

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): February 8, 2024

BioXcel Therapeutics, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-38410
(Commission File Number)

82-1386754
(IRS Employer
Identification No.)

555 Long Wharf Drive
New Haven, CT 06511
(Address of principal executive offices, including Zip Code)

(475) 238-6837
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001	BTAI	The Nasdaq Capital Market

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

Emerging growth company

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

Item 8.01. Other Events.

BioXcel Therapeutics, Inc. (the “Company”) is providing the following updates.

BXCL501 Updates and Planned Activities

On November 14, 2023, the Company announced that it had received the final minutes from its meeting with the FDA held on October 11, 2023. Based on feedback from that meeting, the Company currently plans to conduct an additional Phase 3 trial of BXCL501 in its TRANQUILITY program to evaluate safety and collect additional efficacy data in the at-home setting. The Company is also planning to hold a Type B Breakthrough Therapy Designation Meeting with the FDA on February 20, 2024 to obtain feedback on the design of its proposed at-home study in patients with dementia due to probable Alzheimer’s disease, with a focus on caregiver-assessed efficacy endpoints, and to discuss the content and format of a proposed supplemental New Drug Application (“sNDA”) submission to expand labeling for BXCL501 to include the acute treatment of agitation associated with dementia due to probable Alzheimer’s disease. Subject to discussions with the FDA, the Company expects to initiate its Phase 3 TRANQUILITY II at-home trial in the first half of 2024 with topline results expected to be announced in the first quarter of 2025.

On December 12, 2023, the Company announced that it had received the final minutes from its meeting with the FDA held on November 8, 2023. Based on the feedback from the FDA meeting, the Company currently plans to evaluate BXCL501 in the at-home setting for the acute treatment of agitation in bipolar disorders and schizophrenia using a 120 mcg dose, with safety as the primary endpoint and with efficacy evaluations as exploratory endpoints. The Company is also planning to hold a Type C Meeting with the FDA on March 6, 2024 to obtain further feedback on its proposed changes to the design of its SERENITY III at-home trial with a focus on efficacy endpoints, and to discuss the content and format of a potential sNDA submission to expand labeling for BXCL501 120 mcg for the acute treatment of agitation associated with schizophrenia and bipolar disorders in the outpatient setting. Subject to discussions with the FDA, the Company expects to initiate its Phase 3 SERENITY III at-home trial in the first half of 2024.

Agitation in patients with neuropsychiatric diseases is a serious medical condition. Agitation is characterized by feelings of unease, excessive talking, and/or unintentional and purposeless motions, such as wringing of the hands or pacing. People experiencing agitation may also express excitement, hostility, poor impulse control, tension, uncooperativeness, and occasional disruptive behavior, which may lead to aggression and violence. In many cases, people develop agitation when treatment for their underlying disorder is not working well. Stressful situations or traumatic events can also trigger agitation. Agitation can occur suddenly or slowly and vary in length, lasting for a few minutes or for an extended period.

With the agitation issues associated with schizophrenia and bipolar disorders coupled with a fast-growing elderly population that is likely to experience increased levels of agitation associated with Alzheimer’s disease, the difficulties and expenses of acute treatment of agitation are expected to grow significantly. The Company estimates that in the United States, approximately 1.9 million patients with Alzheimer’s disease experience agitation at a rate of about 6 episodes per month, on average. An estimated 1.6 million Americans diagnosed with schizophrenia or bipolar disorders experience agitation at a rate of about 3 episodes per month, on average. Accordingly, the Company believes there is significant market opportunity for BXCL501 if approved for use in these populations in the at-home setting.

Liquidity

Based upon preliminary information available to the Company, as of January 31, 2024, the Company estimates that it had approximately \$61.6 million of cash and cash equivalents. This estimate is based on currently available information, does not present all necessary information for an understanding of the Company's financial condition as of January 31, 2024, and is subject to change upon completion of its financial statement closing procedures. The Company's independent registered public accounting firm has not audited, reviewed or performed any procedures with respect to this estimate and, accordingly, does not express an opinion or any other form of assurance about it. In addition, as of January 31, 2024, \$102.7 million in principal amount was outstanding under the Credit Agreement and Guaranty by and among the Company, certain of our subsidiaries as guarantors, the lenders party thereto and Oaktree Fund Administration LLC, as administrative agent, as amended as of December 5, 2023 (the "Credit Agreement").

Risk Factors

The Company has limited clinical data supporting potential safety or efficacy of BXCL501 for use in the acute treatment of agitation in patients with dementia due to probable Alzheimer's disease in the at-home setting.

In August 2023, the Company announced its intention to pursue a strategic reprioritization of its commercialization and development efforts (the "Reprioritization"), including among other things, a shift in focus to primarily develop BXCL501 for use in expanded settings, including the at-home setting and care facilities, for the acute treatment of agitation in patients with dementia due to probable Alzheimer's disease and the acute treatment of agitation in schizophrenia and bipolar patients in the at-home setting. Although the Company has conducted several clinical trials that evaluated BXCL501 in the institutional setting, it has limited data supporting BXCL501's potential use in the at-home setting. In particular, the Company has not conducted a clinical trial evaluating the at-home use of BXCL501 in the acute treatment of agitation in patients with dementia due to probable Alzheimer's disease.

Although the Company will seek additional feedback from the FDA regarding the potential of its ongoing or completed clinical trials to support submission of one or more sNDAs, it is possible that the FDA may not consider the Company's available data adequate to support such submissions. For example, on October 11, 2023, the Company received feedback from the FDA that TRANQUILITY I and TRANQUILITY II alone are not sufficient to support an sNDA submission for the use of BXCL501 to treat acute agitation (non-daily) in patients with dementia due to probable Alzheimer's disease in either the at-home setting or care facilities, and the FDA indicated that the Company should conduct a further clinical trial to evaluate safety and collect efficacy data of BXCL501 in the at-home setting before it is able to submit an sNDA seeking approval of BXCL501 for use in such populations. These requirements for submission of an sNDA will be further discussed with the FDA at a forthcoming meeting.

Specifically, the Company has a Type B Breakthrough Therapy Designation Meeting with the FDA scheduled for February 20, 2024 to obtain feedback on the design of its proposed at-home study in patients with dementia due to probable Alzheimer's disease and to discuss the content and format of a proposed sNDA submission to expand labeling for BXCL501 to include the acute treatment of agitation associated with dementia due to probable Alzheimer's disease. At this meeting, the Company intends to propose to conduct a randomized, double blind, placebo-controlled, 2-arm study of 100 patients in which safety and feasibility will be assessed as the primary endpoints over a 4-week treatment period. The Company also intends to propose that it should not assess efficacy in this trial since it believes there are no well-defined and validated measures of efficacy for the at-home setting of acute agitation as measured by the caregiver, notwithstanding that the FDA stated that the Company should collect such efficacy data at its October 2023 meeting.

The Company believes that the efficacy of BXCL501 for the treatment of agitation in dementia patients has already been established in its Phase 3 study (BXCL501-303) and is further supported by additional efficacy data from BXCL501-103, its Phase 2 study, and from the evaluation of BXCL501 in the treatment of agitation in schizophrenia (BXCL501-301) and bipolar disorders (BXCL501-302). However, the FDA may not agree with the Company's proposed trial design to evaluate both the safety and efficacy of BXCL501 for the acute treatment of agitation associated with dementia due to probable Alzheimer's disease in an at-home setting. For example, to assess safety, the FDA may conclude that the Company needs to expose more patients to BXCL501 for a longer period of time and that its proposed trial, combined with the patients in its previous trials, would not support filing of an sNDA. Further, to assess efficacy, the FDA may determine that the Company cannot rely on its previous studies of BXCL501 for this proposed indication since those studies were conducted in assisted living facilities and they are not comparable to the at-home setting. In addition, the FDA may determine that the Company cannot rely on the data from its prior TRANQUILITY II Phase 3 trial to support an sNDA as a result of potential data integrity issues at the trial site, as the FDA may not agree with the conclusion of the Company's independent consulting firm that there were no findings from their investigation that impact the data reliability or integrity of the trial. See Part II, Item 1A, "Risk Factors—Risks Related to the Discovery and Development of Product Candidates—*Developments relating to its TRANQUILITY II Phase 3 trial may impact the timing of its development plans for, and prospects for seeking or obtaining regulatory approval of, BXCL501 for the acute treatment of agitation (non-daily) associated with dementia in patients with probable Alzheimer's disease*" in the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023 for additional information. If the FDA does not accept the data from the Company's prior TRANQUILITY II Phase 3 trial, the Company may be required to conduct additional clinical trials which would increase its costs and delay potential submission of an sNDA for BXCL501 which in turn would adversely affect its financial position and operations.

Accordingly, if the FDA reaches these conclusions or otherwise finds that the Company's proposed study would not adequately evaluate the safety and efficacy of BXCL501 for the acute treatment of agitation associated with dementia due to probable Alzheimer's disease in an at-home setting, the Company may need to evaluate more patients for a longer period of time to demonstrate the safety and efficacy of BXCL501. Any modifications to the Company's proposed trial design by the FDA would delay its initiation of the proposed trial, increase the costs of any trial that it does conduct and delay its submission of an sNDA for BXCL501 for the acute treatment of agitation associated with dementia due to probable Alzheimer's disease. Requirements to conduct additional clinical trials evaluating BXCL501 in support of the Company's planned sNDAs seeking approvals for BXCL501 for its targeted patient populations in at-home settings would increase its costs, and could have a material adverse effect on its prospects and results of operations.

The Company has identified conditions and events that raise substantial doubt regarding its ability to continue as a going concern. As a result, the Company will need to raise significant additional capital to continue its planned operations.

Based upon preliminary information available to it, as of January 31, 2024, the Company estimates that it had approximately \$61.6 million of cash and cash equivalents. It is possible that the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023, when filed with the Securities and Exchange Commission, and the report of its auditors contained therein, may reflect there is substantial doubt regarding its ability to continue as a going concern for a period of one year after such date. A report and opinion of the Company's independent certified public accountants on its audited financial statements for a fiscal year subject to a "going concern" or like qualification or exception or emphasis of matter of going concern footnote or any qualification or exception as to the scope of such audit (collectively, a "Going Concern Opinion") constitutes an event of default under the Credit Agreement, subject to a 120-day cure period. In order to mitigate current and potential future liquidity issues, the Company has undertaken the Reprioritization and may, among other things, seek to raise additional capital in the future through the issuance of common stock, or by restructuring, refinancing, and/or amending the terms of the Credit Agreement (including with respect to regulatory related events of default that do not contain a cure period) or pursue other strategic alternatives. However, such transactions may not be successful and the Company may not be able to raise additional equity, restructure, refinance or amend the terms of the Credit Agreement on acceptable terms, or at all. As a result, the Company may default under the Credit Agreement, resulting in an acceleration of outstanding indebtedness under the Credit Agreement. Acceleration of the repayment of the outstanding indebtedness would raise substantial doubt about the Company's ability to continue as a going concern, shorten the period for which it will be able to fund its operations and would adversely affect its financial condition and ability to pursue its business strategy.

Given the Company's current cash position and funding needs, it will need to obtain significant additional capital in the future to continue its planned operations, including its ongoing and planned clinical trials, commercialization of its products, and continuation as an operating public company. The Company may not be able to obtain sufficient additional funds to achieve top-line results from its Phase 3 TRANQUILITY II at-home trial if it is delayed due to regulatory matters or other unforeseen events. Moreover, there can be no guarantee that the Company will be able to achieve the milestones required to take advantage of additional tranches under the Credit Agreement in the near term if at all. If the Company is unable to obtain additional funding under the Credit Agreement, it would be required to seek alternative sources of funding to continue operations, which may not be available on acceptable terms, or at all. The inability to secure future funding sources could have a material adverse effect upon the Company's financial position and the ability to conduct its business.

The Company has significant indebtedness and other contractual obligations that could impair its liquidity, restrict its ability to do business and thereby harm its business, results of operations and financial condition. The Company may not have sufficient cash flow from operations to satisfy its obligations under the Credit Agreement.

As of January 31, 2024, \$102.7 million in principal amount was outstanding under the Credit Agreement. The Credit Agreement contains customary representations and warranties and customary affirmative and negative covenants, including, among other things, restrictions on indebtedness, liens, investments, mergers, dispositions, prepayment of other indebtedness, and dividends and other distributions, subject to certain exceptions, including specific exceptions with respect to product commercialization and development activities. The Company must also comply with certain covenants under the Credit Agreement, including a financial covenant that requires it maintain a minimum cash liquidity amount of \$15 million (or higher upon certain events) and a minimum revenue requirement measured on a quarterly basis based on the revenue attributable to BXCL501 for the six consecutive month period ending on the last day of the relevant quarter, subject to cure payments of not less than \$1.0 million if it fail to meet the minimum revenue requirement. The minimum revenue requirement applies beginning with the preceding six-month period ending on December 31, 2024, and ranges from approximately \$4.5 million for the fourth quarter of 2024 to approximately \$47.9 million for the first quarter of 2027. If the Company fails to meet the minimum revenue requirements for the six-month periods ending on December 31, 2024, March 31, 2025, June 30, 2025 and September 30, 2025, it could be required to make revenue cure payments for the revenue shortfalls of up to \$4.5 million, \$6.2 million, \$8.5 million, and \$8.5 million, respectively, plus aggregate prepayment fees of \$1.9 million. Under the Credit Agreement, these cure payments would be due on April 21, 2025, June 6, 2025, September 5, 2025 and December 8, 2025, respectively. The Company had revenue of \$1.0 million for the nine months ended September 30, 2023 and the minimum revenue requirements under the Credit Agreement would require a significant increase from its expected revenue for the fiscal year ended December 31, 2023. However, there can be no assurances that the Company will be able to increase its revenue in the time frame needed to remain compliant with the minimum revenue requirement under the Credit Agreement. The Company is only permitted to make cure payments for shortfalls under the minimum revenue requirement up to three times during the term of the Credit Agreement, after which the Company would default on the Credit Agreement if it is unable to satisfy the minimum revenue requirement for any subsequent fiscal quarter. In addition, certain events, including certain regulatory events and a Going Concern Opinion, constitute an event of default under the Credit Agreement. Certain change of control events can also trigger an event of default under the Credit Agreement, including control by any entity or group of entities, other than BioXcel LLC and its affiliates, that acquires 35% or more of our voting capital stock.

The Company's ability to make scheduled payments or payments to maintain compliance with covenants or to restructure or refinance these and other outstanding debt obligations depends on its financial and operating performance, including growth in revenue from BXCL501, which will be affected by prevailing economic, industry and competitive conditions and by financial, business and other factors beyond its control. A failure to pay its debt, fixed costs and other obligations or a breach of its contractual obligations could result in a variety of adverse consequences, including the acceleration of the Company's obligations or the exercise of remedies by its creditors and lessors. In such a situation, it is unlikely that the Company would be able to cure its breach, fulfill its obligations, make required payments or otherwise cover its fixed costs, which would have a material adverse effect on its business, results of operations and financial condition.

In addition, historically the Company has relied on debt and equity financings as its primary sources of liquidity. If its future cash flows and capital resources are insufficient to fund its debt service obligations, the Company may be forced to reduce or delay expenditures, sell assets, seek additional capital or seek to restructure or refinance its indebtedness. Any refinancing or restructuring of the Company's indebtedness could be at higher interest rates and may require it to comply with more onerous covenants. These alternative measures may not be successful and may not permit the Company to meet its scheduled debt service obligations. In the absence of such cash flows and resources, the Company could face substantial liquidity problems and might be required to sell material assets or operations to attempt to meet its debt service obligations.

The Company's only approved product to date is IGALMI™ sublingual film for the acute treatment of agitation associated with schizophrenia or bipolar I or II disorder, to be self-administered by patients under the supervision of a healthcare provider. If IGALMI™ or other products the Company may have approved do not gain market acceptance, the Company's future operations may be adversely affected.

The Company plans to continue to commercialize IGALMI™ sublingual film for the acute treatment of agitation associated with schizophrenia or bipolar I or II disorder, to be self-administered by patients under the supervision of a healthcare provider, which is the Company's only approved product to date. However, in connection with the Reprioritization, the Company significantly reduced the resources devoted to commercialization of IGALMI™ and it is possible that will have adverse consequences on the revenue that the Company is able to generate from IGALMI™. Revenues for IGALMI™ for the nine months ended September 30, 2023 were \$1.0 million. If the Company's commercial products do not gain market acceptance, the Company may not be able to fund future operations, including developing, testing and obtaining regulatory approval for an sNDA for other BXCL501 indications, including in the at-home setting for the acute treatment of agitation (non-daily) associated with dementia due to probable Alzheimer's disease, or for other product candidates that it may develop. The Company's results of operations could be materially harmed if the Company is unable to successfully commercialize IGALMI™ for any currently or additionally approved indications or any future product candidates it may have approved.

In a Current Report on Form 8-K filed with the Securities and Exchange Commission on December 6, 2023, the Company disclosed the material terms of the Second Amendment. A copy of the Second Amendment is filed hereto as Exhibit 10.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d)

Exhibit No.	Description
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10.1+	Second Amendment to Credit Agreement and Guaranty and Termination of Revenue Interest Financing Agreement dated December 5, 2023, which amended the Credit Agreement and Guaranty, dated April 19, 2022, by and among the Company, as the borrower, certain subsidiaries of the Company from time to time party thereto as subsidiary guarantors, the lenders party thereto, and Oaktree Fund Administration LLC, as administrative agent (as amended by the Waiver and First Amendment to Credit Agreement and Guaranty, dated as of November 13, 2023)
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104	Cover Page Interactive Data File (the cover page XBRL tags are embedded within the Inline XBRL document)
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+ Certain annexes, schedules, and exhibits have been omitted pursuant to Item 601(a)(5)(b)(2) of Regulation S-K. The Company hereby agrees to furnish supplementally a copy of any omitted annex, schedule or exhibit to the SEC upon request.

Forward-Looking Statements

This Current Report on Form 8-K (“Form 8-K”) includes “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933, as amended (the “Securities Act”) and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All statements contained in this Form 8-K other than statements of historical fact should be considered forward-looking statements, including, without limitation, statements regarding the Company's clinical development pipeline and future clinical trials and the preliminary estimates of its cash and cash equivalents and principal amount outstanding under the Credit Agreement as of January 31, 2024. When used herein, words including “anticipate,” “believe,” “can,” “continue,” “could,” “designed,” “estimate,” “expect,” “forecast,” “goal,” “intend,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “target,” “will,” “would” and similar expressions are intended to identify forward-looking statements, though not all forward-looking statements use these words or expressions. In addition, any statements or information that refer to expectations, beliefs, plans, projections, objectives, performance or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking. All forward-looking statements are based upon the Company's current expectations and various assumptions. The Company believes there is a reasonable basis for its expectations and beliefs, but they are inherently uncertain. The Company may not realize its expectations, and its beliefs may not prove correct. Actual results could differ materially from those described or implied by such forward-looking statements as a result of various important factors, including, without limitation, its need for substantial additional funding and ability to raise capital when needed; its limited experience in drug discovery and drug development; its dependence on the success and commercialization of IGALMITM and BXCL501 and other product candidates; submissions for regulatory approval or review by governmental authorities, the supplemental risk factors provided in this Form 8-K and the other important factors discussed under the caption “Risk Factors” in its Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2023, as such factors may be updated from time to time in its other filings with the SEC, which are accessible on the SEC's website at www.sec.gov. These and other important factors could cause actual results to differ materially from those indicated by the forward-looking statements made in this Form 8-K. Any such forward-looking statements represent management's estimates as of the date of this Form 8-K. While the Company may elect to update such forward-looking statements at some point in the future, except as required by law, it disclaims any obligation to do so, even if subsequent events cause our views to change. These forward-looking statements should not be relied upon as representing the Company's views as of any date subsequent to the date of this Form 8-K.

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 hereunto duly authorized.

Date: February 8, 2024

BIOXCEL THERAPEUTICS, INC.

/s/ Javier Rodriguez

By: Javier Rodriguez

Title: SVP, Chief Legal Officer

SECOND AMENDMENT TO CREDIT AGREEMENT AND GUARANTY AND TERMINATION OF REVENUE INTEREST FINANCING AGREEMENT

This Second Amendment to Credit Agreement and Guaranty and Termination of Revenue Interest Financing Agreement (this "*Amendment*") is made as of December 5, 2023, by and among BIOXCEL THERAPEUTICS, INC., a Delaware corporation, as borrower (the "*Borrower*"), the Guarantors party to the Credit Agreement (as defined below), the Lenders party to the Credit Agreement (in their capacities as such, the "*Lenders*"), the Purchasers party to the Revenue Interest Financing Agreement (as defined below) (in their capacities as such, the "*Purchasers*"), OAKTREE FUND ADMINISTRATION, LLC, in its separate capacities as administrative agent for the Lenders (in such capacity, the "*Administrative Agent*") and as administrative agent under the Revenue Interest Financing Agreement (in such capacity, the "*RIFA Agent*").

