully earned, non-refundable revolving line commitment fee of Twenty-Five Thousand Dollars (\$25,000.00), on the Effective Date;

(b) Anniversary Fee. For each twelve (12) month anniversary of the Effective Date, a non-refundable anniversary fee (each, an "**Anniversary Fee**" and, collectively, the "**Anniversary Fees**") equal to Twenty-Five Thousand Dollars (\$25,000.00) which shall be fully earned as of the Effective Date and due and payable on the earliest to occur of (i) such twelve (12) month anniversary of the Effective Date, (ii) the Revolving Line Maturity Date, (iii) the occurrence of an Event of Default, and (iv) the termination of this Agreement;

(c) Termination Fee. Upon termination of this Agreement or the termination of the Revolving Line for any reason prior to the Revolving Line Maturity Date, in addition to the payment of any other amounts then-owing, a termination fee in an amount equal to one percent (1.0%) of the Revolving Line (the "**Termination Fee**"); provided that no Termination Fee shall be charged if the credit facility hereunder is replaced with a new facility from Bank; and

(d) Bank Expenses. All Bank Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due (or, if no stated due date, upon demand by Bank).

Unless otherwise provided in this Agreement or in a separate writing by Bank, Borrower shall not be entitled to any credit, rebate, or repayment of any fees earned by Bank pursuant to this Agreement notwithstanding any termination of this Agreement or the suspension or termination of Bank's obligation to make loans and advances hereunder. Bank may deduct amounts owing by Borrower under the clauses of this Section 2.5 pursuant to the terms of Section 2.6(c). Bank shall provide Borrower written notice of deductions made from the Designated Deposit Account pursuant to the terms of the clauses of this Section 2.5.

## 2.6 Payments; Application of Payments; Debit of Accounts.

(a) All payments to be made by Borrower under any Loan Document shall be made in immediately available funds in Dollars, without setoff or counterclaim, before 12:00 p.m. Eastern time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

(b) Bank has the exclusive right to determine the order and manner in which all payments with respect to the Obligations may be applied. Borrower shall have no right to specify the order or the accounts to which Bank shall allocate or apply any payments required to be made by Borrower to Bank or otherwise received by Bank under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

(c) Bank may debit any of Borrower's deposit accounts, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes Bank when due. These debits shall not constitute a set-off.

**2.7 Withholding.** Payments received by Bank from Borrower under this Agreement will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to Bank, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, Bank receives a net sum equal to the sum which it would have received had no withholding or deduction been required, and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish Bank with proof reasonably satisfactory to Bank indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.7 shall survive the termination of this Agreement.

### **3 CONDITIONS OF LOANS**

**3.1 Conditions Precedent to Initial Credit Extension.** Bank's obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation:

(a) duly executed signatures to the Mezzanine Loan Agreement and satisfaction of the conditions therein;

(b) duly executed signatures to the Loan Documents;

(c) the Operating Documents and a long-form good standing certificate of Borrower certified by the Secretary of State of Delaware and each other state in which Borrower is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;

(d) duly executed signatures to the secretary's corporate borrowing certificate of Borrower with respect to such Borrower's Operating Documents, incumbency, specimen signatures and resolutions authorizing the execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(e) duly executed signatures to the completed Borrowing Resolutions for Borrower;

(f) certified copies, dated as of a recent date, of financing statement searches, as Bank may request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(g) the Perfection Certificate of Borrower, together with the duly executed signature thereto;

(h) with respect to the initial Advance, the completion of the Initial Audit;

(i) with respect to the initial Advance, a completed Borrowing Base Report (and any schedules related thereto and including any other information requested by Bank with respect to Borrower's Accounts); and

(j) payment of the fees and Bank Expenses then due as specified in Section 2.6 hereof.

**3.2 Conditions Precedent to all Credit Extensions.** Bank's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) timely receipt of the Credit Extension request and any materials and documents required by Section 3.4;

(b) the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the date of the proposed Credit Extension and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; and

(c) Bank determines to its reasonable satisfaction that there has not been any material impairment in the general affairs, management, results of operation, financial condition or the prospect of repayment of the Obligations, nor any material adverse deviation by Borrower from the most recent business plan of Borrower presented to and accepted by Bank.

**3.3 Covenant to Deliver.** Borrower agrees to deliver to Bank each item required to be delivered to Bank under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank's sole discretion.

**3.4 Procedures for Borrowing.** Subject to the prior satisfaction of all other applicable conditions to the making of an Advance set forth in this Agreement, to obtain an Advance, Borrower (via an individual duly authorized by an Administrator) shall notify Bank (which notice shall be irrevocable) by electronic mail by 12:00 p.m. Eastern time on the Funding Date of the Advance. Such notice shall be made by Borrower through Bank's online banking program, provided, however, if Borrower is not utilizing Bank's online banking program, then such notice shall be in a written format acceptable to Bank that is executed by an Authorized Signer. Bank shall have received satisfactory evidence that the Board has approved that such Authorized Signer may provide such notices and request Advances. In connection with any such notification, Borrower must promptly deliver to Bank by electronic mail or through Bank's online banking program such reports and information, including without limitation, Borrowing Base Reports, sales journals, cash receipts journals, accounts receivable aging reports, as

Bank may reasonably request in its sole discretion. Bank shall credit proceeds of an Advance to the Designated Deposit Account. Bank may make Advances under this Agreement based on instructions from an Authorized Signer or without instructions if the Advances are necessary to meet Obligations which have become due.

#### **4 CREATION OF SECURITY INTEREST**

**4.1 Grant of Security Interest.** Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Bank's Lien in this Agreement).

If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as Bank's obligation to make Credit Extensions has terminated, Bank shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower. In the event (x) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (y) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment consistent with Bank's then current practice for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then at least one hundred five percent (105.0%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then at least one hundred ten percent (110.0%), of the Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its business judgment), to secure all of the Obligations relating to such Letters of Credit.

**4.2 Priority of Security Interest.** Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Bank's Lien under this Agreement). If Borrower shall acquire a commercial tort claim, Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof and grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank.

**4.3 Authorization to File Financing Statements.** Borrower hereby authorizes Bank to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Bank's interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate the rights of Bank under the Code. Such financing statements may indicate the Collateral as "all assets of the Debtor" or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Bank's discretion.

#### **5 REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants as follows:

**5.1 Due Organization, Authorization; Power and Authority.** Borrower is duly existing and in good standing as a Registered Organization in its jurisdiction of formation and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. In connection with this Agreement, Borrower has delivered to Bank a

completed certificate signed by Borrower, entitled "Perfection Certificate" (the "**Perfection Certificate**"). Borrower represents and warrants to Bank that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete in all material respects (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement). If Borrower is not now a Registered Organization but later becomes one, Borrower shall promptly notify Bank of such occurrence and provide Bank with Borrower's organizational identification number.

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except (i) such Governmental Approvals which have already been obtained and are in full force and effect or are being obtained pursuant to Section 6.1(b), and (ii) any filings required by the Code in connection with perfecting the security interest granted herein), or (v) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's business.

**5.2 Collateral.** Borrower has good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no Collateral Accounts at or with any bank or financial institution other than Bank or Bank's Affiliates except for the Collateral Accounts described in the Perfection Certificate delivered to Bank in connection herewith or established in accordance with Section 6.8(b) and which Borrower has taken such actions as are necessary to give Bank a perfected security interest therein, pursuant to the terms of Section 6.8(b). The Accounts are bona fide, existing obligations of the Account Debtors.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate or as permitted pursuant to Section 7.2. None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2.

All Inventory is in all material respects of good and marketable quality, free from material defects.

Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) licenses permitted hereunder, (b) over-the-counter software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate or as otherwise disclosed to Bank in writing. To Borrower's knowledge, each Patent which it owns or purports to own and which is material to Borrower's business is valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower's business has been judged invalid or unenforceable, in whole or in part. To the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Borrower's business.

Except as noted on the Perfection Certificate or as otherwise disclosed to Bank in writing pursuant to Section 6.10(b), Borrower is not a party to, nor is it bound by, any Restricted License.

(a) For each Account with respect to which Advances are requested, on the date each Advance is requested and made, such Account shall be an Eligible Account.

(b) All statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing the Eligible Accounts are and shall be true and correct and all such invoices, instruments and other documents, and all of Borrower's Books are genuine and in all respects what they purport to be. All sales and other transactions underlying or giving rise to each Eligible Account shall comply in all material respects with all applicable laws and governmental rules and regulations. Borrower has no knowledge of any actual or imminent Insolvency Proceeding of any Account Debtor whose accounts are Eligible Accounts in any Borrowing Base Report. To the best of Borrower's knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all Eligible Accounts are genuine, and all such documents, instruments and agreements are legally enforceable in accordance with their terms.

**5.4 Litigation.** There are no actions or proceedings pending or, to the knowledge of any Responsible Officer, threatened in writing by or against Borrower or any of its Subsidiaries involving more than, individually or in the aggregate, Five Hundred Thousand Dollars (\$500,000.00).

**5.5 Financial Statements; Financial Condition.** All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations as of the date or for the period covered by such financial statements (except with respect to unaudited financial statements, subject to normal year-end adjustments and the absence of footnotes). There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Bank.

**5.6 Solvency.** The fair salable value of Borrower's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of Borrower's liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

**5.7 Regulatory Compliance.** Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower (a) has complied in all material respects with all applicable Requirements of Law except where Borrower's failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business, and (b) has not violated any Requirements of Law the violation of which could reasonably be expected to have a material adverse effect on its business. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted except where Borrower's failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business.

**5.8 Subsidiaries; Investments.** Borrower does not own any stock, partnership, or other ownership interest or other equity securities except for Permitted Investments.

**5.9 Tax Returns and Payments; Pension Contributions.** Borrower has timely filed all required tax returns and reports, or duly filed valid extensions thereof, and Borrower has timely paid when due and payable all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except (a) to the extent such taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor, or (b) if such taxes, assessments, deposits and contributions do not, individually or in the aggregate, exceed Fifty Thousand Dollars (\$50,000.00).

To the extent Borrower defers payment of any contested taxes, Borrower shall (i) notify Bank in writing of the commencement of, and any material development in, the proceedings, and (ii) post bonds or take any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien." Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower in excess of Fifty Thousand Dollars (\$50,000.00). Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

**5.10 Use of Proceeds.** Borrower shall use the proceeds of the Credit Extensions as working capital and to fund its general business requirements and not for personal, family, household or agricultural purposes.

**5.11 Full Disclosure.** No written representation, warranty or other statement of Borrower in any certificate or written statement given to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

**5.12 Definition of "Knowledge."** For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of any Responsible Officer.

## **6 AFFIRMATIVE COVENANTS**

Borrower shall do all of the following:

### **6.1 Government Compliance.**

(a) Except as permitted under Section 7.3, maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations; provided, that nothing in this Section 6.1 shall prohibit or prevent Borrower from discontinuing the legal existence and qualification of any Immaterial Subsidiary in any jurisdiction other than its jurisdiction of formation, with prior written notice to Bank, if in the reasonable good faith judgment of Borrower such discontinuance or qualification is no longer desirable in the conduct of its business or such Subsidiary is no longer useful to the business of Borrower or such Subsidiary. Borrower shall comply, and have each Subsidiary comply, in all material respects, with all laws, ordinances and regulations to which it is subject, the failure to comply with which would reasonably be expected to result in a material adverse effect on Borrower's business or operations.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Bank in all of its property. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank.

### **6.2 Financial Statements, Reports, Certificates.** Provide Bank with the following:

(a) a Borrowing Base Report (and any schedules related thereto and including any other information requested by Bank with respect to Borrower's Accounts) (i) within thirty (30) days after the end of each month when an Advance is outstanding and (ii) with each request for an Advance;

(b) within thirty (30) days after the end of each month when an Advance is outstanding or has been requested, (i) monthly accounts receivable agings, aged by invoice date, (ii) monthly accounts payable agings, aged by invoice date, and outstanding or held check registers, if any, (iii) monthly reconciliations of accounts receivable agings (aged by invoice date), transaction reports, and general ledger and (iv) monthly perpetual inventory reports for Inventory valued on a first-in, first-out basis at the lower of cost or market (in accordance with GAAP) or such other inventory reports as are requested by Bank in its good faith business judgment;

(c) within thirty (30) days after the last day of each month and together with Borrower's monthly revenue, net profit and cash balance statements, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Bank may reasonably request, including, without limitation, a statement that at the end of such month there were no held checks;

(d) as soon as available, but no later than forty-five (45) days after the end of each calendar quarter (ninety (90) days for the calendar quarter ending December 31 of each fiscal year), a company prepared consolidated balance sheet and income statement covering Borrower's and each of its Subsidiary's operations for such calendar quarter certified by a Responsible Officer and in a form acceptable to Bank (the "Quarterly Financial Statements");

(e) within forty-five (45) days after the end of each calendar quarter (ninety (90) days for the calendar quarter ending December 31 of each fiscal year) and together with the Quarterly Financial Statements, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such calendar quarter, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Bank may reasonably request, including, without limitation, a statement that at the end of such month there were no held checks

(f) within thirty (30) days after the last day of each fiscal year of Borrower, and contemporaneously with any updates or amendments thereto, (A) annual operating budgets (including income statements, balance sheets and cash flow statements, by month), and (B) annual financial projections (on a quarterly basis), in each case as approved by the Board, together with any related business forecasts used in the preparation of such annual financial projections;

(g) as soon as available, and in any event within one hundred eighty (180) days following the end of Borrower's fiscal year, (A) audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Bank and (B) a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such calendar year, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Bank may reasonably request, including, without limitation, a statement that at the end of such month there were no held checks;

(h) within forty-five (45) days after the last day of each fiscal quarter (ninety (90) days for the calendar quarter ending December 31 of each fiscal year), Borrower's 10-Q report;

(i) within five (5) days of filing, copies of all periodic and other reports, proxy statements and other materials filed by Borrower and/or any Guarantor with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be. Documents required to be delivered pursuant to the terms hereof (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 Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address;

(j) within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt;

(k) prompt written notice of any changes to the beneficial ownership information set out in Section 14 of the Perfection Certificate. Borrower understands and acknowledges that Bank relies on such true, accurate and up-to-date beneficial ownership information to meet Bank's regulatory obligations to obtain, verify and record information about the beneficial owners of its legal entity customers;

(l) prompt report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, Five Hundred Thousand Dollars (\$500,000.00) or more; and

(m) promptly, from time to time, such other information regarding Borrower or compliance with the terms of any Loan Documents as reasonably requested by Bank.

Notwithstanding the foregoing, documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC), including without limitation any documents required to be delivered pursuant to Sections 6.2(e), 6.2(h), 6.2(i), 6.2(l) and 6.2(m), may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address.

### 6.3 Accounts Receivable.

(a) Schedules and Documents Relating to Accounts. Borrower shall deliver to Bank transaction reports and schedules of collections, as provided in Section 6.2, on Bank's standard forms; provided, however, that Borrower's failure to execute and deliver the same shall not affect or limit Bank's Lien and other rights in all of Borrower's Accounts, nor shall Bank's failure to advance or lend against a specific Account affect or limit Bank's Lien and other rights therein. If requested by Bank, Borrower shall furnish Bank with copies (or, at Bank's request, originals) of all contracts, orders, invoices, and other similar documents, and all shipping instructions, delivery receipts, bills of lading, and other evidence of delivery, for any goods the sale or disposition of which gave rise to such Accounts. In addition, Borrower shall deliver to Bank, on its request, the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Accounts, in the same form as received, with all necessary indorsements, and copies of all credit memos.

(b) Disputes. Borrower shall promptly notify Bank of all disputes or claims relating to Accounts in an amount in excess of Five Hundred Thousand Dollars (\$500,000.00) individually or in the aggregate. Borrower may forgive (completely or partially), compromise, or settle any Account for less than payment in full, or agree to do any of the foregoing so long as (i) Borrower does so in good faith, in a commercially reasonable manner, in the ordinary course of business, in arm's-length transactions, and reports the same to Bank in the regular reports provided to Bank; (ii) no Event of Default has occurred and is continuing; and (iii) after taking into account all such discounts, settlements and forgiveness, the total outstanding Advances will not exceed the lesser of the Revolving Line or the Borrowing Base.

(c) Collection of Accounts. Within thirty (30) days prior to the initial Advance, Borrower shall direct Account Debtors to deliver or transmit all proceeds of Accounts into a lockbox account, or into a "blocked account" as specified by Bank (either such account, the "**Cash Collateral Account**"). Whether or not an Event of Default has occurred and is continuing, Borrower shall immediately deliver all payments on and proceeds of Accounts to the Cash Collateral Account. Subject to Bank's right to maintain a reserve pursuant to Section 6.3(d), all amounts received in the Cash Collateral Account shall be transferred on a daily basis to Borrower's operating account with Bank. Borrower hereby authorizes Bank to transfer to the Cash Collateral Account any amounts that Bank reasonably determines are proceeds of the Accounts (provided that Bank is under no obligation to do so and this allowance shall in no event relieve Borrower of its obligations hereunder).

(d) Reserves. Notwithstanding any terms in this Agreement to the contrary, at times when an Event of Default exists, Bank may hold any proceeds of the Accounts and any amounts in the Cash Collateral Account that are not applied to the Obligations pursuant to Section 6.3(c) above as a reserve to be applied to any Obligations regardless of whether such Obligations are then due and payable.

(e) **Returns.** Provided no Event of Default has occurred and is continuing, if any Account Debtor returns any Inventory with a value in excess of Five Hundred Thousand Dollars (\$500,000.00) individually and in the aggregate to Borrower, Borrower shall promptly (i) determine the reason for such return, (ii) issue a credit memorandum to the Account Debtor in the appropriate amount, and (iii) provide a copy of such credit memorandum to Bank, upon request from Bank. In the event any attempted return occurs after the occurrence and during the continuance of any Event of Default, Borrower shall hold the returned Inventory in trust for Bank, and immediately notify Bank of the return of the Inventory.

(f) **Verifications; Confirmations; Credit Quality; Notifications.** Bank may, from time to time, (i) verify and confirm directly with the respective Account Debtors the validity, amount and other matters relating to the Accounts, either in the name of Borrower or Bank or such other name as Bank may choose, and notify any Account Debtor of Bank's security interest in such Account and/or (ii) conduct a credit check of any Account Debtor to approve any such Account Debtor's credit. Notwithstanding the foregoing, prior to the occurrence and the continuance of an Event of Default, Bank shall notify Borrower prior to making direct contact with an Account Debtor.

(g) **No Liability.** Bank shall not be responsible or liable for any shortage or discrepancy in, damage to, or loss or destruction of, any goods, the sale or other disposition of which gives rise to an Account, or for any error, act, omission, or delay of any kind occurring in the settlement, failure to settle, collection or failure to collect any Account, or for settling any Account in good faith for less than the full amount thereof, nor shall Bank be deemed to be responsible for any of Borrower's obligations under any contract or agreement giving rise to an Account. Nothing herein shall, however, relieve Bank from liability for its own gross negligence or willful misconduct.

**6.4 Remittance of Proceeds.** Except as otherwise provided in Section 6.3(c), deliver, in kind, all proceeds arising from the disposition of any Collateral to Bank in the original form in which received by Borrower not later than the following Business Day after receipt by Borrower, to be applied to the Obligations (a) prior to an Event of Default, pursuant to the terms of Section 6.3(c) hereof, and (b) after the occurrence and during the continuance of an Event of Default, pursuant to the terms of Section 9.4 hereof; provided that, if no Event of Default has occurred and is continuing, Borrower shall not be obligated to remit to Bank the proceeds of the sale of worn out or obsolete Equipment disposed of by Borrower in good faith in an arm's length transaction for an aggregate purchase price of Five Hundred Thousand Dollars (\$500,000.00) or less (for all such transactions in any fiscal year). Borrower agrees that it will not commingle proceeds of Collateral with any of Borrower's other funds or property, but will hold such proceeds separate and apart from such other funds and property and in an express trust for Bank. Nothing in this Section 6.4 limits the restrictions on disposition of Collateral set forth elsewhere in this Agreement.

**6.5 Taxes; Pensions.** Timely file, and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.9 hereof, and shall deliver to Bank, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

**6.6 Access to Collateral; Books and Records.** At reasonable times, on one (1) Business Day's notice (provided no notice is required if an Event of Default has occurred and is continuing), Bank, or its agents, shall have the right to inspect the Collateral and the right to audit and copy Borrower's Books. The foregoing inspections and audits shall be conducted no more often than twice every twelve (12) months unless an Event of Default has occurred and is continuing in which case such inspections and audits shall occur as often as Bank shall determine is necessary. The foregoing inspections and audits shall be conducted at Borrower's expense and the charge therefor shall be One Thousand Dollars (\$1,000.00) per person per day (or such higher amount as shall represent Bank's then-current standard charge for the same), plus reasonable out-of-pocket expenses. In the event Borrower and Bank schedule an audit more than eight (8) days in advance, and Borrower cancels or seeks to or reschedules the audit with less than eight (8) days written notice to Bank, then (without limiting any of Bank's rights or remedies) Borrower shall pay Bank a fee of Two Thousand Dollars (\$2,000.00) plus any out-of-pocket expenses incurred by Bank to compensate Bank for the anticipated costs and expenses of the cancellation or rescheduling.

(a) Keep its business and the Collateral insured for risks and in amounts customary for companies in Borrower's industry and location and as Bank may reasonably request. Insurance policies shall be in a form, with financially sound and reputable insurance companies that are not Affiliates of Borrower, and in amounts that are reasonably satisfactory to Bank. All property policies shall have a lender's loss payable endorsement showing Bank as the sole lender loss payee. All liability policies shall show, or have endorsements showing, Bank as an additional insured. Bank shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral.

(b) Ensure that proceeds payable under any property policy are, at Bank's option, payable to Bank on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Bank has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Bank, be payable to Bank on account of the Obligations.

(c) At Bank's request, Borrower shall deliver certified copies of insurance policies and evidence of all premium payments. Each provider of any such insurance required under this Section 6.7 shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Bank, that it will give Bank thirty (30) days (ten (10) days for nonpayment of premium) prior written notice before any such policy or policies shall be canceled. If Borrower fails to obtain insurance as required under this Section 6.7 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Section 6.7, and take any action under the policies Bank deems prudent.

**6.8****Accounts.**

(a) Maintain all of its and all of its Subsidiaries' operating accounts, the Cash Collateral Account and excess cash with Bank and Bank's Affiliates. In addition to the foregoing, Borrower shall conduct all of its primary banking with Bank, including, letters of credit and business credit cards. Any Guarantor shall maintain all operating accounts and excess cash with Bank and Bank's Affiliates.

(b) In addition to and without limiting the restrictions in (a), Borrower shall provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank's Affiliates. For each Collateral Account that Borrower at any time maintains, Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank's Lien in such Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes, and other employee wage and benefit payments to or for the benefit of Borrower's employees and identified to Bank by Borrower as such.

**6.9****Financial Covenant – Trailing Six (6) Month Net Revenue.**

During a Testing Period, Borrower shall achieve (calculated with respect to Borrower only and not on a consolidated basis) for the most recent calendar quarter then-ended and each calendar quarter thereafter if such Testing Period is still in effect, minimum net revenue, generated from the sale of Borrower's products (excluding revenue generated with respect to licensing arrangements), determined in accordance with GAAP, measured on a trailing six (6) month basis, of at least:

**Trailing Six (6) Month Period Ending**

September 30, 2020

**Minimum Revenue**

[\*\*\*]

December 31, 2020	[***]
March 31, 2021	[***]
June 30, 2021	[***]
September 30, 2021	[***]
December 31, 2021	[***]

With respect to the period ending March 31, 2022 and each calendar quarter thereafter, the levels of minimum revenue shall be mutually agreed upon between Borrower and Bank, based upon, among other factors, Borrower’s Board-approved operating plan and financial projections and Bank’s then current credit underwriting. With respect thereto, Borrower’s failure to agree in writing (which agreement shall be set forth in a written amendment to this Agreement) on or before March 15, 2022, to any net revenue covenant levels proposed by Bank with respect to any period from March 31, 2022 through and including December 31, 2023, shall result in an immediate Event of Default for which there shall be no grace or cure period.

**6.10 Protection of Intellectual Property Rights.**

(a) (i) Use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property material to Borrower’s business; (ii) promptly advise Bank in writing of material infringements or any other event that could reasonably be expected to materially and adversely affect the value of its Intellectual Property material to Borrower’s business; and (iii) not allow any Intellectual Property material to Borrower’s business to be abandoned, forfeited or dedicated to the public without Bank’s written consent.

(b) Provide written notice to Bank within ten (10) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such commercially reasonable steps as Bank reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed “Collateral” and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank’s rights and remedies under this Agreement and the other Loan Documents.

**6.11 Litigation Cooperation.** From the date hereof and continuing through the termination of this Agreement, make available to Bank, without expense to Bank, Borrower and its officers, employees and agents and Borrower’s books and records, to the extent that Bank may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower.

**6.12 Online Banking.**

(a) Utilize Bank’s online banking platform for all matters requested by Bank which shall include, without limitation (and without request by Bank for the following matters), uploading information pertaining to Accounts and Account Debtors, requesting approval for exceptions, requesting Credit Extensions, and uploading financial statements and other reports required to be delivered by this Agreement (including, without limitation, those described in Section 6.2 of this Agreement).

(b) Comply with the terms of Bank’s Online Banking Agreement as in effect from time to time and ensure that all persons utilizing Bank’s online banking platform are duly authorized to do so by an Administrator. Bank shall be entitled to assume the authenticity, accuracy and completeness of any information, instruction or request for a Credit Extension submitted via Bank’s online banking platform and to further assume

**6.13 Further Assurances.** Execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's Lien in the Collateral or to effect the purposes of this Agreement. Deliver to Bank, within five (5) days after the same are sent or received, copies of all material correspondence, reports, documents and other material filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that could reasonably be expected to have a material effect on any of the Governmental Approvals or otherwise on the operations of Borrower or any of its Subsidiaries.

**6.14 Formation or Acquisition of Subsidiaries.** Notwithstanding and without limiting the negative covenants contained in Sections 7.3 and 7.7 hereof, at the time that Borrower or any Guarantor forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Effective Date (including, without limitation, pursuant to a Division), Borrower and such Guarantor shall (a) cause such new Subsidiary to provide to Bank a joinder to this Agreement to become a co-borrower hereunder, together with such appropriate financing statements and/or Control Agreements, all in form and substance satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary), (b) provide to Bank appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance satisfactory to Bank; and (c) provide to Bank all other documentation in form and substance satisfactory to Bank, including one or more opinions of counsel satisfactory to Bank, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 6.14 shall be a Loan Document.

**6.15 Post-Closing Deliverables.** Deliver to Bank (i) within sixty (60) days after the Effective Date, (A) a bailee's waiver in favor of Bank for each of the following locations where Borrower maintains property with a third party: (1) Pharma Packaging Solutions - 341 JD Yarnell Industrial Parkway, Clinton, TN 37716, (2) Sterling Pharmaceutical Services LLC - 102 Coulter Road, East Carondelet, IL 62240, and (3) Albany Molecular Research, Inc. - 33 Riverside Avenue, Rensselaer, NY 12144, by the respective third party thereof, together with the duly executed original signatures thereto, and (B) evidence satisfactory to Bank that the insurance policies and endorsements required by Section 6.7 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and/or additional insured clauses or endorsements in favor of Bank, and (ii) within forty-five (45) days after the Effective Date, (A) a completed Marketing Consent Form, together with the duly executed signature thereto and (B) duly executed signatures to the Control Agreement with U.S. Bank and SVB Asset Management.

## **7 NEGATIVE COVENANTS**

Borrower shall not do any of the following without Bank's prior written consent:

**7.1 Dispositions.** Convey, sell, lease, transfer, assign, or otherwise dispose of (including, without limitation, pursuant to a Division) (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out, surplus or obsolete Equipment that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the ordinary course of business of Borrower; (c) consisting of Permitted Liens and Permitted Investments; (d) consisting of the sale or issuance of any stock of Borrower permitted under Section 7.2 of this Agreement; (e) consisting of Borrower's use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents; (f) of non-exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business and licenses that could not result in a legal transfer of title of the licensed property but that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discrete geographical areas outside of the United States; (g) subject to the limitations set forth in Section 6.7(b) with respect to the remittance of proceeds, Transfers of any property subject to a casualty event; (h) consisting of the abandonment, cancellation, non-renewal or discontinuance of use or maintenance of any Intellectual Property (or rights relating thereto) that Borrower determined in its good faith business judgment is no longer material to Borrower's business and not materially disadvantageous to the interests

of Bank; and (i) not otherwise permitted by this Section 7.1, in an aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in any twelve (12) month period.

**7.2 Changes in Business, Management, Control, or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; (c) fail to provide notice to Bank of any Key Person departing from or ceasing to be employed by Borrower within five (5) days after such Key Person's departure from Borrower; or (d) permit or suffer any Change in Control.

Borrower shall not, without at least ten (10) days prior written notice to Bank: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Fifty Thousand Dollars (\$250,000.00) in Borrower's assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, excluding contract manufacturers or clinical sites, (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name, or (5) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to add any new offices or business locations, including warehouses, containing in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) of Borrower's assets or property, then Borrower will cause such landlord of any such new offices or business locations, including warehouses, to execute and deliver a landlord consent in form and substance reasonably satisfactory to Bank. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) to a bailee, and Bank and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will cause such bailee to execute and deliver a bailee agreement in form and substance reasonably satisfactory to Bank, excluding contract manufacturers or clinical sites.

**7.3 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person (including, without limitation, by the formation of any Subsidiary or pursuant to a Division) other than Permitted Acquisitions. Notwithstanding the foregoing, a Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

**7.4 Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**7.5 Encumbrance.** Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens and Transfers permitted by Section 7.1, permit any Collateral not to be subject to the first priority security interest granted herein (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superiority to Bank's Lien under this Agreement), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except (a) as is otherwise permitted in Section 7.1 hereof and the definition of Permitted Liens herein, (b) customary restrictions on assignment, transfer and encumbrances in license agreements under which Borrower or a Subsidiary is the licensee, and (c) covenants with such restrictions in contracts of sale or merger or acquisition agreements, provided that in the case of this clause (c), (i) such covenants do not prohibit or restrict Borrower from granting a security interest in Borrower's or any Subsidiary's Intellectual Property in favor of Bank and (ii) the counter-parties to such covenants are not permitted to receive or obtain a security interest in Borrower's Intellectual Property or any Collateral.

**7.6 Maintenance of Collateral Accounts.** Maintain any Collateral Account except pursuant to the terms of Section 6.8(b) hereof.

**7.7 Distributions; Investments.** (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock provided that Borrower may (i) convert any of its convertible securities

into other securities pursuant to the terms of such convertible securities, (ii) pay dividends solely in common stock, (iii) make cash payments in lieu of fractional shares of capital stock arising out of stock dividends, splits or combinations or Permitted Acquisitions in an aggregate amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) in any twelve (12) month period, (iv) repurchase the stock of former employees, directors or consultants pursuant to stock repurchase agreements so long as an Event of Default does not exist at the time of any such repurchase and would not exist after giving effect to any such repurchase, provided that the aggregate amount of all such repurchases does not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) per fiscal year, and (v) purchase capital stock in connection with the exercise of stock options, warrants or other equity awards by way of cashless exercise or in connection with the satisfaction of withholding tax obligations; or (b) directly or indirectly make any Investment (including, without limitation, by the formation of any Subsidiary) other than Permitted Investments, or permit any of its Subsidiaries to do so.

**7.8 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for (i) transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person, (ii) reasonable and customary fees paid to members of the Board of Borrower and its Subsidiaries, (iii) compensation arrangements and benefit plans for officers and other employees of Borrower and its Subsidiaries entered into or maintained in the ordinary course of business, (iv) bridge financings and equity financings with Borrower's investors that are otherwise permitted by Section 7.2 and constitutes Subordinated Debt, (v) transactions of the type described in and permitted by Section 7.7, and (vi) transactions of the type described in and permitted by subsection (f) Permitted Investments and subsection (h) of Permitted Indebtedness.

**7.9 Subordinated Debt.** (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof, provide for earlier or greater principal, interest, or other payments thereon, or adversely affect the subordination thereof to Obligations owed to Bank.

**7.10 Compliance.** Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower's business, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

## **8 EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

**8.1 Payment Default.** Borrower fails to (a) make any payment of principal or interest on any Credit Extension when due, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Revolving Line Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

### **8.2 Covenant Default.**

(a) Borrower fails or neglects to perform any obligation in Sections 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12 or 6.15 or violates any covenant in Section 7; or

(b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants set forth in clause (a) above;

**8.3 Material Adverse Change.** A Material Adverse Change occurs;

**8.4 Attachment; Levy; Restraint on Business.**

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under the control of Borrower (including a Subsidiary), or (ii) a notice of lien or levy is filed against any of Borrower's assets by any Governmental Authority, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or

(b) (i) any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting all or any material part of its business;

**8.5 Insolvency.** (a) Borrower or any of its Subsidiaries is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and is not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

**8.6 Other Agreements.** There is, under any agreement to which Borrower or any Guarantor is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of Five Hundred Thousand Dollars (\$500,000.00); or (b) any breach or default by Borrower or Guarantor, the result of which could have a material adverse effect on Borrower's or any Guarantor's business; provided, however, that the Event of Default under this Section 8.6 caused by the occurrence of a breach or default under such other agreement shall be cured or waived for purposes of this Agreement upon Bank receiving written notice from the party asserting such breach or default of such cure or waiver of the breach or default under such other agreement, if at the time of such cure or waiver under such other agreement (x) Bank has not declared an Event of Default under this Agreement and/or exercised any rights with respect thereto; (y) any such cure or waiver does not result in an Event of Default under any other provision of this Agreement or any Loan Document; and (z) in connection with any such cure or waiver under such other agreement, the terms of any agreement with such third party are not modified or amended in any manner which could in the good faith business judgment of Bank be materially less advantageous to Borrower or any Guarantor;

**8.7 Judgments; Penalties.** One or more fines, penalties or final judgments, orders or decrees for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand Dollars (\$500,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower by any Governmental Authority, and the same are not, within ten (10) days after the entry, assessment or issuance thereof, discharged, satisfied, or paid, or after execution thereof, stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the satisfaction, payment, discharge, stay, or bonding of such fine, penalty, judgment, order or decree);

**8.8 Misrepresentations.** Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made (it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results);

**8.9 Subordinated Debt.** Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect (provided that any revocation, cancellation, invalidation, or termination of any such document, instrument or agreement that (i) is consented to in writing by Bank in its sole and absolute discretion or (ii) results from Borrower's payment in full of the Subordinated Debt if permitted under any subordination agreement, shall not constitute an Event of Default under this Section 8.9), any Person shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement or any applicable subordination or intercreditor agreement; or

**8.10 Governmental Approvals.** Any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (b) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in clause (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal (i) causes, or could reasonably be expected to cause, a Material Adverse Change, or (ii) materially adversely affects the legal qualifications of Borrower or any of its Subsidiaries to hold such Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or non-renewal could reasonably be expected to materially adversely affect the status of or legal qualifications of Borrower or any of its Subsidiaries to hold any Governmental Approval in any other jurisdiction.

**8.11 Mezzanine Loan Agreement.** The occurrence of an Event of Default (as defined in the Mezzanine Loan Agreement) under the Mezzanine Loan Agreement.

## **9 BANK'S RIGHTS AND REMEDIES**

**9.1 Rights and Remedies.** Upon the occurrence and during the continuance of an Event of Default, Bank may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Bank);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) demand that Borrower (i) deposit cash with Bank in an amount equal to at least (A) one hundred five percent (105.0%) of the Dollar Equivalent of the aggregate face amount of all Letters of Credit denominated in Dollars remaining undrawn, and (B) one hundred ten percent (110.0%) of the Dollar Equivalent of the aggregate face amount of all Letters of Credit denominated in a Foreign Currency remaining undrawn (plus, in each case, all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit;

(d) terminate any FX Contracts;

(e) verify the amount of, demand payment of and performance under, and collect any Accounts and General Intangibles, settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, and notify any Person owing Borrower money of Bank's security interest in such funds. Borrower shall collect all payments in trust for Bank and, if requested by Bank, immediately deliver the payments to Bank in the form received from the Account Debtor, with proper endorsements for deposit;

(f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

(g) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) amount held by Bank owing to or for the credit or the account of Borrower;

(h) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 9.1, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit;

(i) place a "hold" on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower's Books; and

(k) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

**9.2 Power of Attorney.** Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, exercisable following the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks, payment instruments, or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) demand, collect, sue, and give releases to any Account Debtor for monies due, settle and adjust disputes and claims about the Accounts directly with Account Debtors, and compromise, prosecute, or defend any action, claim, case, or proceeding about any Collateral (including filing a claim or voting a claim in any bankruptcy case in Bank's or Borrower's name, as Bank chooses); (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, or other claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Bank or a third party as the Code permits. Borrower hereby appoints Bank as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Bank's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations or other obligations which, by their terms, survive the termination of this Agreement) have been satisfied in full and the Loan Documents have been terminated. Bank's foregoing appointment as Borrower's attorney in fact, and all of Bank's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and the Loan Documents have been terminated.

**9.3 Protective Payments.** If Borrower fails to obtain the insurance called for by Section 6.7 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and

payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

**9.4 Application of Payments and Proceeds.** If an Event of Default has occurred and is continuing (or at any time on the terms set forth in Section 6.3(c), regardless of whether an Event of Default exists), Bank shall have the right to apply in any order any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations. Bank shall pay any surplus to Borrower by credit to the Designated Deposit Account or to other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. If Bank, directly or indirectly, enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

**9.5 Bank's Liability for Collateral.** So long as Bank complies with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Bank, Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral, except to the extent caused by the gross negligence or willful misconduct of Bank.

**9.6 No Waiver; Remedies Cumulative.** Bank's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank's rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay in exercising any remedy is not a waiver, election, or acquiescence.

**9.7 Demand Waiver.** To the extent permitted by applicable law, Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

## **10 NOTICES**

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Bank or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower:           Verrica Pharmaceuticals Inc.  
10 North High Street, Suite 200  
West Chester, Pennsylvania 19380  
Attn: Brian Davis  
Email: [bdavis@verrica.com](mailto:bdavis@verrica.com)

with a copy to: Cooley LLP  
101 California Street, 5th Floor  
San Francisco, California 94111-5800  
Attention: Maricel Mojares-Moore  
Fax: (415) 693-2222  
Email: mmoore@cooley.com

If to Bank: Silicon Valley Bank 275 Grove Street, Suite 2-200  
Newton, Massachusetts 02466 Attn: Michael McMahon Email: Mmcmahon@svb.com

Newton, Massachusetts 02466 Attn: Michael McMahon Email: Mmcmahon@svb.com

with a copy to: Morrison & Foerster LLP  
200 Clarendon Street, Floor 20  
Boston, Massachusetts 02116  
Attn: David A. Ephraim, Esquire  
Email: DEphraim@mfo.com

## **11 CHOICE OF LAW, VENUE, AND JURY TRIAL WAIVER**

Except as otherwise expressly provided in any of the Loan Documents, California law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Bank each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Bank. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

This Section 11 shall survive the termination of this Agreement.

## **12 GENERAL PROVISIONS**

**12.1 Termination Prior to Maturity Date; Survival.** All covenants, representations and warranties made in this Agreement shall continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations or other obligations which, by their terms, survive the termination of this Agreement) have been satisfied. So long as Borrower has satisfied the Obligations (other than inchoate indemnity obligations, and any other obligations which, by their terms, are to survive the termination of this Agreement, and any Obligations under Bank Services Agreements that are cash collateralized in accordance with Section 4.1 of this Agreement), this Agreement may be terminated prior to the Revolving Line Maturity Date

by Borrower, effective three (3) Business Days after written notice of termination is given to Bank. Those obligations that are expressly specified in this Agreement as surviving this Agreement's termination shall continue to survive notwithstanding this Agreement's termination.

**12.2 Successors and Assigns.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Bank's prior written consent (which may be granted or withheld in Bank's discretion). Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents. Notwithstanding the foregoing, prior to the occurrence of an Event of Default, Bank shall not assign any interest in the Loan Documents to any person who is a direct competitor of Borrower.

**12.3 Indemnification.** Borrower agrees to indemnify, defend and hold Bank and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Bank (each, an "**Indemnified Person**") harmless against: (i) all obligations, demands, claims, and liabilities (collectively, "**Claims**") claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (ii) all losses or expenses (including Bank Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Bank and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct.

This Section 12.3 shall survive until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

**12.4 Time of Essence.** Time is of the essence for the performance of all Obligations in this Agreement.

**12.5 Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**12.6 Correction of Loan Documents.** Bank may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties.

**12.7 Amendments in Writing; Waiver; Integration.** No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

**12.8 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

**12.9 Confidentiality.** In handling any confidential information, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Bank, collectively, "**Bank Entities**"), provided that such Subsidiaries or Affiliates shall agree to be bound by the confidentiality provisions or agreements substantially the same as those set forth in this Section 12.9; (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, that any prospective transferee or purchaser shall have entered

into an agreement containing provisions substantially the same as those in this Section 12.9); (c) as required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required in connection with Bank's examination or audit; (e) as Bank considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain (other than as a result of its disclosure by Bank in violation of this Agreement) after disclosure to Bank; or (ii) disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

Bank Entities may use anonymous forms of confidential information for aggregate datasets, for analyses or reporting, and for any other uses not expressly prohibited in writing by Borrower. The provisions of the immediately preceding sentence shall survive the termination of this Agreement.

**12.10 Electronic Execution of Documents.** The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

**12.11 Right of Setoff.** Borrower hereby grants to Bank a Lien and a right of setoff as security for all Obligations to Bank, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any entity under the control of Bank (including a subsidiary of Bank) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Bank may setoff the same or any part thereof and apply the same to any liability or Obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

**12.12 Captions.** The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

**12.13 Construction of Agreement.** The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

**12.14 Relationship.** The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

**12.15 Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

## **13 DEFINITIONS**

**13.1 Definitions.** As used in the Loan Documents, the word "shall" is mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

“**Account**” is, as to any Person, any “**account**” of such Person as “**account**” is defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to such Person.

“**Account Debtor**” is any “**account debtor**” as defined in the Code with such additions to such term as may hereafter be made.

“**Acquisition**” is (a) the purchase or other acquisition by Borrower or any of its Subsidiaries of all or substantially all of the assets of any other Person, or (b) the purchase or other acquisition (whether by means of merger, consolidation, or otherwise) by Borrower or any of its Subsidiaries of all or substantially all of the stock or other equity interest of any other Person.

“**Administrator**” is an individual that is named:

- (a) as an “Administrator” in the “SVB Online Services” form completed by Borrower with the authority to determine who will be authorized to use SVB Online Services (as defined in Bank’s Online Banking Agreement as in effect from time to time) on behalf of Borrower; and
- (b) as an Authorized Signer of Borrower in an approval by the Board.

“**Advance**” or “**Advances**” means a revolving credit loan (or revolving credit loans) under the Revolving Line.

“**Affiliate**” is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person’s managers and members. For purposes of the definition of Eligible Accounts, Affiliate shall include a Specified Affiliate.

“**Agreement**” is defined in the preamble hereof.

“**Anniversary Fee**” and “**Anniversary Fees**” is defined in Section 2.5(b).

“**Authorized Signer**” is any individual listed in Borrower’s Borrowing Resolution who is authorized to execute the Loan Documents, including making (and executing if applicable) any Credit Extension request, on behalf of Borrower.

“**Availability Amount**” is (a) the lesser of (i) the Revolving Line or (ii) the amount available under the Borrowing Base minus (b) the outstanding principal balance of any Advances.

“**Bank**” is defined in the preamble hereof.

“**Bank Entities**” is defined in Section 12.9.

“**Bank Expenses**” are all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower or any Guarantor.

“**Bank Services**” are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank’s various agreements related thereto (each, a “**Bank Services Agreement**”).

“**Bank Services Agreement**” is defined in the definition of Bank Services.

“**Board**” is Borrower’s board of directors.

“**Borrower**” is defined in the preamble hereof.

“**Borrower’s Books**” are all Borrower’s books and records including ledgers, federal and state tax returns, records regarding Borrower’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Borrowing Base**” is eighty-five percent (85.0)% of Eligible Accounts, as determined by Bank from Borrower’s most recent Borrowing Base Report (and as may subsequently be updated by Bank based upon information received by Bank including, without limitation, Accounts that are paid and/or billed following the date of the Borrowing Base Report); provided, however, that Bank has the right, after consultation with and notice to Borrower, to decrease the foregoing percentages in its good faith business judgment to mitigate the impact of events, conditions, contingencies, or risks which may adversely affect the Collateral or its value.

“**Borrowing Base Report**” is that certain report of the value of certain Collateral in the form specified by Bank to Borrower from time to time.

“**Borrowing Resolutions**” are, with respect to any Person, those resolutions adopted by such Person’s board of directors (and, if required under the terms of such Person’s Operating Documents, stockholders) and delivered by such Person to Bank approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its secretary on behalf of such Person certifying (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that set forth as a part of or attached as an exhibit to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents, including making (and executing if applicable) any Credit Extension request, on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Bank may conclusively rely on such certificate unless and until such Person shall have delivered to Bank a further certificate canceling or amending such prior certificate.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Bank is closed.

“**Cash Collateral Account**” is defined in Section 6.3(c).

“**Cash Equivalents**” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc.; (c) Bank’s certificates of deposit issued maturing no more than one (1) year after issue; and (d) money market funds at least ninety-five percent (95.0%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (c) of this definition.

“**Change in Control**” means (a) at any time, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of forty-nine percent (49.0%) or more of the ordinary voting power for the election of directors of Borrower (determined on a fully diluted basis) other than by the sale of Borrower’s equity securities in a public offering or to venture capital or private equity investors so long as Borrower identifies to Bank the venture capital or private equity investors at least seven (7) Business Days prior to the closing of the transaction and provides to Bank a description of the material terms of the transaction; (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 Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in

clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or (c) at any time, Borrower shall cease to own and control, of record and beneficially, directly or indirectly, one hundred percent (100.0%) of each class of outstanding capital stock of each Subsidiary of Borrower free and clear of all Liens (except Liens created by this Agreement).