WHEREAS, the Borrower, the Guarantors, the Administrative Agent and the Lenders party thereto previously entered into that certain Credit Agreement and Guaranty, dated as of April 19, 2022 (including the exhibits and other attachments thereto, as amended by that certain Waiver and First Amendment to Credit Agreement and Guaranty, dated as of November 13, 2023 (the "*First Amendment*"), the "*Existing Credit Agreement*", and as further amended by this Amendment, the "*Credit Agreement*");

WHEREAS, Borrower, Purchasers and the RIFA Agent are parties to the Revenue Interest Financing Agreement, dated as of April 19, 2022 (as amended, restated, supplemented or otherwise modified from time to time, the "*Revenue Interest Financing Agreement*");

WHEREAS, the Borrower has requested certain amendments to the Existing Credit Agreement, including, among other things, (i) the deferral of the effectiveness of the Minimum Revenue Covenant and the reduction of the required minimum revenue levels set forth in the Minimum Revenue Covenant and (ii) the addition of a new \$50,000,000 Tranche D Term Loan available upon satisfaction of certain conditions on or before December 31, 2025;

WHEREAS, as a condition precedent to the Lenders' willingness to provide the amendments contemplated hereby, the Borrower and the Lenders have agreed that each Lender, in its capacity as Purchaser, shall contribute all of its claims in respect of the Obligations outstanding under the Revenue Interest Financing Agreement (the "*RIFA Obligations*") in exchange for the Borrower issuing to it such Purchaser's Proportionate Share (as defined in the Revenue Interest Financing Agreement) of Tranche A-2 Term Loans, as set forth in Section 3 below, and the Revenue Interest Financing Agreement shall be terminated upon the completion of such exchange (other than the provisions that, by their express terms, survive the termination of the Revenue Interest Financing Agreement);

WHEREAS, pursuant to Section 6 of the First Amendment, the Borrower agreed to, and to cause the other Obligors to, on or before December 1, 2023 (or such later date as the Administrative Agent may agree in its sole and absolute discretion), execute and deliver to Administrative Agent and the Lenders its duly executed signature pages to an amendment to the Credit Agreement and documents related thereto or contemplated thereby, in each case, on substantially the terms described in Exhibit A to the First Amendment or such other terms as the parties may mutually agree, and the parties hereto agree that (i) this Amendment satisfies the requirements of Section 6 of the First Amendment and (ii) for the avoidance of doubt, the Administrative Agent agreed to extend the deadline to satisfy the requirements of Section 6 of the First Amendment to the date hereof; and

WHEREAS, the Borrower, the Administrative Agent and the Lenders have agreed to amend the Existing Credit Agreement, and the Borrower, the RIFA Agent and the Purchasers have agreed to terminate the Revenue Interest Financing Agreement, in each case, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, for and in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, each of the Borrower, the Guarantors, the Administrative Agent, the Lenders party hereto, the RIFA Agent and the Purchasers party hereto hereby covenants and agrees as follows:

1. **Definitions.** Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Existing Credit Agreement.
2. **Amendments.** Subject to the satisfaction of the conditions precedent specified in Section 5 hereof, on the Second Amendment Effective Date, the Existing Credit Agreement (including the Exhibits thereto) shall be amended as set forth on **Exhibit A** to this Amendment.
 - (a) Language inserted into the applicable section of the Existing Credit Agreement is evidenced by double underline formatting (indicated textually in the same manner as the following example: double underlined text). Language deleted from the applicable section of the Existing Credit Agreement is evidenced by strike-through formatting (indicated textually in the same manner as the following example: ~~stricken text~~);
 - (b) **Schedule 1** to the Existing Credit Agreement is hereby amended and restated in its entirety as set forth on **Exhibit B** hereto;
 - (c) **Schedule 3** to the Existing Credit Agreement is hereby amended and restated in its entirety as set forth on **Exhibit C** hereto; and
 - (d) Except to the extent specifically set forth in **Exhibit A, Exhibit B, Exhibit C** or **Exhibit D**, the Exhibits and Schedules to the Credit Agreement are not amended or modified hereby in any respect.

It is agreed that no conforming revisions have been made to the other Loan Documents, and, to the extent that there other revisions to the Loan Documents necessitated by this Amendment, the parties hereto agree to cooperate and make reasonable revisions to such other Loan Documents to reflect the agreements contained in this Amendment. Any references to the Credit Agreement in the other Loan Documents shall mean the Credit Agreement as amended by this Amendment.

3. Exchange.

- (a) Subject to the satisfaction of the conditions precedent specified in Section 5 hereof, on the Second Amendment Effective Date, each of the Purchasers shall receive Tranche A-2 Term Loans in a principal amount equal to such Purchaser's Proportionate Share (as defined in the Revenue Interest Financing Agreement) of \$30,000,000.
- (b) Upon receipt by each Purchaser of such Tranche A-2 Term Loans, each Purchaser shall be deemed to have automatically contributed to the Borrower its Proportionate Share (as defined in the Revenue Interest Financing Agreement) of the RIFA Obligations in exchange for such Tranche A-2 Term Loans, and upon such contribution (i) the RIFA Obligations shall be deemed discharged in full, (ii) all security interests in the Collateral (as defined in the Revenue Interest Financing Agreement) created pursuant to the Revenue Interest Financing Agreement securing the RIFA Obligations shall be automatically released, (iii) the Revenue Interest Financing Agreement, including all commitments of the Purchasers thereunder, shall be terminated (provided that the provisions of Section 5.03, Section 5.10, Section 7.05 and Section 7.19 thereof shall survive such termination) and (iv) the Security Agreement (as defined in the Revenue Interest Financing Agreement) shall be terminated. Any amounts currently deposited in one or more Collection Accounts (as defined in the Revenue Interest Financing Agreement) shall be transferred into a Controlled Account concurrently with the effectiveness of this Amendment.
- (c) The parties hereto agree and acknowledge that, after giving effect to the transactions contemplated by this Amendment, including this Section 3, the outstanding Loans and Commitments of the Lenders shall be as set forth in the amended **Schedule 1** attached hereto as **Exhibit B** (it being understood that all references to "Tranche A" in the Existing Credit Agreement will be replaced by references to "Tranche A-1" upon the effectiveness of this Amendment).
- (d) The Borrower agrees that the RIFA Obligations and the security interests granted in connection therewith shall be reinstated with full force and effect if at any time on or after the Second Amendment Effective Date the exchange contemplated by this Section 3 or all or any portion of the Tranche A-2 Term Loans issued to the Purchasers pursuant to this Section 3 are voided, rescinded, disallowed or held not to be valid and enforceable first priority secured claims in any way, including in connection the Borrower's insolvency, bankruptcy, reorganization or otherwise, all as if the transactions contemplated by this Amendment had not occurred.

4. Reaffirmation of Loan Documents. The Borrower and the Guarantors, as Grantors under the Security Documents, hereby (i) agrees that each of the Loan Documents is, and shall continue to be, in full force and effect and is hereby in all respects ratified and confirmed on the Second Amendment Effective Date, except that, on and after the Second Amendment Effective Date, each reference to "*Credit Agreement*", "*this Agreement*", "*thereunder*", "*thereof*" or words of like import shall, unless the context otherwise requires, mean and be a reference to the Existing Credit Agreement as amended by this Amendment and (ii) confirms that the Security Documents and all of the Collateral described therein do, and shall continue to, secure the payment in full and performance of all of the Obligations.
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5. Conditions Precedent to Effectiveness. This Amendment shall become effective upon the fulfillment of the following conditions precedent (the date of such fulfillment, the “*Second Amendment Effective Date*”):
- (a) This Amendment shall have been duly executed and delivered to the Administrative Agent by the Borrower, the Guarantors and the Lenders party hereto, which constitute all of the “Lenders” as defined in the Existing Credit Agreement;
 - (b) The amended and restated Fee Letter and amended and restated Registration Rights Agreement shall have been duly executed and delivered to the Administrative Agent by the Borrower;
 - (c) The Borrower shall have issued and delivered to the Lenders warrants, evidenced by an instrument substantially in the form of **Exhibit J-1** attached to the Credit Agreement (as amended hereby), dated as of the Second Amendment Effective Date, exercisable for an aggregate number of shares of common stock of the Borrower set forth in **Exhibit D**;
 - (d) All Company Warrants previously issued to the Lenders shall have been amended to revise the exercise price thereunder from \$20.04 per share to \$3.6452 per share;
 - (e) The Administrative Agent shall have received, for the benefit of the Lenders, payment of all accrued and unpaid interest on the Loans since the most recent Payment Date through (but not including) the Second Amendment Effective Date (in an aggregate amount equal to \$1,373,840.96, of which \$301,574.85 shall be paid “in kind” by adding and capitalizing such amount to the outstanding principal amount of the Tranche A-1 Term Loans (and the amount so capitalized shall constitute “principal” for all purposes of the Loan Documents from and after the Second Amendment Effective Date) and \$1,072,266.11 shall be paid in cash;
 - (f) The Borrower shall have paid to the RIFA Agent, for the account of the Purchasers, an amount equal to the sum of (i) the Revenue Interest Payments (as defined in the Revenue Interest Financing Agreement as in effect immediately prior to the date hereof) for the fiscal quarter ended September 30, 2023 plus (ii) a prorated portion (based on the actual portion of the quarter elapsed) of the Revenue Interest Payments (as defined in the Revenue Interest Financing Agreement as in effect immediately prior to the date hereof) for the fiscal quarter ending December 31, 2023;
 - (g) The Borrower shall have paid all costs, fees and expenses of the Administrative Agent and the Lenders, including, without limitation, the fees and expenses of Sullivan & Cromwell LLP, as outside counsel to Administrative Agent and the Oaktree Lenders and the fees and expenses of Shearman & Sterling LLP, as outside counsel to Q Boost Holding LLC, incurred prior to date hereof, to the extent invoiced at least one Business Day prior to the date hereof;
-

- (h) Each of the representations and warranties in Section 7 of this Amendment, Section 7 of the Credit Agreement and in the other Loan Documents shall be true, accurate and complete in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the date hereof with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all respects on and as of such earlier date;
- (i) At the time of and after giving effect to this Amendment, no fact or condition exists that constitutes, or with the passage of time, the giving of notice, or both, would constitute, an Event of Default;
- (j) The Administrative Agent shall have received a duly executed legal opinion of counsel to the Obligors dated as of the Second Amendment Effective Date, in form and substance reasonably acceptable to the Administrative Agent;
- (k) The Administrative Agent shall have received from each Obligor (x) a copy of a good standing certificate, dated a date reasonably close to the Second Amendment Effective Date, for each such Person and (y) a certificate, dated as of the Second Amendment Effective Date, duly executed and delivered by such Person's Responsible Officer, as to:
 - (i) resolutions of each such Person's Board then in full force and effect authorizing the execution, delivery and performance of each Loan Document to be executed by such Person and the Transactions;
 - (ii) solely to the extent different than the incumbency delivered on the Closing Date, the incumbency and signatures of Responsible Officers authorized to execute and deliver each Loan Document to be executed by such Person; and
 - (iii) the full force and validity of each Organic Document of such Person and, solely to the extent modified or amended since the Closing Date, copies thereof;

which certificates shall be in form and substance reasonably satisfactory to the Administrative Agent and upon which the Administrative Agent and the Lenders may conclusively rely until they shall have received a further certificate of the Responsible Officer of any such Person cancelling or amending the prior certificate of such Person.

6. Amendment Fee. In consideration of this Amendment and agreements of the Administrative Agent and the Lenders contained herein, the Borrower shall pay an amendment fee (the “*Second Amendment Fee*”) in cash to the Administrative Agent, for the account of the Lenders, in the amount of 0.25% of the aggregate principal amount of Loans prepaid or repaid from time to time, due and payable on the date of each such prepayment or repayment. The Second Amendment Fee is in addition to, and not in lieu of, the portion of the Amendment Fee (as defined in the First Amendment) that, pursuant to Section 7(ii) of the First Amendment, is also due and payable with respect to the aggregate principal amount of Loans prepaid or repaid from time to time, on the date of each such prepayment or repayment.
7. Representations and Warranties. Each of the Obligors hereby represents and warrants:
- (a) The execution, delivery and performance by such Obligor of this Amendment and the documents, instruments and agreements executed in connection herewith (collectively, the “*Amendment Documents*”), such Obligor’s consummation of the transactions contemplated by the Amendment Documents and performance under the Amendment Documents do not and will not (i) conflict with any of its organizational, constitutional or constituent documents; (ii) contravene, conflict with, constitute a default under or violate any Law except as would not reasonably be expected to have a Material Adverse Effect; (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which it or any of its property or assets may be bound or affected except as would not reasonably be expected to have a Material Adverse Effect; (iv) require any action by, filing, registration, or qualification with, or approval of, any Governmental Authority (except such approval which has already been obtained and is in full force and effect, or the filing of any UCC financing statement) except where the failure to do so would not reasonably be expected to have a Material Adverse Effect; or (v) constitute a default under or conflict with any Material Agreement that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.
 - (b) This Amendment and the other Amendment Documents have been duly authorized, executed and delivered by such Obligor and constitute legal, valid and binding agreements of such Obligor, enforceable in accordance with their terms (subject, as to enforcement, to (x) the effect of applicable bankruptcy, insolvency, examinership or similar laws affecting the enforcement or creditors’ rights and (y) general principles of equity).
 - (c) The execution, delivery and performance by such Obligor of the Amendment and the other Amendment Documents executed or to be executed by it is in each case within such Obligor’s powers.
-

8. Release.

- (a) In consideration of this Amendment and agreements of the Administrative Agent, the Lenders, the RIFA Agent and the Purchasers contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower (the “**Releasing Party**”), on behalf of itself and its successors, assigns and other legal representatives hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges the Administrative Agent, the Lenders, the RIFA Agent, the Purchasers and their respective present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives, in each case solely in their capacities relative to the Lenders and not in any other capacity such party may have relative to the Releasing Party (the Administrative Agent, each Lender and all such other Persons being hereinafter referred to collectively as the “**Releasees**” and individually as a “**Releasee**”), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which the Borrower or any of its successors, assigns or other legal representatives may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the Second Amendment Effective Date, for or on account of, or in relation to, or in any way in connection with the Credit Agreement or any of the other Loan Documents or transactions thereunder (any of the foregoing, a “**Claim**” and collectively, the “**Claims**”). The Releasing Party expressly acknowledges and agrees, with respect to the Claims, that it waives, to the fullest extent permitted by applicable law, any and all provisions, rights and benefits conferred by any applicable U.S. federal or state law, or any principle of U.S. common law, that would otherwise limit a release or discharge of any unknown Claims pursuant to this Section 8. Furthermore, the Releasing Party hereby absolutely, unconditionally and irrevocably covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released and/or discharged by the Releasing Parties pursuant to this Section 8. The foregoing release, covenant and waivers of this Section 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment or prepayment of any of the Loans, or the termination of the Credit Agreement, this Amendment, any other Loan Document, the Revenue Interest Financing Agreement or any provision hereof or thereof.
- (b) Each Releasing Party understands, acknowledges and agrees that its release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.
- (c) Each Releasing Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above.
-

9. Fees and Expenses. The Borrower agrees to pay on demand (a) all out-of-pocket fees, costs and expenses of the Administrative Agent and the Lenders accrued prior to the Second Amendment Effective Date and (b) all out-of-pocket fees, costs and expenses of the Administrative Agent and the Lenders incurred in connection with the preparation, execution and delivery of (i) this Amendment, (ii) any Amendment Documents, other Loan Documents or other post-closing amendments, agreements, arrangements or documentation, (iii) any other instruments and documents to be delivered hereunder or thereunder, in each case of clauses (a) and (b), including the fees and expenses of Sullivan & Cromwell LLP, as outside counsel to Administrative Agent and the Oaktree Lenders, and Shearman & Sterling LLP, as outside counsel to Q Boost Holding LLC, with respect thereto.
10. Miscellaneous.
- (a) Except as otherwise expressly provided herein, (i) all provisions of the Credit Agreement and the other Loan Documents remain in full force and effect and (ii) the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders, nor constitute a waiver of any provision of the Existing Credit Agreement or any of the Loan Documents. None of the Administrative Agent or any Lender is under any obligation to enter into this Amendment. The entering into of this Amendment by such parties shall not be deemed to limit or hinder any rights of any such party under the Loan Documents, nor shall it be deemed to create or infer a course of dealing between any such party, on the one hand, and the Borrower, on the other hand, with regard to any provision of the Loan Documents.
- (b) This Amendment shall constitute a Loan Document.
- (c) This Amendment may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. An executed facsimile or electronic copy of this Amendment shall be effective for all purposes as an original hereof. The words “execution,” “execute”, “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Amendment and the transactions contemplated hereby (including without limitation assignments, assumptions, amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.
-

- (d) This Amendment expresses the entire understanding of the parties with respect to the amendments contemplated hereby. No prior negotiations or discussions shall limit, modify, or otherwise affect the provisions hereof.
- (e) This Amendment and the rights and obligations of the parties hereunder shall be governed by, and construed and enforced in accordance with, the law of the State of New York, excluding conflict of laws principles that would cause the application of laws of any other jurisdiction.
- (f) Save to the extent expressly provided for in any Loan Document to the contrary, all judicial proceedings arising in or under or related to this Amendment may be brought in any state or federal court located in the State of New York. By execution and delivery of this Amendment, each party hereto generally and unconditionally: (a) consents to nonexclusive personal jurisdiction in New York County, State of New York; (b) waives any objection as to jurisdiction or venue in New York County, State of New York; (c) agrees not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts; and (d) irrevocably agrees to be bound by any judgment rendered thereby in connection with this Amendment. Service of process on any party hereto in any action arising out of or relating to this Amendment shall be effective if given in accordance with the requirements for notice set forth in Section 14.02 of the Credit Agreement, and shall be deemed effective and received as set forth in Section 14.02 of the Credit Agreement. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of either party to bring proceedings in the courts of any other jurisdiction.
- (g) Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert Person and the parties wish applicable state and federal laws to apply (rather than arbitration rules), the parties desire that their disputes be resolved by a judge applying such applicable laws. EACH OF THE BORROWER, ADMINISTRATIVE AGENT AND LENDER SPECIFICALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR ANY OTHER CLAIM (COLLECTIVELY, "CLAIMS") ASSERTED BY THE BORROWER AGAINST ADMINISTRATIVE AGENT, LENDER OR THEIR RESPECTIVE ASSIGNEE OR BY ADMINISTRATIVE AGENT, LENDER OR THEIR RESPECTIVE ASSIGNEE AGAINST THE BORROWER. This waiver extends to all such Claims, including Claims that involve Persons other than Administrative Agent, the Borrower and Lender; Claims that arise out of or are in any way connected to the relationship among the Borrower, Administrative Agent and Lender; and any Claims for damages, breach of contract, tort, specific performance, or any equitable or legal relief of any kind, arising out of this Amendment or any other Loan Document.
- (h) This Amendment and its contents shall be subject to the indemnification and severability provisions of the Existing Credit Agreement, *mutatis mutandis*.
-

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the day and year first above written.

BORROWER:

BIOXCEL THERAPEUTICS, INC.

By: /s/ Vimal Mehta
Name: Vimal Mehta
Title: Chief Executive Officer

Address for Notices:
555 Long Wharf Drive, 12th Floor
New Haven, CT
06511

With a copy to (which shall not constitute notice):

Cooley LLP
3 Embarcadero Center
20th Floor
San Francisco, CA 94111-4004
Attn: Mischi a Marca
Email: gmamarca@cooley.com

[Signature Page to Second Amendment to Credit Agreement and Guaranty]

SUBSIDIARY GUARANTORS:

ONKOSXCEL THERAPEUTICS, LLC

By: /s/ Vimal Mehta
Name: Vimal Mehta
Title: Chief Executive Officer

ONKOSXCEL EMPLOYEE HOLDINGS, LLC

By: /s/ Vimal Mehta
Name: Vimal Mehta
Title: Chief Executive Officer

Address for Notices:
555 Long Wharf Drive, 12th Floor
New Haven, CT
06511

With a copy to (which shall not constitute notice):

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3 Embarcadero Center
20th Floor
San Francisco, CA 94111-4004
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Email: gmamarca@cooley.com

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ADMINISTRATIVE AGENT:

OAKTREE FUND ADMINISTRATION, LLC

By: Oaktree Capital Management, L.P.
Its: Managing Member

By: /s/ Matthew Stewart
Name: Matthew Stewart
Title: Managing Director

By: /s/ Mary Gallegly
Name: Mary Gallegly
Title: Managing Director

Address for Notices:
Oaktree Fund Administration, LLC
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Oaktree Agency
Email: Oaktreeagency@alterdomus.com

With a copy to:
Oaktree Capital Management, L.P.
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Aman Kumar
Email: AmKumar@oaktreecapital.com

With a copy to:
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
Attn: Ari B. Blaut
Email: blauta@sullcrom.com

[Signature Page to Second Amendment to Credit Agreement and Guaranty]

LENDERS:

OAKTREE-TCDRS STRATEGIC CREDIT, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Matthew Stewart
Name: Matthew Stewart
Title: Managing Director

By: /s/ Mary Gallegly
Name: Mary Gallegly
Title: Managing Director

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New York, NY 10004
Attn: Ari B. Blaut
Email: blauta@sullcrom.com

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OAKTREE-FORREST MULTI-STRATEGY, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Matthew Stewart
Name: Matthew Stewart
Title: Managing Director

By: /s/ Mary Gallegly
Name: Mary Gallegly
Title: Managing Director

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Email: blauta@sullcrom.com

[Signature Page to Second Amendment to Credit Agreement and Guaranty]

OAKTREE-TBMR STRATEGIC CREDIT FUND C, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Matthew Stewart
Name: Matthew Stewart
Title: Managing Director

By: /s/ Mary Gallegly
Name: Mary Gallegly
Title: Managing Director

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OAKTREE-TBMR STRATEGIC CREDIT FUND F, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Matthew Stewart
Name: Matthew Stewart
Title: Managing Director

By: /s/ Mary Gallegly
Name: Mary Gallegly
Title: Managing Director

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OAKTREE-TBMR STRATEGIC CREDIT FUND G, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Matthew Stewart
Name: Matthew Stewart
Title: Managing Director

By: /s/ Mary Gallegly
Name: Mary Gallegly
Title: Managing Director

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OAKTREE-TSE 16 STRATEGIC CREDIT, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Matthew Stewart
Name: Matthew Stewart
Title: Managing Director

By: /s/ Mary Gallegly
Name: Mary Gallegly
Title: Managing Director

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INPRS STRATEGIC CREDIT HOLDINGS, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Matthew Stewart
Name: Matthew Stewart
Title: Managing Director

By: /s/ Mary Gallegly
Name: Mary Gallegly
Title: Managing Director

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OAKTREE SPECIALTY LENDING CORPORATION

By: Oaktree Fund Advisors, LLC
Its: Investment Adviser

By: /s/ Matthew Stewart
Name: Matthew Stewart
Title: Managing Director

By: /s/ Mary Gallegly
Name: Mary Gallegly
Title: Managing Director

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OAKTREE STRATEGIC CREDIT FUND

By: Oaktree Fund Advisors, LLC
Its: Investment Adviser

By: /s/ Matthew Stewart
Name: Matthew Stewart
Title: Managing Director

By: /s/ Mary Gallegly
Name: Mary Gallegly
Title: Managing Director

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OAKTREE GCP FUND DELAWARE HOLDINGS, L.P.