“**Claims**” is defined in Section 12.3.

“**Code**” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” is any and all properties, rights and assets of Borrower described on Exhibit A.

“**Collateral Account**” is any Deposit Account, Securities Account, or Commodity Account.

“**Commodity Account**” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“**Compliance Certificate**” is that certain certificate in the form attached hereto as Exhibit B.

“**Contingent Obligation**” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation, in each case, directly or indirectly guaranteed, endorsed, co made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“**Control Agreement**” is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

“**Copyrights**” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“**Credit Extension**” is any Advance, any Overadvance, or any other extension of credit by Bank for Borrower’s benefit.

“**Currency**” is coined money and such other banknotes or other paper money as are authorized by law and circulate as a medium of exchange.

“**Default Rate**” is defined in Section 2.4(b).

“**Deferred Revenue**” is all amounts received or invoiced in advance of performance under contracts and not yet recognized as revenue.

“**Deposit Account**” is any “**deposit account**” as defined in the Code with such additions to such term as may hereafter be made.

“**Designated Deposit Account**” is the account number ending 564 (last three digits) maintained by Borrower with Bank (provided, however, if no such account number is included, then the Designated Deposit Account shall be any deposit account of Borrower maintained with Bank as chosen by Bank).

“**Division**” means, in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons, with the dividing Person either continuing or terminating its existence as part of such division, including, without limitation, as contemplated under Section 18-217 of the Delaware Limited Liability Company Act for limited liability companies formed under Delaware law, or any analogous action taken pursuant to any other applicable law with respect to any corporation, limited liability company, partnership or other entity.

“**Dollars,**” “**dollars**” or use of the sign “\$” means only lawful money of the United States and not any other currency, regardless of whether that currency uses the “\$” sign to denote its currency or may be readily converted into lawful money of the United States.

“**Dollar Equivalent**” is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

“**Effective Date**” is defined in the preamble hereof.

“**Eligible Accounts**” means Accounts owing to Borrower which arise in the ordinary course of Borrower’s business that meet all Borrower’s representations and warranties in Section 5.3, that have been, at the option of Bank, confirmed in accordance with Section 6.3(f) of this Agreement, and are due and owing from Account Debtors deemed creditworthy by Bank in its good faith business judgment. Bank reserves the right, after consultation with and notice to Borrower, at any time after the Effective Date to adjust any of the criteria set forth below and to establish new criteria in its good faith business judgment. Unless Bank otherwise agrees in writing, Eligible Accounts shall not include:

- (a) Accounts (i) for which the Account Debtor is Borrower’s Affiliate, officer, employee, investor, or agent, or (ii) that are intercompany Accounts;
- (b) Accounts that the Account Debtor has not paid within ninety (90) days of invoice date regardless of invoice payment period terms;
- (c) Accounts with credit balances over ninety (90) days from invoice date;
- (d) Accounts owing from an Account Debtor if fifty percent (50%) or more of the Accounts owing from such Account Debtor have not been paid within ninety (90) days of invoice date;
- (e) Accounts owing from an Account Debtor (i) which does not have its principal place of business in the United States or (ii) whose billing address (as set forth in the applicable invoice for such Account) is not in the United States, unless in the case of both (i) and (ii), such Accounts are otherwise approved by Bank in writing;
- (f) Accounts billed from and/or payable to Borrower outside of the United States (sometimes called foreign invoiced accounts);

- laws;
- (g) Accounts in which Bank does not have a first priority, perfected security interest under all applicable laws;
  - (h) Accounts billed and/or payable in a Currency other than Dollars;
  - (i) Accounts owing from an Account Debtor to the extent that Borrower is indebted or obligated in any manner to the Account Debtor (as creditor, lessor, supplier or otherwise - sometimes called "contra" accounts, accounts payable, customer deposits or credit accounts);
  - (j) Accounts with or in respect of accruals for marketing allowances, incentive rebates, price protection, cooperative advertising and other similar marketing credits, unless otherwise approved by Bank in writing;
  - (k) Accounts owing from an Account Debtor which is a United States government entity or any department, agency, or instrumentality thereof unless Borrower has assigned its payment rights to Bank and the assignment has been acknowledged under the Federal Assignment of Claims Act of 1940, as amended;
  - (l) Accounts with customer deposits and/or with respect to which Borrower has received an upfront payment, to the extent of such customer deposit and/or upfront payment;
  - (m) Accounts for demonstration or promotional equipment, or in which goods are consigned, or sold on a "sale guaranteed", "sale or return", "sale on approval", or other terms if Account Debtor's payment may be conditional;
  - (n) Accounts owing from an Account Debtor where goods or services have not yet been rendered to the Account Debtor (sometimes called memo billings or pre-billings);
  - (o) Accounts subject to contractual arrangements between Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts);
  - (p) Accounts owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor's satisfaction of Borrower's complete performance (but only to the extent of the amount withheld; sometimes called retainage billings);
  - (q) Accounts subject to trust provisions, subrogation rights of a bonding company, or a statutory trust;
  - (r) Accounts owing from an Account Debtor that has been invoiced for goods that have not been shipped to the Account Debtor unless Bank, Borrower, and the Account Debtor have entered into an agreement acceptable to Bank wherein the Account Debtor acknowledges that (i) it has title to and has ownership of the goods wherever located, (ii) a bona fide sale of the goods has occurred, and (iii) it owes payment for such goods in accordance with invoices from Borrower (sometimes called "bill and hold" accounts);
  - (s) Accounts for which the Account Debtor has not been invoiced;
  - (t) Accounts that represent non-trade receivables or that are derived by means other than in the ordinary course of Borrower's business;
  - (u) Accounts for which Borrower has permitted Account Debtor's payment to extend beyond ninety (90) days (including Accounts with a due date that is more than ninety (90) days from invoice date);
  - (v) Accounts arising from chargebacks, debit memos or other payment deductions taken by an Account Debtor;

- accounts);
- (w) Accounts arising from product returns and/or exchanges (sometimes called “warranty” or “RMA”
- (x) Accounts in which the Account Debtor disputes liability or makes any claim (but only up to the disputed or claimed amount), or if the Account Debtor is subject to an Insolvency Proceeding (whether voluntary or involuntary), or becomes insolvent, or goes out of business;
- (y) Accounts owing from an Account Debtor with respect to which Borrower has received Deferred Revenue (but only to the extent of such Deferred Revenue);
- (z) Accounts owing from an Account Debtor, whose total obligations to Borrower exceed twenty-five percent (25.0%) of all Accounts, unless Bank approves in writing; and
- (aa) Accounts for which Bank in its good faith business judgment determines collection to be doubtful, including, without limitation, accounts represented by “refreshed” or “recycled” invoices.

“**Equipment**” is all “**equipment**” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**ERISA**” is the Employee Retirement Income Security Act of 1974, and its regulations.

“**Event of Default**” is defined in Section 8.

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

“**Foreign Currency**” means lawful money of a country other than the United States.

“**Funding Date**” is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

“**FX Contract**” is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency on a specified date.

“**GAAP**” is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

“**General Intangibles**” is all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“**Governmental Approval**” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“**Governmental Authority**” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

**“Guarantor”** is any Person providing a Guaranty in favor of Bank.

**“Guaranty”** is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

**“Immaterial Subsidiary”** is any Subsidiary of Borrower which is not a Material Subsidiary.

**“Indebtedness”** is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

**“Indemnified Person”** is defined in Section 12.3.

**“Initial Audit”** is Bank’s inspection of Borrower’s Accounts, the Collateral, and Borrower’s Books, with results satisfactory to Bank in its sole and absolute discretion.

**“Insolvency Proceeding”** is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

**“Intellectual Property”** means, with respect to any Person, all of such Person’s right, title, and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how and operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to such Person;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

**“Inventory”** is all **“inventory”** as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

**“Investment”** is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

**“Key Person”** is each of Borrower’s (a) Chief Executive Officer, who is Ted White as of the Effective Date and (b) Chief Financial Officer, who is Brian Davis as of the Effective Date.

**“Letter of Credit”** is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

“**Lien**” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Loan Documents**” are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Subordination Agreement, the Perfection Certificate, the Mezzanine Loan Agreement, any Control Agreement, any Bank Services Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower or any Guarantor, and any other present or future agreement by Borrower and/or any Guarantor with or for the benefit of Bank, all as amended, restated, or otherwise modified.

“**Material Adverse Change**” is (a) a material impairment in the perfection or priority of Bank’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or financial condition of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

“**Material Subsidiary**” is any Subsidiary of Borrower that has assets or revenue or material Intellectual Property valued in excess of Five Hundred Thousand Dollars (\$500,000.00) or is a Borrower or Guarantor hereunder.

“**Mezzanine Loan Agreement**” means that certain Mezzanine Loan and Security Agreement by and among Bank (as Agent and Lender, as such terms are defined in the Mezzanine Loan Agreement), WestRiver Innovation Lending Fund VIII, L.P., a Delaware limited partnership, as Lender (as such term is defined in the Mezzanine Loan Agreement), and Borrower, dated as of March 10, 2020 (as the same may from time to time be amended, modified, supplemented and/or restated).

“**Obligations**” are Borrower’s obligations to pay when due any debts, principal, interest, fees, Bank Expenses, the Termination Fee, Anniversary Fee, and other amounts Borrower owes Bank now or later, whether under this Agreement, the other Loan Documents, or otherwise, including, without limitation, all obligations relating to Bank Services and interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower’s duties under the Loan Documents.

“**Operating Documents**” are, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Overadvance**” is defined in Section 2.4.

“**Patents**” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“**Payment Date**” is, the last calendar day of each month.

“**Perfection Certificate**” is defined in Section 5.1.

“**Permitted Acquisition**” or “**Permitted Acquisitions**” is any Acquisition by the Borrower, disclosed to Bank, provided that each of the following shall be applicable to any such Acquisition:

- (a) no Event of Default shall have occurred and be continuing or would result from the consummation of the proposed Acquisition;
- (b) the entity or assets acquired in such Acquisition are in the same or similar line of business as Borrower is in as of the date hereof or reasonably related thereto;
- (c) such transaction shall only involve an entity formed, and assets located, in the United States;

(d) the Acquisition is approved by the Board (or equivalent control group) of all parties to the transaction;

(e) if the Acquisition includes a merger of Borrower, Borrower shall remain a surviving entity after giving effect to such Acquisition; if, as a result of such Acquisition, a new Subsidiary of Borrower is formed or acquired, Borrower shall cause such Subsidiary to comply with Section 6.14, as required by Bank;

(f) Borrower shall provide Bank with written notice of the proposed Acquisition at least thirty (30) Business Days prior to the anticipated closing date of the proposed Acquisition; and not less than five (5) Business Days prior to the anticipated closing date of the proposed Acquisition, copies of the acquisition agreement and all other material documents relative to the proposed Acquisition (or if such acquisition agreement and other material documents are not in final form, drafts of such acquisition agreement and other material documents; provided that Borrower shall deliver final forms of such acquisition agreement and other material documents promptly upon completion);

(g) the total cash consideration, (excluding equity) for all such Acquisitions does not exceed Five Million Dollars (\$5,000,000.00) in the aggregate for all such Acquisitions;

(h) the resulting transaction is accretive to Borrower's business on a prospective pro forma financial basis as of twelve (12) months after giving effect to such Acquisition;

(i) no Indebtedness will be incurred, assumed, or would exist with respect to Borrower or its Subsidiaries as a result of the contemplated transaction, other than Permitted Indebtedness;

(j) the Acquisition shall not constitute an Unfriendly Acquisition; and

(k) the entity or assets acquired in such Acquisition shall not be subject to any Lien other than (x) the first-priority Liens granted in favor of Bank, if applicable and (y) Permitted Liens.

**"Permitted Indebtedness" is:**

(a) Borrower's Indebtedness to Bank under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date which is shown on the Perfection Certificate;

(c) Subordinated Debt;

(d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(f) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of "Permitted Liens" hereunder;

(g) Indebtedness in connection with the Mezzanine Loan Agreement;

(h) to the extent constituting Indebtedness, Investments permitted pursuant to subsection (f) of the definition of Permitted Investments;

(i) Indebtedness consisting of the financing of insurance premiums;

(j) other unsecured Indebtedness not otherwise permitted by Section 7.4 in an aggregate principal amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) outstanding at any time;

(k) unsecured Indebtedness in respect of guarantees, bank guarantees, surety or performance bonds and similar instruments issued for (i) Borrower's account in the ordinary course of Borrower's business or (ii) the account of any Subsidiary of Borrower in the ordinary course of Borrower's business in a maximum aggregate amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) in order to provide security for: (A) workers' compensation claims, unemployment insurance and other types of social security and employee health and disability

benefits, or casualty-liability insurance, payment obligations in connection with self-insurance or similar requirements; and (B) tenders, completion guarantees, statutory obligations, surety, environmental or appeal bonds, bids, leases, government contracts, contracts (other than for borrowed money), performance bonds or other obligations of a like nature; and

(l) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (k) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

**“Permitted Investments” are:**

(a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date which are shown on the Perfection Certificate;

(b) (i) Investments consisting of Cash Equivalents, and (ii) any Investments permitted by Borrower’s investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Bank;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of deposit accounts (but only to the extent that Borrower is permitted to maintain such accounts pursuant to Section 6.8 of this Agreement) in which Bank has a first priority perfected security interest;

(e) Investments accepted in connection with Transfers permitted by Section 7.1;

(f) Investments by Borrower or any Subsidiary in (i) any Subsidiary that is a Borrower or a secured Guarantor or (ii) in any Borrower;

(g) Investments consisting of the creation of a Subsidiary for the purpose of consummating a merger transaction permitted by Section 7.3 of this Agreement, which is otherwise a Permitted Investment;

(h) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by the Board;

(i) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(j) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (j) shall not apply to Investments of Borrower in any Subsidiary;

(k) joint ventures or strategic alliances in the ordinary course of Borrower’s business, provided that any cash investments by Borrower do not exceed Five Hundred Thousand Dollars (\$500,000.00) in the aggregate in any fiscal year;

(l) deposits made to secure the performance of leases in the ordinary course of business;

(m) Permitted Acquisitions; and

(n) other Investments not otherwise permitted by Section 7, not exceeding Five Hundred Thousand Dollars (\$500,000.00) in the aggregate outstanding at any time.

**“Permitted Liens”** are:

- (a) Liens existing on the Effective Date which are shown on the Perfection Certificate or arising under this Agreement or the other Loan Documents;
- (b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on Borrower’s Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;
- (c) purchase money Liens or capital leases (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Five Hundred Thousand Dollars (\$500,000.00) in the aggregate amount outstanding, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;
- (d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;
- (e) Liens in connection with the Mezzanine Loan Agreement;
- (f) leases or subleases of real property granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), if the leases, subleases, licenses and sublicenses do not prohibit granting Bank a security interest therein;
- (g) non-exclusive licenses of Intellectual Property granted to third parties in the ordinary course of business, and licenses of Intellectual Property that could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States;
- (h) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 8.4 and 8.7;
- (i) Liens in favor of other financial institutions arising in connection with Borrower’s deposit and/or securities accounts held at such institutions, provided that (i) Bank has a first priority perfected security interest in the amounts held in such deposit and/or securities accounts (ii) such accounts are permitted to be maintained pursuant to Section 6.8 of this Agreement;
- (j) Liens on insurance proceeds in favor of insurance companies granted solely as a security for financed premiums;
- (k) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations (including pledges of deposits securing liability for reimbursement or indemnity arrangements and letters of credit with respect thereto);
- (l) Liens to secure the performance of bids, trade contracts (other than for borrowed money), contracts for the purchase of property permitted hereunder, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case, incurred in the ordinary course of business, not representing an obligation for borrowed money;
- (m) Liens arising from precautionary filings under the Code;
- (n) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, are not substantial in an amount and that 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 Borrower or any Subsidiary;

(o) Liens on assets of Borrower or its Subsidiaries so long as (i) such Liens do not cover any property not subject to Bank's Liens and (ii) the aggregate outstanding principal amount of the obligations secured thereby does not exceed One Hundred Thousand Dollars (\$100,000.00) at any time; and

(p) Liens incurred in the extension, renewal or refinancing of the Indebtedness secured by Liens described in (a) through (o), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase.

**"Person"** is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

**"Prime Rate"** is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the "prime rate" then in effect; provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement; and provided further that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Bank, the "Prime Rate" shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors); provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

**"Quarterly Financial Statements"** is defined in Section 6.2(e).

**"Registered Organization"** is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

**"Requirement of Law"** is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**"Reserves"** means, as of any date of determination, such amounts as Bank may from time to time establish and revise in its good faith business judgment, reducing the amount of Advances and other financial accommodations which would otherwise be available to Borrower (a) to reflect events, conditions, contingencies or risks which, as determined by Bank in its good faith business judgment, do or may adversely affect (i) the Collateral or any other property which is security for the Obligations or its value (including without limitation any increase in delinquencies of Accounts), (ii) the assets, business or prospects of Borrower or any Guarantor, or (iii) the security interests and other rights of Bank in the Collateral (including the enforceability, perfection and priority thereof); or (b) to reflect Bank's reasonable belief that any collateral report or financial information furnished by or on behalf of Borrower or any Guarantor to Bank is or may have been incomplete, inaccurate or misleading in any material respect; or (c) in respect of any state of facts which Bank determines constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

**"Responsible Officer"** is any of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

**"Restricted License"** is any material license or other agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with Bank's right to sell any Collateral.

**"Revolving Line"** is an aggregate principal amount equal to Five Million Dollars (\$5,000,000.00).

“**Revolving Line Maturity Date**” is March 1, 2024.

“**SEC**” shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

“**Securities Account**” is any “**securities account**” as defined in the Code with such additions to such term as may hereafter be made.

“**Specified Affiliate**” is any Person (a) more than ten percent (10.0%) of whose aggregate issued and outstanding equity or ownership securities or interests, voting, non-voting or both, are owned or held directly or indirectly, beneficially or of record, by Borrower, and/or (b) whose equity or ownership securities or interests representing more than ten percent (10.0%) of such Person’s total outstanding combined voting power are owned or held directly or indirectly, beneficially or of record, by Borrower.

“**Subordinated Debt**” is indebtedness incurred by Borrower subordinated to all of Borrower’s now or hereafter indebtedness to Bank (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms acceptable to Bank.

“**Subordination Agreement**” means that certain Subordination Agreement by and among Bank, Agent (as such term is defined in the Mezzanine Loan Agreement) and the Lenders (as such term is defined in the Mezzanine Loan Agreement), dated as of March 10, 2020 (as the same may from time to time be amended, modified, supplemented and/or restated).

“**Subsidiary**” is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower or Guarantor.

“**Termination Fee**” is defined in Section 2.5(c) hereof.

“**Testing Period**” is, at all times, commencing as of September 30, 2020, when unrestricted and unencumbered cash (other than Liens in favor of Bank under this Agreement) held in accounts in the name of Borrower maintained with Bank is less than two times (2x) the aggregate outstanding Obligations of Borrower to Bank.

“**Trademarks**” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

“**Transfer**” is defined in Section 7.1.

“**Unfriendly Acquisition**” is any Acquisition that has not, at the time of the first public announcement of an offer relating thereto, been approved by the board of directors (or other legally recognized governing body) of the Person to be acquired; except that with respect to any Acquisition of a non-U.S. Person, an otherwise friendly Acquisition shall not be deemed to be unfriendly if it is not customary in such jurisdiction to obtain such approval prior to the first public announcement of an offer relating to a friendly Acquisition.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**BORROWER:**

**VERRICA PHARMACEUTICALS INC.**

By: /s/ A. Brian Davis

Name: A. Brian Davis

Title: Chief Financial Officer

**BANK:**

**SILICON VALLEY BANK**

By: /s/ Michael McMahon

Name: Michael McMahon

Title: Director

Signature Page to Loan and Security Agreement

## **EXHIBIT A - COLLATERAL DESCRIPTION**

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (a) any property to the extent that such grant of security interest is prohibited by any Requirement of Law of a Governmental Authority or constitutes a breach or default under or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such property, except to the extent that such Requirement of Law or the term in such contract, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under Section 9-406, 9-407, 9-408 or 9-409 of the Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity; provided, however, that such security interest shall attach immediately at such time as such Requirement of Law is not effective or applicable, or such prohibition, breach, default or termination is no longer applicable or is waived, and to the extent severable, shall attach immediately to any portion of the Collateral that does not result in such consequences; (b) Equipment that is subject to a Lien that is otherwise permitted pursuant to subsection (c) of the definition of "Permitted Liens" if the holder of such Lien has expressly prohibited Borrower in writing from granting Liens on such property in favor of third parties; provided that immediately upon the ineffectiveness, lapse, or termination of any such provision, the term "Collateral" shall include, and Borrower shall be deemed to have granted a security interest in, all of its rights, title and interests in and to such property as if such provision had never been in effect; or (c) Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Bank's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property.

Pursuant to the terms of a certain negative pledge arrangement with Bank, Borrower has agreed not to encumber any of its Intellectual Property without Bank's prior written consent.

Certain information has been excluded from this agreement (indicated by "[\*\*\*]") because such information (i) is not material and (ii) would be competitively harmful if publicly disclosed.

**EXHIBIT B**  
**COMPLIANCE CERTIFICATE**

TO: SILICON VALLEY BANK Date:  
FROM: VERRICA PHARMACEUTICALS INC.

The undersigned authorized officer of VERRICA PHARMACEUTICALS INC. ("**Borrower**") certifies that under the terms and conditions of the Loan and Security Agreement between Borrower and Bank (the "**Agreement**"), (1) Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below, (2) there are no Events of Default, (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, (4) Borrower, and each of its Subsidiaries, has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.9 of the Agreement, and (5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries, if any, relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank. Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

Use indicate compliance status by circling Yes/No under "Complies" column.

<u>Reporting Covenants</u>	<u>Required</u>	<u>Complies</u>
Monthly revenue, net profit and cash balance statements with Compliance Certificate	Monthly within 30 days	Yes No
Quarterly financial statements with Compliance Certificate	Within 45 days of quarter end (within 90 days of quarter end for Q4)	Yes No
Annual financial statement with Compliance Certificate (CPA Audited)	FYE within 180 days	Yes No
10-Q Report	Within 45 days of quarter end for 10-Q (within 90 days of quarter end for Q4)	Yes No
Registered 10-Q, 10-K and 8-K	Within 5 days after filing with SEC	Yes No
Financial Agings, A/P Agings & Inventory Reports	Monthly within 30 days when an Advance is outstanding or has been requested	Yes No
Borrowing Base Reports	With each Advance request and monthly within 30 days when an Advance is outstanding	Yes No
Board approved projections	30 days of FYE and as amended/updated	Yes No

<u>Financial Covenants</u>	<u>Required</u>	<u>Actual</u>	<u>Complies</u>
Minimum Revenue*	\$ *	\$	Yes No

\* as set forth in Section 6.9

The following financial covenant analyses and information set forth in Schedule 1 attached hereto are true and accurate as of the date of this Certificate.