By: Oaktree Global Credit Plus Fund GP, L.P.
Its: General Partner

By: Oaktree Global Credit Plus Fund GP Ltd.
Its: General Partner

By: Oaktree Capital Management, L.P.
Its: Director

By: /s/ Matthew Stewart
Name: Matthew Stewart
Title: Managing Director

By: /s/ Mary Gallegly
Name: Mary Gallegly
Title: Managing Director

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OAKTREE DIVERSIFIED INCOME FUND INC.

By: Oaktree Fund Advisors, LLC
Its: Investment Adviser

By: /s/ Matthew Stewart
Name: Matthew Stewart
Title: Managing Director

By: /s/ Mary Gallegly
Name: Mary Gallegly
Title: Managing Director

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Email: blauta@sullcrom.com

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OAKTREE AZ STRATEGIC LENDING FUND, L.P.

By: Oaktree AZ Strategic Lending Fund GP, L.P.
Its: General Partner

By: Oaktree Fund GP IIA, LLC
Its: General Partner

By: Oaktree Fund GP II, L.P.
Its: Managing Member

By: /s/ Matthew Stewart
Name: Matthew Stewart
Title: Managing Director

By: /s/ Mary Gallegly
Name: Mary Gallegly
Title: Managing Director

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Email: blauta@sullcrom.com

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OAKTREE LSL FUND HOLDINGS EURRC S.À R.L.

26A, boulevard Royal L-2449
Luxembourg, Grand Duchy of Luxembourg
R.C.S Luxembourg Number: B269245

By: /s/ Martin Eckel

Name: Martin Eckel

Title: Manager

By: /s/ Flora Verrecchia

Name: Flora Verrecchia

Title: Manager

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With a copy to:

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Attn: Aman Kumar
Email: AmKumar@oaktreecapital.com

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Attn: Ari B. Blaut
Email: blauta@sullcrom.com

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OAKTREE LSL FUND DELAWARE HOLDINGS EURRC, L.P.

By: Oaktree Life Sciences Lending Fund GP, L.P.
Its: General Partner

By: Oaktree Life Sciences Lending Fund GP Ltd.
Its: General Partner

By: Oaktree Capital Management, L.P.
Its: Director

By: /s/ Matthew Stewart
Name: Matthew Stewart
Title: Managing Director

By: /s/ Mary Gallegly
Name: Mary Gallegly
Title: Managing Director

Address for Notices:
Oaktree Fund Administration, LLC 333 S.
Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Oaktree Agency
Email: Oaktreeagency@alterdomus.com

With a copy to:
Oaktree Capital Management, L.P.
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Aman Kumar
Email: AmKumar@oaktreecapital.com

With a copy to:
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
Attn: Ari B. Blaut
Email: blauta@sullcrom.com

[Signature Page to Second Amendment to Credit Agreement and Guaranty]

Q BOOST HOLDING LLC

By: /s/ Ahmed Nasser Al-Abdulghani

Name: Ahmed Nasser Al-Abdulghani

Title: Director

Address for Notices:

c/o Qatar Investment Authority

Ooredoo Tower (Building 14)

Al Dafna Street (Street 801)

Al Dafna (Zone 61) Doha, Qatar

A copy (which shall not constitute notice) shall also be sent to:

General Counsel

Qatar Investment Authority

Ooredoo Tower (Building 14)

Al Dafna Street (Street 801)

Al Dafna (Zone 61)

Doha, Qatar

Email: notices.legal@qia.qa

A copy (which shall not constitute notice) shall also be sent to:

Shearman & Sterling LLP

535 Mission Street, 25th Floor

San Francisco, CA 94105

Attn: Michael S. Dorf

Tomasz Kulawik

Email: mdorf@shearman.com

tomasz.kulawik@shearman.com

[Signature Page to Second Amendment to Credit Agreement and Guaranty]

EXHIBIT A

CREDIT AGREEMENT AND GUARANTY

dated as of April 19, 2022

and amended as of December 5, 2023

by and among

BIOXCEL THERAPEUTICS, INC.,
as the Borrower,

THE SUBSIDIARY GUARANTORS FROM TIME TO TIME
PARTY HERETO,
as the Guarantors,

THE LENDERS FROM TIME TO TIME PARTY HERETO

as the Lenders,

and

OAKTREE FUND ADMINISTRATION, LLC,
as the Administrative Agent

U.S. \$~~135,000,000~~202,319,447

TABLE OF CONTENTS

SECTION 1. DEFINITIONS	1
1.01 Certain Defined Terms	1
1.02 Accounting Terms and Principles	38 <u>35</u>
1.03 Interpretation	36
1.04 Division	40 <u>37</u>
SECTION 2. THE COMMITMENT AND THE LOANS; EQUITY INVESTMENT	40 <u>37</u>
2.01 Loans	40 <u>37</u>
2.02 Borrowing Procedures	38
2.03 Funding of Borrowings	41 <u>38</u>
2.04 Notes	38
2.05 Use of Proceeds	38
2.06 Ticking Fees	38
2.07 Extension of Maturity Date	39
2.08 Equity Investment	39
SECTION 3. PAYMENTS OF PRINCIPAL AND INTEREST, ETC.	43 <u>40</u>
3.01 Scheduled Repayments and Prepayments Generally; Application	43 <u>40</u>
3.02 Interest	40
3.03 Prepayments	44 <u>41</u>
3.04 Commitment Termination	43
SECTION 4. PAYMENTS, ETC.	47 <u>44</u>
4.01 Payments	47 <u>44</u>
4.02 Computations	48 <u>45</u>
4.03 Set-Off	48 <u>45</u>
SECTION 5. YIELD PROTECTION, TAXES, ETC.	49 <u>45</u>
5.01 Additional Costs	49 <u>45</u>
5.02 Illegality	50 <u>47</u>
5.03 Taxes	47
5.04 Mitigation Obligations	54 <u>50</u>
5.05 Survival	54 <u>50</u>
SECTION 6. CONDITIONS	52

6.01	Conditions to Closing	52
6.02	Conditions to the Borrowing of All Loans	55
SECTION 7. REPRESENTATIONS AND WARRANTIES		59 <u>57</u>
7.01	Power and Authority	57
7.02	Authorization; Enforceability	60 <u>57</u>
7.03	Governmental and Other Approvals; No Conflicts	60 <u>57</u>
7.04	Financial Statements; Material Adverse Change	58
7.05	Properties	58
7.06	No Actions or Proceedings	63 <u>60</u>
7.07	Compliance with Laws and Agreements	61
7.08	Taxes	61
7.09	Full Disclosure	61
7.10	Investment Company Act and Margin Stock Regulation	65 <u>62</u>
7.11	Solvency	62
7.12	Subsidiaries	62
7.13	Indebtedness and Liens	62
7.14	Material Agreements	62
7.15	Restrictive Agreements	62
7.16	Real Property	62
7.17	Pension Matters	66 <u>63</u>
7.18	Regulatory Approvals	63
7.19	Transactions with Affiliates	64
7.20	OFAC; Anti-Terrorism Laws	64
7.21	Anti-Corruption	65
7.22	BXCL 701 Assets	65
7.23	Priority of Obligations	65
7.24	Royalty and Other Payments	65
7.25	Non-Competes	65
7.26	Security Interest	65
7.27	Data Privacy	69 <u>65</u>
SECTION 8. AFFIRMATIVE COVENANTS		65
8.01	Financial Statements and Other Information	66

8.02	Notices of Material Events	68
8.03	Existence	69
8.04	Payment of Obligations	69
8.05	Insurance	70
8.06	Books and Records; Inspection Rights	70
8.07	Compliance with Laws and Other Obligations	70
8.08	Maintenance of Properties, Etc.	71
8.09	Licenses	71
8.10	Use of Proceeds	71
8.11	Certain Obligations Respecting Subsidiaries; Further Assurances	71
8.12	Termination of Non-Permitted Liens	73
8.13	Board Materials; Oaktree Lender Board Observer	79 <u>73</u>
8.14	[Reserved]	80 <u>74</u>
8.15	Maintenance of Regulatory Approvals, Contracts, Intellectual Property, Etc.	80 <u>74</u>
8.16	ERISA Compliance	75
8.17	Cash Management	75
8.18	Amendments to Agreements	81 <u>75</u>
8.19	Post-Closing Obligations	81 <u>75</u>
SECTION 9. NEGATIVE COVENANTS		77
9.01	Indebtedness	77
9.02	Liens	79
9.03	Fundamental Changes and Acquisitions	81
9.04	Lines of Business	87 <u>81</u>
9.05	Investments	81
9.06	Restricted Payments	89 <u>83</u>
9.07	Payments of Indebtedness	90 <u>84</u>
9.08	Change in Fiscal Year	90 <u>84</u>
9.09	Sales of Assets, Etc.	90 <u>84</u>
9.10	Transactions with Affiliates	92 <u>86</u>
9.11	Restrictive Agreements	92 <u>87</u>
9.12	Modifications and Terminations of Material Agreements and Organic Documents	94 <u>87</u>

9.13	Outbound Licenses	94 <u>88</u>
9.14	Sales and Leasebacks	95 <u>88</u>
9.15	Hazardous Material	95 <u>88</u>
9.16	Accounting Changes	95 <u>89</u>
9.17	Compliance with ERISA	95 <u>89</u>
9.18	Sanctions; Anti-Corruption Use of Proceeds	95 <u>89</u>
9.19	BXCL 701 Subsidiary Covenants	89
SECTION 10. FINANCIAL COVENANTS		97 <u>90</u>
10.01	Minimum Liquidity	97 <u>90</u>
10.02	Minimum Revenue	97 <u>91</u>
SECTION 11. EVENTS OF DEFAULT		98 <u>91</u>
11.01	Events of Default	98 <u>91</u>
11.02	Remedies	+01 <u>94</u>
11.03	Additional Remedies	+02 <u>95</u>
11.04	Minimum Revenue Covenant Cure	+02 <u>95</u>
11.05	Payment of Prepayment Fee	+03 <u>96</u>
SECTION 12. THE ADMINISTRATIVE AGENT		+04 <u>97</u>
12.01	Appointment and Duties	+04 <u>97</u>
12.02	Binding Effect	+06 <u>98</u>
12.03	Use of Discretion	+06 <u>98</u>
12.04	Delegation of Rights and Duties	+06 <u>98</u>
12.05	Reliance and Liability	+06 <u>99</u>
12.06	Administrative Agent Individually	+08 <u>100</u>
12.07	Lender Credit Decision	+08 <u>100</u>
12.08	Expenses; Indemnities	+08 <u>100</u>
12.09	Resignation of the Administrative Agent	+09 <u>101</u>
12.10	Release of Collateral or Guarantors	+10 <u>102</u>
12.11	Additional Secured Parties	+11 <u>102</u>
12.12	Agent May File Proofs of Claim	+11 <u>103</u>
12.13	Acknowledgements of Lenders	+12 <u>103</u>
SECTION 13. GUARANTY		+14 <u>105</u>
13.01	The Guaranty	+14 <u>105</u>
13.02	Obligations Unconditional	+15 <u>106</u>

13.05	Reinstatement	+18 <u>109</u>
13.06	Subrogation	+18 <u>109</u>
13.07	Remedies	+19 <u>110</u>
13.08	Instrument for the Payment of Money	+19 <u>110</u>
13.09	Continuing Guarantee	+19 <u>110</u>
13.11	General Limitation on Guarantee Obligations	+20 <u>111</u>
SECTION 14. MISCELLANEOUS		+20 <u>111</u>
14.01	No Waiver	+20 <u>111</u>
14.02	Notices	+21 <u>111</u>
14.03	Expenses, Indemnification, Etc.	+21 <u>112</u>
14.04	Amendments, Etc.	+23 <u>113</u>
14.05	Successors and Assigns	+23 <u>114</u>
14.06	Survival	+26 <u>116</u>
14.07	Captions	+26 <u>116</u>
14.08	Counterparts, Effectiveness	+26 <u>116</u>
14.09	Governing Law	+26 <u>116</u>
14.10	Jurisdiction, Service of Process and Venue	+26 <u>117</u>
14.11	Waiver of Jury Trial	+27 <u>117</u>
14.12	Waiver of Immunity	+27 <u>117</u>
14.13	Entire Agreement	+27 <u>117</u>
14.14	Severability	+28 <u>118</u>
14.15	No Fiduciary Relationship	+28 <u>118</u>
14.16	Confidentiality	+28 <u>118</u>
14.17	Interest Rate Limitation	+29 <u>119</u>
14.18	Judgment Currency	+29 <u>119</u>
14.19	USA PATRIOT Act	+30 <u>119</u>
14.20	Acknowledgement and Consent to Bail-In of Affected Financial Institutions	+30 <u>119</u>

SCHEDULES AND EXHIBITS

Schedule 1	-	Loans Schedule
Schedule 2	-	Products
Schedule 3	-	Minimum Revenue
Schedule 4	-	BXCL 701 Assets
Schedule 7.05(b)	-	Certain Intellectual Property
Schedule 7.06(b)	-	Environmental Matters
Schedule 7.08	-	Taxes
Schedule 7.12	-	Information Regarding Subsidiaries
Schedule 7.13(a)	-	Existing Indebtedness
Schedule 7.13(b)	-	Existing Liens
Schedule 7.14	-	Material Agreements
Schedule 7.15	-	Restrictive Agreements
Schedule 7.16	-	Real Property Owned or Leased by Obligors
Schedule 7.17	-	Pension Matters
Schedule 7.18(c)	-	Adverse Findings
Schedule 7.19	-	Transactions with Affiliates
Schedule 7.24	-	Royalties and Other Payments
Schedule 9.05	-	Existing Investments
Schedule 9.09	-	Sale of Assets
Exhibit A	-	Form of Note
Exhibit B	-	Form of Borrowing Notice
Exhibit C	-	Form of Guarantee Assumption Agreement
Exhibit D-1	-	Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)
Exhibit D-2	-	Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)
Exhibit D-3	-	Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)
Exhibit D-4	-	Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)
Exhibit E	-	Form of Compliance Certificate
Exhibit F	-	Form of Assignment and Assumption
Exhibit G	-	Form of Landlord Consent
Exhibit H	-	Form of Stock Purchase Agreement
Exhibit I	-	Form of Intercompany Subordination Agreement
Exhibit J-1	-	Form of Company Warrant
Exhibit J-2	-	Form of 701 Warrant
Exhibit K	-	Form of Solvency Certificate
Exhibit L	-	Form of Funding Date Certificate
Exhibit M	-	Form of Tranche eD Revenue Condition Certificate

CREDIT AGREEMENT AND GUARANTY

CREDIT AGREEMENT AND GUARANTY, dated as of April 19, 2022, and amended as of November 13, 2023 and December 5, 2023 (this “*Agreement*”), among BIOXCEL THERAPEUTICS, INC., a Delaware corporation (the “*Borrower*”), certain Subsidiaries of the Borrower that may be required to provide Guarantees from time to time hereunder (each a “*Guarantor*” and collectively, the “*Guarantors*”), the lenders from time to time party hereto (each a “*Lender*” and collectively, the “*Lenders*”), and OAKTREE FUND ADMINISTRATION, LLC, as administrative agent for the Lenders (in such capacity, the “*Administrative Agent*”).

WITNESSETH:

WHEREAS, the Borrower has requested that the Lenders provide a first-lien term loan facility to the Borrower in an aggregate principal amount of ~~\$135,000,000~~ 202,319,447, consisting of (a) a ~~\$70,000,000~~ 72,319,447 Tranche A-1 Term Loan extended on the Closing Date, (b) a \$30,000,000 Tranche A-2 Term Loan extended on the Second Amendment Effective Date, (c) a \$20,000,000 Tranche B Term Loan to be extended on the Applicable Funding Date for the Tranche A Term Loan, (b) a ~~\$35,000,000 Tranche B Term to be extended on the Applicable Funding Date for the Tranche B Term Loan~~, (c) a \$30,000,000 Tranche C Term Loan to be extended on the Applicable Funding Date for the Tranche C Term Loan, and (d) a \$50,000,000 Tranche D Term Loan to be extended on the Applicable Funding Date for the Tranche D Term Loan; and

WHEREAS, the Lenders are willing, on the terms and subject to the conditions set forth herein, to provide such senior secured term loan facility.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

1.01 Certain Defined Terms. As used herein, the following terms have the following respective meanings:

“*30-day VWAP*” has the meaning set forth in **Section 2.08(a)**.

“*701 Subsidiary Shared Services Agreement*” means the Shared Services Agreement, dated as of April 19, 2022, by and between OnkosXcel Therapeutics, LLC and the Borrower, as in effect on the date hereof.

“*701 Warrant*” means any warrant delivered pursuant to **Section 6.02(h)**, evidenced by an instrument substantially in the form of **Exhibit J-2** hereto, as amended, replaced or otherwise modified pursuant to the terms thereof.

“*Account Control Agreement Completion Date*” has the meaning set forth in **Section 8.19(d)**.

“*Acquisition*” means any transaction, or any series of related transactions, by which any Person (for purposes of this definition, an “*acquirer*”) directly or indirectly, by means of amalgamation, consolidation, merger, purchase of assets, purchase of Equity Interests, or otherwise, (i) acquires all or substantially all of the assets of any other Person, (ii) acquires (including via licensing and in-licensing) an entire business line or unit or division of any other Person, (iii) with respect to any other Person that is managed or governed by a Board, acquires control of Equity Interests of such other Person representing more than fifty percent (50%) of the ordinary voting power (determined on a fully-diluted basis) for the election of directors of such Person’s Board, or (iv) acquires control of more than fifty percent (50%) of the Equity Interests in any other Person (determined on a fully-diluted basis) that is not managed by a Board.

“**Administrative Agent**” has the meaning set forth in the preamble hereto.

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

“**Affiliate**” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided that solely with respect to transfers by, or any other rights afforded to, the QIA Lender or any of its Affiliates, all references to “Affiliate” or “Affiliates” with respect to the QIA Lender shall include (i) Qatar Investment Authority and any individual, corporation, partnership, firm, joint venture, investment fund, association, trust, unincorporated association or organization, governmental body or other entity, which controls, is controlled by or is under common control with, the QIA Lender, and (ii) government entities or instrumentalities of, or entities that are wholly-owned or controlled by, the State of Qatar, the Amiri Diwan of the State of Qatar or any entities that are wholly-owned or controlled by any one or more of the foregoing.

“**Agreement**” has the meaning set forth in the preamble hereto.

“**ANDA**” means (i) (x) an abbreviated new drug application (as defined in the FD&C Act) and (y) any similar application or functional equivalent relating to any new drug application applicable to or required by any non-U.S. Governmental Authority, and (ii) all supplements and amendments that may be filed with respect to any of the foregoing.

“**Anti-Terrorism Laws**” means any laws relating to terrorism or money laundering, including (i) the Money Laundering Control Act of 1986 (e.g., 18 U.S.C. §§ 1956 and 1957), (ii) the Bank Secrecy Act of 1970 (e.g., 31 U.S.C. §§ 5311 – 5330), as amended by the Patriot Act, (iii) the laws, regulations and Executive Orders administered by the United States Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), (iv) the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and implementing regulations by the United States Department of the Treasury, (v) any law prohibiting or directed against terrorist activities or the financing of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B), or (vi) any similar laws enacted in the United States, European Union or any other jurisdictions in which the parties to this agreement operate, and all other present and future legal requirements of any Governmental, including His Majesty’s Treasury, governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war.