# **Schedule 1 to Compliance Certificate**

## **Financial Covenants of Borrower**

In the event of a conflict between this Schedule and the Agreement, the terms of the Agreement shall govern.

Dated: \_\_\_\_\_

### **I. Minimum Revenue (Section 6.9)**

**Required:** During a Testing Period, Borrower shall achieve (calculated with respect to Borrower only and not on a consolidated basis) for the most recent calendar quarter then-ended and each calendar quarter thereafter if such Testing Period is still in effect, minimum net revenue, generated from the sale of Borrower's products (excluding revenue generated with respect to licensing arrangements), determined in accordance with GAAP, measured on a trailing six (6) month basis, of at least:

<b>Trailing Six (6) Month Period Ending</b>	<b>Minimum Revenue</b>
September 30, 2020	[***]
December 31, 2020	[***]
March 31, 2021	[***]
June 30, 2021	[***]
September 30, 2021	[***]
December 31, 2021	[***]

**Actual:**

A. Minimum Revenue \$

Is line A equal to or greater than \_\_\_\_\_\*?

\* As set forth above.

No, not in compliance

Yes, in compliance

**MEZZANINE  
LOAN AND SECURITY AGREEMENT**

**THIS MEZZANINE LOAN AND SECURITY AGREEMENT** (this “**Agreement**”) dated as of March 10, 2020 (the “**Effective Date**”) among (a) **SILICON VALLEY BANK**, a California corporation (“**SVB**”), in its capacity as administrative agent and collateral agent (“**Agent**”), (b) **SILICON VALLEY BANK**, a California corporation (“**SVB**”), as a lender, (c) **WESTRIVER INNOVATION LENDING FUND VIII, L.P.**, a Delaware limited partnership (“**WestRiver**”), as a lender (SVB and WestRiver and each of the other “**Lenders**” from time to time a party hereto are referred to herein collectively as the “**Lenders**” and each individually as a “**Lender**”), and (d) **VERRICA PHARMACEUTICALS INC.**, a Delaware corporation (“**Borrower**”), provides the terms on which Agent and the Lenders shall lend to Borrower and Borrower shall repay Agent and the Lenders. The parties agree as follows:

**1            ACCOUNTING AND OTHER TERMS**

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP; *provided* that if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either Borrower or Agent shall so request, Borrower and Agent shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; *provided further*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrower shall provide Agent with 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. In addition, no effect shall be given to Accounting Standards Codification 842, Leases (or any other Accounting Standards Codification having similar result or effect) (and related interpretations) to the extent any lease (or similar arrangement) would be required to be treated as a capital lease thereunder where such lease (or arrangement) would have been treated as an operating lease under GAAP as in effect immediately prior to the effectiveness of such Accounting Standards Codification. Notwithstanding the foregoing, all financial covenant and other financial calculations shall be computed with respect to Borrower only, and not on a consolidated basis. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 14 of this Agreement. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

**2            LOAN AND TERMS OF PAYMENT**

**2.1            Promise to Pay.** Borrower hereby unconditionally promises to pay to Agent, for the ratable benefit of each Lender, the outstanding principal amount of all Credit Extensions advanced to Borrower by such Lender and accrued and unpaid interest thereon, together with any fees as and when due in accordance with this Agreement.

**2.1.1            Term Loan Advances**

(a)            Availability. Subject to the terms and conditions of this Agreement, upon Borrower’s request, the Lenders, severally and not jointly, shall make one (1) term loan advance to Borrower on or about the Effective Date in an original principal amount of Thirty-Five Million Dollars (\$35,000,000.00) according to each Lender’s Term Loan Commitment as set forth on Schedule 1 hereto (the “**Term A Loan Advance**”). Subject to the terms and conditions of this Agreement, upon Borrower’s request, during the Draw Period, the Lenders, severally and not jointly, shall make one (1) term loan advance available to Borrower in an original principal amount of Fifteen Million Dollars (\$15,000,000.00) according to each Lender’s Term Loan Commitment as set forth on Schedule 1 hereto (the “**Term B Loan Advance**”). The Term A Loan Advance and the Term B Loan Advance are hereinafter referred to singly as a “**Term Loan Advance**” and collectively as the “**Term Loan Advances**”. After repayment, no Term Loan Advance (or any portion thereof) may be reborrowed.

(b) Interest Period. Commencing on the first (1<sup>st</sup>) Payment Date of the month following the month in which the Funding Date of the applicable Term Loan Advance occurs, and continuing on the Payment Date of each month thereafter, Borrower shall make monthly payments of interest to Agent, for the account of the Lenders, in arrears, on the principal amount of each Term Loan Advance, at the rate set forth in Section 2.2(a).

(c) Repayment. Commencing on the Term Loan Amortization Date and continuing on each Payment Date thereafter, Borrower shall repay the aggregate outstanding Term Loan Advances to Agent, for the account of the Lenders, in (i) consecutive equal monthly installments of principal based on the applicable Repayment Schedule, plus (ii) monthly payments of accrued interest at the rate set forth in Section 2.2(a). All outstanding principal and accrued and unpaid interest with respect to the Term Loan Advances, and all other outstanding Obligations under the Term Loan Advances, are due and payable in full on the Term Loan Maturity Date.

(d) Permitted Prepayment. Borrower shall have the option to prepay all or a portion of the Term Loan Advances advanced by the Lenders under this Agreement, provided that such partial prepayments shall be in increments of at least One Million Dollars (\$1,000,000.00), and provided further that Borrower (i) delivers written notice to Agent of its election to prepay all or such portion of the Term Loan Advances at least five (5) Business Days prior to such prepayment, and (ii) pays to Agent, for the account of the Lenders in accordance with its respective Pro Rata Share, on the date of such prepayment (A) the outstanding principal plus accrued and unpaid interest with respect to the Term Loan Advances, (B) the Final Payment, (C) the Prepayment Premium with respect to the amount of such prepaid portion of the Term Loan Advances, and (D) all other sums, if any, that shall have become due and payable with respect to the Term Loan Advances, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts. Any of payments of principal with respect to the Term Loan Advances made under this Section 2.1.1(d) will be applied to the principal balance of the Term Loan Advances in the inverse order of maturity.

(e) Mandatory Prepayment Upon an Acceleration. If the Term Loan Advances are accelerated by Agent, following the occurrence of an Event of Default, Borrower shall immediately pay to Agent, for the account of the Lenders in accordance with its respective Pro Rata Share, an amount equal to the sum of (i) all outstanding principal plus accrued and unpaid interest with respect to the Term Loan Advances, (ii) the Final Payment, (iii) the Prepayment Premium, and (iv) all other sums, if any, that shall have become due and payable with respect to the Term Loan Advances, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts.

## 2.2 Payment of Interest on the Credit Extensions.

(a) Interest Rate. Subject to Section 2.2(b), the principal amount outstanding under each Term Loan Advance shall accrue interest at a floating per annum rate equal to the greater of (i) seven and one-quarter of one percent (7.25%) and (ii) two and one-half of one percent (2.50%) above the Prime Rate, which interest, in each case, shall be payable monthly in accordance with Section 2.2(d) below.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is four percent (4.0%) above the rate that is otherwise applicable thereto (the "**Default Rate**"). Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Lenders' Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2.2(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Agent or any Lender.

(c) Adjustment to Interest Rate. Changes to the interest rate of any Credit Extension based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of any such change.

(d) Payment; Interest Computation. Interest is payable monthly on the Payment Date of each month and shall be computed on the basis of a 360-day year for the actual number of days elapsed. In computing interest, (i) all payments received after 12:00 p.m. Eastern time on any day shall be deemed received at the opening of business on the next Business Day, and (ii) the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension.

- (a) Commitment Fee. A fully earned, non-refundable commitment fee of Five Hundred Thousand Dollars (\$500,000.00), payable on the Effective Date, to be shared between the Lenders pursuant to their respective Term Loan Commitment Percentages;
- (b) Final Payment. The Final Payment, when due hereunder, to be shared between the Lenders pursuant to their respective Term Loan Commitment Percentages;
- (c) Prepayment Premium. The Prepayment Premium, when due hereunder, to be shared between the Lenders pursuant to their respective Term Loan Commitment Percentages; and
- (d) Lenders' Expenses. All Lenders' Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due (or, if no stated due date, upon demand by Agent).

Unless otherwise provided in this Agreement or in a separate writing by Agent, Borrower shall not be entitled to any credit, rebate, or repayment of any fees earned by Agent or any Lender pursuant to this Agreement notwithstanding any termination of this Agreement or the suspension or termination of any Lender's obligation to make loans and advances hereunder. Agent may deduct amounts owing by Borrower under the clauses of this Section 2.3 pursuant to the terms of Section 2.4(e). Agent shall provide Borrower written notice of deductions made from the Designated Deposit Account pursuant to the terms of the clauses of this Section 2.3.

**2.4****Payments; Pro Rata Treatment; Application of Payments; Debit of Accounts.**

- (a) All payments (including prepayments) to be made by Borrower under any Loan Document shall be made to Agent for the account of Lenders, in immediately available funds in Dollars, without setoff or counterclaim, before 12:00 p.m. Eastern time on the date when due. Agent shall distribute such payments to Lenders in like funds as set forth in Section 2.5. Payments of principal and/or interest received after 12:00 p.m. Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.
- (b) Each borrowing by Borrower from Lenders hereunder shall be made according to the respective Term Loan Commitment Percentages of the relevant Lenders.
- (c) Except as otherwise provided herein, each payment (including each prepayment) by Borrower on account of principal or interest on the Term Loan Advances shall be applied according to each Lender's Pro Rata Share of the outstanding principal amount of the Term Loan Advances. The amount of each principal prepayment of the Term Loan Advances shall be applied to reduce the then remaining installments of the Term Loan Advances based upon each Pro Rata Share of Term Loan Advances.
- (d) Agent has the exclusive right to determine the order and manner in which all payments with respect to the Obligations may be applied. Borrower shall have no right to specify the order or the accounts to which Agent shall allocate or apply any payments required to be made by Borrower to Agent or otherwise received by Agent or any Lender under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.
- (e) Agent may debit any of Borrower's deposit accounts, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes Agent or any Lender when due. These debits shall not constitute a set-off.
- (f) Unless Agent shall have been notified in writing by Borrower prior to the date of any payment due to be made by Borrower hereunder that Borrower will not make such payment to Agent, Agent may assume that Borrower is making such payment, and Agent may, but shall not be required to, in reliance upon such

assumption, make available to Lenders their respective Pro Rata Share of a corresponding payment amount. If such payment is not made to Agent by Borrower within three (3) Business Days after such due date, Agent shall be entitled to recover, on demand, from each Lender to which any amount which was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Effective Rate. Nothing herein shall be deemed to limit the rights of Agent or any Lender against Borrower.

**2.5 Settlement Procedures.** If Agent receives any payment for the account of Lenders on or prior to 12:00 p.m. (Eastern time) on any Business Day, Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on such Business Day. If Agent receives any payment for the account of Lenders after 12:00 p.m. (Eastern time) on any Business Day, Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on the next Business Day.

**2.6 Withholding by Borrower.** Payments received by Agent from Borrower under this Agreement will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to Agent, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, Agent receives a net sum equal to the sum which it would have received had no withholding or deduction been required, and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish Agent with proof reasonably satisfactory to Agent indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.6 shall survive the termination of this Agreement.

### **3 CONDITIONS OF LOANS**

**3.1 Conditions Precedent to Initial Credit Extension.** Each Lender's obligation to make the initial Credit Extension hereunder is subject to the condition precedent that Agent shall have received, in form and substance satisfactory to Agent and the Lenders, such documents, and completion of such other matters, as Agent may reasonably deem necessary or appropriate, including, without limitation:

(a) duly executed Senior Loan Documents and satisfaction of all conditions precedent therein;

(b) duly executed signatures to the Loan Documents;

(c) the Operating Documents and a long-form good standing certificate of Borrower certified by the Secretary of State of Delaware and each other state in which Borrower is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;

(d) duly executed signatures to the secretary's corporate borrowing certificate of Borrower with respect to such Borrower's Operating Documents, incumbency, specimen signatures and resolutions authorizing the execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(e) duly executed signatures to the completed Borrowing Resolutions for Borrower;

(f) certified copies, dated as of a recent date, of financing statement searches, as Agent may request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

- (g) the Perfection Certificate of Borrower, together with the duly executed signatures thereto; and
- (h) payment of the fees and Lenders' Expenses then due as specified in Section 2.3 hereof.

**3.2 Conditions Precedent to all Credit Extensions.** Each Lender's obligation to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

- (a) timely receipt by the Lenders of (i) an executed Disbursement Letter and (ii) an executed Payment/Advance Form and any materials and documents required by Section 3.4;
- (b) the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the date of the Disbursement Letter (and the Payment/Advance Form) and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; and
- (c) Agent and each Lender determine to its reasonable satisfaction that there has not been any material impairment in the general affairs, management, results of operation, financial condition or the prospect of repayment of the Obligations, nor any material adverse deviation by Borrower from the most recent business plan of Borrower presented to and accepted by Agent and the Lenders.

**3.3 Covenant to Deliver.** Borrower agrees to deliver to Agent and each Lender each item required to be delivered to Agent and each Lender under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Agent and each Lender of any such item shall not constitute a waiver by Agent or Lenders of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in each Lender's sole discretion.

**3.4 Procedures for Borrowing.**

- (a) Term Loan Advances. Subject to the prior satisfaction of all other applicable conditions to the making of a Credit Extension set forth in this Agreement, to obtain a Credit Extension, Borrower shall notify Agent (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 p.m. Eastern time at least five (5) Business Days before the proposed Funding Date of such Credit Extension. Together with any such electronic or facsimile notification, Borrower shall deliver to Agent by electronic mail or facsimile a completed Disbursement Letter (and Payment/Advance Form) executed by an Authorized Signer. Agent may rely on any telephone notice given by a person whom Agent believes is an Authorized Signer. On the Funding Date, Agent shall credit the Credit Extensions to the Designated Deposit Account. Agent may make Credit Extensions under this Agreement based on instructions from an Authorized Signer or without instructions if the Credit Extensions are necessary to meet Obligations which have become due.
- (b) Funding. In determining compliance with any condition hereunder to the making of a Credit Extension that, by its terms, must be fulfilled to the satisfaction of a Lender, Agent may presume that such condition is satisfactory to such Lender unless Agent shall have received notice to the contrary from such Lender prior to the making of such Credit Extension. Unless Agent shall have been notified in writing by any Lender prior to the date of any Credit Extension, that such Lender will not make the amount that would constitute its share of such borrowing available to Agent, Agent may assume that such Lender is making such amount available to Agent, and Agent may, in reliance upon such assumption, make available to Borrower a corresponding amount. If such amount

is not made available to Agent by the required time on the Funding Date therefor, such Lender shall pay to Agent, on demand, such amount with interest thereon, at a rate equal to the greater of (i) the Federal Funds Effective Rate or (ii) a rate determined by Agent in accordance with banking industry rules on interbank compensation, for the period until such Lender makes such amount immediately available to Agent. If such Lender's share of such Credit Extension is not made available to Agent by such Lender within three (3) Business Days after such Funding Date, Agent shall also be entitled to recover such amount with interest thereon at the rate per annum applicable to the Term Loan Advances, on demand, from Borrower.

#### **4            CREATION OF SECURITY INTEREST**

**4.1            Grant of Security Interest.** Borrower hereby grants Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. For clarity, any reference to "Agent's Lien" or any granting of collateral to Agent in this Agreement or any Loan Document means the Lien granted to Agent for the ratable benefit of the Lenders.

If this Agreement is terminated, Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as the Lenders' obligation to make Credit Extensions has terminated, Agent shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower. Agent's Lien in the assets of Borrower securing the Obligations of Borrower to Lenders under this Agreement shall be junior and subordinated to SVB's security interest in the assets of Borrower securing the Obligations of Borrower to SVB under the Senior Loan Agreement.

**4.2            Priority of Security Interest.** Borrower represents, warrants, and covenants that the security interests granted herein are and shall at all times continue to be a first priority perfected security interests in the Collateral (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Agent's Lien under this Agreement). If Borrower shall acquire a commercial tort claim, Borrower shall promptly notify Agent in a writing signed by Borrower of the general details thereof and grant to Agent, for the ratable benefit of the Lenders, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Agent.

**4.3            Authorization to File Financing Statements.** Borrower hereby authorizes Agent, on behalf of the Lenders, to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Agent's and Lenders' interest or rights hereunder, including a notice that any disposition of the Collateral, by Borrower or any other Person, shall be deemed to violate the rights of Agent under the Code. Such financing statements may indicate the Collateral as "all assets of the Debtor" or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Agent's discretion.

#### **5            REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants as follows:

**5.1            Due Organization, Authorization; Power and Authority.** Borrower is duly existing and in good standing as a Registered Organization in its jurisdiction of formation and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. In connection with this Agreement, Borrower has delivered to Agent and each Lender a completed certificate signed by Borrower, entitled "**Perfection Certificate**" (the "**Perfection Certificate**"). Borrower represents and warrants to Agent and each Lender that: (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) has not, in the

past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete in all material respects (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement). If Borrower is not now a Registered Organization but later becomes one, Borrower shall promptly notify Agent of such occurrence and provide Agent with Borrower's organizational identification number.

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except (i) such Governmental Approvals which have already been obtained and are in full force and effect or are being obtained pursuant to Section 6.1(b), and (ii) any filings required by the Code in connection with perfecting the security interest granted herein), or (v) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's business.

**5.2 Collateral.** Borrower has good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no Collateral Accounts at or with any bank or financial institution other than SVB or SVB's Affiliates except for the Collateral Accounts described in the Perfection Certificate delivered to Agent and each Lender in connection herewith or established in accordance with Section 6.6(b) and which Borrower has given Agent notice and taken such actions as are necessary to give Agent, for the ratable benefit of the Lenders, a perfected security interest therein, pursuant to the terms of Section 6.6(b). The Accounts are bona fide, existing obligations of the Account Debtors.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate or as permitted pursuant to Section 7.2. None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2.

All Inventory is in all material respects of good and marketable quality, free from material defects.

Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) licenses permitted hereunder, (b) over-the-counter software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate or as otherwise disclosed to Agent in writing. To Borrower's knowledge, each Patent which it owns or purports to own and which is material to Borrower's business is valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower's business has been judged invalid or unenforceable, in whole or in part. To the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Borrower's business.

Except as noted on the Perfection Certificate or as otherwise disclosed to Agent in writing pursuant to Section 6.8(b), Borrower is not a party to, nor is it bound by, any Restricted License.

**5.3 Litigation.** There are no actions or proceedings pending or, to the knowledge of any Responsible Officer, threatened in writing by or against Borrower or any of its Subsidiaries involving more than, individually or in the aggregate, Five Hundred Thousand Dollars (\$500,000.00).

**5.4 Financial Statements; Financial Condition.** All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Agent and the Lenders fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations as of the date or for the period

covered by such financial statements (except with respect to unaudited financial statements, subject to normal year-end adjustments and the absence of footnotes). There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Agent and the Lenders.

**5.5 Solvency.** The fair salable value of Borrower's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of Borrower's liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

**5.6 Regulatory Compliance.** Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower (a) has complied in all material respects with all applicable Requirements of Law except where Borrower's failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business, and (b) has not violated any Requirements of Law the violation of which could reasonably be expected to have a material adverse effect on its business. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted except where Borrower's failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business.

**5.7 Subsidiaries; Investments.** Borrower does not own any stock, partnership, or other ownership interest or other equity securities except for Permitted Investments.

**5.8 Tax Returns and Payments; Pension Contributions.** Borrower has timely filed all required tax returns and reports, or duly filed valid extensions thereof, and Borrower has timely paid when due and payable all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except (a) to the extent such taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor, or (b) if such taxes, assessments, deposits and contributions do not, individually or in the aggregate, exceed Fifty Thousand Dollars (\$50,000.00).

To the extent Borrower defers payment of any contested taxes, Borrower shall (i) notify Agent in writing of the commencement of, and any material development in, the proceedings and (ii) post bonds or take any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien." Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower in excess of Fifty Thousand Dollars (\$50,000.00). Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

**5.9 Use of Proceeds.** Borrower shall use the proceeds of the Credit Extensions as working capital and to fund its general business requirements and not for personal, family, household or agricultural purposes.

**5.10 Full Disclosure.** No written representation, warranty or other statement of Borrower in any certificate or written statement given to Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by Agent and each Lender that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not

viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

**5.11 Definition of “Knowledge.”** For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower’s knowledge or awareness, to the “best of” Borrower’s knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of any Responsible Officer.

## **6 AFFIRMATIVE COVENANTS**

Borrower shall do all of the following:

### **6.1 Government Compliance.**

(a) Except as permitted under Section 7.3, maintain its and all its Subsidiaries’ legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower’s business or operations; provided, that nothing in this Section 6.1 shall prohibit or prevent Borrower from discontinuing the legal existence and qualification of any Immaterial Subsidiary in any jurisdiction other than its jurisdiction of formation, with prior written notice to Agent, if in the reasonable good faith judgment of Borrower such discontinuance or qualification is no longer desirable in the conduct of its business or such Subsidiary is no longer useful to the business of Borrower or such Subsidiary. Borrower shall comply, and have each Subsidiary comply, in all material respects, with all laws, ordinances and regulations to which it is subject, the failure to comply with which would reasonably be expected to result in a material adverse effect on Borrower’s business or operations.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Agent, for the ratable benefit of the Lenders, in all of its property. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Agent.

### **6.2 Financial Statements, Reports, Certificates.** Provide Agent and each Lender with the following:

(a) Monthly Compliance Certificate. Within thirty (30) days after the last day of each month and together with Borrower’s monthly revenue, net profit and cash balance statements, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement (if any) and such other information as Agent or the Lenders may reasonably request;

(b) Quarterly Financial Statements. As soon as available, but no later than forty-five (45) days after the end of each calendar quarter (ninety (90) days for the calendar quarter ending December 31 of each fiscal year), a company prepared consolidated balance sheet and income statement covering Borrower’s and each of its Subsidiary’s operations for such calendar quarter certified by a Responsible Officer and in a form acceptable to Agent (the “**Quarterly Financial Statements**”);

(c) Quarterly Compliance Certificate. Within forty-five (45) days after the end of each calendar quarter (ninety (90) days for the calendar quarter ending December 31 of each fiscal year) and together with the Quarterly Financial Statements, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such calendar quarter, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Agent or the Lenders may reasonably request, including, without limitation, a statement that at the end of such month there were no held checks;

(d) Board Projections. Within thirty (30) days after the last day of each fiscal year of Borrower, and contemporaneously with any updates or amendments thereto, (A) annual operating budgets (including income

statements, balance sheets and cash flow statements, by month), and (B) annual financial projections (on a quarterly basis), in each case as approved by the Board, together with any related business forecasts used in the preparation of such annual financial projections;

(e) Annual Audited Financial Statements. As soon as available, and in any event within one hundred eighty (180) days following the end of Borrower's fiscal year, (A) audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Agent and (B) a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such calendar year, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Agent or the Lenders may reasonably request, including, without limitation, a statement that at the end of such month there were no held checks;

(f) 10-Q Reports. Within forty-five (45) days after the last day of each fiscal quarter (ninety (90) days for the calendar quarter ending December 31 of each fiscal year), Borrower's 10-Q report;

(g) SEC Filings. Within five (5) days of filing, copies of all periodic and other reports, proxy statements and other materials filed by Borrower with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be. Documents required to be delivered pursuant to the terms hereof (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 Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address;

(h) Other Statements. Within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt;

(i) Beneficial Ownership Information. Prompt written notice of any changes to the beneficial ownership information set out in Section 14 of the Perfection Certificate. Borrower understands and acknowledges that each Lender relies on such true, accurate and up-to-date beneficial ownership information to meet such Lender's regulatory obligations to obtain, verify and record information about the beneficial owners of its legal entity customers;

(j) Legal Action Notice. A prompt report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, Five Hundred Thousand Dollars (\$500,000.00) or more; and

(k) Other Financial Information. Other financial information reasonably requested by Agent or any Lender.