“**Applicable Availability Period**”, with respect to a tranche of Loans, has the meaning set forth in the Loans Schedule for such tranche of Loans.

“**Applicable Funding Condition**”, with respect to a tranche of Loans, has the meaning set forth in the Loans Schedule for such tranche of Loans.

“**Applicable Funding Date**”, with respect to a tranche of Loans, means the date during the Applicable Availability Period for such tranche of Loans on which all conditions precedent set forth in **Section 6.02** are satisfied or waived in accordance with the terms of this Agreement.

“**Arm’s Length Transaction**” means, with respect to any transaction, the terms of such transaction shall not be less favorable to the Borrower or any of its Subsidiaries than commercially reasonable terms that would be obtained in a transaction not while in financial distress with a Person that is an unrelated third party.

“**Asset Sale**” has the meaning set forth in **Section 9.09**.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an assignee of such Lender substantially in the form of **Exhibit F**, or such other form as agreed by the Administrative Agent.

“**Bailee Letter**” means a bailee letter substantially in the form of Exhibit F to the Security Agreement.

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

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

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy.”

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Benefit Plan**” means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which any Obligor or Subsidiary thereof incurs or otherwise has any obligation or liability, contingent or otherwise.

“**BioXcel LLC**” means BioXcel LLC, a Delaware limited liability company (formerly known as BioXcel Corporation).

“**BioXcel Trademark Agreement**” has the meaning set forth in **Section 6.02(j)(ii)**.

“**Board**” means, with respect to any Person, the board of directors or equivalent management or oversight body of such Person or any committee thereof authorized to act on behalf of such board (or equivalent body).

“**Board Observer**” has the meaning set forth in **Section 8.13(b)**.

“**Borrower**” has the meaning set forth in the preamble hereto.

“**Borrower Party**” has the meaning set forth in **Section 14.03(b)**.

“**Borrowing**” means the borrowing of the Loans on each Applicable Funding Date.

“**Borrowing Notice**” means a written notice substantially in the form of **Exhibit B**.

“**Business Day**” means a day (other than a Saturday or Sunday) on which commercial banks are not authorized or required to close in New York City; provided, that with respect to any notices to a QIA Lender or any obligation for a QIA Lender to fund any Borrowings, “Business Day” shall not include any day on which commercial banks in Qatar are authorized or required to close.

“**BXCL 501**” means a proprietary, orally dissolving thin film formulation of dexmedetomidine, a selective alpha-2a receptor agonist, as further described on Schedule 2, including all improvements and modifications thereto.

“**BXCL 701**” means an orally administered talabostat formulation, as further described on Schedule 2, including all improvements and modifications thereto, or any other formulation of talabostat.

“**BXCL 701 Asset Contribution**” means the contribution by the Borrower of the BXCL 701 Assets to the BXCL 701 Subsidiaries.

“**BXCL 701 Assets**” means the assets listed on **Schedule 4**.

“**BXCL 701 Disposition Proceeds Account**” has the meaning set forth in **Section 3.03(b)(i)(B)**.

“**BXCL 701 Primary Disposition Proceeds**” means Net Cash Proceeds from a Permitted BXCL 701 Primary Disposition Event; provided that, at the time that a Permitted BXCL 701 Primary Disposition Event occurs, any Net Cash Proceeds from any exclusive license previously granted for the use of the Intellectual Property of an Obligor or any of its Subsidiaries for the promotion, manufacture or sale of BXCL 701 should be included in BXCL 701 Primary Disposition Proceeds, except to the extent such proceeds were used for research and development activities for oncology products and no incentive payments were made with respect to any employee equity incentive or similar plan.

“**BXCL 701 Release Date**” means the date on which a Permitted BXCL 701 Release Event occurs.

“**BXCL 701 Secondary Disposition Proceeds**” means Net Cash Proceeds from a Permitted BXCL 701 Secondary Disposition Event.

“**BXCL 701 Subsidiaries**” means (i) OnkosXcel Therapeutics, LLC and OnkosXcel Employee Holdings, LLC, each a Delaware limited liability company and each formed solely for the purpose of acquiring, developing and commercializing the BXCL 701 Assets, (ii) any Subsidiary created solely for the purpose of holding the Equity Interests and/or Indebtedness of the other BXCL 701 Subsidiaries, (iii) each subsidiary of the foregoing from time to time, and (iv) any IPO Co., in each case of clauses (i) through (iv), so long as such Person is a Subsidiary of the Borrower. For the avoidance of doubt, any Person that is not a Subsidiary of the Borrower shall not constitute a BXCL 701 Subsidiary.

“**Capital Lease Obligations**” means, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal property, the amount of the liability in respect thereof that would at that time be required to be capitalized on a balance sheet in accordance with GAAP as in effect on December 31, 2018, subject to **Section 1.02**.

“**Casualty Event**” means the damage, destruction or condemnation, as the case may be, of property of the Borrower or any of its Subsidiaries in excess of \$2,000,000 (or the Equivalent Amount in other currencies).

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

“**CFC Holding Company**” means any Domestic Subsidiary that owns no material assets (directly or indirectly) other than Equity Interests and debt of one or more CFCs or Domestic Subsidiaries that are themselves CFC Holding Companies.

“**Change of Control**” means an event or series of events (i) as a result of which any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Act, but excluding any of such person or its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such Plan and excluding any Permitted Holder) becomes the “beneficial owner”, directly or indirectly, of thirty-five percent (35%) or more of the Equity Interests of the Borrower entitled to vote for members of the Board of the Borrower on a fully-diluted basis (and taking into account all such Equity Interests that such person or group has the right to acquire pursuant to any Option Right); (ii) as a result of which any Permitted Holder or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Act) including any Permitted Holder becomes the “beneficial owner”, directly or indirectly, of forty-five percent (45%) or more of the Equity Interests of the Borrower entitled to vote for members of the Board of the Borrower on a fully-diluted basis (and taking into account all such Equity Interests that such Permitted Holder or group has the right to acquire pursuant to any Option Right); (iii) that results in the sale of all or substantially all of the assets or businesses of the Borrower and its Subsidiaries, taken as a whole, or (iv) that results in the Borrower’s failure to own, directly or indirectly, beneficially and of record, one-hundred percent (100%) of all issued and outstanding Equity Interests of each Subsidiary Guarantor (other than, in the case of this clause (iv), as a result of any Asset Sale permitted by **Section 9.09**, liquidation or dissolution permitted by **Section 9.03(b)**, the issuance of any Equity Interests in BXCL 701 Subsidiaries pursuant to **Section 9.09(o)**, a Permitted BXCL 701 Disposition Event, or any interest in or exercise of any 701 Warrant). For purposes of this definition, “beneficial owner” is as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have “beneficial ownership” of all Equity Interests that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “**Option Right**”).

“**Claims**” means (and includes) any claim, demand, complaint, grievance, action, application, suit, cause of action, order, charge, indictment, prosecution, judgement or other similar process, whether in respect of assessments or reassessments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

“**Closing Date**” means the date on which the conditions precedent specified in **Section 6.01** are satisfied (or waived in accordance with **Section 14.04**).

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

“**Collaboration Agreement Option**” means Borrower’s option, pursuant to the Shared Services Agreement, to enter into a collaborative services agreement with BioXcel LLC by which BioXcel LLC shall perform product identification and related services for the Borrower utilizing the EvolverAI Platform.

“**Collateral**” means any real, personal and mixed property (including Equity Interests), whether tangible or intangible, in which Liens are granted or purported to be granted to the Administrative Agent as security for the Obligations under any Loan Document on or after the Closing Date, including future acquired or created assets or property (or collectively, all such real, personal and mixed property, as the context may require); provided, “Collateral” shall not include (i) Equity Interests of any Subsidiary representing, in the aggregate, more than sixty-five percent (65%) of the Equity Interests of any CFC or CFC Holding Company or (ii) any assets owned by the BXCL 701 Subsidiaries (but shall include a pledge of 100% of the Equity Interests of the BXCL 701 Subsidiaries that are directly owned by the Borrower or any of the Borrower’s other Subsidiaries).

“**Commercial Supply Agreement**” means the commercial supply agreement, dated as of April 1, 2022, by and between the Borrower and ARx, LLC, as it may be amended or modified from time to time in accordance with the terms hereof.

“**Commitment**” means, with respect to each Lender, the obligation of such Lender to make Loans to the Borrower on each Applicable Funding Date in accordance with the terms and conditions of this Agreement, which commitment is in the amount set forth opposite such Lender’s name on **Schedule 1** under the caption “Applicable Commitment”, as such Schedule may be amended from time to time pursuant to an Assignment and Assumption or otherwise. The aggregate amount of Commitments ~~on the date of this Agreement equals \$135,000,000~~ outstanding on the Second Amendment Effective Date (after giving effect to the Second Amendment) equals \$100,000,000.

“**Commitment Termination Date**” means (a) with respect to the Commitments to make Tranche B Term Loans, December 31, 2024, (b) with respect to the Commitments to make Tranche C Term Loans, December 31, 2025 and (c) with respect to the Commitments to make Tranche D Term Loans, December 31, 2025.

“**Common Stock**” means the common stock, \$0.001 par value, of the Borrower.

“**Company Competitor**” means (i) any competitor of the Borrower or any of its Subsidiaries primarily operating in the same line of business as the Borrower or any of its Subsidiaries and (ii) any of such competitor’s Affiliates (other than any Person that is a bona fide debt fund primarily engaged in the making, purchasing, holding or other investing in commercial loans, notes, bonds or similar extensions of credit or securities in the Ordinary Course) that are either (x) identified by name in writing by the Borrower to the Administrative Agent from time to time or (y) clearly identifiable on the basis of such Affiliate’s name.

“**Company Warrant Warrants**” means ~~that~~ (i) those certain warrant warrants, dated as of the Closing Date and delivered pursuant to Section 6.01(h), evidenced by an instrument substantially the form of Exhibit J-1 hereto, as amended on the Second Amendment Effective Date and as further amended, replaced or otherwise modified pursuant to the terms thereof and (ii) those certain warrants, dated as of the Second Amendment Effective Date, evidenced by an instrument substantially the form of Exhibit J-1 hereto, as amended, replaced or otherwise modified pursuant to the terms thereof.

“**Compliance Certificate**” has the meaning set forth in **Section 8.01(c)**.

“**Conforming Changes**” means, with respect to the use, administration of or any conventions associated with Term SOFR or any proposed Successor Rate, as applicable, any conforming changes to the definitions of “Term SOFR” and “Interest Period”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of “Business Day” and “U.S. Government Securities Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent (in consultation with the Borrower), to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent determines (in consultation with the Borrower) is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

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

“**Contracts**” means any contract, license, lease, agreement, obligation, promise, undertaking, understanding, arrangement, document, commitment, entitlement or engagement under which a Person has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied, and whether in respect of monetary or payment obligations, performance obligations or otherwise).

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

“**Controlled Account**” has the meaning set forth in **Section 8.17**.

“**Copyright**” means published and unpublished works of authorship whether or not copyrightable, including software, website and mobile content, data, databases, and other compilations of information, in each case, whether or not registered, and any and all copyrights in and to the foregoing, together with all common law rights and moral rights therein, and all copyrights, copyright registrations and applications for copyright registrations, including all renewals, extensions, restorations, derivative works and reversions thereof and all common law rights, moral rights and other rights whatsoever accruing thereunder or pertaining thereto throughout the world.

“**Daily Simple SOFR**” means, with respect to any applicable determination date, the SOFR published on such date on the Federal Reserve Bank of New York’s website (or any successor source).

“**Default**” means any Event of Default and any event that, upon the giving of notice, the lapse of time or both, would constitute an Event of Default.

“**Default Rate**” has the meaning set forth in **Section 3.02(b)**.

“**Deferred Acquisition Consideration**” means any purchase price adjustments, royalty, earn-out, milestone payments, contingent or other deferred payment payments of a similar nature (including any non-compete payments and consulting payments) made in connection with any Permitted Acquisition or other acquisition or investment permitted under this Agreement.

“**Designated Jurisdiction**” means any country or territory to the extent that such country or territory is the subject of country- or territory-wide Sanctions.

“**Disqualified Equity Interests**” means, with respect to any Person, any Equity Interest of such Person that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable or requires such Person to use efforts to redeem such Equity Interests (in each case, other than solely for Qualified Equity Interests), including pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (iii) provides for the scheduled payments of dividends or other distributions in cash or other securities that would constitute Disqualified Equity Interests, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Maturity Date; provided, that if such Equity Interests are issued to any employee or any plan for the benefit of employees of Borrower or its Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of any such employee’s termination, death or disability; provided, further, that no Equity Interests held by any future, present or former employee, director, officer or consultant (or their respective Affiliates or immediate family members) of Borrower issued pursuant to customary terms in the Ordinary Course shall be considered Disqualified Equity Interests solely because such Equity Interests are redeemable or subject to repurchase pursuant to a customary management equity subscription agreement, stock option, stock appreciation right or other stock award agreement or similar agreement that may be in effect from time to time.

“**Distressed Debt Investor**” means any investor or investment fund specializing in distressed debt and a majority of whose investment portfolio at all times consists of distressed debt. In no event shall any Oaktree Lender be deemed to be a Distressed Debt Investor.

“**Division**” has the meaning set forth in **Section 1.04**.

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

“**Domestic Subsidiary**” means any Subsidiary that is a corporation, limited liability company, partnership or similar business entity incorporated, formed or organized under the laws of the United States, any state of the United States or the District of Columbia.

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

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

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

“**Eligible Transferee**” means and includes (i) any commercial bank, (ii) any insurance company, (iii) any finance company, (iv) any financial institution, (v) any Person that is a bona fide debt fund primarily engaged in the making, purchasing, holding or other investing in commercial loans, notes, bonds or similar extensions of credit or securities in the Ordinary Course, (vi) with respect to any Lender, any of its Affiliates or such Lender’s or Affiliate’s managed funds or accounts, and (vii) any other “accredited investor” (as defined in Regulation D of the Securities Act) that is principally in the business of managing investments or holding assets for investment purposes; provided, that no Distressed Debt Investor or Company Competitor shall be an Eligible Transferee.

“**Emerging 701 Pipeline**” means oncology drug concepts and candidates identified using AI platform approaches, including synthetic lethality pairs.

“**Environmental Claims**” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, information request, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of, or liability relating to, any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment, arising out of a violation of Environmental Law or any Hazardous Materials Activity.

“**Environmental Law**” means all laws (including common law and any federal, state, provincial or local governmental law), rule, regulation, order, writ, judgment, notice, requirement, binding agreement, injunction or decree, whether U.S. or non-U.S., relating in any way to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) to the extent related to Hazardous Materials Activity, occupational safety and health, industrial hygiene, land use, natural resources or the protection of human, plant or animal health or welfare, in any manner applicable to the Borrower or any of its Subsidiaries or any Facility.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Obligor or any of its Subsidiaries directly or indirectly resulting from or based upon (i) violation of any Environmental Law, (ii) the generation, use, presence, emission, discharge, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (iii) exposure to any Hazardous Materials, (iv) the release or threatened release of any Hazardous Materials into the environment or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**Equity Interests**” means, with respect to any Person (for purposes of this defined term, an “**issuer**”), all shares of, interests or participations in, or other equivalents in respect of such issuer’s capital stock, including all membership interests, partnership interests or equivalent, whether now outstanding or issued after the Closing Date, and in each case, however designated and whether voting or non-voting. Notwithstanding the foregoing, in no event shall any Indebtedness convertible or exchangeable into Equity Interests constitute “Equity Interests” hereunder.

“**Equity Investment**” has the meaning set forth in **Section 2.08(b)**.

“**Equity Purchase Right**” means, with respect to each Lender, the right of such Lender to purchase Common Stock pursuant to an Equity Investment in the amounts set forth opposite such Lender’s name on **Schedule 1** under the caption “**Equity Purchase Right**”, as such schedule may be amended from time to time pursuant to an Assignment and Assumption agreement or otherwise.

“**Equivalent Amount**” means, with respect to an amount denominated in one currency, the amount in another currency that could be purchased by the amount in the first currency determined by reference to the Exchange Rate at the time of determination. Where the permissibility of a transaction, accuracy of a representation or warranty or compliance with a covenant hereunder is determined by reference to amounts stated in Dollars (or the Equivalent Amount in other currencies), the time of determination shall, in each case, be the time at which any applicable transaction is entered into (e.g. the time at which Indebtedness is incurred or at which an Investment or Asset Sale is made), financial covenant is tested, or representation or warranty is made, and the permissibility of actions taken under this Agreement shall not be affected by, and no Default or Event of Default shall arise as a result of, subsequent fluctuations in exchange rates.

“**ERISA**” means the United States Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” means, collectively, any Obligor, Subsidiary thereof, and any Person under common control, or treated as a single employer, with any Obligor or Subsidiary thereof, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“**ERISA Event**” means (i) a reportable event as defined in Section 4043 of ERISA with respect to a Title IV Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event; (ii) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Title IV Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following thirty (30) days; (iii) a withdrawal by any Obligor or any ERISA Affiliate thereof from a Title IV Plan or the termination of any Title IV Plan resulting in liability under Sections 4063 or 4064 of ERISA; (iv) the withdrawal of any Obligor or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by any Obligor or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is insolvent pursuant to Section 4245 of ERISA; (v) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Title IV Plan or Multiemployer Plan; (vi) the imposition of liability on any Obligor or any ERISA Affiliate thereof pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the failure by any Obligor or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Title IV Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Title IV Plan or the failure to make any required contribution to a Multiemployer Plan; (viii) the determination that any Title IV Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (ix) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan; (x) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or any ERISA Affiliate thereof; (xi) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Title IV Plan; (xii) the occurrence of a non-exempt prohibited transaction under Section 406 or 407 of ERISA for which any Obligor or any Subsidiary thereof may be directly or indirectly liable; (xiii) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Code by any fiduciary or disqualified person for which any Obligor or any ERISA Affiliate thereof may be directly or indirectly liable; (xiv) the occurrence of an act or omission which could give rise to the imposition on any Obligor or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (xv) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Obligor or any Subsidiary thereof in connection with any such plan; (xvi) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; (xvii) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of any Obligor or any ERISA Affiliate thereof, in either case pursuant to Title I or IV, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code; or (xviii) the establishment or amendment by any Obligor or any Subsidiary thereof of any “welfare plan”, as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that would increase the liability of any Obligor.

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

“*Erroneous Payment*” has the meaning set forth in **Section 12.13(a)**.

“*Erroneous Payment Deficiency Assignment*” has the meaning set forth in **Section 12.13(d)**.

“*Erroneous Payment Impacted Loans*” has the meaning set forth in **Section 12.13(d)**.

“*Erroneous Payment Return Deficiency*” has the meaning set forth in **Section 12.13(d)**.

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

“*Event of Default*” has the meaning set forth in **Section 11.01**.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Exchange Rate**” means, as of any date, the rate at which any currency may be exchanged into another currency, as set forth on the relevant Reuters screen at or about 11:00 a.m. (Eastern time) on such date. In the event that such rate does not appear on the Reuters screen, the “Exchange Rate” shall be determined by reference to such other publicly available service for displaying exchange rates as may be reasonably designated by the Administrative Agent.

“**Excluded Accounts**” means (i) deposit accounts exclusively used for payroll, payroll Taxes and other employee wage and benefit payments to or for the benefit of any Obligor’s employees, (ii) zero balance accounts that are swept no less frequently than weekly to a Controlled Account, (iii) accounts (including trust accounts) used exclusively for bona fide escrow purposes, insurance or fiduciary purposes, (iv) cash collateral for (x) Permitted Liens incurred pursuant to **Sections 9.02(i)** and **(r)** and (y) Permitted Liens securing Indebtedness incurred pursuant to **Sections 9.01(p), (r), (s)(iii)** and **(s)(iv)**, (v) ~~collateral accounts in respect of the Revenue Interest Financing~~, ~~(vi)~~ all deposit accounts, securities accounts or commodity accounts of the BXCL 701 Subsidiaries, and ~~(vii)~~ any other deposit accounts established after the Closing Date only for so long as the amounts of deposit therein do not exceed \$500,000 (or the Equivalent Amount in other currencies) in the aggregate.

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (x) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivisions thereof) or (y) that are Other Connection Taxes, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (1) such Lender acquires such interest in the Loan or Commitment or (2) such Lender changes its lending office, except in each case to the extent that, pursuant to this Agreement, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) Taxes attributable to such Recipient’s failure to comply with **Section 5.03(f)**, and (iv) any U.S. federal withholding Taxes imposed under FATCA.

“**Facility**” means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased or operated by any Obligor or any of its Subsidiaries.

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

“**FD&C Act**” means the U.S. Food, Drug and Cosmetic Act of 1938, 21 U.S.C. §§ 301 et seq. (or any successor thereto), as amended from time to time, and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder.

“**FDA**” means the U.S. Food and Drug Administration and any successor entity.

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

“**Fee Letter**” means the amended and restated Fee Letter, dated as of the ~~date of this Agreement~~Second Amendment Effective Date, among the Borrower, the Lenders and the Administrative Agent.

“**First Offer**” has the meaning set forth in **Section 9.19(d)**.

“**Foreign Lender**” means a Lender that is not a U.S. Person.

“**Funding Date Certificate**” means a certificate substantially in the form of Exhibit L.

“**GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination. All references to “GAAP” shall be to GAAP applied consistently with the principles used in the preparation of the financial statements delivered pursuant to **Section 6.01(d)**.

“**Governmental Approval**” means any consent, authorization, approval, order, license, franchise, permit, certification, accreditation, registration, clearance or exemption that is issued or granted by or from (or pursuant to any act of) any Governmental Authority, including any application or submission related to any of the foregoing.

“**Governmental Authority**” means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-, rule- or regulation-making organizations or entities of any state, territory, county, city or other political subdivision of any country, in each case whether U.S. or non-U.S.

“**Guarantee**” of or by any Person (the “**guarantor**”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or other obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course.

“**Guarantee Assumption Agreement**” means a Guarantee Assumption Agreement substantially in the form of **Exhibit C** by an entity that, pursuant to **Section 8.11(a)**, is required to become a “Subsidiary Guarantor.”

“**Guaranteed Obligations**” has the meaning set forth in **Section 13.01**.

“**Guaranty**” means the Guaranty made by the Subsidiary Guarantors under **Section 13** in favor of the Secured Parties (including any Guaranty assumed by an entity that is required to become a “Subsidiary Guarantor” pursuant to a Guarantee Assumption Agreement).

“**Hazardous Material**” means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or would reasonably be expected to pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

“**Hazardous Materials Activity**” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, release, threatened release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, recycling, disposition or handling of any Hazardous Materials, and any investigation, monitoring, corrective action or response action with respect to any of the foregoing.

“**Healthcare Laws**” means, collectively, all Laws and Product Authorizations applicable to the business, any Product or the Product Commercialization and Development Activities of any Obligor, whether U.S. or non-U.S., regulating the distribution, dispensing, importation, exportation, quality, manufacturing, labeling, promotion and provision of and payment for drugs, medical or healthcare products, items and services, including 45 C.F.R. et seq. (“**HIPAA**”); Section 1128B(b) of the Social Security Act, as amended; 42 U.S.C. § 1320a-7b (Criminal Penalties Involving Medicare or State Health Care Programs), commonly referred to as the “Federal Anti-Kickback Statute”; § 1877 of the Social Security Act, as amended; 42 U.S.C. § 1395nn (Limitation on Certain Physician Referrals), commonly referred to as “Stark Statute”; the FD&C Act; all rules, regulations and guidance with respect to the provision of Medicare and Medicaid programs or services (42 C.F.R. Chapter IV et seq.); 10 U.S.C. §§1071 – 1110(b); 5 U.S.C. §§ 8901 – 8914; and all rules, regulations and guidance promulgated under or pursuant to any of the foregoing, including any non-U.S. equivalents.

“**Hedging Agreement**” means any interest rate exchange agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement. Notwithstanding anything to the contrary in the foregoing, neither any Permitted Bond Hedge Transaction nor any Permitted Warrant Transaction shall be a Hedging Agreement.

“**HIPAA**” has the meaning set forth in “Healthcare Laws”.

“**Immaterial Subsidiary**” means any Subsidiary of the Borrower that (i) individually constitutes or holds less than five percent (5%) of the Borrower’s consolidated total assets and generates less than five percent (5%) of the Borrower’s consolidated total revenue, and (ii) when taken together with all then existing Immaterial Subsidiaries, such Subsidiary and such Immaterial Subsidiaries, in the aggregate, would constitute or hold less than five percent (5%) of the Borrower’s consolidated total assets and generate less than five percent (5%) of the Borrower’s consolidated total revenue, in each case as pursuant to the most recent fiscal period for which financial statements were required to have been delivered pursuant to **Section 8.01(a) or (b)**; provided that no Subsidiary of the Borrower shall be an Immaterial Subsidiary if such Subsidiary holds Material Intellectual Property (other than, for the avoidance of doubt, foreign Product Authorizations). If at any time the aggregate amount of the Borrower’s consolidated total assets or consolidated total revenue attributable to Immaterial Subsidiaries exceeds five percent (5%) of the Borrower’s consolidated total assets or consolidated total revenue, the Borrower shall promptly (and in any event within thirty (30) days of becoming aware of such excess) designate sufficient Subsidiaries as ceasing to constitute “Immaterial Subsidiaries” to eliminate such excess, and such designated Subsidiaries shall be required to become Guarantors in accordance with **Section 8.11(a)**. If at any time any Subsidiary designated as an Immaterial Subsidiary individually constitutes or holds five percent (5%) or more of the Borrower’s consolidated total assets or generates five percent (5%) or more of the Borrower’s consolidated total revenue, such Subsidiary shall cease to constitute an Immaterial Subsidiary and the Borrower shall promptly (and in any event within thirty (30) days of becoming aware thereof) cause such Subsidiary to become a Guarantor in accordance with **Section 8.11(a)**.

“**IND**” means (i) (x) an investigational new drug application (as defined in the FD&C Act) that is required to be filed with the FDA before beginning clinical testing in human subjects, or any successor application or procedure and (y) any similar application or functional equivalent relating to any investigational new drug application applicable to or required by any non-U.S. Governmental Authority, and (ii) all supplements and amendments that may be filed with respect to the foregoing.

“**Indebtedness**” of any Person means, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (v) all obligations of such Person in respect of the deferred purchase price of property or services, (vi) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (vii) all Guarantees by such Person of Indebtedness of others, (viii) all Capital Lease Obligations of such Person, (ix) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (x) obligations under any Hedging Agreement, currency swaps, forwards, futures or derivatives transactions, (xi) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (xii) all obligations under any earn-out and guaranteed minimum milestone and other payments of such Person under any license or other agreements (but excluding any payments based on sales under any such license or other agreement), (xiii) any Disqualified Equity Interests of such Person and (xiv) any Off-Balance Sheet Liability; provided that, notwithstanding the foregoing, Indebtedness shall not include (A) accrued expenses, deferred rent, deferred Taxes, deferred compensation or customary obligations under employment agreements, ~~or~~ and (B) accounts payable incurred in the ordinary course of business and either (i) not overdue by more than ninety (90) days or (ii) being contested in good faith by appropriate proceedings and reserved for in accordance with GAAP. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“**Indemnified Party**” has the meaning set forth in **Section 14.03(b)**.

“**Indemnified Taxes**” means (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any Obligation and (ii) to the extent not otherwise described in **clause (i)**, Other Taxes.

“**Information Certificate**” means the Information Certificate delivered pursuant to **Section 6.01(c)**.

“**Initial Period**” has the meaning ascribed to such term in the BioXcel Trademark Agreement.

“**Insolvency Proceeding**” means (i) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of any Person’s creditors generally or any substantial portion of such Person’s creditors, in each case undertaken under U.S. federal, state or foreign law, including the Bankruptcy Code.

“**Intellectual Property**” means all intellectual property or proprietary rights of any kind anywhere in the world, including any rights in or to Patents, Trademarks, Copyrights, and Trade Secrets, whether U.S. or non-U.S.

“**Intercompany Subordination Agreement**” means a subordination agreement to be executed and delivered by each Obligor and each of its Subsidiaries, pursuant to which all obligations in respect of any Indebtedness owing to any such Person by an Obligor shall be subordinated to the prior payment in full in cash of all Obligations, such agreement to be in substantially the form attached hereto as **Exhibit I**.

Interest

“**Interest Period**” means (a) the period commencing on and including the Second Amendment Effective Date and ending on but excluding the immediately subsequent Payment Date and (b) subsequently, each period commencing on and excluding the last day of the previous Interest Period for such Loan and ending on but excluding the immediately subsequent Payment Date; provided however if such period shall end on a day that is not a Business Day, it shall be deemed to end on the next succeeding Business Day.

“**Interest Rate**” means ~~10~~ Term SOFR plus 7.50% per annum, as may be increased pursuant to **Section 3.02(b)**.

“**Invention**” means any novel, inventive or useful art, apparatus, method, process, machine (including any article or device), manufacture or composition of matter, or any novel, inventive and useful improvement in any art, method, process, machine (including article or device), manufacture or composition of matter.

“**Investment**” means, for any Person: (i) the acquisition (whether for cash, property, services or securities or otherwise) of any debt or Equity Interests, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any “short sale” or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (ii) the making of any deposit with, or advance, loan, assumption of debt or other extension of credit to, or capital contribution in any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days arising in connection with the sale of inventory or supplies by such Person in the Ordinary Course; or (iii) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person. The amount of an Investment shall be the amount actually invested (which, in the case of any Investment constituting the contribution of an asset or property, shall be based on such Person’s good faith estimate of the fair market value of such asset or property at the time such Investment is made), less the amount of cash received or returned for such Investment, without adjustment for subsequent increases or decreases in the value of such Investment or write-ups, write-downs or write-offs with respect thereto; provided that in no event shall such amount be less than zero or increase any basket or amount pursuant to **Section 9.05** above the fixed amount set forth therein. Notwithstanding anything to the contrary in the foregoing, the purchase of any Permitted Bond Hedge Transaction by the Borrower or any of its Subsidiaries and the performance of its obligations thereunder shall not be an Investment.

“**IPO Co.**” means a corporation created in contemplation of a Qualifying IPO which shall become the direct or indirect parent or managing member of a BXCL 701 Subsidiary and which shall have no assets other than direct or indirect Equity Interests in such BXCL 701 Subsidiary and other assets that BXCL 701 Subsidiaries are permitted to own pursuant to the terms of this Agreement.

“**IRS**” means the U.S. Internal Revenue Service or any successor agency, and to the extent relevant, the U.S. Department of the Treasury.

“**Landlord Consent**” means a Landlord Consent substantially in the form of **Exhibit G**.

“**Law**” means, collectively, all U.S. or non-U.S. federal, state, provincial, territorial, municipal or local statute, treaty, rule, guideline, regulation, ordinance, code or administrative or judicial precedent or authority, including any interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“**Lenders**” has the meaning set forth in the preamble hereto.

“**Lien**” means (a) any mortgage, lien, license, pledge, hypothecation, charge, security interest, or other encumbrance of any kind or character whatsoever, whether or not filed, recorded or otherwise perfected under applicable Law, or any lease, title retention agreement, mortgage, restriction, easement, right-of-way, option or adverse claim (of ownership or possession) (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any other encumbrance on title to real property, any option or other agreement to sell, or give a security interest in, such asset and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes of any jurisdiction)) or any preferential arrangement that has the practical effect of creating a security interest and (b) in the case of Equity Interests, any purchase option, call or similar right of a third party with respect to such Equity Interests.

“**Loan**” means each loan advanced by a Lender pursuant to **Section 2.01**.

“**Loan Documents**” means, collectively, this Agreement, the Second Amendment, the Notes, the Security Documents, the Company ~~Warrant~~Warrants, the 701 Warrants, the Fee Letter, any Guarantee Assumption Agreement, the Intercompany Subordination Agreement and any subordination agreement, intercreditor agreement ~~(including the Permitted Intercreditor Agreement but, for the avoidance of doubt, excluding any other documentation related to the Revenue Interest Financing)~~ or other present or future document, instrument, agreement or certificate delivered to the Administrative Agent (for itself or for the benefit of any other Secured Party) in connection with this Agreement or any of the other Loan Documents, in each case, as amended or otherwise modified.

“**Loss**” means judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any Claim or any proceeding relating to any Claim.

“**Majority Lenders**” means, at any time, Lenders having at such time in excess of fifty percent (50%) of the aggregate Commitments (or, if such Commitments are terminated, the outstanding principal amount of the Loans) then in effect.

“**Margin Stock**” means “margin stock” within the meaning of Regulations U and X.

“**Material Adverse Change**” and “**Material Adverse Effect**” mean a material adverse change in or effect on (i) the business, financial performance, operations, condition of the assets or liabilities of the Borrower and its Subsidiaries taken as a whole, (ii) the ability of any Obligor to perform its obligations under the Loan Documents, as and when due, (iii) the legality, validity, binding effect or enforceability of the Loan Documents or (iv) the rights, remedies and benefits available to, or conferred upon, the Administrative Agent or the Secured Parties under any of the Loan Documents.

“**Material Agreement**” means any Contract required to be disclosed (including amendments thereto) under regulations promulgated under the Securities Act of 1933 or Securities Exchange Act of 1934, as may be amended. For the avoidance of doubt, employment and management contracts shall not be Material Agreements.

“**Material Indebtedness**” means, at any time, any Indebtedness of any Obligor or Subsidiary thereof, the outstanding principal amount of which, individually or in the aggregate, exceeds \$15,000,000 (or the Equivalent Amount in other currencies).

“**Material Intellectual Property**” means all Intellectual Property, whether currently owned by (or purported to be owned by) or licensed to (or purported to be licensed to) the Borrower or any of its Subsidiaries, or acquired, developed or obtained by or otherwise licensed to the Borrower or any of its Subsidiaries after the ~~date hereof~~Closing Date that is, in each case, material to any current, planned or anticipated business of the Borrower or any of its Subsidiaries. Material Intellectual Property includes all Intellectual Property that is material to, or specifically related to or directed toward, (i) BXCL 501 or, prior to a Permitted BXCL 701 Release Event, BXCL 701 or (ii) Product Commercialization and Development Activities with respect to BXCL 501 or, prior to a Permitted BXCL 701 Release Event, BXCL 701.

“**Material Software**” has the meaning set forth in **Section 7.05(b)(G)**.

“**Material Subsidiary**” means any Subsidiary of the Borrower that is not an Immaterial Subsidiary.

“**Maturity Date**” means April 19, 2027 (as it may be extended pursuant to **Section 2.07**) or, if such date is not a Business Day, the immediately preceding Business Day.

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

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

“**Minimum Liquidity Amount**” means (i) from the Closing Date until the date on which the Tranche B Term Loans are funded (the “**Step-Up Date**”), \$15,000,000; *provided*, that upon and following the occurrence of a Permitted BXCL 701 Release Event, the Minimum Liquidity Amount shall be \$27,500,000; *provided, further*, that upon and following the occurrence of a Permitted BXCL 701 Control Event, the Minimum Liquidity Amount shall be \$32,500,000; ~~and~~ (ii) from and after the Step-Up Date, \$20,000,000; *provided*, that upon and following the occurrence of a Permitted BXCL 701 Release Event, the Minimum Liquidity Amount shall be \$32,500,000; *provided, further*, that upon and following the occurrence of a Permitted BXCL 701 Control Event, the Minimum Liquidity Amount shall be \$37,500,000; and (iii) from and after the Applicable Funding Condition for Tranche C Term Loans is satisfied (as evidenced by an officer’s certificate delivered by the Borrower to the Administrative Agent) (the “Step-Down Date”), \$15,000,000; provided, that upon and following the occurrence of a Permitted BXCL 701 Release Event, the Minimum Liquidity Amount shall be \$27,500,000; provided, further, that upon and following the occurrence of a Permitted BXCL 701 Control Event, the Minimum Liquidity Amount shall be \$32,500,000. For the avoidance of doubt, the Minimum Liquidity Amount shall be the highest applicable amount at any time. Notwithstanding the foregoing or anything to the contrary herein, the Minimum Liquidity Amount shall in no event exceed 50% of the aggregate amount of Loans outstanding at any time.

“**Minimum Liquidity Covenant**” shall have the meaning set forth in **Section 10.01**.

“**Minimum Revenue**” means, with respect to any period, the minimum revenue for such period as set forth on **Schedule 3**.

“**Minimum Revenue Covenant**” has the meaning set forth in **Section 10.02**. “**Minimum Revenue Cure Right**” has the meaning set forth in **Section 11.04(a)**. “**Mortgage Deliverables**” has the meaning set forth in **Section 8.11(b)(iv)**.

“**Multiemployer Plan**” means any multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

“**NDA**” means (i) (x) a new drug application (as defined in the FD&C Act) and (y) any similar application or functional equivalent relating to any new drug application applicable to or required by any non-U.S. country, jurisdiction or Governmental Authority, and (ii) all supplements and amendments that may be filed with respect to any of the foregoing.

“**Net Cash Proceeds**” means, (i) with respect to any Casualty Event experienced or suffered by any Obligor or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) from time to time by or on behalf of such Person after deducting therefrom only (w) reasonable costs and expenses related thereto incurred by such Obligor or such Subsidiary in connection therewith, (x) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith, (y) reasonable reserves established for liabilities estimated to be payable in respect of such Casualty Event and deposited into escrow with a third party escrow agent on customary terms or set aside in a Controlled Account and (z) any amounts required to be used to prepay Permitted Indebtedness pursuant to **Sections 9.01(j) and 9.01(l)** secured by the assets subject to such Casualty Event (other than (A) Indebtedness owing to the Administrative Agent or any Lender under this Agreement or the other Loan Documents and (B) Indebtedness assumed by the purchaser of such asset); and (ii) with respect to any Asset Sale by any Obligor or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) from time to time by or on behalf of such Person after deducting therefrom only (w) reasonable costs and expenses related thereto incurred by such Obligor or such Subsidiary in connection therewith, (x) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith, (y) reasonable reserves established for liabilities estimated to be payable in respect of such Asset Sale and deposited into escrow with a third party escrow agent on customary terms or set aside in a Controlled Account and (z) any amounts required to be used to prepay Permitted Indebtedness pursuant to **Sections 9.01(j) and 9.01(l)** secured by the assets subject to such Asset Sale (other than (A) Indebtedness owing to the Administrative Agent or any Lender under this Agreement or the other Loan Documents and (B) Indebtedness assumed by the purchaser of such asset); provided that, in each case of **clauses (i) and (ii)**, costs and expenses shall only be deducted to the extent, that the amounts so deducted are (x) actually paid to a Person that is not an Affiliate of any Obligor or any of its Subsidiaries and (y) properly attributable to such Casualty Event or Asset Sale, as the case may be. Notwithstanding the foregoing, Net Cash Proceeds exclude any cash proceeds received by any BXCL 701 Subsidiary arising from a Casualty Event affecting, or Asset Sale by, such Subsidiary (or other BXCL 701 Subsidiary); provided that any such excluded cash proceeds shall constitute Net Cash Proceeds as, and to the extent, distributed to Borrower or any Subsidiary that is not a BXCL 701 Subsidiary.

“**Note**” means a promissory note, in substantially the form of **Exhibit A** hereto, executed and delivered by the Borrower to any Lender in accordance with **Section 2.04**.

“**Notice of Intent to Cure Revenue Covenant**” has the meaning set forth in **Section 11.04(b)**.

“**NY UCC**” means the UCC as in effect from time to time in New York.

“**Oaktree Lender**” means any Lender that is an Affiliate or managed fund or account of Oaktree Capital Management, L.P.

“**Obligations**” means, with respect to any Obligor, all amounts, obligations, liabilities, covenants and duties of every type and description owing by such Obligor to any Secured Party (including all Guaranteed Obligations) any other indemnitee hereunder or any participant, arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (i) if such Obligor is the Borrower, all Loans, (ii) all interest, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (iii) all other fees, expenses (including fees, charges and disbursement of counsel), interest, Ticking Fees, Prepayment Fee, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to such Obligor under any Loan Document. Notwithstanding the foregoing, the Obligations shall not include any Warrant Obligations, obligations under the Stock Purchase Agreement or obligations of the Borrower to issue Common Stock pursuant to **Section 2.08** or the Stock Purchase Agreement.

“**Obligors**” means, collectively, the Borrower and the Subsidiary Guarantors and their respective successors and permitted assigns. At all times prior to the BXCL 701 Release Date, each of the BXCL 701 Subsidiaries shall be Subsidiary Guarantors on an unsecured basis.

“**OFAC**” has the meaning assigned to such term in the definition of “Anti-Terrorism Laws.”

“**Off-Balance Sheet Liability**” of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability or obligation under any so-called “synthetic lease” transaction entered into by such Person, or (c) any indebtedness, liability or obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person (other than operating leases).

“**Option Right**” has the meaning set forth in the definition of “Change of Control.”

“**Ordinary Course**” means ordinary course of business or ordinary trade activities that are customary for similar businesses in the normal course of their ordinary operations and not while in financial distress.

“**Organic Document**” means, for any Person, such Person’s formation documents, including, as applicable, its certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation, limited liability agreement, operating agreement and all shareholder agreements, voting trusts and similar arrangements applicable to such Person’s Equity Interests, or any equivalent document of any of the foregoing.

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

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

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

“**Participant**” has the meaning set forth in **Section 14.05(e)**.

“**Participant Register**” has the meaning set forth in **Section 14.05(e)**.

“**Patents**” means (i) all domestic, national, regional and foreign patents, patent rights, patent applications, provisional applications, patent disclosures and Invention disclosures issued or filed, (ii) any patent applications filed from such patents, patent rights, patent applications, provisional applications, patent disclosures and Invention disclosures claiming priority to any of these, including renewals, divisionals, continuations, continuations-in-part, substitutions, provisionals, converted provisionals, and continued prosecution applications, (iii) any patents that have issued or in the future issue from the foregoing described in clauses (i) and (ii), including utility models, petty patents and design patents and certificates of invention; and (iv) all extensions or restorations by existing or future extension or restoration mechanisms, including revalidations, reissues, re-examinations, revisions, and term extensions (including any supplementary protection certificates and the like) of the foregoing patents or patent applications described in clauses (i), (ii) and (iii), including the Inventions claimed in any of the foregoing and any priority rights arising therefrom.

“*Patriot Act*” has the meaning set forth in **Section 14.19**.