Notwithstanding the foregoing, documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC), including without limitation any documents required to be delivered pursuant to Sections 6.2(c), 6.2(f), 6.2(g), 6.2(j) and 6.2(k), may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address.

**6.3 Taxes; Pensions.** Timely file, and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and shall deliver to Agent, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

**6.4 Inventory; Returns.** Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower and its Account Debtors shall follow Borrower's customary

practices as they exist at the Effective Date. Borrower must promptly notify Agent and the Lenders of all returns, recoveries, disputes and claims that involve more than Two Hundred Fifty Thousand Dollars (\$250,000.00).

**6.5 Insurance.**

(a) Keep its business and the Collateral insured for risks and in amounts customary for companies in Borrower's industry and location and as Agent may reasonably request. Insurance policies shall be in a form, with financially sound and reputable insurance companies that are not Affiliates of Borrower, and in amounts that are reasonably satisfactory to Agent. All property policies shall have a lender's loss payable endorsement showing Agent as the sole lender loss payee. All liability policies shall show, or have endorsements showing, Agent as an additional insured. Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral.

(b) Ensure that proceeds payable under any property policy are, at Agent's option, payable to Agent for the ratable benefit of the Lenders on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Agent has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Agent, be payable to Agent on account of the Obligations.

(c) At Agent's request, Borrower shall deliver certified copies of insurance policies and evidence of all premium payments. Each provider of any such insurance required under this Section 6.5 shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Agent, that it will give Agent thirty (30) days (ten (10) days for nonpayment of premium) prior written notice before any such policy or policies shall be canceled. If Borrower fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons and Agent, Agent may make all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Agent deems prudent.

**6.6 Operating Accounts.**

(a) Maintain all of its and all of its Subsidiaries' operating accounts and excess cash with SVB and SVB's Affiliates. In addition, Borrower shall conduct all other primary banking with SVB for services such as letters of credit and business credit cards. Any Guarantor shall maintain all operating accounts and excess cash with SVB and SVB's Affiliates

(b) Provide Agent five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than SVB or SVB's Affiliates. In addition, for each account that the Lenders in their sole discretion permit Borrower at any time to open or maintain (other than accounts at SVB), Borrower shall cause the applicable bank or financial institution (other than SVB) at or with which any such Collateral Account is opened or maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Agent's Lien in such Collateral Account in accordance with the terms hereunder, which Control Agreement may not be terminated without the prior written consent of the Lenders. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees and identified to Agent and the Lenders by Borrower as such.

**6.7 Financial Covenant – Trailing Six (6) Month Net Revenue.** During a Testing Period, Borrower shall achieve (calculated with respect to Borrower only and not on a consolidated basis) for the most recent calendar quarter then-ended and each calendar quarter thereafter if such Testing Period is still in effect, minimum net revenue, generated from the sale of Borrower's products (excluding revenue generated with respect to licensing arrangements), determined in accordance with GAAP, measured on a trailing six (6) month basis, of at least:

**Trailing Six (6) Month Period Ending**

**Minimum Revenue**

September 30, 2020	[***]
December 31, 2020	[***]
March 31, 2021	[***]
June 30, 2021	[***]
September 30, 2021	[***]
December 31, 2021	[***]

With respect to the period ending March 31, 2022 and each calendar quarter thereafter, the levels of minimum revenue shall be mutually agreed upon between Borrower, Agent and Lenders, based upon, among other factors, Borrower's Board-approved operating plan and financial projections and Lenders' then current credit underwriting. With respect thereto, Borrower's failure to agree in writing (which agreement shall be set forth in a written amendment to this Agreement) on or before March 15, 2022, to any net revenue covenant levels proposed by Agent and Lenders with respect to any period from March 31, 2022 through and including December 31, 2023, shall result in an immediate Event of Default for which there shall be no grace or cure period.

**6.8 Protection of Intellectual Property Rights.**

(a) (i) Use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property material to Borrower's business; (ii) promptly advise Agent in writing of material infringements or any other event that could reasonably be expected to materially and adversely affect the value of its Intellectual Property material to Borrower's business; and (iii) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Agent's written consent.

(b) Provide written notice to Agent within ten (10) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such commercially reasonable steps as Agent reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Agent to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Agent's and the Lenders' rights and remedies under this Agreement and the other Loan Documents.

**6.9 Litigation Cooperation.** From the date hereof and continuing through the termination of this Agreement, make available to Agent, without expense to Agent or any Lender, Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Agent and/or the Lenders may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Agent and/or any Lender with respect to any Collateral or relating to Borrower.

**6.10 Access to Collateral; Books and Records.** Allow Agent or its agents, at reasonable times, on one (1) Business Day's notice (provided no notice is required if an Event of Default has occurred and is continuing), to inspect the Collateral and audit and copy Borrower's Books. The foregoing inspections and audits shall be conducted no more often than twice every twelve (12) months unless an Event of Default has occurred and is continuing in which case such inspections and audits shall occur as often as Agent shall determine is necessary. The foregoing inspections and audits shall be conducted at Borrower's expense and the charge therefor shall be One Thousand Dollars (\$1,000.00) per person per day (or such higher amount as shall represent Agent's then-current standard charge for the same), plus reasonable out-of-pocket expenses. In the event Borrower and Agent schedule an audit more than eight (8) days in advance, and Borrower cancels or reschedules the audit with less than eight (8) days written notice to Agent, then (without limiting any of Agent's or any Lender's rights or remedies) Borrower shall pay Agent a fee of Two Thousand Dollars (\$2,000.00) plus any out-of-pocket expenses incurred by Agent to compensate Agent for the anticipated costs and expenses of the cancellation or rescheduling.

**6.11 Further Assurances.** Execute any further instruments and take further action as Agent and the Lenders reasonably request to perfect or continue Agent's Lien in the Collateral or to effect the purposes of this Agreement. Deliver to Agent and the Lenders, within five (5) days after the same are sent or received, copies of all material correspondence, reports, documents and other material filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that could reasonably be expected to have a material effect on any of the Governmental Approvals or otherwise on the operations of Borrower or any of its Subsidiaries.

**6.12 Formation or Acquisition of Subsidiaries.** Notwithstanding and without limiting the negative covenants contained in Sections 7.3 and 7.7 hereof, at the time that Borrower or any Guarantor forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Effective Date (including, without limitation, pursuant to a Division), Borrower and such Guarantor shall (a) cause such new Subsidiary to provide to Agent and Lenders a joinder to this Agreement to become a co-borrower hereunder, together with such appropriate financing statements and/or Control Agreements, all in form and substance satisfactory to Agent (including being sufficient to grant Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary), (b) provide to Agent appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance satisfactory to Agent; and (c) provide to Agent all other documentation in form and substance satisfactory to Agent, including one or more opinions of counsel satisfactory to Agent, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 6.12 shall be a Loan Document.

**6.13 Post-Closing Deliverables.** Deliver to Bank (i) within sixty (60) days after the Effective Date, (A) a bailee's waiver in favor of Bank for each of the following locations where Borrower maintains property with a third party: (1) Pharma Packaging Solutions - 341 JD Yarnell Industrial Parkway, Clinton, TN 37716, (2) Sterling Pharmaceutical Services LLC - 102 Coulter Road, East Carondelet, IL 62240, and (3) Albany Molecular Research, Inc. - 33 Riverside Avenue, Rensselaer, NY 12144, by the respective third party thereof, together with the duly executed original signatures thereto, and (B) evidence satisfactory to Bank that the insurance policies and endorsements required by Section 6.7 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and/or additional insured clauses or endorsements in favor of Bank, and (ii) within forty-five (45) days after the Effective Date, (A) a completed Marketing Consent Form, together with the duly executed signature thereto and (B) duly executed signatures to the Control Agreement with U.S. Bank and SVB Asset Management.

#### **6.14 NEGATIVE COVENANTS**

Borrower shall not do any of the following without the prior written consent of the Lenders:

**6.15 Dispositions.** Convey, sell, lease, transfer, assign, or otherwise dispose of (including, without limitation, pursuant to a Division) (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out, surplus or obsolete Equipment that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the ordinary course of business of Borrower; (c) consisting of Permitted Liens and Permitted Investments; (d) consisting of the sale or issuance of any stock of Borrower permitted under Section 7.2 of this Agreement; (e) consisting of Borrower's use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents; (f) of non-exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business and licenses that could not result in a legal transfer of title of the licensed property but that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discrete geographical areas outside of the United States; (g) subject to the limitations set forth in Section 6.7(b) with respect to the remittance of proceeds, Transfers of any property subject to a casualty event; (h) consisting of the abandonment, cancellation, non-renewal or discontinuance of use or maintenance of any Intellectual Property (or rights relating thereto) that Borrower determined in its good faith business judgment is no longer material to Borrower's business and not materially disadvantageous to the interests of Agent and Lenders; and (i) not otherwise permitted by this Section 7.1, in an aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in any twelve (12) month period.

**6.16 Changes in Business, Management, Control, or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; (c) fail to provide notice to Agent and Lenders of any Key Person departing from or ceasing to be employed by Borrower within five (5) days after such Key Person's departure from Borrower; or (d) permit or suffer any Change in Control.

Borrower shall not, without at least ten (10) days prior written notice to Agent: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Fifty Thousand Dollars (\$250,000.00) in Borrower's assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, excluding contract manufacturers or clinical sites, (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name, or (5) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to add any new offices or business locations, including warehouses, containing in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) of Borrower's assets or property, then Borrower will cause such landlord of any such new offices or business locations, including warehouses, to execute and deliver a landlord consent in form and substance reasonably satisfactory to Agent. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) to a bailee, and Agent and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will cause such bailee to execute and deliver a bailee agreement in form and substance reasonably satisfactory to Agent, excluding contract manufacturers or clinical sites.

**6.17 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person (including, without limitation, by the formation of any Subsidiary or pursuant to a Division) other than Permitted Acquisitions. Notwithstanding the foregoing, a Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

**6.18 Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**6.19 Encumbrance.** Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens and Transfers permitted by Section 7.1, permit any Collateral not to be subject to the first priority security interest granted herein (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superiority to Agent's Lien under this Agreement), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Agent, for the ratable benefit of the Lenders or pursuant to the Senior Loan Documents) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except (a) as is otherwise permitted in Section 7.1 hereof and the definition of Permitted Liens herein, (b) customary restrictions on assignment, transfer and encumbrances in license agreements under which Borrower or a Subsidiary is the licensee, and (c) covenants with such restrictions in contracts of sale or merger or acquisition agreements, provided that in the case of this clause (c), (i) such covenants do not prohibit or restrict Borrower from granting a security interest in Borrower's or any Subsidiary's Intellectual Property in favor of Agent, for the ratable benefit of the Lenders, and (ii) the counter-parties to such covenants are not permitted to receive or obtain a security interest in Borrower's Intellectual Property or any Collateral.

**6.20 Maintenance of Collateral Accounts.** Maintain any Collateral Account except pursuant to the terms of Section 6.6(b) hereof.

**6.21 Distributions; Investments.** (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock provided that Borrower may (i) convert any of its convertible securities into other securities pursuant to the terms of such convertible securities, (ii) pay dividends solely in common stock, (iii) make cash payments in lieu of fractional shares of capital stock arising out of stock dividends, splits or combinations or

Permitted Acquisitions in an aggregate amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) in any twelve (12) month period, (iv) repurchase the stock of former employees, directors or consultants pursuant to stock repurchase agreements so long as an Event of Default does not exist at the time of any such repurchase and would not exist after giving effect to any such repurchase, provided that the aggregate amount of all such repurchases does not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) per fiscal year, and (v) purchase capital stock in connection with the exercise of stock options, warrants or other equity awards by way of cashless exercise or in connection with the satisfaction of withholding tax obligations; or (b) directly or indirectly make any Investment (including, without limitation, by the formation of any Subsidiary) other than Permitted Investments, or permit any of its Subsidiaries to do so.

**6.22 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for (i) transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person, (ii) reasonable and customary fees paid to members of the Board of Borrower and its Subsidiaries, (iii) compensation arrangements and benefit plans for officers and other employees of Borrower and its Subsidiaries entered into or maintained in the ordinary course of business, (iv) bridge financings and equity financings with Borrower's investors that are otherwise permitted by Section 7.2 and constitutes Subordinated Debt, (v) transactions of the type described in and permitted by Section 7.7, and (vi) transactions of the type described in and permitted by subsection (f) of Permitted Investments and subsection (h) of Permitted Indebtedness.

**6.23 Subordinated Debt.** (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof, provide for earlier or greater principal, interest, or other payments thereon, or adversely affect the subordination thereof to Obligations owed to Agent and the Lenders.

**6.24 Compliance.** Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower's business, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

## **7 EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

**7.1 Payment Default.** Borrower fails to (a) make any payment of principal or interest on any Credit Extension when due, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Term Loan Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

### **7.2 Covenant Default.**

(a) Borrower fails or neglects to perform any obligation in Sections 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8(b) or 6.13, or violates any covenant in Section 7;  
or

(b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in

this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants set forth in clause (a) above;

**7.3 Material Adverse Change.** A Material Adverse Change occurs;

**7.4 Attachment; Levy; Restraint on Business.**

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under the control of Borrower (including a Subsidiary), or (ii) a notice of lien or levy is filed against any of Borrower's assets by any Governmental Authority, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or

(b) (i) any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting all or any material part of its business;

**7.5 Insolvency.** (a) Borrower or any of its Subsidiaries is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and is not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

**7.6 Other Agreements.** There is, under any agreement to which Borrower or any Guarantor is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of Five Hundred Thousand Dollars (\$500,000.00); or (b) any breach or default by Borrower or Guarantor, the result of which could have a material adverse effect on Borrower's or any Guarantor's business; provided, however, that the Event of Default under this Section 8.6 caused by the occurrence of a breach or default under such other agreement shall be cured or waived for purposes of this Agreement upon Agent receiving written notice from the party asserting such breach or default of such cure or waiver of the breach or default under such other agreement, if at the time of such cure or waiver under such other agreement (x) Agent has not declared an Event of Default under this Agreement and/or exercised any rights with respect thereto; (y) any such cure or waiver does not result in an Event of Default under any other provision of this Agreement or any Loan Document; and (z) in connection with any such cure or waiver under such other agreement, the terms of any agreement with such third party are not modified or amended in any manner which could in the good faith business judgment of Agent be materially less advantageous to Borrower or any Guarantor;

**7.7 Judgments; Penalties.** One or more fines, penalties, or final judgments, orders or decrees for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand Dollars (\$500,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower by any Governmental Authority, and the same are not, within ten (10) days after the entry, assessment or issuance thereof, discharged, satisfied, or paid, or after execution thereof, stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the satisfaction, payment, discharge, stay, or bonding of such fine, penalty, judgment, order or decree);

**7.8 Misrepresentations.** Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Agent or any Lender or to induce Agent or any Lender to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made (it being recognized by

Agent that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results);

**7.9 Subordinated Debt.** Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect (provided that any revocation, cancellation, invalidation, or termination of any such document, instrument or agreement that (i) is consented to in writing by Agent in its sole and absolute discretion or (ii) results from Borrower's payment in full of the Subordinated Debt if permitted under any subordination agreement, shall not constitute an Event of Default under this Section 8.9), any Person shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement or any applicable subordination or intercreditor agreement; or

**7.10 Governmental Approvals.** Any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (b) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in clause (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal (i) cause, or could reasonably be expected to cause, a Material Adverse Change, or (ii) materially adversely affects the legal qualifications of Borrower or any of its Subsidiaries to hold such Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or non-renewal could reasonably be expected to materially adversely affect the status of or legal qualifications of Borrower or any of its Subsidiaries to hold any Governmental Approval in any other jurisdiction.

**7.11 Senior Loan Agreement.** The occurrence of an Event of Default (as defined in the Senior Loan Agreement) under the Senior Loan Agreement.

## **8 RIGHTS AND REMEDIES**

**8.1 Rights and Remedies.** Upon the occurrence and during the continuance of an Event of Default, Agent, in accordance with the Lender Intercreditor Agreement or, if such rights and remedies are not addressed in the Lender Intercreditor Agreement, as directed by Lenders having a majority of the Obligations, may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Agent or any Lender);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement among Borrower, Agent and/or any Lenders;

(c) demand that Borrower (i) deposit cash with SVB in an amount equal to at least (x) one hundred five percent (105.0%) of the Dollar Equivalent of the aggregate face amount of all Letters of Credit denominated in Dollars remaining undrawn, and (y) one hundred ten percent (110.0%) of the Dollar Equivalent of the aggregate face amount of all Letters of Credit denominated in a Foreign Currency remaining undrawn (plus, in each case, all interest, fees, and costs due or to become due in connection therewith (as estimated by SVB in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit;

(d) terminate any FX Contracts;

(e) verify the amount of, demand payment of and performance under, and collect any Accounts and General Intangibles, settle or adjust disputes and claims directly with Account Debtors for amounts on terms and

in any order that Agent and/or the Lenders consider advisable, and notify any Person owing Borrower money of Agent's security interest in such funds;

(f) make any payments and do any acts Agent or any Lender considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Agent requests and make it available as Agent designates. Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest or charges and pay all expenses incurred. Borrower grants Agent a license to enter and occupy any of its premises, without charge, to exercise any of Agent's rights or remedies;

(g) apply to the Obligations (i) any balances and deposits of Borrower it holds, or (ii) any amount held by Agent owing to or for the credit or the account of Borrower;

(h) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Agent, for the benefit of the Lenders, is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Section, Borrower's rights under all licenses and all franchise agreements inure to Agent, for the ratable benefit of the Lenders;

(i) place a "hold" on any account maintained with Agent or Lenders and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower's Books; and

(k) exercise all rights and remedies available to Agent and the Lenders under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

**8.2 Power of Attorney.** Borrower hereby irrevocably appoints Agent, for the benefit of the Lenders, as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Agent or a third party as the Code permits. Borrower hereby appoints Agent as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations or other obligations which, by their terms, survive the termination of this Agreement) have been satisfied in full and Lenders are under no further obligation to make Credit Extensions hereunder. Agent's foregoing appointment as Borrower's attorney in fact, and all of Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and each Lender's obligation to provide Credit Extensions terminates.

**8.3 Protective Payments.** If Borrower fails to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Agent may obtain such insurance or make such payment, and all amounts so paid by Agent are Lenders' Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Agent will make reasonable efforts to provide Borrower with notice of Agent obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Agent are deemed an agreement to make similar payments in the future or Agent's or and Lenders' waiver of any Event of Default.

**8.4 Application of Payments and Proceeds Upon Default.** If an Event of Default has occurred and is continuing, Agent shall have the right to apply in any order any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations. Agent shall pay any surplus to Borrower by credit to the Designated Deposit Account or to other Persons legally entitled thereto; Borrower shall remain liable to Agent and the Lenders for any deficiency. If Agent, directly or indirectly, enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Agent shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Agent of cash therefor.

**8.5 Liability for Collateral.** So long as Agent and Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in their possession or under the control of Agent and/or Lenders, Agent and Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral, except to the extent caused by the gross negligence or willful misconduct of Agent or Lenders.

**8.6 No Waiver; Remedies Cumulative.** Agent's and any Lender's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Agent's and each Lender's rights and remedies under this Agreement and the other Loan Documents are cumulative. Agent and each Lender have all rights and remedies provided under the Code, by law, or in equity. Agent's or any Lender's exercise of one right or remedy is not an election and shall not preclude Agent or any Lender from exercising any other remedy under this Agreement or any other Loan Document or other remedy available at law or in equity, and Agent's or any Lender's waiver of any Event of Default is not a continuing waiver. Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

**8.7 Demand Waiver.** To the extent permitted by law, Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Agent on which Borrower is liable.

## **9 AGENT**

### **9.1 Appointment and Authority.**

(a) Each Lender hereby irrevocably appoints SVB to act on its behalf as Agent hereunder and under the other Loan Documents and authorizes Agent to take such actions on its behalf and to exercise such powers as are delegated to Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

(b) The provisions of this Section 10 are solely for the benefit of Agent and Lenders, and Borrower shall not have rights as a third party beneficiary of any of such provisions. Notwithstanding any provision to the contrary elsewhere in this Agreement, Agent shall not have any duties or responsibilities to any Lender or any other Person, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent.

**9.2 Delegation of Duties.** 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 Agent. 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 Indemnified Persons. The exculpatory provisions of this Section 10.2 shall apply to any such sub-agent and to the Indemnified Persons of Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

**9.3 Exculpatory Provisions.** Agent shall have no duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, Agent shall not:

- (a) be subject to any fiduciary, trust, agency or other similar duties, regardless of whether any Event of Default has occurred and is continuing;
- (b) 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 Agent is required to exercise as directed in writing by the Lenders, as applicable; provided that Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Agent to liability or that is contrary to any Loan Document or applicable law; and
- (c) except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and Agent shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as Agent or any of its Affiliates in any capacity.

Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Lenders (or as Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 13.7) or (ii) in the absence of its own gross negligence or willful misconduct.

Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 3 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Agent.

**9.4 Reliance by Agent.** Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. In determining compliance with any condition hereunder to the making of a Credit Extension that, by its terms, must be fulfilled to the satisfaction of a Lender, Agent may presume that such condition is satisfactory to such Lender unless Agent shall have received notice to the contrary from such Lender prior to the making of such Credit Extension. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Lenders, and such request and any action taken or failure to act pursuant thereto shall be binding upon Lenders and all future holders of the Credit Extensions.

**9.5 Notice of Default.** Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default (except with respect to defaults in the payment of principal, interest or fees required to be paid to Agent for the account of Lenders), unless Agent has received notice from a Lender or Borrower referring to this Agreement, describing such Event of Default and stating that such notice is a “notice of default”. In the event that Agent receives such a notice, Agent shall give notice thereof to Lenders. Agent shall take such action with respect to such Event of Default as shall be reasonably directed by the Lenders.