“*Payment Date*” means (i) March 31, June 30, September 30 and December 31 of each year, commencing on the first such date to occur after the Closing Date (provided, that if such date is not a Business Day, then on the immediately preceding Business Day); and (ii) the Maturity Date.

“*PBGC*” means the United States Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“*Perfection Requirements*” means the filing of appropriate financing statements with the applicable filing office and the filing of appropriate assignments or notices with the U.S. Patent and Trademark Office and the U.S. Copyright Office, in each case in favor of Administrative Agent, the delivery to Administrative Agent of any stock certificates or promissory notes (and any corresponding stock powers or allonges), control agreements and any other Security Documents required to be delivered or actions to be taken pursuant to the applicable Loan Documents and the making or procuring of any other registrations, filings, endorsements, notarizations, stampings and/or notifications of the Security Documents or the Liens created thereunder necessary for the validity and enforceability thereof.

“*Permitted Acquisition*” means any Acquisition by the Borrower or any of its Subsidiaries, whether by purchase, merger or otherwise; provided that:

- (a) ~~(a)~~ immediately prior to, and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would reasonably be expected to result therefrom;
- (b) ~~(b)~~ such Acquisition shall comply in all material respects with all applicable Laws and all applicable Governmental Approvals;
- (c) ~~(c)~~ in the case of any Acquisition of Equity Interests of another Person, after giving effect to such Acquisition, all Equity Interests of such other Person acquired by the Borrower or any of its Subsidiaries shall be owned, directly or indirectly, beneficially and of record, by the Borrower or any of its Subsidiaries, and, the Borrower shall cause such acquired Person to satisfy each of the actions set forth in Section 8.11 as required by such Section;
- (d) ~~(d)~~ if such Acquisition is structured as an in-license of Intellectual Property, all actions shall have been taken that are necessary or reasonably requested by the Administrative Agent to provide and perfect a first priority Lien to the Administrative Agent in such in-license (in each case, subject to Permitted Liens);

- (e) on a *pro forma* basis after giving effect to such Acquisition, the Borrower and its Subsidiaries shall be in compliance with the financial covenants set forth in Section 10;
- (f) ~~(e)~~ to the extent that the purchase price for any such Acquisition is paid in cash, the amount thereof does not exceed \$10,000,000 (or the Equivalent Amount in other currencies) in any fiscal year (excluding any Deferred Acquisition Consideration consisting of milestone and royalty payments that are calculated on the basis of future revenues pursuant to an agreement entered as an Arm's Length Transaction);
- (~~f~~g) to the extent that the purchase price for any such Acquisition is paid in Equity Interests, all such Equity Interests shall be Qualified Equity Interests;
- (~~g~~h) in the case of any such Acquisition that has a purchase price (excluding any Deferred Acquisition Consideration consisting of milestone and royalty payments that are in each case calculated on the basis of future revenues pursuant to an agreement entered as an Arm's Length Transaction) in excess of \$35,000,000 (or the Equivalent Amount in other currencies), (A) the Borrower shall provide to the Administrative Agent (i) at least ten (10) Business Day's prior written notice of any such Acquisition, together with summaries, prepared in reasonable detail, of all due diligence conducted by or on behalf of the Borrower or the applicable Subsidiary, as applicable, prior to such Acquisition, in each case subject to customary confidentiality restrictions, (ii) subject to customary confidentiality restrictions, a copy of the draft purchase agreement related to the proposed Acquisition (and any related documents requested by the Administrative Agent), (iii) pro forma financial statements of the Borrower and its Subsidiaries (as of the last day of the most recently ended fiscal quarter prior to the date of consummation of such Acquisition for which financial statements are required to be delivered pursuant to **Section 8.01(a) or (b)**) after giving effect to such Acquisition, and (iv) subject to customary confidentiality restrictions, any other information reasonably requested (to the extent available), by the Administrative Agent and available to the Obligor and (B) to the extent the cash purchase price exceeds \$35,000,000 (or the Equivalent Amount in other currencies) (excluding any Deferred Acquisition Consideration consisting of milestone and royalty payments that are calculated on the basis of future revenues pursuant to an agreement entered as an Arm's Length Transaction), the Administrative Agent shall have consented to in writing to such Acquisition (such consent not to be unreasonably delayed, withheld or conditioned); and
- (~~h~~i) no Obligor or any of its Subsidiaries (including any acquired Person) shall, in connection with any such Acquisition, assume or remain liable with respect to (x) any Indebtedness of the related seller or the business, Person or assets acquired, except to the extent permitted pursuant to **Section 9.01(l)**, (y) any Lien on any business, Person or assets acquired, except to the extent permitted pursuant to **Section 9.02**, (z) any other liabilities (including Tax, ERISA and environmental liabilities), except to the extent the assumption of such liability would not reasonably be expected to result in a Material Adverse Effect. Any other such Indebtedness, liabilities or Liens not permitted to be assumed, continued or otherwise supported by any Obligor or Subsidiary thereof hereunder shall be paid in full or released within sixty (60) days of the acquisition date as to the business, Persons or properties being so acquired on or before the consummation of such Acquisition.

“Permitted Bond Hedge Transaction” means any call or capped call option (or substantively equivalent derivative transaction) relating to the Borrower’s common stock (or other securities or property following a merger event, reclassification or other change of the common stock of the Borrower) that is (A) purchased by the Borrower in connection with the issuance of any Permitted Convertible Debt, (B) settled in common stock of the Borrower (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower’s common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower and (C) on terms and conditions customary for bond hedge transactions in respect of broadly distributed 144A convertible bond transactions as reasonably determined by the Borrower.

“Permitted BXCL 701 Control Event” means a Permitted BXCL 701 Disposition Event that (taken together with all prior Permitted BXCL 701 Disposition Events) results in one or more unaffiliated third parties owning, in the aggregate, more than 30% of the Equity Interests in the BXCL 701 Subsidiaries (excluding any Equity Interests issued pursuant to **Section 9.09(o)**).

“Permitted BXCL 701 Disposition Event” means a Permitted BXCL 701 Primary Disposition Event or a Permitted BXCL 701 Secondary Disposition Event.

“Permitted BXCL 701 Primary Disposition Event” means (i) any investment in the BXCL 701 Subsidiaries by an unaffiliated third-party institutional investor or licensee or collaboration partner on arm’s length terms and for fair market value or (ii) a Qualifying IPO; provided that, after giving effect to such Permitted BXCL 701 Primary Disposition Event and any related transactions, the Borrower shall be in pro forma compliance with the Minimum Liquidity Covenant.

“Permitted BXCL 701 Release Event” means a Permitted BXCL 701 Disposition Event that (taken together with all prior Permitted BXCL 701 Disposition Events) (i) results in one or more unaffiliated third parties owning, in the aggregate, more than 20% of the Equity Interests in the BXCL 701 Subsidiaries (excluding any Equity Interests issued pursuant to **Section 9.09(o)**) or (ii) is a Qualifying IPO.

“Permitted BXCL 701 Secondary Disposition Event” means (i) any sale by the Borrower or a Subsidiary (other than a BXCL 701 Subsidiary) of Equity Interests in a BXCL 701 Subsidiary to an unaffiliated third-party institutional investor or licensee or collaboration partner on arm’s length terms and for fair market value or (ii) the transfer, on arm’s length terms and for fair market value, to an unaffiliated third party, of all or substantially all of the BXCL 701 Assets (whether by sale, license, joint venture, reverse merger or otherwise); provided that, after giving effect to any Permitted BXCL 701 Secondary Disposition Event and any related transactions, the Borrower shall be in pro forma compliance with the Minimum Liquidity Covenant.

“Permitted Cash Equivalent Investments” means (i) marketable direct obligations issued or unconditionally guaranteed by the United States or any member states of the European Union or any agency or any state thereof having maturities of not more than one (1) year from the date of acquisition, (ii) commercial paper maturing no more than two hundred seventy (270) days after the date of acquisition thereof and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., (iii) certificates of deposit maturing no more than one (1) year after issue that are issued by any bank organized under the Laws of the United States, or any state thereof, or the District of Columbia, or any U.S. branch of a foreign bank having, at the date of acquisition thereof, combined capital and surplus of not less than \$500,000,000 (or the Equivalent Amount in other currencies), (iv) any Investments compliant with the Borrower’s investment policy in the form provided to the Administrative Agent prior to the Closing Date, subject to amendments to such investment policy approved by the Administrative Agent in writing (such approval not to be unreasonably withheld, conditioned or delayed), and (v) any money market or similar funds that exclusively hold any of the foregoing.

“Permitted Convertible Debt” means unsecured Indebtedness of the Borrower that (i) contains customary conversion rights for broadly distributed 144A convertible bond transactions as of the date of issuance and (ii) is convertible into shares of common stock of the Borrower, cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower’s common stock or such other securities or property), or cash in lieu of fractional shares of common stock of the Borrower; provided that any such indebtedness shall (A) mature, and not be subject to mandatory repurchase or redemption (other than in connection with a customary change of control or “fundamental change” provision), at least 270 days after the Maturity Date, (B) have recourse only to the Borrower and (C) not have an all-in-yield greater than 550 basis points as determined in good faith by the Administrative Agent (with any original issue discount equated to interest based on the convertible debt maturity date and excluding any additional or special interest that may become payable from time to time).

“Permitted Hedging Agreement” means a Hedging Agreement entered into by any Obligor in such Obligor’s Ordinary Course for the purpose of hedging currency risks or interest rate risks (and not for speculative purposes) and (x) with respect to hedging currency risks, in an aggregate notional amount for all such Hedging Agreements not in excess of \$10,000,000 (or the Equivalent Amount in other currencies) and (y) with respect to hedging interest rate risks, in an aggregate notional amount for all such Hedging Agreements in excess of 50%, but not more than 100%, of the aggregate principal amount of Loans outstanding at such time.

“Permitted Holder” means BioXcel LLC and its Affiliates.

“Permitted Indebtedness” means any Indebtedness permitted under Section 9.01.

~~**“Permitted Intercreditor Agreement”** means the intercreditor agreement entered into by and between the Administrative Agent and the providers (or agent or trustee on their behalf) of the Revenue Interest Financing, dated as of the date hereof, including any amendments, amendments and restatements, modifications or replacements thereof with the consent of the Administrative Agent.~~

“Permitted Licenses” means (A) outbound non-exclusive licenses for the use of the Intellectual Property of any Obligor or any of its Subsidiaries entered into in the Ordinary Course, (B) exclusive licenses limited (i) in territory solely with respect to a specific geographic country or region outside of the United States or (ii) to BXCL 701 and the Emerging 701 Pipeline so long as such exclusive license is not in substance a sale of BXCL 701 or any Products in the Emerging 701 Pipeline (because it conveys to the licensee or sublicensee exclusive rights to practice such Intellectual Property in the United States for consideration that is not based upon (1) the future development or commercialization of Product in the United States (e.g., pursuant to so-called earn-out payments or royalties based on net sales), or (2) the performance of services by the licensee or sublicensee (other than transition services), such as, for example, consideration of only upfront advances or initial license fees or similar initial payments in consideration of such rights with no anticipated subsequent payments or only de minimis subsequent payments to the BXCL 701 Subsidiaries), (C) promotion, manufacture or other collaborative arrangements with a third party in which an Obligor or any of its Subsidiaries grants a third party licenses under any of its Intellectual Property, but does not grant such third party the right to sell (unless the Administrative Agent shall otherwise consent, which consent shall not be unreasonably delayed, withheld or conditioned; provided, that in the event Borrower requests such consent in writing to Administrative Agent, accompanied by a reasonably detailed description of the proposed arrangement, Administrative Agent shall respond to such request within ten (10) Business Days), and (D) subject to the applicable terms in this Agreement, licenses to a BXCL 701 Subsidiary for the use of the AI immune-oncology platform within the immune oncology field but excluding the neuroscience field; provided, that with respect to each license described in clauses (A) through (D), such license constitutes an Arm’s Length Transaction, the terms of which (x) do not provide for a sale or assignment of any Intellectual Property, (y) do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge or grant a security interest in or Lien on any Intellectual Property, and (z) are commercially reasonable (as determined in good faith by Borrower).

“**Permitted Liens**” means any Liens permitted under Section 9.02.

“**Permitted Priority Liens**” means (a) Liens permitted under Section 9.02 (c), (d), (e), (f), (g), (h), (i), (j), (k), (p), (q), (s)(ii), and (t) and (b) Liens permitted under Sections 9.02(b) and (j); *provided* that such Liens are also of the type described in clause (a) of this definition.

“**Permitted Refinancing**” means, with respect to any Indebtedness permitted to be refinanced, extended, renewed or replaced hereunder, any refinancings, extensions, renewals and replacements of such Indebtedness; provided that such refinancing, extension, renewal or replacement shall not (i) increase the outstanding principal amount of the Indebtedness being refinanced, extended, renewed or replaced, except by an amount equal to accrued interest, any required prepayment premium and customary fees and expenses reasonably incurred, in connection therewith, (ii) contain terms relating to outstanding principal amount, amortization, maturity, collateral security (if any) or subordination (if any), or other material terms that, taken as a whole, are less favorable in any material respect to the Obligor and their respective Subsidiaries or the Secured Parties than the terms of any agreement or instrument governing such existing Indebtedness (as determined in good faith by the Borrower), (iii) have an applicable interest rate which does not exceed the greater of (A) the rate of interest of the Indebtedness being replaced and (B) the then applicable market interest rate, (iv) contain any new requirement to grant any Lien or to give any Guarantee that was not an existing requirement of such Indebtedness and (v) after giving effect to such refinancing, extension, renewal or replacement, no Default shall have occurred (or would reasonably be expected to occur) as a result thereof.

“**Permitted Tax Distributions**” means,

(A) for any taxable period ending prior to any Qualifying IPO and after the Closing Date for which the BXCL 701 Subsidiary is treated as a partnership (or disregarded as an entity separate from a partnership) that is not wholly-owned by a corporation for U.S. federal income tax purposes, in an aggregate amount for such taxable period not to exceed the product of (1) the taxable income of the BXCL 701 Subsidiary for such taxable period and (2) the highest combined marginal U.S. federal, state and/or local income tax rate (taking into account the character of the taxable income in question (e.g., long term capital gain, qualified dividend income, etc.)) applicable to any equityholder of the BXCL 701 Subsidiary;

(B) for any taxable period (or portion thereof) ending after any Qualifying IPO for which a BXCL 701 Subsidiary is treated as a partnership (or disregarded as an entity separate from a partnership) that is not wholly-owned by a corporation for U.S. federal income tax purposes, in an aggregate amount for such taxable period not to exceed the product of (1) the taxable income of the BXCL 701 Subsidiary for such taxable period (determined without regard to any adjustments pursuant to Section 734 or 743 of the Code), and (2) the highest combined marginal U.S. federal, state and/or local income tax rate (taking into account the character of the taxable income in question (e.g., long term capital gain, qualified dividend income, etc.)) applicable to any equityholder of the BXCL 701 Subsidiary; provided that, to the extent an equityholder a BXCL 701 Subsidiary would be entitled to receive less than its pro rata share (in accordance with relative economic ownership of the BXCL 701 Subsidiary) of the amounts of tax distributions otherwise distributable to the BXCL 701 Subsidiary pursuant to this clause (B) on any given date, the amounts of Permitted Tax Distributions otherwise permitted pursuant to this clause (B) shall be increased to ensure that the equityholders of the BXCL 701 Subsidiary shall receive an amount pursuant to this clause (B) so that all tax distributions by the BXCL 701 Subsidiary are made to its equityholders pro rata in accordance with relative economic ownership; or

(C) for any taxable year ending after the Closing Date for which (i) the BXCL 701 Subsidiary is treated as a corporation that is a member of a consolidated, combined, unitary or similar income tax group for U.S. federal or applicable foreign, state and/or local income tax purposes (a “Tax Group”) of which a direct or indirect parent company of the BXCL 701 Subsidiary is the common parent or (ii) the BXCL 701 Subsidiary is a pass-through or disregarded entity for U.S. federal or applicable foreign, state or local income tax purposes that is wholly-owned (directly or indirectly) by a corporation for U.S. federal income tax purposes, any payments and distributions to fund the portion of the U.S. federal, foreign, state and/or local income taxes of such Tax Group or such corporation (as applicable) for such taxable period that is attributable to the taxable income of the BXCL 701 Subsidiary and/or the applicable Subsidiaries.

“**Permitted Warrant Transaction**” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to the Borrower’s common stock (or other securities or property following a merger event, reclassification or other change of the common stock of the Borrower) sold by the Borrower and with recourse to the Borrower only, substantially concurrently with any purchase by the Borrower of a Permitted Bond Hedge Transaction and settled in common stock of the Borrower, cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower’s common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower.

“**Person**” means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

“**PIK Interest**” has the meaning set forth in **Section 3.02(e)**.

“**Plan**” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“**Prepayment Fee**” means with respect to any prepayment of all or any portion of the Loans, whether by optional or mandatory prepayment, acceleration or otherwise (in each case, other than any scheduled amortization payment and other than any prepayment made pursuant to **Section 5.02**), occurring (i) on or prior to the second anniversary of the Closing Date, an amount equal to the amount of interest that would have been paid on the principal amount of the Loans being so repaid or prepaid for the period from and including the date of such repayment or prepayment to but excluding the date that is the two (2) year anniversary of the Closing Date, *plus* four percent (4%) of the principal amount of the Loans being so repaid or prepaid and the Commitments being so terminated, provided that, with respect to any prepayment in connection with a Change of Control event, the Prepayment Fee shall be (A) twelve and one half percent (12.5%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid if such prepayment occurs on or prior to the first anniversary of the Closing Date, and (B) ten percent (10%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid if such prepayment occurs after the first anniversary of the Closing Date but on or prior to the second anniversary of the Closing Date, (ii) at any time after the second anniversary of the Closing Date but on or prior to the third anniversary of the Closing Date, an amount equal to four percent (4%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, (iii) at any time after the third anniversary of the Closing Date but on or prior to the fourth anniversary of the Closing Date, an amount equal to two percent (2%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid and (iv) if the prepayment is made after the fourth anniversary of the Closing Date, 0%.

“**Prepayment Price**” has the meaning set forth in **Section 3.03(a)(i)**.

“**Pro Forma Basis**” means, with respect to the calculation of any financial ratio, as of any date, that *pro forma* effect will be given to the Transactions, any Permitted Acquisition, any issuance, incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transaction and for which any such financial ratio is being calculated) and all sales, transfers and other dispositions or discontinuance of any subsidiary, line of business or division, in each case that have occurred during the four consecutive fiscal quarter period of the Borrower being used to calculate such financial ratio (the “**Reference Period**”), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made, as if each such event occurred on the first day of the Reference Period.

“**Product**” means (i) those pharmaceutical or biological products (and described in reasonable detail) on **Schedule 2** attached hereto, and (ii) any current or future pharmaceutical or biological product developed, distributed, dispensed, imported, exported, labeled, promoted, manufactured, licensed, marketed, sold or otherwise commercialized by any Obligor or any of its Subsidiaries, including any such product in development or which may be developed.

“**Product Authorizations**” means any and all Governmental Approvals, whether U.S. or non-U.S. (including all applicable ANDAs, NDAs, INDs, Product Standards, supplements, amendments, pre- and post- approvals, governmental price and reimbursement approvals and approvals of applications for regulatory exclusivity) of any Regulatory Authority, in each case, necessary to be held or maintained by, or for the benefit of, any Obligor or any of its Subsidiaries for the ownership, use or commercialization of any Product or for any Product Commercialization and Development Activities with respect thereto in any country or jurisdiction.

“**Product Commercialization and Development Activities**” means, with respect to any Product, any combination of research, development, manufacture, import, use, sale, licensing, importation, exportation, shipping, storage, handling, design, labeling, marketing, promotion, supply, distribution, testing, packaging, purchasing or other commercialization activities, receipt of payment in respect of any of the foregoing (including in respect of licensing, royalty or similar payments), or any similar or other activities the purpose of which is to commercially exploit such Product.

“**Product Standards**” means all safety, quality and other specifications and standards applicable to any Product, including all pharmaceutical, biological and other standards promulgated by Standards Bodies.

“Prohibited Payment” means any bribe, rebate, payoff, influence payment, kickback or other payment or gift of money or anything of value (including meals or entertainment) to any officer, employee or ceremonial office holder of any government or instrumentality thereof, political party or supra-national organization (such as the United Nations), any political candidate, any royal family member or any other person who is connected or associated personally with any of the foregoing that is prohibited under any Law for the purpose of influencing any act or decision of such payee in his official capacity, inducing such payee to do or omit to do any act in violation of his lawful duty, securing any improper advantage or inducing such payee to use his influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

“Proportionate Share” means, with respect to any Lender, the percentage obtained by dividing (i) the sum of the Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of such Lender then in effect by (ii) the sum of the Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of all Lenders then in effect.

“Qatari Business Day” has the meaning set forth in **Section 14.02(b)**.

“QIA Lender” means any Lender that is an Affiliate of Qatar Investment Authority.

“QIA Lender Notice” has the meaning set forth in **Section 14.02(b)**.

“Qualified Equity Interest” means, with respect to any Person, any Equity Interest of such Person that is not a Disqualified Equity Interest.