**9.6 Non-Reliance on Agent and Other Lenders.** Each Lender expressly acknowledges that neither Agent nor any of its officers, directors, employees, agents, attorneys in fact or affiliates has made any representations or warranties to it and that no act by Agent hereafter taken, including any review of the affairs of a Group Member or any Affiliate of a Group Member, shall be deemed to constitute any representation or warranty by Agent to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon Agent or any other Lender, and

based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, operations, property, financial and other condition and creditworthiness of the Group Members and their Affiliates and made its own decision to make its Credit Extensions hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Group Members and their Affiliates. Except for notices, reports and other documents expressly required to be furnished to Lenders by Agent hereunder, Agent shall have no duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Group Member or any Affiliate of a Group Member that may come into the possession of Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

**9.7 Indemnification.** Each Lender agrees to indemnify Agent in its capacity as such (to the extent not reimbursed by Borrower and without limiting the obligation of Borrower to do so in accordance with the terms hereof), according to its Term Loan Commitment Percentage in effect on the date on which indemnification is sought under this Section 10.7 (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Obligations shall have been paid in full, in accordance with its Term Loan Commitment Percentage immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Credit Extensions) be imposed on, incurred by or asserted against Agent in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted primarily from Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of the Credit Extensions and all other amounts payable hereunder.

**9.8 Agent in Its Individual Capacity.** The Person serving as 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 Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include each such Person serving as Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Borrower, any Guarantor or any Subsidiary or other Affiliate thereof as if such Person were not Agent hereunder and without any duty to account therefor to Lenders.

**9.9 Successor Agent.** Agent may at any time give notice of its resignation to Lenders and Borrower, which resignation shall not be effective until the time at which the majority of the Lenders have delivered to Agent their written consent to such resignation. Upon receipt of any such notice of resignation, the Lenders shall have the right, in consultation with Borrower, to appoint a successor, which shall be a financial institution with an office in the State of California, or an Affiliate of any such bank with an office in the State of California. If no such successor shall have been so appointed by the Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent has received the written consent of the majority of the Lenders to such resignation, then the retiring Agent may on behalf of Lenders, appoint a successor Agent meeting the qualifications set forth above; provided that in no event shall any such successor Agent be a Defaulting Lender and provided further that if the retiring Agent shall notify Borrower and Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring 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 Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed and such collateral security is assigned to such successor Agent) and (2) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as the Lenders appoint a successor Agent as provided for above in this Section 10.9. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring

(or retired) Agent, and the retiring 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 10.9). The fees payable by Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Section 10 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Indemnified Persons in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

#### **9.10 Defaulting Lender.**

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

(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 long as said Lender is a Defaulting Lender.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise, and including any amounts made available to the Agent by such Defaulting Lender pursuant to Section 13.10), shall be applied at such time or times as may be determined by the Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; second, as Borrower may request (so long as no Event of Default exists), to the funding of any Term Loan Advance in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; third, if so determined by the Agent and Borrower, to be held in a Deposit Account and released pro rata to satisfy such Defaulting Lender's potential future funding obligations with respect to Term Loan Advances under this Agreement; fourth, so long as no Event of Default has occurred and is continuing, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and fifth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Term Loan Advances in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Term Loan Advances were made at a time when the conditions set forth in Section 3.1 were satisfied or waived, such payment shall be applied solely to pay the Term Loan Advance of all non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Term Loan Advances of such Defaulting Lender until such time as all Term Loan Advances are held by the Lenders pro rata in accordance with the Term Loan Commitments under this Agreement. 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 pursuant to this Section 10.10(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.3(b) or Section 2.3(c) for any period during which such Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender).

(b) Defaulting Lender Cure. If Borrower and Agent agree in writing that a Lender is no longer a Defaulting Lender, 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, such Lender will, to the extent applicable, purchase at par that portion of outstanding Term Loan Advances of the other Lenders or take such other actions as Agent may determine to be necessary to cause the Term Loan Advances to be held on a *pro rata* basis by the Lenders in accordance with their respective Term Loan Commitment Percentages, 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 Borrower while such Lender was a Defaulting Lender; and provided further that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender having been a Defaulting Lender.

(c) **Termination of Defaulting Lender.** Borrower may terminate the unused amount of the Term Loan Commitment of any Lender that is a Defaulting Lender upon not less than ten (10) Business Days' prior notice to Agent (which shall promptly notify the Lenders thereof), and in such event the provisions of Section 10.10(a)(ii) will apply to all amounts thereafter paid by Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); provided that (i) no Event of Default shall have occurred and be continuing, and (ii) such termination shall not be deemed to be a waiver or release of any claim Borrower, Agent or any Lender may have against such Defaulting Lender.

(d) If the Person serving as Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the non-Defaulting Lenders may, to the extent permitted by applicable law, by notice in writing to Borrower and such Person, remove such Person as Agent and, in consultation with Borrower, appoint a successor. If no such successor shall have been so appointed by the non-Defaulting Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the non-Defaulting Lenders) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

## 10 NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Agent or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 11.

If to Borrower:

Verrica Pharmaceuticals Inc.  
10 North High Street, Suite 200  
West Chester, Pennsylvania 19380

Attn:

Brian Davis

Email:

[Bdavis@verrica.com](mailto:bdavis@verrica.com)

with a copy to:

Cooley LLP  
101 California Street, 5th Floor  
San Francisco, California 94111-5800  
Attention: Maricel Mojares-Moore  
Fax: (415) 693-2222  
Email: [mmoore@cooley.com](mailto:mmoore@cooley.com)

If to Agent or SVB: Silicon Valley Bank  
275 Grove Street, Suite 2-200  
Newton, Massachusetts 02466  
Attn: Michael McMahan  
Email: [Mcmahan@svb.com](mailto:Mcmahan@svb.com)

with a copy to:

Morrison & Foerster LLP  
200 Clarendon Street, 20<sup>th</sup> Floor  
Attn: David A. Ephraim, Esquire  
Email: Dephram@mof.com

If to WestRiver: WestRiver Innovation Lending Fund VIII, L.P.  
c/o WestRiver Management, LLC  
920 5th Avenue, Suite 3450  
Seattle, WA 98104  
Attn: Harper Ellison  
Email: [Harper@wrg.VC](mailto:Harper@wrg.VC)

## 11 CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

Except as otherwise expressly provided in any of the Loan Documents, California law governs the Loan Documents without regard to principles of conflicts of law. Except to the extent otherwise set forth in the Loan Documents, Borrower, Agent and Lenders each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Agent or Lenders from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Agent or any Lender. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 11 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, AGENT AND EACH LENDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR ALL PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

This Section 12 shall survive the termination of this Agreement.

## 12 GENERAL PROVISIONS

**12.1 Termination Prior to Term Loan Maturity Date; Survival.** All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations, any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. So long as Borrower has satisfied the Obligations (other than inchoate indemnity obligations, any other obligations which, by their terms, are to survive the termination of this Agreement), this Agreement may be terminated prior to the Term Loan Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Agent. Those obligations that are expressly specified in this Agreement as surviving this Agreement's termination shall continue to survive notwithstanding this Agreement's termination. No termination of this Agreement shall in any way affect or impair any right or remedy of Agent or any Lender, nor shall any such termination relieve Borrower of any Obligation to any Lender, until all of the Obligations have been paid and performed in full. Those Obligations that are expressly specified in this Agreement as

surviving this Agreement's termination shall continue to survive notwithstanding this Agreement's termination and payment in full of the Obligations then outstanding.

**12.2 Successors and Assigns.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Agent and Lenders' prior written consent (which may be granted or withheld in Agent's and Lenders' sole discretion). Agent and each Lender has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, such Lender's obligations, rights, and benefits under this Agreement and the other Loan Documents. Notwithstanding the foregoing, prior to the occurrence of an Event of Default, Lenders shall not assign any interest in the Loan Documents to any person who is a direct competitor of Borrower.

**12.3 Indemnification.** Borrower agrees to indemnify, defend and hold Agent, each Lender and their respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Agent or any Lender (each, an "**Indemnified Person**") harmless against: (i) all obligations, demands, claims, and liabilities (collectively, "**Claims**") claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (ii) all losses or expenses (including Lenders' Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Agent, Lenders and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct. This Section 13.3 shall survive until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

**12.4 Time of Essence.** Time is of the essence for the performance of all Obligations in this Agreement.

**12.5 Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**12.6 Correction of Loan Documents.** Agent may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties.

**12.7 Amendments in Writing; Waiver; Integration.** No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, or release, or subordinate Lenders' security interest in, or consent to the transfer of, any Collateral shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by Agent, with the consent of the Lenders in accordance with the Lender Intercreditor Agreement or, if such item is not addressed in the Lender Intercreditor Agreement, as consented to by a majority of the Lenders, and Borrower. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents. In the event any provision of any other Loan Document is inconsistent with the provisions of this Agreement, the provisions of this Agreement shall exclusively control.

**12.8 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

**12.9 Confidentiality.** Agent and each Lender agrees to maintain the confidentiality of Information (as defined below), except that Information may be disclosed (a) to Agent and/or any Lender's subsidiaries or Affiliates, and their respective employees, directors, investors, potential investors, agents, attorneys, accountants and other professional advisors (collectively, "**Representatives**" and, together with Agent and the Lenders, collectively, "**Lender Entities**") provided that such Representatives shall agree to be bound by the confidentiality provisions or

agreements substantially the same as those set forth in this Section 13.9; (b) to prospective transferees, assignees, credit providers or purchasers of any of Agent's or Lenders' interests under or in connection with this Agreement and their Representatives (provided, however, Agent and the Lenders shall use their best efforts to obtain any such prospective transferee's, assignee's, credit provider's, or purchaser's or their Representatives' agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; (d) to Agent's or any Lender's regulators or as otherwise required in connection with Agent's or any Lender's examination or audit; (e) as Agent or any Lender considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of Agent and/or any Lender so long as such service providers have executed a confidentiality agreement with Agent or the Lenders, as applicable, with terms no less restrictive than those contained herein. The term "**Information**" means all information received from Borrower regarding Borrower or its business, in each case other than information that is either: (i) in the public domain or in Agent's or any Lender's possession when disclosed to Agent or such Lender, or becomes part of the public domain (other than as a result of its disclosure by Agent or a Lender in violation of this Agreement) after disclosure to Agent and/or the Lenders; or (ii) disclosed to Agent and/or a Lender by a third party, if Agent or such Lender, as applicable, does not know that the third party is prohibited from disclosing the information.

Lender Entities may use anonymous forms of confidential information for aggregate datasets, for analyses or reporting, and for any other uses not expressly prohibited in writing by Borrower. The provisions of the immediately preceding sentence shall survive the termination of this Agreement.

**12.10 Right of Setoff.** Borrower hereby grants to Agent, for the ratable benefit of the Lenders, a Lien, security interest, and a right of setoff as security for all Obligations to Agent and the Lenders, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Agent or any entity under the control of Agent (including a subsidiary of Agent) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Agent or any Lender may setoff the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmaturing and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE AGENT OR ANY LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

**12.11 Electronic Execution of Documents.** The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

**12.12 Captions.** The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

**12.13 Construction of Agreement.** The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

**12.14 Relationship.** The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

**12.15 Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

**12.16 Patriot Act.** Each Lender hereby notifies Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies Borrower and each of its Subsidiaries, which information includes the names and addresses of Borrower and each of its Subsidiaries and other information that will allow Lender, as applicable, to identify Borrower and each of its Subsidiaries in accordance with the USA PATRIOT Act.

### **13 DEFINITIONS**

**13.1 Definitions.** As used in the Loan Documents, the word “shall” is mandatory, the word “may” is permissive, the word “or” is not exclusive, the words “includes” and “including” are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

“**Account**” is, as to any Person, any “**account**” of such Person as “**account**” is defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to such Person.

“**Account Debtor**” is any “**account debtor**” as defined in the Code with such additions to such term as may hereafter be made.

“**Acquisition**” is (a) the purchase or other acquisition by Borrower or any of its Subsidiaries of all or substantially all of the assets of any other Person, or (b) the purchase or other acquisition (whether by means of merger, consolidation, or otherwise) by Borrower or any of its Subsidiaries of all or substantially all of the stock or other equity interest of any other Person.

“**Affiliate**” is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person’s managers and members.

“**Agent**” is defined in the preamble hereof.

“**Agreement**” is defined in the preamble hereof.

“**Authorized Signer**” is any individual listed in Borrower’s Borrowing Resolution who is authorized to execute the Loan Documents, including any Credit Extension request, on behalf of Borrower.

“**Board**” is Borrower’s board of directors.

“**Borrower**” is defined in the preamble hereof.

“**Borrower’s Books**” are all Borrower’s books and records including ledgers, federal and state tax returns, records regarding Borrower’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Borrowing Resolutions**” are, with respect to any Person, those resolutions adopted by such Person’s board of directors (and, if required under the terms of such Person’s Operating Documents, stockholders) and delivered by such Person to Agent approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its secretary on behalf of such Person certifying (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that set forth as a part of or attached as an exhibit to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents, including any Credit Extension request, on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Agent and Lenders may conclusively rely on such certificate unless

and until such Person shall have delivered to Agent and Lenders a further certificate canceling or amending such prior certificate.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Agent is closed.

“**Cash Equivalents**” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc.; (c) SVB’s certificates of deposit issued maturing no more than one (1) year after issue; and (d) money market funds at least ninety-five percent (95.0%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (c) of this definition.

“**Change in Control**” means (a) at any time, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of forty-nine percent (49.0%) or more of the ordinary voting power for the election of directors of Borrower (determined on a fully diluted basis) other than by the sale of Borrower’s equity securities in a public offering or to venture capital or private equity investors so long as Borrower identifies to the Agent and the Lenders the venture capital or private equity investors at least seven (7) Business Days prior to the closing of the transaction and provides to Agent and the Lenders a description of the material terms of the transaction; (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 Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or (c) at any time, Borrower shall cease to own and control, of record and beneficially, directly or indirectly, one hundred percent (100.0%) of each class of outstanding capital stock of each Subsidiary of Borrower free and clear of all Liens (except Liens created by this Agreement).

“**Claims**” is defined in Section 13.3.

“**Code**” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Agent’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term “**Code**” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” is any and all properties, rights and assets of Borrower described on Exhibit A.

“**Collateral Account**” is any Deposit Account, Securities Account, or Commodity Account.

“**Commitment**” and “**Commitments**” means the Term Loan Commitment(s).

“**Commodity Account**” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“**Compliance Certificate**” is that certain certificate in the form attached hereto as Exhibit B.

**“Contingent Obligation”** is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation, in each case, directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

**“Control Agreement”** is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Agent pursuant to which Agent obtains control (within the meaning of the Code) for the benefit of the Lenders over such Deposit Account, Securities Account, or Commodity Account.

**“Copyrights”** are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

**“Credit Extension”** is any Term Loan Advance or any other extension of credit by any Lender for Borrower’s benefit.

**“Default Rate”** is defined in Section 2.2(b).

**“Defaulting Lender”** is, subject to Section 10.10(b), any Lender that (a) has failed to (i) fund all or any portion of its Term Loan Advances within two (2) Business Days of the date such Term Loan Advances were required to be funded hereunder unless such Lender notifies Agent and Borrower in writing that such failure is the result of such Lender’s reasonable 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 Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified Borrower or Agent 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 Term Loan Advance hereunder and states that such position is based on such Lender’s reasonable 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 Agent or Borrower, to confirm in writing to Agent and Borrower 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 Agent and Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of an Insolvency Proceeding, or (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; 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 Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 10.10(b)) upon delivery of written notice of such determination to Borrower and each Lender.

**“Deposit Account”** is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

**“Designated Deposit Account”** is the account number ending 564 (last three digits), maintained by Borrower with SVB (provided, however, if no such account number is included, then the Designated Deposit Account shall be any deposit account of Borrower maintained with SVB as chosen by the Lenders).

**“Disbursement Letter”** is that certain form attached hereto as Exhibit D.

**“Division”** means, in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons, with the dividing Person either continuing or terminating its existence as part of such division, including, without limitation, as contemplated under Section 18 217 of the Delaware Limited Liability Company Act for limited liability companies formed under Delaware law, or any analogous action taken pursuant to any other applicable law with respect to any corporation, limited liability company, partnership or other entity.

**“Dollars,” “dollars”** or use of the sign “\$” means only lawful money of the United States and not any other currency, regardless of whether that currency uses the “\$” sign to denote its currency or may be readily converted into lawful money of the United States.

**“Dollar Equivalent”** is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Agent at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

**“Draw Period”** is the period of time commencing upon the occurrence of the Milestone Event and continuing through the earlier to occur of (a) December 31, 2021 or (b) an Event of Default.

**“Effective Date”** is defined in the preamble hereof.

**“Equipment”** is all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

**“Equity Event”** means Borrower has received, after the Effective Date, but on or prior to December 31, 2021, unrestricted and unencumbered gross cash proceeds in an amount of at least Forty Million Dollars (\$40,000,000.00) from the issuance and sale by Borrower of its equity securities to investors reasonably acceptable to Agent and the Lenders (other than Liens in favor of Agent for the ratable benefit of the Lenders under this Agreement).

**“ERISA”** is the Employee Retirement Income Security Act of 1974, and its regulations.

**“Event of Default”** is defined in Section 8.

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

**“Federal Funds Effective Rate”** means, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by SVB from three federal funds brokers of recognized standing selected by it.

**“Final Payment”** is a payment (in addition to and not in substitution for the regular monthly payments of principal plus accrued interest) equal to the original principal amount of each Term Loan Advance extended by Lenders to Borrower hereunder multiplied by seven and one-half of one percent (7.50%), due on the earliest to occur of (a) the Term Loan Maturity Date, (b) the payment in full of such Term Loan Advance, (c) as required by Section 2.1.1(d) or 2.1.1(e) or (d) the termination of this Agreement.

**“Foreign Currency”** means lawful money of a country other than the United States.

**“Funding Date”** is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

**“FX Contract”** is any foreign exchange contract by and between Borrower and SVB under which Borrower commits to purchase from or sell to SVB a specific amount of Foreign Currency on a specified date.

**“GAAP”** is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

**“General Intangibles”** is all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

**“Governmental Approval”** is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

**“Governmental Authority”** is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

**“Group Member”** means Borrower and its Subsidiaries.

**“Guarantor”** is any Person providing a Guaranty in favor of Lenders.

**“Guaranty”** is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

**“Immaterial Subsidiary”** is any Subsidiary of Borrower which is not a Material Subsidiary.

**“Indebtedness”** is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

**“Indemnified Person”** is defined in Section 13.3.

**“Information”** is defined in Section 13.9.

**“Insolvency Proceeding”** is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

**“Intellectual Property”** means, with respect to any Person, all of such Person’s right, title, and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;

- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how and operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to such Person;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

**“Inventory”** is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

**“Investment”** is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

**“Key Person”** is each of Borrower’s (a) Chief Executive Officer, who is Ted White as of the Effective Date, and (b) Chief Financial Officer, who is Brian Davis as of the Effective Date.

**“Lender”** and **“Lenders”** is defined in the preamble.

**“Lender Entities”** is defined in Section 13.9.

**“Lender Intercreditor Agreement”** is, collectively, any and all intercreditor agreement, master arrangement agreement or similar agreement by and between WestRiver and SVB, as each may be amended from time to time in accordance with the provisions thereof.

**“Lenders’ Expenses”** are all of Agent’s and the Lenders’ audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower.

**“Letter of Credit”** is a standby or commercial letter of credit issued by SVB upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

**“Lien”** is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

**“Loan Documents”** are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Subordination Agreement, the Senior Loan Agreement, the Perfection Certificate, each Disbursement Letter, the Lender Intercreditor Agreement, any Control Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower or any Guarantor, and any other present or future agreement by Borrower and/or any Guarantor with or for the benefit of Agent and the Lenders in connection with this Agreement, all as amended, restated, or otherwise modified.

**“Material Adverse Change”** is: (a) a material impairment in the perfection or priority of Agent’s, for the ratable benefit of the Lenders, Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or financial condition of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

“**Material Subsidiary**” is any Subsidiary of Borrower that has assets or revenue or material Intellectual Property valued in excess of Five Hundred Thousand Dollars (\$500,000.00) or is a Borrower or Guarantor hereunder.

“**Milestone Event**” means Borrower has provided Agent and the Lenders, on or prior to December 31, 2021, with evidence satisfactory to Agent and each Lender, in Agent’s and each Lender’s sole and absolute discretion, that each of the following have occurred on or prior to December 31, 2021: (i) the Equity Event and (ii) the Revenue Event.

“**Obligations**” are Borrower’s obligations to pay when due any debts, principal, interest, fees, Lenders’ Expenses, the Final Payment, the Prepayment Premium, and other amounts Borrower owes Agent or any Lender now or later, whether under this Agreement, the other Loan Documents, or otherwise, including, without limitation, any interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Agent and/or the Lenders, and to perform Borrower’s duties under the Loan Documents.

“**Operating Documents**” are, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Patents**” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“**Payment/Advance Form**” is that certain form attached hereto as Exhibit C.

“**Payment Date**” is the first (1<sup>st</sup>) calendar day of each month.

“**Perfection Certificate**” is defined in Section 5.1.

“**Permitted Acquisition**” or “**Permitted Acquisitions**” is any Acquisition by the Borrower, disclosed to Agent, provided that each of the following shall be applicable to any such Acquisition:

(a) no Event of Default shall have occurred and be continuing or would result from the consummation of the proposed Acquisition;

(b) the entity or assets acquired in such Acquisition are in the same or similar line of business as Borrower is in as of the date hereof or reasonably related thereto;

(c) such transaction shall only involve an entity formed, and assets located, in the United States;

(d) the Acquisition is approved by the Board (or equivalent control group) of all parties to the transaction;

(e) if the Acquisition includes a merger of Borrower, Borrower shall remain a surviving entity after giving effect to such Acquisition; if, as a result of such Acquisition, a new Subsidiary of Borrower is formed or acquired, Borrower shall cause such Subsidiary to comply with Section 6.12, as required by Agent;

(f) Borrower shall provide Agent with written notice of the proposed Acquisition at least thirty (30) Business Days prior to the anticipated closing date of the proposed Acquisition; and not less than five (5) Business Days prior to the anticipated closing date of the proposed Acquisition, copies of the acquisition agreement and all other material documents relative to the proposed Acquisition (or if such acquisition agreement and other material documents are not in final form, drafts of such acquisition agreement and other material documents; provided that Borrower shall deliver final forms of such acquisition agreement and other material documents promptly upon completion);

(g) the total cash consideration, (excluding equity) for all such Acquisitions does not exceed Five Million Dollars (\$5,000,000.00) in the aggregate for all such Acquisitions;

(h) the resulting transaction is accretive to Borrower's business on a prospective pro forma financial basis as of twelve (12) months after giving effect to such Acquisition;

(i) no Indebtedness will be incurred, assumed, or would exist with respect to Borrower or its Subsidiaries as a result of the contemplated transaction, other than Permitted Indebtedness;

(j) the Acquisition shall not constitute an Unfriendly Acquisition; and

(k) the entity or assets acquired in such Acquisition shall not be subject to any Lien other than (x) the first-priority Liens granted in favor of Agent, if applicable and (y) Permitted Liens.