“Qualified Plan” means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (ii) that is intended to be tax qualified under Section 401(a) of the Code.

“Qualifying IPO” means (a) a transaction in which the common Equity Interests of a BXCL 701 Subsidiary or an IPO Co. are publicly-listed (whether through an initial public offering, a direct listing or otherwise) on a major stock exchange in the United States, Canada, the United Kingdom or the Kingdom of the Netherlands (including the New York Stock Exchange, NASDAQ Stock Market or London Stock Exchange) or (b) the consummation of any merger, acquisition, contribution, equity purchase or similar reorganization transaction or series of transactions resulting in the combination of a BXCL 701 Subsidiary and any special purpose acquisition company or similar entity, where the common Equity Interests of such surviving entity (or any direct or indirect parent thereof) are publicly listed on a major stock exchange in the United States, Canada, the United Kingdom or the Kingdom of the Netherlands (including the New York Stock Exchange, NASDAQ Stock Market or London Stock Exchange); provided, that in the case of each of the foregoing, (i) the applicable BXCL 701 Subsidiary shall receive proceeds from such transaction of no less than \$50,000,000 and (ii) more than 50% of the economic and voting equity interests of the applicable BXCL 701 Subsidiary must be held at all times by the Obligors and subject to a first priority Lien in favor of the Administrative Agent, until such time as a Qualifying IPO is consummated. For purposes of the foregoing proviso, the applicable BXCL 701 Subsidiary shall be the BXCL 701 Subsidiary whose common Equity Interests will be publicly listed, the BXCL 701 Subsidiary party to such merger, acquisition, contribution, equity purchase or similar reorganization or, in the case of a public offering of common Equity Interests by an IPO Co., the BXCL 701 Subsidiary of which the IPO Co. will be the direct parent or managing member after giving effect to such Qualifying IPO.

“**Real Property Security Documents**” means any Mortgage Deliverables, Landlord Consents or Bailee Letters.

“**Recipient**” means any Lender or any other recipient of any payment to be made by or on account of any Obligation.

“**Referral Source**” has the meaning set forth in **Section 7.07(b)**.

“**Register**” has the meaning set forth in **Section 14.05(d)**.

“**Registration Rights Agreement**” means that certain amended and restated Registration Rights Agreement, dated as of the ~~Closing~~Second Amendment Effective Date, by and among the Borrower and the purchasers identified therein.

“**Regulation T**” means Regulation T of the Board of Governors of the Federal Reserve System, as amended.

“**Regulation U**” means Regulation U of the Board of Governors of the Federal Reserve System, as amended.

“**Regulation X**” means Regulation X of the Board of Governors of the Federal Reserve System, as amended.

“**Regulatory Approvals**” mean, with respect to a Product, the approval of the applicable Regulatory Authority necessary for the testing, manufacturing, use, storage, supply, promotion, marketing or sale of such Product for a particular indication in a particular jurisdiction.

“**Regulatory Authority**” means any Governmental Authority, whether U.S. or non-U.S., that is concerned with or has regulatory or supervisory oversight with respect to any Product or any Product Commercialization and Development Activities relating to any Product, including the FDA and all equivalent Governmental Authorities, whether U.S. or non-U.S.

“**Reinvestment Period**” has the meaning set forth in **Section 3.03(b)(i)**.

“**Related Parties**” has the meaning set forth in **Section 14.16**.

“**Resignation Effective Date**” has the meaning set forth in **Section 12.09**.

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

“**Responsible Officer**” of any Person means each of the president, chief executive officer, chief financial officer and similar officer of such Person.

“**Restricted Payment**” means any dividend or other distribution (whether in cash, Equity Interests or other property) with respect to any Equity Interests of any Obligor or any of its Subsidiaries, or any payment (whether in cash, Equity Interests or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests of any Obligor or any of its Subsidiaries, or any option, warrant or other right to acquire any such Equity Interests of any Obligor or any of its Subsidiaries; provided, that any payments on Indebtedness convertible or exchangeable into Equity Interests shall not be Restricted Payments.

“Restrictive Agreement” means any Contract or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of any Obligor or any of its Subsidiaries to create, incur or permit to exist any Lien in favor of the Administrative Agent or the Lenders upon any of its properties or assets (other than (x) customary provisions in Contracts (including leases and in-bound licenses of Intellectual Property) restricting the assignment thereof and (y) restrictions or conditions imposed by any Contract governing secured Permitted Indebtedness permitted under **Section 9.01(j)**), to the extent that such restrictions or conditions apply only to the property or assets securing such Indebtedness), or (ii) the ability of any Obligor or any of its Subsidiaries to make Restricted Payments with respect to any of their respective Equity Interests or to make or repay loans or advances to any other Obligor or any of its Subsidiaries or such other Obligor or to Guarantee Indebtedness of any other Obligor or any of its Subsidiaries thereof or such other Obligor.

“Revenue” means, for any relevant fiscal period, the consolidated net revenues of the Borrower and its Subsidiaries attributable to BXCL 501 for such fiscal period, as recognized on the income statement of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP.

“Revenue Cure Payment” means, with respect to any fiscal quarter of the Borrower to which the Minimum Revenue Covenant applies, the amount, if positive, by which Revenue for the applicable six (6) consecutive month period ending on the last day of such fiscal quarter is less than the Minimum Revenue for such period; provided that the Revenue Cure Payment shall in no event be less than \$1,000,000.

~~**“Revenue Interest Financing”** means the transaction contemplated by the Revenue Interest Financing Agreement relating to the Revenue Interest Financing Secured Product.~~

~~**“Revenue Interest Financing Agreement”** means the Revenue Interest Financing Agreement by and between the Borrower, the purchasers party thereto and Oaktree, as administrative agent for the purchasers, dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the Permitted Intercreditor Agreement).~~

~~**“Revenue Interest Financing Secured Product”** means BXCL 501, including any improvements or modifications thereto, across all marketed indications in the United States.~~

“Sanction” means any international economic or financial sanction or trade embargo imposed, administered or enforced from time to time by the United States Government (including OFAC), the United Nations Security Council, the European Union or its Member States, HerHis Majesty’s Treasury or other relevant sanctions authority where the Borrower is located or conducts business.

“Sanctioned Person” means, at any time, (i) any Person listed in any Sanctions-related list of designated Persons maintained by the United States Government (including OFAC), the United Nations Security Council, the European Union or its Member States, HerHis Majesty’s Treasury, or other relevant sanctions authority, (ii) any Person organized or resident in a Designated Jurisdiction or (iii) any Person fifty percent (50%) or more owned or is controlled by any such Person or Persons described in the foregoing clause (i) or (ii).

“Scheduled Unavailability Date” has the meaning set forth in Section 5.05(a)(ii).

“*Second Amendment*” means the Second Amendment to this Agreement, dated as of December 5, 2023.

“*Second Amendment Effective Date*” has the meaning set forth in the Second Amendment.

“*SEC*” means the U.S. Securities and Exchange Commission and any successor agency thereto.

“*Secured Parties*” means the Lenders, the Administrative Agent and any of their respective permitted transferees or assigns.

“*Securities Act*” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“*Security Agreement*” means the Security Agreement, delivered pursuant to Section 6.01(f), among the Obligors and the Administrative Agent, granting a security interest in the Obligors’ personal property in favor of the Administrative Agent, for the benefit of the Secured Parties.

“*Security Documents*” means, collectively, the Security Agreement, each Short-Form IP Security Agreement, each Real Property Security Document, and each other security document, control agreement or financing statement required or recommended to perfect Liens in favor of the Secured Parties for purposes of securing the Obligations.

“*Shared Services Agreement*” means the Second Amended and Restated Separation and Shared Services Agreement, dated as of March 6, 2020, by and between BioXcel LLC and the Borrower, as in effect on the date hereof.

“*Short-Form IP Security Agreements*” means short-form copyright, patent or trademark (as the case may be) security agreements, dated as of the Closing Date and substantially in the form of Exhibit C, D and E to the Security Agreement, entered into by one or more Obligors in favor of the Secured Parties, each in form and substance satisfactory to the Administrative Agent (and as amended, modified or replaced from time to time).

“*Solvent*” means, as to any Person as of any date of determination, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (ii) the present fair saleable value of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature and (iv) such Person is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which such Person’s property would constitute an unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“*Standard Bodies*” means any of the organizations that create, sponsor or maintain safety, quality or other standards, including ISO, ANSI, CEN and SCC and the like.

“*Step-Down Date*” has the meaning set forth in the definition of “*Minimum Liquidity Amount.*”

“*Step-Up Date*” has the meaning set forth in the definition of “*Minimum Liquidity Amount.*”

“**Stock Purchase Agreement**” has the meaning set forth in **Section 2.08(a)**.

“**Subsidiary**” means, with respect to any Person (the “**parent**”) at any date, any corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, directly or indirectly. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantors**” means each Subsidiary of the Borrower identified under the caption “SUBSIDIARY GUARANTORS” on the signature pages hereto and each Subsidiary of the Borrower that becomes, or is required to become, a “Subsidiary Guarantor” after the ~~date hereof~~ Closing Date pursuant to **Section 8.11(a)** or **8.11(b)**.

“**Successor Rate**” has the meaning set forth in **Section 5.05(a)(iii)(B)**.

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

“**Termination Conditions**” has the meaning set forth in **Section 13.03**.

“**Term SOFR**” means for any Interest Period the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to three months; provided that if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto; provided that if the Term SOFR Screen Rate determined in accordance with the foregoing would otherwise be less than 2.50% or greater than 5.50%, the Term SOFR shall be deemed to be 2.50% or 5.50%, as applicable, for purposes of this Agreement.

“**Term SOFR Replacement Date**” has the meaning assigned to such term in **Section 5.05(a)(iii)(A)**.

“**Term SOFR Screen Rate**” means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Administrative Agent) and published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“**Ticking Fee**” has the meaning set forth in **Section 2.06**.

“**Title IV Plan**” means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (ii) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

“**Trade Secrets**” means all know-how, trade secrets and other proprietary or confidential information, any information of a scientific, technical, or business nature in any form or medium, Inventions and Invention disclosures, all documented research, developmental, demonstration or engineering work (including all novel manufacturing methods), and all other technical data, clinical data and information related thereto, including laboratory notebooks, chemical and biological materials (including any compounds, DNA, RNA, clones, vectors, cells and any expression product, progeny, derivatives or improvements thereto) and the results of experimentation and testing, including samples.

“**Trademarks**” means all trade names, trademarks and service marks, trade dress, corporate names, logos, Internet domain names, IP addresses, social media handles, uniform resource locators and other indicia of origin, trademark and service mark registrations, and applications for trademark and service mark registrations, whether or not registered, and any and all common law rights thereto, including (i) all renewals of trademark and service mark registrations and (ii) all rights whatsoever accruing thereunder or pertaining thereto throughout the world, together, in each case, with the goodwill of the business connected with the use thereof and symbolized thereby.

“**Trading Day**” means a day on which the Common Stock is traded on a Trading Market or, if the Common Stock is not traded on a Trading Market, then on the principal securities exchange or securities market on which the Common Stock is then traded.

“**Trading Market**” means any market or exchange of The Nasdaq Stock Market LLC or the New York Stock Exchange.

“**Tranche A-1 Term Loans**” has the meaning assigned to such term in **Section 2.01(a)(i)**.

“**Tranche A-2 Term Loans**” has the meaning assigned to such term in **Section 2.01(a)(ii)**.

“**Tranche B Term Loans**” has the meaning assigned to such term in **Section 2.01(a)(iii)**.

“**Tranche C Term Loans**” has the meaning assigned to such term in **Section 2.01(a)(iv)**.

“**Tranche D Term Loans**” has the meaning assigned to such term in **Section 2.01(a)(v)**.

“**Transactions**” means (a) the negotiation, preparation, execution, delivery and performance by each Obligor of this Agreement and the other Loan Documents to which such Obligor is (or is intended to be) a party, the making of the Loans hereunder, and all other transactions contemplated pursuant to this Agreement and the other Loan Documents, including the creation of the Liens pursuant to the Security Documents, and (b) the payment of all fees and expenses incurred or paid by the Obligors in connection with the foregoing.

“**UCC**” means, with respect to any applicable jurisdictions, the Uniform Commercial Code as in effect in such jurisdiction, as may be modified from time to time.

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

“**United States**” or “**U.S.**” means the United States of America, its fifty states and the District of Columbia.

“U.S. Government Securities Business Day” means any day, except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“U.S. Person” means a “United States Person” within the meaning of Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning set forth in Section 5.03(f)(ii)(B)(3).

“USPTO” has the meaning set forth in Section 8.19(a).

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (i) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:00 p.m. (New York City time)), (ii) if the Common Stock is not then listed on a Trading Market or quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported in the “Pink Sheets” published by OTC Markets Group Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported or (iii) in all other cases, the fair market value of a share of Common Stock as determined by an independent nationally recognized investment banking, accounting or valuation firm selected in good faith by the Borrower and reasonably acceptable to the Administrative Agent, the fees and expenses of which shall be paid by the Borrower.

“Warrant Obligations” means all Obligations of Borrower arising out of, under or in connection with the Company ~~Warrant~~ Warrants or the 701 Warrants.

“Withdrawal Liability” means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA.

“Withholding Agent” means the Borrower and the Administrative Agent.

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

1.02 Accounting Terms and Principles. Unless otherwise specified, all accounting terms used in each Loan Document shall be interpreted, and all accounting determinations and computations thereunder (including under Section 10 and any definitions used in such calculations) shall be made, in accordance with GAAP. Unless otherwise expressly provided, all financial covenants and defined financial terms shall be computed on a consolidated basis for the Borrower and its Subsidiaries, in each case without duplication. If the Borrower requests an amendment to any provision hereof to eliminate the effect of (a) any change in GAAP or the application thereof or (b) the issuance of any new accounting rule or guidance or in the application thereof, in each case, occurring after the date of this Agreement, then the Lenders and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such change or issuance with the intent of having the respective positions of the Lenders and Borrower after such change or issuance conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, (i) the provisions in this Agreement shall be calculated as if no such change or issuance has occurred and (ii) the Borrower shall provide to the Lenders a written reconciliation in form and substance reasonably satisfactory to the Lenders, between calculations of any baskets and other requirements hereunder before and after giving effect to such change or issuance. Notwithstanding anything to the contrary in this Agreement, all obligations of any Person that would have been treated as operating leases pursuant to GAAP prior to the effectiveness of Accounting Standards Codification 842 shall continue to be treated as operating leases for purposes of the definitions of “Capital Lease Obligations” and “Indebtedness.”

1.03 Interpretation. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires,

- (a) the terms defined in this Agreement include the plural as well as the singular and vice versa;
- (b) words importing gender include all genders;
- (c) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement;
- (d) any reference to “this Agreement” refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision;
- (e) references to days, months and years refer to calendar days, months and years, respectively;
- (f) all references herein to “include” or “including” shall be deemed to be followed by the words “without limitation”;
- (g) the word “from” when used in connection with a period of time means “from and including” and the word “until” means “to but not including”;
- (h) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer broadly to any and all assets and properties, whether tangible or intangible, real or personal, including cash, securities, rights under contractual obligations and permits and any right or interest in any such assets or property;
- (i) accounting terms not specifically defined herein (other than “property” and “asset”) shall be construed in accordance with GAAP, subject to Section 1.02;
- (j) the word “will” shall have the same meaning as the word “shall”;

(k) where any provision in this Agreement or any other Loan Document refers to an action to be taken by any Person, or an action which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or, to the knowledge of such Person, indirectly; and

(l) references to any Lien granted or created hereunder or pursuant to any other Loan Document securing any Obligations shall be deemed to be a Lien for the benefit of the Secured Parties.

Unless otherwise expressly provided herein, references to organizational documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto permitted by the Loan Documents. Any definition or reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

If any payment required to be made pursuant to the terms and conditions of any Loan Document falls due on a day which is not a Business Day, then such required payment date shall be extended to the immediately following Business Day. For purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Obligors and their Subsidiaries will be deemed to be equal to 100% of the outstanding principal amount thereof or payment obligations with respect thereto at the time of determination thereof, or with respect to any Hedging Agreements, the amount that would be payable if the agreement governing such Hedging Agreements were terminated on the date of termination.

1.04 Division. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws) (a "**Division**"), if (a) any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

SECTION 2. THE COMMITMENT AND THE LOANS; EQUITY INVESTMENT

2.01 Loans.

- (a) On the terms and subject to the conditions of this Agreement, each Lender agrees:
- (i) to make Loans to the Borrower in a principal amount equal to the amount of such Lender's Tranche A-1 Commitment on the Applicable Funding Date for the Tranche A-1 Term Loans ("**Tranche A-1 Term Loans**");
 - (ii) to make Loans to the Borrower in a principal amount equal to the amount of such Lender's Tranche A-2 Commitment on the Applicable Funding Date for the Tranche A-2 Term Loans ("**Tranche A-2 Term Loans**");

- (iii) to make Loans to the Borrower in a principal amount equal to the amount of such Lender's Tranche B Commitment on the Applicable Funding Date for the Tranche B Term Loans ("Tranche B Term Loans"); and
- (iiiiv) to make Loans to the Borrower in a principal amount equal to the amount of such Lender's Tranche C Commitment on the Applicable Funding Date for the Tranche C Term Loans ("~~Tranche C Term Loans~~"); and
- (v) to make Loans to the Borrower in a principal amount equal to the amount of such Lender's Tranche D Commitment on the Applicable Funding Date for the Tranche D Term Loans ("Tranche D Term Loans").

(b) No amounts paid or prepaid with respect to any Loan may be re-borrowed.

(c) Any term or provision hereof (or of any other Loan Document) to the contrary notwithstanding, Loans made to the Borrower will be denominated solely in Dollars and will be repayable solely in Dollars and no other currency.

2.02 Borrowing Procedures. At least five (5) Business Days prior to any Applicable Funding Date (other than with respect to Tranche A-2 Term Loans), (or such shorter period agreed by the Lenders), the Borrower shall deliver to the Administrative Agent an irrevocable Borrowing Notice in the form of **Exhibit B** signed by a duly authorized representative of the Borrower (which notice, if received by the Administrative Agent on a day that is not a Business Day or after 10:00 A.M. (Eastern time) on a Business Day, shall be deemed to have been delivered on the next Business Day). Each Borrowing Notice shall be for the full amount of the applicable Commitments and no Borrowing Notice for less than such full amount shall be permitted.

2.03 Funding of Borrowings. Promptly following receipt of any written Borrowing ~~Request~~Notice the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof solely by wire transfer of immediately available funds, by 2:00 p.m. New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. Upon receipt of all funds the Administrative Agent will make such Loans available to the Borrower promptly by wire transfer of the amounts so received, in like funds, to an account designated by the Borrower in the applicable Borrowing ~~Request~~Notice.

2.04 Notes. If requested by any Lender, the Loan of such Lender shall be evidenced by one or more Notes. The Borrower shall prepare, execute and deliver to the Lender such promissory note(s) substantially in the form attached hereto as **Exhibit A**.

2.05 Use of Proceeds. The Borrower shall use the proceeds of the Loans (i) for U.S. commercial launch of BXCL 501, clinical development of expanded indications for BXCL 501, and clinical development of BXCL 701 and the Emerging 701 Pipeline, and (ii) for working capital and general corporate purposes, including the payment of fees and expenses associated with this Agreement and to support the Borrower's research and development pipeline.

2.06 Ticking Fees. The Borrower shall pay to the Administrative Agent, for the account of the Lenders, a ticking fee (the "**Ticking Fee**") equal to 0.750% per annum multiplied by the daily undrawn amount of the outstanding Commitments, on (i) each Payment Date prior to the latest Commitment Termination Date, commencing with the first Payment Date following the date that is 120 days after the funding of the Tranche A-1 Term Loans, (ii) each date on which a Tranche B Term Loan ~~or~~, Tranche C Term Loan or Tranche D Term Loan is funded, in each case solely with respect to such funded Loans for the period from the prior Payment Date through, and including, the date of such funding, (iii) each date on which any Commitments expire or are terminated, in each case solely with respect to such expired or terminated Commitments for the period from the prior Payment Date through, and including, the date of such expiration or termination and (iv) upon acceleration or maturity of the Loans hereunder, solely with respect to any then-outstanding and undrawn Commitments for the period from the prior Payment Date through, and including, the date of such acceleration or maturity.

2.07 Extension of Maturity Date. The Borrower shall have the right to extend the Maturity Date to April 19, 2028 upon satisfaction of all of the following conditions precedent, which must be satisfied prior to the effectiveness of the extension of the Maturity Date:

- (a) **Extension Request.** The Borrower shall deliver written notice of a request for extension to the Administrative Agent no earlier than September 21, 2026 and not later than October 21, 2026.
- (b) **BXCL 501 FDA Alzheimer's Approval.** The BXCL 501 FDA Alzheimer's Approval shall have been received on or prior to December 31, 2024 and the Administrative Agent shall have received evidence thereof.
- (c) **No Default.** At the time the Borrower delivers written notice of its request for extension to the Administrative Agent, there shall exist no Default or Event of Default.
- (d) **No Acceleration.** The Loans shall not have become due and payable for any reason in accordance with **Section 11.02**.
- (e) **Representations and Warranties.** At the time the Borrower delivers written notice of its request for extension to the Administrative Agent, the representations and warranties contained in this Agreement and in the other Loan Documents delivered pursuant to **Section 6.01(a)** shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the date of such extension, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all respects on and as of such earlier date.