**"Permitted Indebtedness" is:**

- (a) Borrower's Indebtedness to Agent and the Lenders under this Agreement and the other Loan Documents;
- (b) Indebtedness existing on the Effective Date which is shown on the Perfection Certificate;
- (c) Subordinated Debt;
- (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;
- (e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;
- (f) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of "Permitted Liens" hereunder;
- (g) Indebtedness in connection with the Senior Loan Agreement;
- (h) to the extent constituting Indebtedness, Investments permitted pursuant to subsection (f) of the definition of Permitted Investments;
- (i) Indebtedness consisting of the financing of insurance premiums;
- (j) other unsecured Indebtedness not otherwise permitted by Section 7.4 in an aggregate principal amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) outstanding at any time;
- (k) unsecured Indebtedness in respect of guarantees, bank guarantees, surety or performance bonds and similar instruments issued for (i) Borrower's account in the ordinary course of Borrower's business or (ii) the account of any Subsidiary of Borrower in the ordinary course of Borrower's business in a maximum aggregate amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) in order to provide security for: (A) workers' compensation claims, unemployment insurance and other types of social security and employee health and disability benefits, or casualty-liability insurance, payment obligations in connection with self-insurance or similar requirements; and (B) tenders, completion guarantees, statutory obligations, surety, environmental or appeal bonds, bids, leases, government contracts, contracts (other than for borrowed money), performance bonds or other obligations of a like nature; and
- (l) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (k) above; provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

**"Permitted Investments" are:**

- (a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date which are shown on the Perfection Certificate;
- (b) (i) Investments consisting of Cash Equivalents, and (ii) any Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Agent;
- (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;
- (d) Investments consisting of deposit accounts (but only to the extent that Borrower is permitted to maintain such accounts pursuant to Section 6.6 of this Agreement) in which Agent has a first priority perfected security interest;
- (e) Investments accepted in connection with Transfers permitted by Section 7.1;
- (f) Investments by Borrower or any Subsidiary in (i) any Subsidiary that is a Borrower or a secured Guarantor or (ii) in any Borrower;
- (g) Investments consisting of the creation of a Subsidiary for the purpose of consummating a merger transaction permitted by Section 7.3 of this Agreement, which is otherwise a Permitted Investment;
- (h) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by the Board;
- (i) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;
- (j) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (j) shall not apply to Investments of Borrower in any Subsidiary;
- (k) joint ventures or strategic alliances in the ordinary course of Borrower's business, provided that any cash investments by Borrower do not exceed Five Hundred Thousand Dollars (\$500,000.00) in the aggregate in any fiscal year;
- (l) deposits made to secure the performance of leases in the ordinary course of business;
- (m) Permitted Acquisitions; and
- (n) other Investments not otherwise permitted by Section 7, not exceeding Five Hundred Thousand Dollars (\$500,000.00) in the aggregate outstanding at any time.

**"Permitted Liens" are:**

- (a) Liens existing on the Effective Date which are shown on the Perfection Certificate or arising under this Agreement and the other Loan Documents;
- (b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on Borrower's Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

- (c) purchase money Liens or capital leases (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Five Hundred Thousand Dollars (\$500,000.00) in the aggregate amount outstanding, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;
- (d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;
- (e) Liens in connection with the Senior Loan Agreement;
- (f) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Agent a security interest therein;
- (g) non-exclusive licenses of Intellectual Property granted to third parties in the ordinary course of business, and licenses of Intellectual Property that could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States;
- (h) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 8.4 and 8.7;
- (i) Liens in favor of other financial institutions arising in connection with Borrower's deposit and/or securities accounts held at such institutions, provided that (i) Agent has a first priority perfected security interest in the amounts held in such deposit and/or securities accounts (ii) such accounts are permitted to be maintained pursuant to Section 6.6 of this Agreement;
- (j) Liens on insurance proceeds in favor of insurance companies granted solely as a security for financed premiums;
- (k) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations (including pledges of deposits securing liability for reimbursement or indemnity arrangements and letters of credit with respect thereto);
- (l) Liens to secure the performance of bids, trade contracts (other than for borrowed money), contracts for the purchase of property permitted hereunder, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case, incurred in the ordinary course of business, not representing an obligation for borrowed money;
- (m) Liens arising from precautionary filings under the Code;
- (n) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, are not substantial in an amount and that 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 Borrower or any Subsidiary;
- (o) Liens on assets of Borrower or its Subsidiaries so long as (i) such Liens do not cover any property not subject to Bank's Liens and (ii) the aggregate outstanding principal amount of the obligations secured thereby does not exceed One Hundred Thousand Dollars (\$100,000.00) at any time; and

(p) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (o), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase.

“**Person**” is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

“**Prepayment Premium**” shall be an additional fee, payable to Agent, for the ratable benefit of the Lenders based on their Pro Rata Share, with respect to the Term Loan Advances, in an amount equal to:

(a) for a prepayment of the Term Loan Advances made on or prior to the first (1<sup>st</sup>) anniversary of the Effective Date, three percent (3.0%) of the then outstanding principal amount of the Term Loan Advances immediately prior to the date of such prepayment;

(b) for a prepayment of the Term Loan Advances made after the first (1<sup>st</sup>) anniversary of the Effective Date, but on or prior to the second (2<sup>nd</sup>) anniversary of the Effective Date, two percent (2.0%) of the then outstanding principal amount of the Term Loan Advances immediately prior to the date of such prepayment;

(c) for a prepayment of the Term Loan Advances made after the second (2<sup>nd</sup>) anniversary of the Effective Date, but on or prior to the third (3<sup>rd</sup>) anniversary of the Effective Date, one percent (1.0%) of the then outstanding principal amount of the Term Loan Advances immediately prior to the date of such prepayment; and

(d) for a prepayment of the Term Loan Advances made after the third (3<sup>rd</sup>) anniversary of the Effective Date, zero percent (0.0%) of the then outstanding principal amount of the Term Loan Advances immediately prior to the date of such prepayment.

“**Prime Rate**” is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement; and provided further that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Agent, the “Prime Rate” shall mean the rate of interest per annum announced by SVB as its prime rate in effect at its principal office in the State of California (such SVB announced Prime Rate not being intended to be the lowest rate of interest charged by SVB in connection with extensions of credit to debtors); provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**Pro Rata Share**” is, as of any date of determination, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by *dividing* the outstanding principal amount of Term Loan Advances held by such Lender by the aggregate outstanding principal amount of all Term Loan Advances.

“**Quarterly Financial Statements**” is defined in Section 6.2(c).

“**Registered Organization**” is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.

“**Removal Effective Date**” is defined in Section 10.10(d).

“**Repayment Schedule**” means the period of time equal to twenty-four (24) consecutive months, which shall be reduced to eighteen (18) consecutive months, once the Term B Loan Advance is made.

“**Representatives**” is defined in Section 13.9.

“**Requirement of Law**” is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**“Responsible Officer”** is any of the Chief Executive Officer, President, Chief Financial Officer, and Controller of Borrower.

**“Restricted License”** is any material license or other agreement with respect to which Borrower is the licensee (a) that prohibits Borrower from granting a security interest in, Borrower’s interest in such license or agreement or any other property, or (b) for which a default under or termination of would interfere with the Agent’s right to sell any Collateral.

**“Revenue Event”** means Borrower has achieved (calculated with respect to Borrower only and not on a consolidated basis), net revenue generated from the sale of Borrower’s products (excluding revenue generated with respect to licensing arrangements), determined in accordance with GAAP, of at least [\*\*\*] Dollars (\$[\*\*\*]) for any trailing six (6) month period ending no later than December 31, 2021 (which six (6) month period shall end no earlier than the last day of the first (1<sup>st</sup>) calendar month ending after the Effective Date).

**“SEC”** shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

**“Securities Account”** is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

**“Senior Loan Agreement”** means that certain Loan and Security Agreement by and between Borrower and SVB dated as of March 10, 2020, (as the same has been and may from time to time be further amended, modified, supplemented and/or restated).

**“Senior Loan Documents”** are, collectively, the Senior Loan Agreement and the Loan Documents as defined therein, all as amended, extended or restated form time to time.

**“Subordinated Debt”** is indebtedness incurred by Borrower subordinated to all of Borrower’s now or hereafter indebtedness to Agent and the Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Agent and the Lenders, entered into between Agent, the Lenders and the other creditor), on terms acceptable to Agent and the Lenders.

**“Subordination Agreement”** is that certain Subordination Agreement by and among SVB and Bank (as such term is defined in the Senior Loan Agreement), and the Lenders dated as of March 10, 2020 (as the same may from time to time be amended, modified, supplemented and/or restated).

**“Subsidiary”** is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

**“SVB”** is defined in the preamble hereof.

**“Term A Loan Advance”** is defined in Section 2.1.1(a).

**“Term B Loan Advance”** is defined in Section 2.1.1(a).

**“Term Loan Advance”** and **“Term Loan Advances”** are each defined in Section 2.1.1(a).

**“Term Loan Amortization Date”** means April 1, 2022, which shall be extended until October 1, 2022, once the Term B Loan Advance is made.

“**Term Loan Commitment**” means, for any Lender, the obligation of such Lender to make a Term Loan Advance as and when available, up to the principal amount shown on Schedule 1. “**Term Loan Commitments**” means the aggregate amount of such commitments of all Lenders.

“**Term Loan Commitment Percentage**” means, as to any Lender at any time, the percentage (carried out to the fourth decimal place) of the Term Loan Commitments represented by such Lender’s Term Loan Commitment at such time. The initial Term Loan Commitment Percentage of each Lender is set forth opposite the name of such Lender on Schedule 1.

“**Term Loan Maturity Date**” is March 1, 2024.

“**Testing Period**” is, at all times, commencing as of September 30, 2020, when unrestricted and unencumbered cash (other than Liens in favor of Agent for the ratable benefit of the Lenders under this Agreement) held in accounts in the name of Borrower maintained with SVB is less than two times (2x) the aggregate outstanding Obligations of Borrower to Lenders.

“**Trademarks**” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

“**Transfer**” is defined in Section 7.1.

“**WestRiver**” is defined in the preamble hereof.

[Signature page follows.]

Certain information has been excluded from this agreement (indicated by “[\*\*\*]”) because such information (i) is not material and (ii) would be competitively harmful if publicly disclosed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

**VERRICA PHARMACEUTICALS INC.**

By: /s/ A. Brian Davis  
Name: A. Brian Davis  
Title: Chief Financial Officer

AGENT:

**SILICON VALLEY BANK**, as Agent

By: /s/ Michael McMahon  
Name: Michael McMahon  
Title: Director

LENDERS:

**SILICON VALLEY BANK**, as Lender

By: /s/ Michael McMahon  
Name: Michael McMahon  
Title: Director

**WESTRIVER INNOVATION LENDING FUND VIII, L.P.**, as Lender

By: /s/ Trent Dawson  
Name: Trent Dawson  
Title: Chief Financial Officer

[Signature Page to Mezzanine Loan and Security Agreement]

**Schedule 1**  
**LENDERS AND COMMITMENTS**

**TERM LOAN COMMITMENTS**

**Term A Loan Advance**

<b><u>Lender</u></b>	<b><u>Term A Loan Advance Commitment</u></b>	<b><u>Term A Loan Advance Commitment Percentage</u></b>
Silicon Valley Bank	\$17,500,000.00	50.0%
WestRiver Innovation Lending Fund VIII, L.P.	\$17,500,000.00	50.0%
<b><u>TOTAL</u></b>	<b><u>\$35,000,000.00</u></b>	<b><u>100.0000%</u></b>

**Term B Loan Advance**

<b><u>Lender</u></b>	<b><u>Term B Loan Advance Commitment</u></b>	<b><u>Term B Loan Advance Commitment Percentage</u></b>
Silicon Valley Bank	\$7,500,000.00	50.0%
WestRiver Innovation Lending Fund VIII, L.P.	\$7,500,000.00	50.0%
<b><u>TOTAL</u></b>	<b><u>\$15,000,000.00</u></b>	<b><u>100.0000%</u></b>

## **EXHIBIT A – COLLATERAL DESCRIPTION**

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (a) any property to the extent that such grant of security interest is prohibited by any Requirement of Law of a Governmental Authority or constitutes a breach or default under or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such property, except to the extent that such Requirement of Law or the term in such contract, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under Section 9-406, 9-407, 9-408 or 9-409 of the Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity; provided, however, that such security interest shall attach immediately at such time as such Requirement of Law is not effective or applicable, or such prohibition, breach, default or termination is no longer applicable or is waived, and to the extent severable, shall attach immediately to any portion of the Collateral that does not result in such consequences; (b) Equipment that is subject to a Lien that is otherwise permitted pursuant to subsection (c) of the definition of "Permitted Liens" if the holder of such Lien has expressly prohibited Borrower in writing from granting Liens on such property in favor of third parties; provided that immediately upon the ineffectiveness, lapse, or termination of any such provision, the term "Collateral" shall include, and Borrower shall be deemed to have granted a security interest in, all of its rights, title and interests in and to such property as if such provision had never been in effect; or (c) Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Agent's, for the ratable benefit of the Lenders, security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property.

Pursuant to the terms of a certain negative pledge arrangement with Agent and the Lenders, Borrower has agreed not to encumber any of its Intellectual Property without Agent and the Lenders' prior written consent.

**EXHIBIT B**

**COMPLIANCE CERTIFICATE**

Date:

TO: SILICON VALLEY BANK, as Agent, SVB, and WESTRIVER INNOVATION LENDING FUND VIII, L.P., as Lender  
FROM: VERRICA PHARMACEUTICALS INC.

The undersigned authorized officer of VERRICA PHARMACEUTICALS INC. ("**Borrower**") certifies that under the terms and conditions of the Loan and Security Agreement among Borrower, SVB, and WestRiver (the "**Loan Agreement**"), (1) Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below, (2) there are no Events of Default, (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, (4) Borrower, and each of its Subsidiaries, has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.8 of the Agreement, and (5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Agent. Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

Please indicate compliance status by circling Yes/No under "Complies" column.

<u>Reporting Covenants</u>	<u>Required</u>	<u>Complies</u>
Monthly revenue, net profit and cash balance statements with Compliance Certificate	Monthly within 30 days	Yes No
Quarterly financial statements with Compliance Certificate	Within 45 days of quarter end (within 90 days of quarter end for Q4)	Yes No
Annual financial statement with Compliance Certificate (CPA Audited)	FYE within 180 days	Yes No
10-Q Report	Within 45 days of quarter end for 10-Q (within 90 days of quarter end for Q4)	Yes No
Filed 10-Q, 10-K and 8-K	Within 5 days after filing with SEC	Yes No
Board approved projections	30 days of FYE and as amended/updated	Yes No

<u>Financial Covenants</u>	<u>Required</u>	<u>Actual</u>	<u>Complies</u>
Minimum Revenue*	\$ *	\$	Yes No

\* as set forth in Section 6.7

As of the date of this Certificate, the following financial covenant analysis and information set forth in Schedule 1 attached hereto are true and accurate for the period indicated.

**Other Matters**

Have there been any amendments of or other changes to the capitalization table of Borrower listed to the Operating Documents of Borrower or any of its Subsidiaries? If yes, provide details of any such amendments or changes with this Compliance Certificate. Yes No

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

-----  
-----  
-----

VERRICA PHARMACEUTICALS INC.

By:  
Name:  
Title:

**AGENT USE ONLY**

Received by: \_\_\_\_\_  
AUTHORIZED SIGNER

Date: \_\_\_\_\_

Verified: \_\_\_\_\_  
AUTHORIZED SIGNER

Date: \_\_\_\_\_

Compliance Status: Yes No

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**Schedule 1 to Compliance Certificate**

**Financial Covenants of Borrower**

In the event of a conflict between this Schedule and the Loan Agreement, the terms of the Loan Agreement shall govern.

Dated: \_\_\_\_\_

**I. Minimum Revenue (Section 6.7)**

Required: During a Testing Period, Borrower shall achieve (calculated with respect to Borrower only and not on a consolidated basis) for the most recent calendar quarter then-ended and each calendar quarter thereafter if such Testing Period is still in effect, minimum net revenue, generated from the sale of Borrower's products (excluding revenue generated with respect to licensing arrangements), determined in accordance with GAAP, measured on a trailing six (6) month basis, of at least:

<b>Trailing Six (6) Month Period Ending</b>	<b>Minimum Revenue</b>
September 30, 2020	[***]
December 31, 2020	[***]
March 31, 2021	[***]
June 30, 2021	[***]
September 30, 2021	[***]
December 31, 2021	[***]

.

Actual:

A. Minimum Revenue \$

Is line A equal to or greater than \_\_\_\_\_\*?

\* As set forth above.

No, not in compliance                      Yes, in compliance

**LOAN PAYMENT/ADVANCE REQUEST FORM**  
**DEADLINE FOR SAME DAY PROCESSING IS NOON EASTERN TIME**

Fax To: \_\_\_\_\_ Date: \_\_\_\_\_

**PAYMENT:** VERRICA PHARMACEUTICALS INC.

Account # \_\_\_\_\_ To Account # \_\_\_\_\_  
(Deposit Account #) (Loan Account #)  
Total \$ \_\_\_\_\_ and/or Interest \$ \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Phone \_\_\_\_\_ Num \_\_\_\_\_  
Name/Title: \_\_\_\_\_

**ADVANCE:**

Complete *Outgoing Wire Request* section below if all or a portion of the funds from this loan advance are for an outgoing wire.

Account # \_\_\_\_\_ To Account # \_\_\_\_\_  
(Loan Account #) (Deposit Account #)

Amount of Term Loan Advance \$ \_\_\_\_\_

Borrower's representations and warranties in the Mezzanine Loan and Security Agreement are true, correct and complete in all material respects on the date of the loan advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by a materiality exception in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date:

Authorized Signature: \_\_\_\_\_ Phone \_\_\_\_\_ Num \_\_\_\_\_  
Name/Title: \_\_\_\_\_

**OUTGOING WIRE REQUEST:**  
**Complete only if all or a portion of funds from the loan advance above is to be wired.**  
Deadline for same day processing is noon, Eastern Time

Beneficiary Name: \_\_\_\_\_ Amount of Wire: \$ \_\_\_\_\_  
Beneficiary Bank: \_\_\_\_\_ Account Number: \_\_\_\_\_  
Beneficiary State: \_\_\_\_\_

Beneficiary Bank Transit (ABA) #: \_\_\_\_\_ Beneficiary Bank Code (Swift, Sort, C): \_\_\_\_\_

**(For International Wire Only)**

Beneficiary Bank: \_\_\_\_\_ Transit (ABA) \_\_\_\_\_  
Beneficiary Credit to: \_\_\_\_\_

Special Instruction: \_\_\_\_\_  
By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).

Authorized Signature: \_\_\_\_\_ 2nd Signature (if required): \_\_\_\_\_  
Name/Title: \_\_\_\_\_ Print Name/Title: \_\_\_\_\_

Phone #: \_\_\_\_\_ Telephone \_\_\_\_\_

**EXHIBIT D**

**Form of Disbursement Letter**

[see attached]

**DISBURSEMENT LETTER**

[DATE]

The undersigned, being the duly elected and acting \_\_\_\_\_ of **VERRICA PHARMACEUTICALS INC.**, a Delaware corporation ("**Borrower**"), does hereby certify to (a) **SILICON VALLEY BANK**, a California corporation ("**SVB**"), in its capacity as administrative agent and collateral agent ("**Agent**"), (b) **SILICON VALLEY BANK**, a California corporation, as a lender, (c) **WESTRIVER INNOVATION LENDING FUND VIII, L.P.**, a Delaware limited partnership ("**WestRiver**"), as a lender (SVB and WestRiver and each of the other "**Lenders**" from time to time a party hereto are referred to herein collectively as the "**Lenders**" and each individually as a "**Lender**") in connection with that certain Mezzanine Loan and Security Agreement dated as of March 10, 2020 by and among Borrower, Agent and the Lenders from time to time party thereto (the "**Loan Agreement**"; with other capitalized terms used below having the meanings ascribed thereto in the Loan Agreement) that:

1. The representations and warranties made by Borrower in Section 5 of the Loan Agreement and in the other Loan Documents are true and correct in all material respects as of the date hereof.
2. No event or condition has occurred that would constitute an Event of Default under the Loan Agreement or any other Loan Document.
3. Borrower is in compliance with the covenants and requirements contained in Sections 4, 6 and 7 of the Loan Agreement.
4. All conditions referred to in Section 3 of the Loan Agreement to the making of a Credit Extension to be made on or about the date hereof have been satisfied or waived by Agent.
5. No Material Adverse Change has occurred.
6. The undersigned is an Authorized Signer.

*[Balance of Page Intentionally Left Blank]*

7A. The proceeds of the [Term Loan Advance] shall be disbursed as follows:

**Disbursement from SVB:**

Loan Amount	\$ _____
Plus:	
--Deposit Received	\$ _____
Less:	
--Commitment Fee	(\$ _____)
--Lender's Legal Fees	(\$ _____)*

**Net Proceeds due from SVB:**

\$ \_\_\_\_\_

**Disbursement from WestRiver:**

Loan Amount	\$ _____
Plus:	
--Deposit Received	\$ _____
Less:	
--Commitment Fee	(\$ _____)

**Net Proceeds due from WestRiver:**

\$ \_\_\_\_\_

Loan Amount	\$ _____
Plus:	
--Deposit Received	\$ _____
Less:	
--Commitment Fee	(\$ _____)

**Net Proceeds due from Agent**

\$ \_\_\_\_\_

**TOTAL [TERM LOAN ADVANCE] NET PROCEEDS FROM LENDERS**

\$ \_\_\_\_\_

7B. Funds from **VERRICA PHARMACEUTICALS INC.** ("**Borrower**") Designated Deposit Account shall be disbursed as follows:

**SVB:**

Term Loan Fees	\$ _____
Revolver Loan Fees	\$ _____
Lender's Legal Fees	\$ _____

**WestRiver:** Designated Deposit Account: \_\_\_\_\_

\* Legal fees and costs are through the Effective Date. Postclosing legal fees and costs, payable after the Effective Date, to be invoiced and paid postclosing.

Term Loan Fees  
Revolver Loan Fees  
**Funds due from Borrower ("Total Funds")**

\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_

8A. The aggregate net proceeds of the [Term Loan Advance] shall be transferred to the Designated Deposit Account as follows:

Account Name: \_\_\_\_\_  
Bank Name: Silicon Valley Bank  
Bank Address: 3003 Tasman Drive  
Santa Clara, California 95054  
Account Number: \_\_\_\_\_  
ABA Number: \_\_\_\_\_

8B. Borrower authorized SVB to debit the Total Funds from the Designated Deposit Account set forth below:

Account Name: \_\_\_\_\_  
Bank Name: Silicon Valley Bank  
Bank Address: 3003 Tasman Drive  
Santa Clara, California 95054  
Account Number: \_\_\_\_\_  
ABA Number: \_\_\_\_\_

Dated as of the date first set forth above.

**BORROWER:**

VERRICA PHARMACEUTICALS INC.

By  
Name:  
Title:

**AGENT AND LENDER:**

SILICON VALLEY BANK

By  
Name:  
Title:

**LENDER:**  
SILICON VALLEY BANK

By  
Name:  
Title:

**LENDER:**

WESTRIVER INNOVATION LENDING FUND  
VIII, L.P.

By  
Name:  
Title:

**FIRST AMENDMENT TO LEASE AGREEMENT**

**THIS FIRST AMENDMENT TO LEASE AGREEMENT** (the “**First Amendment**”) is entered into this 12 day of March, 2020, by and between **44 WEST GAY LLC**, a Pennsylvania limited liability company (the “**Landlord**”) and **VERRICA PHARMACEUTICALS INC.**, a Delaware corporation (the “**Tenant**”).

**WITNESSETH:**

A. Landlord and Tenant are parties to that certain Lease Agreement dated July 1, 2019 (the “**Lease**”), pursuant to which Landlord leased to Tenant, and Tenant accepted from Landlord, certain premises consisting of approximately 5,829 rentable square feet of space known as Suite Number 400 (the “**Original Premises**”) located on the fourth floor of the building (the “**Building**”), along with common areas, located at 44 West Gay Street, West Chester, Pennsylvania, as more particularly described in the Lease.

B. Landlord and Tenant now desire to amend the Lease to expand the Original Premises to include approximately 5,372 rentable square feet of space (the “**Additional Premises**”) located on the fourth floor of the Building, which Additional Premises is depicted on **Exhibit “A”** attached hereto, so that the premises shall consist of approximately 11,201 rentable square feet of space (the “**Premises**”), upon the terms and conditions as hereinafter set forth.

**NOW, THEREFORE**, in consideration of the covenants and conditions set forth herein, the parties hereto, intending to be legally bound, hereby agree that the Lease is hereby amended and supplemented as follows:

1. **RECITALS/DEFINITIONS.** The above recitals are true and correct and are hereby incorporated into this First Amendment as if set forth herein at length. Any and all capitalized terms not defined herein shall have the definitions set forth in the Lease.

2. **ADDITIONAL PREMISES.** Effective as of the date on which Landlord delivers to Tenant possession of the Additional Premises with the Landlord’s Additional Premises Work (hereinafter defined) substantially complete (the “**Effective Date**”), Landlord hereby leases to Tenant, and Tenant hereby accepts from Landlord, the Additional Premises to be used by Tenant solely for the uses permitted in **Section 1** of the Lease. All terms and conditions of the Lease (as amended hereby) shall apply to the Additional Premises except: (w) as specifically set forth herein; (x) the Base Rent with respect to the Additional Premises shall be as set forth in **Section 4** of this First Amendment; (y) Tenant’s Proportionate Share of Operating Expenses, additional rent, and all other figures in the Lease affected by the addition of such rentable square feet of space to the Premises shall be adjusted accordingly; and (z) Tenant shall not be entitled to any allowances, credits, options or other concessions with respect to the Additional Premises except as specifically set forth in this First Amendment. From and after the Effective Date, all references in the Lease to the “**Premises**” shall be deemed to include both the Original Premises and the Additional Premises.

3. **TERM.** The initial term of the Lease for the Additional Premises shall commence on the Effective Date and shall expire on May 31, 2027 (the “**New Expiration Date**”), unless otherwise terminated or extended in accordance with the provisions set forth in the Lease. The initial term of the Lease for the Original Premises shall likewise be extended to expire on the New Expiration Date.

4. **BASE RENT.** Commencing on the Effective Date, with respect to the Original Premises, Section 1 of the Lease is hereby amended as set forth herein. Tenant shall pay to Landlord an annual Base Rent for both the Original Premises and the Additional Premises as follows:

<b><u>Period</u></b>	<b><u>Base Rent</u></b>	<b><u>Monthly Installment</u></b>
Effective Date – 12/31/2020*	\$87,435.00	\$14,572.50
1/1/2021 – 5/31/2021	\$168,015.00	\$28,002.50
6/1/2021 – 5/31/2022	\$341,630.50	\$28,469.21
6/1/2022 – 5/31/2023	\$347,231.00	\$28,935.92
6/1/2023 – 5/31/2024	\$352,831.50	\$29,402.63
6/1/2024 – 5/31/2025	\$358,432.00	\$29,869.33
6/1/2025 – 5/31/2026	\$364,032.50	\$30,336.04
6/1/2027 – 5/31/2027	\$369,633.00	\$30,802.75
<b><u>Extension Period</u></b>	<b><u>Base Rent</u></b>	<b><u>Monthly Installment</u></b>
6/1/2027 – 5/31/2028	\$375,233.50	\$31,269.46
6/1/2028 – 5/31/2029	\$380,834.00	\$31,736.17
6/1/2029 – 5/31/2030	\$386,434.50	\$32,202.88
6/1/2030 – 5/31/2031	\$392,035.00	\$32,669.58
6/1/2031 – 5/31/2032	\$397,635.50	\$33,136.29

\*In the foregoing Base Rent chart, the Base Rent from the Effective Date through December 31, 2020 is based on the rentable square footage of the Original Premises only.

5. **TENANT’S PROPORTIONATE SHARE.** Commencing on the Effective Date (but subject to Section 6 of this First Amendment), Section 1 of the Lease is hereby amended so that Tenant’s Proportionate Share shall be 33.33%, which is determined by dividing the rentable square footage of the Premises (11,201) by the rentable square footage of all office spaces in the Building, excluding the basement and all retail space (33,603).

6. **ADDITIONAL RENT.** Subject to the terms of this Section 6, Tenant shall continue to be responsible for and shall pay to Landlord, as and when due, any and all charges due under the Lease, including, without limitation, Tenant's Proportionate Share of Operating Expenses, which, as of January 1, 2021, shall be increased to take into account the square footage of the Additional Premises. To clarify the immediately preceding sentence, commencing on the Effective Date and expiring on December 31, 2020, Tenant shall not be obligated to pay any Operating Expenses for the Additional Premises, provided, however, during such period: (i) Tenant shall remain obligated to pay Tenant's Proportionate Share of Operating Expenses for the Original Premises; and (ii) Tenant shall be obligated to pay for all utilities consumed within the Additional Premises and for the cost of janitorial services to the Additional Premises. Commencing on January 1, 2021, and through the New Expiration Date, Tenant shall pay its Proportionate Share of Operating Expenses for both the Original Premises and the Additional Premises.

7. **LANDLORD'S ADDITIONAL PREMISES WORK.** Subject to the Tenant Allowance (hereinafter defined), prior to the Effective Date, Landlord shall construct the work required to be performed in the interior of the Additional Premises as set forth on Exhibit "B" attached hereto (the "**Landlord's Additional Premises Work**") in accordance with Tenant's Additional Premises Work Plans (hereinafter defined). Except for Landlord's Additional Premises Work (and Landlord's Work as set forth in Section 3 of the Lease), Landlord shall not be obligated to perform any improvements to the Premises or to or for the benefit of Tenant, and except as expressly set forth in the Lease, as amended hereby, Landlord makes no representations or warranties regarding the Additional Premises or Landlord's Additional Premises Work, express or implied, including, any warranty of habitability, merchantability, or fitness for a particular use. Promptly following full execution of this First Amendment, Tenant shall deliver to Landlord, for Landlord's approval, plans and specifications depicting Landlord's Additional Premises Work prepared by a licensed architect ("**Tenant's Additional Premises Work Plans**"), which work shall not affect the structure or exterior of the Building or any building systems. Landlord shall secure and pay for all permits and fees, licenses and inspections necessary for the proper execution and completion of Landlord's Additional Premises Work the cost of which shall be included in Costs (hereinafter defined). Landlord shall use commercially reasonable efforts to cause Landlord's Additional Premises Work to be substantially completed on or before the Additional Premises Estimated Delivery Date, subject to extension for any time lost by Landlord due to Force Majeure and/or Tenant Delay.

8. **TENANT ALLOWANCE FOR ADDITIONAL PREMISES.** Landlord shall construct Landlord's Additional Premises Work pursuant to Tenant's Additional Premises Work Plans, as approved by Landlord, but in no event shall Landlord be obligated to incur Costs to construct Landlord's Additional Premises Work in excess of \$55.00 per square foot of the Additional Premises, which amount equals \$295,460.00 (the "**Additional Premises Allowance**" and, together with the "Allowance" set forth in Section 1 of the Lease, the "**Improvement Allowance**"). Tenant shall be responsible for all Costs in excess of the Additional Premises Allowance. "**Costs**" shall mean all "hard" and "soft" costs to construct Landlord's Additional Premises Work. "Hard" costs shall include the actual costs of labor and materials in the construction of Landlord's Additional Premises Work, including contractor profit, overhead and

general conditions. "Soft" costs shall include all costs other than "hard" costs, including, without limitation, design, engineering and architect's fees, project management fees (not to exceed 3% of total Costs), permit fees and inspection fees. Landlord shall bid the final construction drawings for Landlord's Additional Premises Work and shall deliver to Tenant an estimate of the Costs based upon the bid selected by Landlord and such other information as Landlord considers relevant in determining the total Costs. If the Costs are estimated to exceed the Additional Premises Allowance, Tenant shall pay to Landlord within ten (10) days after receipt of such estimate the difference between the Costs and the budgeted amount of the Costs (the "Excess"). Upon completion of Landlord's Additional Premises Work, Landlord shall submit to Tenant a statement of the actual Costs incurred by Landlord. If the actual Costs exceed the Additional Premises Allowance and the Excess paid to Landlord, Tenant shall pay such additional amount to Landlord within ten (10) days after receipt of such statement. If the actual Costs exceed the Additional Premises Allowance, but are less than the Additional Premises Allowance and the Excess, Landlord shall refund the difference to Tenant with such statement. If the actual Costs are less than the Additional Premises Allowance, Landlord shall credit any excess to Tenant for moving expenses and costs for furniture, fixtures and equipment actually incurred by Tenant, and any additional excess shall be credited against Base Rent. If Tenant requests, and Landlord approves, any changes to Tenant's Additional Premises Work Plans, Tenant shall be responsible for one hundred percent (100%) of the costs to implement such change, including any costs resulting from delays in Landlord's Additional Premises Work, and Tenant shall pay such excess Costs to Landlord as a condition to Landlord's obligation to construct such change. The funds of Additional Premises Allowance may for all purposes be comingled with the funds of the Allowance.

9. **OPTION TO EXTEND LEASE TERM.** The renewal options set forth in Section 1 of the Lease remain in full force and effect.

10. **RIGHT OF FIRST OFFER.** The Right of First Offer set forth in Section 1 of the Lease is hereby deleted in its entirety and shall be of no further force or effect.

11. **SECURITY DEPOSIT.** Landlord acknowledges receipt of the Security Deposit in the amount of Nineteen Thousand Three Hundred Ninety-One and 14/100 Dollars (\$19,391.14), it being acknowledged that Landlord shall continue to hold the Security Deposit pursuant to the terms of the Lease.

12. **CONFESSION OF JUDGMENT.** The confession of judgment set forth in Section 35 of the Lease is hereby restated in its entirety as follows:

**(A) INTENTIONALLY OMITTED**

**(B) TENANT HEREBY AUTHORIZES AND EMPOWERS THE PROTHONOTARY, CLERK OF COURT OR ANY ATTORNEY OF ANY COURT OF RECORD IN THIS COMMONWEALTH OR ELSEWHERE TO APPEAR FOR TENANT UPON OR AFTER THE EXPIRATION OF THE TERM OF THIS LEASE, AS AMENDED, (OR ANY EXTENSION OR RENEWAL THEREOF), OR UPON OR AFTER THIS LEASE, AS AMENDED,**

HAS TERMINATED ON ACCOUNT OF ANY EVENT OF DEFAULT ON THE PART OF TENANT HEREUNDER, TO APPEAR AS ATTORNEY FOR TENANT AS WELL AS FOR ALL PERSONS CLAIMING BY, THROUGH OR UNDER TENANT, AND THEREIN TO CONFESS JUDGMENT IN EJECTMENT FOR POSSESSION OF THE PREMISES HEREIN DESCRIBED, FOR WHICH THIS LEASE, AS AMENDED, AND THE APPOINTMENTS HEREIN SHALL BE SUFFICIENT WARRANT; THEREUPON, IF LANDLORD SO DESIRES, AN APPROPRIATE WRIT OF POSSESSION MAY ISSUE FORTHWITH, WITHOUT ANY PRIOR WRIT OR PROCEEDING WHATSOEVER, AND PROVIDED THAT IF FOR ANY REASON AFTER SUCH ACTION SHALL HAVE BEEN COMMENCED IT SHALL BE DETERMINED THAT POSSESSION OF THE PREMISES SHOULD REMAIN IN OR BE RESTORED TO TENANT, LANDLORD SHALL HAVE THE RIGHT FOR THE SAME DEFAULT AND UPON ANY SUBSEQUENT EVENT OR EVENTS OF DEFAULT, OR UPON THE TERMINATION OF THIS LEASE, AS AMENDED, OR OF TENANT'S RIGHT OF POSSESSION AS HEREINBEFORE SET FORTH, TO BRING ONE OR MORE FURTHER ACTIONS AS HEREINBEFORE SET FORTH TO RECOVER POSSESSION OF THE PREMISES AND TO CONFESS JUDGMENT (FOR THE RECOVERY OF POSSESSION OF THE PREMISES BY LANDLORD AS HEREINBEFORE PROVIDED. THE FOREGOING WARRANT SHALL NOT BE EXHAUSTED BY ANY ONE EXERCISE THEREOF BUT SHALL BE EXERCISABLE FROM TIME TO TIME AND AS OFTEN AS THERE IS ANY ONE OR MORE EVENTS OF DEFAULT OR WHENEVER THIS LEASE, AS AMENDED, AND THE TERM OR ANY EXTENSION OR RENEWAL THEREOF SHALL HAVE EXPIRED, OR TERMINATED ON ACCOUNT OF ANY EVENT OF DEFAULT BY TENANT HEREUNDER. THE TENANT AGREES THAT THE POWER TO CONFESS JUDGMENT GRANTED BY THIS PARAGRAPH IS COUPLED WITH AN INTEREST, AND IS THEREFORE IRREVOCABLE.

IN ANY SUCH ACTION, A TRUE COPY OF THIS LEASE, AS AMENDED, SHALL BE SUFFICIENT WARRANT, AND IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL AS A WARRANT OF ATTORNEY, ANY RULE OF COURT, CUSTOM OR PRACTICE TO THE CONTRARY NOTWITHSTANDING.

TENANT ACKNOWLEDGES AND AGREES THAT THIS LEASE, AS AMENDED, CONTAINS PROVISIONS UNDER WHICH LANDLORD MAY ENTER JUDGMENT BY CONFESSION AGAINST TENANT. BEING FULLY AWARE OF TENANT'S RIGHTS TO PRIOR NOTICE AND A HEARING ON THE VALIDITY OF ANY JUDGMENT OR OTHER CLAIMS THAT MAY BE ASSERTED AGAINST TENANT BY LANDLORD HEREUNDER BEFORE JUDGMENT IS ENTERED, TENANT HEREBY FREELY, KNOWINGLY AND INTELLIGENTLY WAIVES THESE RIGHTS AND EXPRESSLY AGREES AND CONSENTS TO LANDLORD'S ENTERING JUDGMENT AGAINST TENANT BY CONFESSION PURSUANT TO THE TERMS OF THIS LEASE, AS AMENDED.

(C) TENANT ALSO ACKNOWLEDGES AND AGREES THAT THIS LEASE, AS AMENDED, CONTAINS PROVISIONS UNDER WHICH LANDLORD MAY, AFTER ENTRY OF JUDGMENT AND WITHOUT EITHER NOTICE OR A HEARING, FORECLOSE UPON, ATTACH, LEVY OR OTHERWISE SEIZE PROPERTY (REAL OR PERSONAL) OF THE UNDERSIGNED IN FULL OR PARTIAL PAYMENT OR OTHER SATISFACTION OF THE JUDGMENT. BEING FULLY AWARE OF TENANT'S RIGHTS AFTER JUDGMENT IS ENTERED (INCLUDING THE RIGHT TO MOVE OR PETITION TO OPEN OR STRIKE THE JUDGMENT), THE UNDERSIGNED HEREBY FREELY, KNOWINGLY AND INTELLIGENTLY WAIVES THESE RIGHTS AND EXPRESSLY AGREES AND CONSENTS TO LANDLORD'S TAKING SUCH ACTIONS AS MAY BE PERMITTED UNDER APPLICABLE STATE AND FEDERAL LAW, AND ACKNOWLEDGES THAT THE LANDLORD MAY CAUSE PROPERTY OF THE TENANT TO BE SEIZED AND SOLD WITHOUT PRIOR NOTICE TO TENANT. WITHOUT LIMITING THE FOREGOING, TENANT SPECIFICALLY WAIVES THE NOTICES AND NOTICE REQUIREMENTS OF RULES 2956.1, 2958.1, 2958.2, 2958.3, 2973.1, 2973.2, AND 2973.3.

VERRICA PHARMACEUTICALS, INC.

Witness: /s/ Christopher G Hayes  
Name: Christopher G Hayes

By: /s/ ted white  
Name: Ted White  
Title: CEO

13. **BROKERAGE COMMISSIONS.** Each party represents and warrants to the other that it has not entered into any agreement or incurred or created any obligation which might require the other party to pay any broker's commission, finder's fee or other commission or fee relating to the leasing of the Additional Premises. Each party shall indemnify, defend and hold harmless the other party and its respective officers, directors, shareholders, agents and employees from and against all claims for any such commissions or fees made by anyone claiming by or through the indemnifying party.

14. **ENTIRE AGREEMENT/RATIFICATION**. This First Amendment represents the entire understanding of the parties with respect to the subject matter hereof, and the Lease as hereby amended remains in full force and effect and may not be modified further except in writing executed by the parties to be bound thereby. Unless expressly modified herein, the terms and conditions of the Lease shall continue in full force and effect, and the parties hereby confirm and ratify the same.

15. **MISCELLANEOUS**. This First Amendment shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.

16. **COUNTERPARTS**. This First Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The transmission of a signed counterpart of this First Amendment by facsimile or by portable document file ("PDF") shall have the same force and effect as the delivery of an original signed counterpart of this First Amendment and shall constitute valid and effective delivery for all purposes.

- SIGNATURE PAGE TO FOLLOW -

IN WITNESS WHEREOF, the parties have executed this First Amendment on the date first written above.

**LANDLORD:**

**44 WEST GAY LLC,**  
a Pennsylvania limited liability company

Witness:  \_\_\_\_\_

By: /s/ Eli A. Kahn  
Eli A. Kahn, Member

**TENANT:**

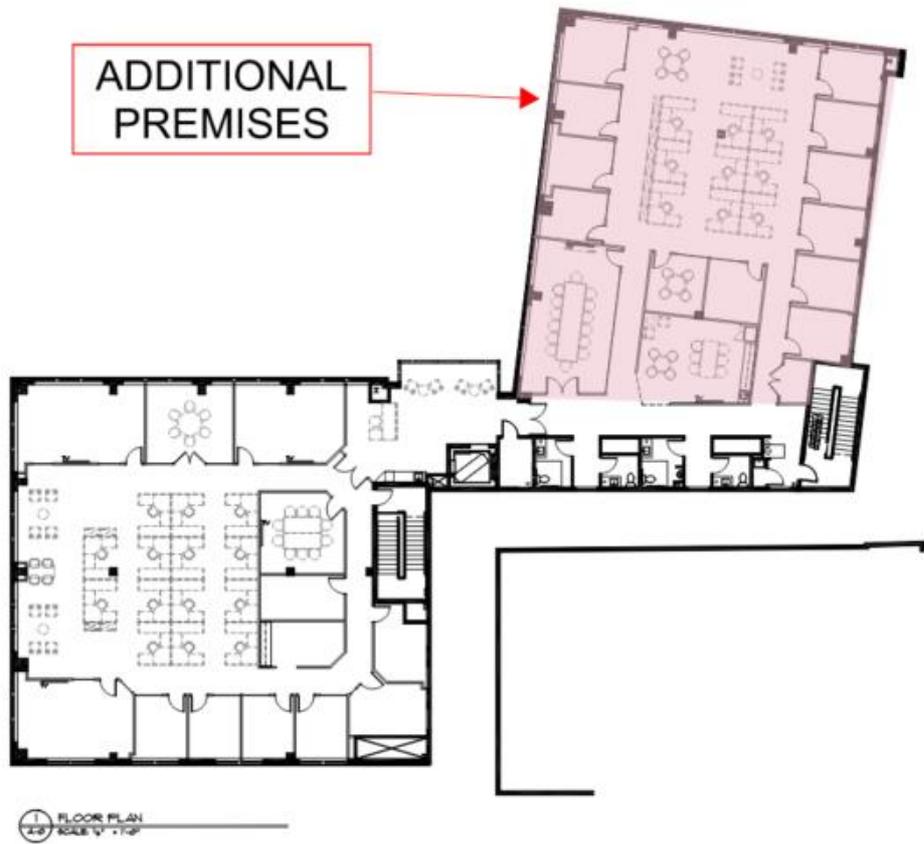
**VERRICA PHARMACEUTICALS, INC.,**  
a Delaware corporation

Witness: /s/ Christopher G Hayes  
Christopher G Hayes

By: /s/ ted white  
Name: Ted White  
Title: CEO

EXHIBIT "A"

ADDITIONAL PREMISES



**EXHIBIT "B"**

**LANDLORD'S ADDITIONAL PREMISES WORK**

See attached

<b>POLEK SCHWARTZ</b> ARCHITECTS 1180 West Sandeford Road Suite 140 Berwyn, PA 19312 610 889-9090 Fax 610 889-9335	<b>VERRICA PHARMACEUTICALS</b> 44 W. MARKET STREET FOURTH FLOOR - SUITE 400 WEST CHESTER, PA	DATE: FEBRUARY 12, 2020	REVISIONS		
		SCALE: 1/8" = 1'-0"	NO.	DATE	DESCRIPTION
		PROJECT NO.:			
		33,090,12			
		DRAWN BY: A.F.S.J.L.P.			



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**VERRICA PHARMACEUTICALS INC.  
CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Ted White, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended March 31, 2020 of Verrica Pharmaceuticals Inc. (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer(s) 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(s) 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: May 7, 2020

/s/ Ted White

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Ted White

President and Chief Executive Officer  
(principal executive officer)

**VERRICA PHARMACEUTICALS INC.**  
**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER**  
**PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, A. Brian Davis, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended March 31, 2020 of Verrica Pharmaceuticals Inc. (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer(s) 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(s) 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: May 7, 2020

/s/ A. Brian Davis

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A. Brian Davis  
Chief Financial Officer  
(principal financial officer)

**VERRICA PHARMACEUTICALS INC.  
PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Ted White, President and Chief Executive Officer of Verrica Pharmaceuticals Inc. (the "Company"), and A. Brian Davis, Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Quarterly Report on Form 10-Q for the period ended March 31, 2020, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

**IN WITNESS WHEREOF** , the undersigned have set their hands hereto as of the 7th day of May, 2020.

/s/ Ted White

Ted White  
President and Chief Executive Officer  
(principal executive officer)

/s/ A. Brian Davis

A. Brian Davis  
Chief Financial Officer  
(principal financial officer)

- \* This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.