2.08 Equity Investment.

(a) On any date following the Closing Date and prior to the earlier of (i) Maturity Date and (ii) the repayment in full of the Loans, the Lenders may, severally and not jointly, purchase up to an aggregate of \$5,000,000 (based on purchase price) of Common Stock from the Company, in either one (1) or two (2) closings (one for all Oaktree Lenders and one for all QIA Lenders), with the amount of Common Stock to be purchased by each Lender to be determined according to such Lender's Equity Purchase Right, in each case in accordance with the terms of a stock purchase agreement in substantially the form attached hereto as **Exhibit H** (the "**Stock Purchase Agreement**") (such purchase, an "**Equity Investment**"). The price per share of Common Stock for each Equity Investment will equal 110% of the average of the daily VWAPs over the 30 consecutive Trading Days preceding the date of the notice contemplated by Section 2.08(b) below (the "**30-day VWAP**"). In connection with any Equity Investment, the Borrower shall enter into a registration rights agreement with the purchasers under the Stock Purchase Agreement on substantially the same terms as the Registration Rights Agreement.

(b) To exercise the right to make an Equity Investment, the Administrative Agent shall provide notice in writing to the Borrower of the applicable Lenders' election to make an Equity Investment two (2) Business Days prior to the proposed closing date for such Equity Investment. Such notice must include (i) the price per share of Common Stock to be purchased in the Equity Investment, calculated in accordance with **Section 2.08(a)** above, (ii) appropriate backup for the 30-day VWAP (e.g., Bloomberg Terminal screenshot), (iii) the number of shares of Common Stock to be purchased by each applicable Lender in accordance with such Lender's Equity Purchase Right and (iv) the irrevocable commitment of each such Lender to complete such Equity Investment in accordance with this **Section 2.08** and the Stock Purchase Agreement two (2) Business Days following delivery of the notice.

(c) Notwithstanding anything to the contrary herein, the maximum number of shares issuable by the Borrower pursuant to the Stock Purchase Agreement and the Company ~~Warrant~~ Warrants shall not exceed ~~5,593,270~~ 5,851,606 (as may be proportionally adjusted for stock splits or combinations following the ~~date of this Agreement~~ Second Amendment Effective Date), with the amount of any Equity Investment being reduced pro rata among the Lenders based on their respective Equity Purchase Rights if required as a result of the foregoing cap.

SECTION 3. PAYMENTS OF PRINCIPAL AND INTEREST, ETC.

3.01 Scheduled Repayments and Prepayments Generally; Application. The Borrower hereby promises to pay to the Administrative Agent for the account of each Lender (as such amounts may in each case be reduced from time to time in accordance with **Section 3.03**): on the Maturity Date, all outstanding Obligations in full (together with the accrued and unpaid interest and any other accrued and unpaid charges thereon and all other obligations due and payable by the Borrower under this Agreement). Except as otherwise provided in this Agreement, each payment (including each repayment and prepayment) by the Borrower (other than fees payable pursuant to the Fee Letter) will be deemed to be made ratably in accordance with the Lenders' Proportionate Shares. On any date occurring prior to the Maturity Date that payment or prepayment in full of the Loans hereunder occurs, the Borrower shall pay in full all outstanding Obligations, which shall include the Prepayment Fee, if applicable.

3.02 Interest.

(a) **Interest Generally.** The outstanding principal amount of the Loans shall accrue interest from the date made to repayment (whether by acceleration or otherwise and whether voluntary or mandatory) at the Interest Rate.

(b) **Default Interest.** Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default, the Interest Rate shall increase automatically by two percent (2.0%) *per annum* (the Interest Rate, as increased pursuant to this **Section 3.02(b)**, being the "**Default Rate**"). If any Obligation (including fees, costs and expenses payable hereunder) is not paid when due (giving effect to any applicable grace period) under any applicable Loan Document, the amount thereof shall accrue interest at the Default Rate and such Default Rate interest shall be due and payable in cash on demand.

(c) **Interest Payment Dates.** Accrued interest on the Loans shall be payable in arrears on each Payment Date in cash, and upon the payment or prepayment of the Loans (on the principal amount being so paid or prepaid); provided that interest payable at the Default Rate shall also be payable in cash from time to time on demand by the Administrative Agent. Notwithstanding the foregoing, commencing on the first Payment Date on which interest on the Loans is owed and continuing through, and including, ~~the third anniversary of such Payment Date, 2.25%~~ March 31, 2025, any interest above 8.00% per annum ~~of the interest~~ for each applicable period shall be payable in kind by capitalizing and adding such interest to the outstanding principal amount of the Loans on such Payment Date ("**PIK Interest**"); provided, that the Borrower may, at its option, irrevocably elect, by written notice to the Administrative Agent, by 10:00 a.m. (Eastern time) three (3) Business Days prior to any Payment Date, to decrease the rate of interest per annum capitalized as PIK Interest for such Payment Date by paying such amount in cash, or that no PIK Interest will be capitalized for such Payment Date, and, in each case, Borrower will pay such amount of interest that is owing and not capitalized as PIK Interest in cash as regular interest on such Payment Date. For purposes of this Agreement and the other Loan Documents, PIK Interest capitalized pursuant to this **Section 3.02** shall constitute a portion of the principal amount outstanding of the Loans hereunder and shall bear interest in accordance with this **Section 3** and all references herein or in any other Loan Document to the principal amount of the Loans shall include all interest accrued and capitalized as a result of any payment of PIK Interest. Any PIK Interest shall automatically be capitalized on the applicable Payment Date in accordance with the foregoing.

3.03 Prepayments.

(a) Optional Prepayments.

(i) Subject to prior written notice pursuant to **clause (ii)** below, the Borrower shall have the right to optionally prepay in whole or in part the outstanding principal amount of the Loans on any Business Day for an amount equal to the sum of (A) the aggregate principal amount of the Loans being prepaid, (B) any accrued but unpaid interest on the principal amount of the Loans being prepaid, (C) any applicable Prepayment Fee and (D) if applicable, other unpaid amounts then due and owing pursuant to this Agreement and the other Loan Documents (such aggregate amount, the "**Prepayment Price**"); provided that each partial prepayment of principal of Loans shall be in an aggregate amount at least equal to \$5,000,000 and integral multiples of \$1,000,000 in excess thereof.

(ii) A notice of optional prepayment shall be effective only if received by the Administrative Agent not later than 2:00 p.m. (Eastern time) on a date not less than two (2) (nor more than five (5)) Business Days prior to the proposed prepayment date; provided that a notice of optional prepayment may state that such notice is conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable event or condition, in which case such notice of prepayment may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified date of prepayment) if such condition is not satisfied. Each notice of optional prepayment shall specify the proposed prepayment date, the Prepayment Price, the principal amount to be prepaid and any conditions to prepayment (if applicable).

(b) **Mandatory Prepayments.**

(i) **Mandatory Prepayments for Casualty Events or Asset Sales.**

(A) Within three (3) Business Days of the receipt of Net Cash Proceeds from the occurrence of any Casualty Event or Asset Sale (that is not otherwise permitted by **Section 9.09** (other than pursuant to clause (l) thereof)), the Borrower shall make a mandatory prepayment of the Loans in an amount equal to the sum of (i) one hundred percent (100%) of the Net Cash Proceeds received by the Borrower or any of its Subsidiaries with respect to such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event, as the case may be, (ii) any accrued but unpaid interest on any principal amount of the Loans being prepaid and (iii) any applicable Prepayment Fee; provided that, so long as no Default has occurred and is continuing or shall result therefrom, if, within ten (10) Business Days following the occurrence of any such Casualty Event or Asset Sale as a result of which the Borrower or any of its Subsidiaries receives Net Cash Proceeds in an aggregate amount less than \$10,000,000, a Responsible Officer of the Borrower delivers to the Administrative Agent a notice to the effect that the Borrower or the applicable Subsidiary intends to apply the Net Cash Proceeds from such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event, to reinvest in the business of the Borrower or any of its Subsidiaries (a "**Reinvestment**"), then such Net Cash Proceeds of such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event may be applied for such purpose in lieu of such mandatory prepayment to the extent such Net Cash Proceeds of such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event are actually applied for such purpose; provided, further, that, if such Casualty Event or Asset Sale occurs with respect to any Obligor, such Reinvestment shall be made in the business of an Obligor; provided, further, that, in the event that Net Cash Proceeds have not been so applied within three hundred sixty-five (365) days (the "**Reinvestment Period**") following the occurrence of such Casualty Event or Asset Sale, the Borrower shall no later than the end of such period make a mandatory prepayment of the Loans in an aggregate amount equal to the sum of (i) one hundred percent (100%) of the unused balance of such Net Cash Proceeds received by any Obligor or any of its Subsidiaries with respect to such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event, (ii) any accrued but unpaid interest on any principal amount of the Loans being prepaid and (iii) any applicable Prepayment Fee. Notwithstanding the foregoing, no mandatory prepayment shall be required pursuant to this Section 3.03(b)(i)(A) as a result of any Permitted License.

(B) Notwithstanding Section 3.03(b)(i)(A), (i) any BXCL 701 Secondary Disposition Proceeds or (ii) any BXCL 701 Primary Disposition Proceeds distributed to the Borrower or any Subsidiary that is not a BXCL 701 Subsidiary shall, in each case at the written election of the Administrative Agent, be subject to the following: (x) 50% of such proceeds shall be deposited into a blocked account (the "**BXCL 701 Disposition Proceeds Account**"), and (y) the remainder of such proceeds may be retained by the Borrower or any other Obligor and used for any purpose permitted by this Agreement and the Loan Documents, except such proceeds shall not be used for any Restricted Payments; provided that the amount required to be deposited in the BXCL 701 Disposition Proceeds Account at any time shall not exceed 50% of the Loans outstanding at such time. The contents of the BXCL 701 Disposition Proceeds Account shall be released to the Borrower upon the delivery of a certification by the Borrower that net product revenue attributable to BXCL 501 for any trailing twelve (12) consecutive month period exceeds \$45,000,000 for such period. The full amount in the BXCL 701 Disposition Proceeds Account shall be applied to prepay the Loans (i) if such amount has not been released by December 31, 2024 or (ii) at the option of the Administrative Agent, upon the occurrence of an Event of Default.

(C) Notwithstanding Section 3.03(b)(i)(A), any BXCL 701 Subsidiary shall use the BXCL 701 Primary Disposition Proceeds received by it solely (i) for the development and commercialization of BXCL 701 and the Emerging 701 Pipeline, (ii) for the acquisition or in-licensing of assets or for research and development purposes, in each case within the oncology field, (iii) in the case of a Qualifying IPO by IPO Co., to purchase Equity Interests in BXCL 701 Subsidiaries in connection with such Qualifying IPO, (iv) for reasonable and customary compensation expenses and for other ordinary course administrative and operational expenses, or (v) to make distributions to the Borrower or any Subsidiary that is not a BXCL 701 Subsidiary.

(ii) **Mandatory Prepayments for Debt Issuances.** Immediately upon receipt by any Obligor or any of its Subsidiaries of proceeds from any issuance, incurrence or assumption of Indebtedness other than Indebtedness permitted by **Section 9.01**, on or after the Closing Date, the Borrower shall prepay the Loans and other Obligations in an amount equal to 100% of the cash proceeds received, *plus* the Prepayment Fee, if applicable.

(iii) **Notice.** The Borrower shall notify the Administrative Agent not later than 12:00 p.m. (Eastern time) on a date not less than two (2) Business Days prior to any mandatory prepayment.

Each notice of mandatory prepayment shall specify the proposed prepayment date, the Prepayment Price, the principal amount to be prepaid and the subsection under which the prepayment is required. Notwithstanding anything in this **Section 3.03** to the contrary, any Lender may elect, by written notice to the Administrative Agent no later than 12:00 p.m. (Eastern time), one (1) Business Day prior to the prepayment date (or such later time as the Administrative Agent may agree), to decline all or any portion of any mandatory prepayment of its Loans pursuant to this **Section 3.03**. Any Lender that fails to deliver such notice to the Administrative Agent in the time frame set forth above shall be deemed to have accepted its share of any mandatory prepayment. The aggregate amount of the prepayment that would have been applied to prepay Loans but was so declined may be retained by the Borrower and used for any general corporate purpose not prohibited by this Agreement.

(c) **Application.** All prepayments of the Loans shall be applied to principal installments on the Loans in the inverse order of maturity.

(d) **Prepayment Fee.** Without limiting the foregoing, whenever the Prepayment Fee is in effect and payable pursuant to the terms hereof or any other Loan Document, such Prepayment Fee shall be payable on each prepayment of all or any portion of the Loans, whether by optional or mandatory prepayment, acceleration or otherwise (other than any prepayment pursuant to **Section 5.02** or any scheduled amortization payment).

(e) **Partial Prepayments.** Prepayments shall be accompanied by accrued interest to the extent required by **Section 3.02**.

3.04 Commitment Termination. Each Applicable Commitment shall terminate automatically without further action upon the earliest of (i) the making by the Lenders of the Loans to which such Applicable Commitment relates on the Applicable Funding Date, (ii) the last day of the Applicable Availability Period and (iii) the acceleration of the Loans hereunder. The Borrower shall have the right at any time or from time to time to terminate in full (but not in part) all the then outstanding Applicable Commitments; provided that the Borrower shall give the Lender at least five (5) Business Days' notice of each such termination. The termination of any Applicable Commitment shall be permanent.

**SECTION 4.
PAYMENTS, ETC.**

4.01 Payments.

(a) **Payments Generally.** Each payment of principal, interest and other amounts to be made by the Obligors under this Agreement or any other Loan Document shall be made (i) in Dollars, in immediately available funds, without deduction, set off or counterclaim, to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, to the deposit account of the Administrative Agent designated by the Administrative Agent by notice to the Borrower, and (ii) not later than 2:00 p.m. (Eastern time) on the date on which such payment is due (each such payment made after such time on such due date may, in the Administrative Agent's discretion, be deemed to have been made on the next succeeding Business Day).

(b) **Application of Payments.** Notwithstanding anything herein to the contrary, following the occurrence and continuance of an Event of Default, all payments shall be applied as follows:

(A) first, to the payment of that portion of the Obligations constituting unpaid fees, indemnities, expenses or other amounts (including fees and disbursements and other charges of counsel payable under **Section 14.03**) payable to the Administrative Agent in its capacity as such;

(B) second, to the payment of that portion of the Obligations constituting unpaid fees, indemnities, costs, expenses and other amounts (other than principal and interest, but including fees and disbursements and other charges of counsel payable under **Section 14.03**, any Ticking Fees and Prepayment Fees) payable to the Lenders arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this **clause (B)** payable to them;

(C) third, to the payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this **clause (C)** payable to them;

(D) fourth, to the payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this **clause (D)** payable to them;

(E) fifth, in reduction of any other Obligation then due and owing, ratably among the Administrative Agent and the Lenders based upon the respective aggregate amount of all such Obligations owing to them in accordance with the respective amounts thereof then due and payable; and

(F) sixth, the balance, if any, after all Obligations have been indefeasibly paid in full, to the Borrower or such other Person as may be lawfully entitled to or directed by the Borrower to receive the remainder.

(c) **Non-Business Days.** If the due date of any payment under this Agreement (whether in respect of principal, interest, fees, costs or otherwise) would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall continue to accrue and be payable for the period of such extension; provided that if such next succeeding Business Day would fall after the Maturity Date, payment shall be made on the immediately preceding Business Day.

4.02 Computations. All computations of interest and fees hereunder shall be computed on the basis of a year of three hundred and sixty (360) days and actual days elapsed during the period for which payable.

4.03 Set-Off.

(a) **Set-Off Generally.** Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent, each of the Lenders and each of their Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Administrative Agent, any Lender and any of their Affiliates to or for the credit or the account of any Obligor against any and all of the Obligations, whether or not such Person shall have made any demand and although such obligations may be unmaturing. Any Person exercising rights of set off hereunder agrees promptly to notify the Borrower after any such set-off and application; provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Administrative Agent, the Lenders and each of their Affiliates under this **Section 4.03** are in addition to other rights and remedies (including other rights of set-off) that such Persons may have.

(b) **Exercise of Rights Not Required.** Nothing contained in **Section 4.03(a)** shall require the Administrative Agent, any Lender or any of their Affiliates to exercise any such right or shall affect the right of such Persons to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of any Obligor.

(c) **Payments Set Aside.** To the extent that any payment by or on behalf of any Obligor is made to the Administrative Agent or any Lender, or the Administrative Agent, any Lender or any Affiliate of the foregoing exercises its right of setoff pursuant to this **Section 4.03**, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such Lender or such Affiliate in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (i) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (ii) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect.

**SECTION 5.
YIELD PROTECTION, TAXES, ETC.**

5.01 Additional Costs.

(a) **Change in Law Generally.** If, on or after the ~~date hereof~~Closing Date (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), the adoption of any Law, or any change in any Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or administration thereof, or compliance by the Administrative Agent or any of the Lenders (or its lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, shall impose, modify or deem applicable any reserve (including any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, contribution, insurance assessment or similar requirement, in each case that becomes effective after the ~~date hereof~~Closing Date (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office) or shall impose on a Lender (or its lending office) any other condition affecting the Loans or the Commitment, and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or any other Loan Document, or subject any Lender to any Taxes on its Loan, Commitment or other obligations, or its deposits, reserves, other liabilities or capital (if any) attributable thereto by an amount reasonably deemed by such Lender in good faith to be material (other than (i) Indemnified Taxes, (ii) Taxes described in **clauses (ii) through (iv)** of the definition of Excluded Taxes and (iii) Connection Income Taxes), then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender for such increased cost or reduction.

(b) **Change in Capital Requirements.** If a Lender shall have determined that, on or after the ~~date hereof~~Closing Date (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), the adoption of any Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, in each case that becomes effective after the ~~date hereof~~Closing Date (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), has or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender's obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have achieved but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender (or its parent) for such reduction.

(c) **Notification by Lender.** Each Lender promptly will notify the Borrower of any event of which it has knowledge, occurring after the ~~date hereof~~Closing Date (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), which will entitle such Lender to compensation pursuant to this **Section 5.01**. Before giving any such notice pursuant to this **Section 5.01(c)** such Lender shall designate a different lending office if such designation (x) will, in the reasonable judgment of such Lender, avoid the need for, or reduce the amount of, such compensation and (y) will not, in the reasonable judgment of such Lender, be materially disadvantageous to such Lender. A certificate of such Lender claiming compensation under this **Section 5.01**, setting forth the additional amount or amounts to be paid to it hereunder, shall be conclusive and binding on the Borrower in the absence of manifest error.

(d) Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to constitute a change in Law for all purposes of this **Section 5.01**, regardless of the date enacted, adopted or issued.

5.02 Illegality. Notwithstanding any other provision of this Agreement, in the event that on or after the ~~date hereof~~Closing Date (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement) the adoption of or any change in any Law or in the interpretation or application thereof by any competent Governmental Authority shall make it unlawful for a Lender or its lending office to make or maintain the Loans (and, in the opinion of such Lender, the designation of a different lending office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify the Borrower thereof, following which if such Law shall so mandate, the Loans shall be prepaid by the Borrower on or before such date as shall be mandated by such Law in an amount equal to the Prepayment Price (notwithstanding anything herein to the contrary, without any Prepayment Fee) applicable on such prepayment date in accordance with **Section 3.03(a)**.

5.03 Taxes.

(a) **Payments Free of Taxes.** Any and all payments by or on account of any Obligation shall be made without deduction or withholding for any Taxes, except as required by any Law. If any Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Laws and, if such Tax is an Indemnified Tax, then the sum payable by such Obligor shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 5**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by the Obligors.** The Obligors shall timely pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Administrative Agent or each Lender, timely reimburse it for the payment of any Other Taxes.

(c) **Evidence of Payments.** As soon as practicable after any payment of Taxes by an Obligor to a Governmental Authority pursuant to this **Section 5**, such Obligor shall deliver to the Administrative Agent the original, a certified copy of a receipt issued by such Governmental Authority evidencing such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) **Indemnification by the Obligors.** The Obligors shall reimburse and indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 5**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Obligors by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(e) **Indemnification by the Lender.** Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Obligor has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Obligor to do so), and (ii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this **Section 5.03(e)**.

(f) **Status of Lenders.**

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Law as reasonably requested by the Borrower as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two (2) sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 5.03(f)(ii)(A), (ii)(B), and (ii)(D)**) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

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

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

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

(2) executed copies of IRS Form W-8ECI (or successor form);

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit D-1** to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code (a “*U.S. Tax Compliance Certificate*”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms); or

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

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

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

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

(g) **Treatment of Certain Tax Benefits.** If any party to this Agreement determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 5** (including by the payment of additional amounts pursuant to this **Section 5**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 5** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this **Section 5.03(8)** (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 5.03(8)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 5.03(g)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This **Section 5.03(g)** shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Each party hereto hereby acknowledges and agrees that the Tranche A-1 Term Loans are part of an investment unit within the meaning of Section 1273(c)(2) of the Code, which includes the Company ~~Warrant~~ Warrants issued on the Closing Date. For federal income tax purposes, pursuant to Treasury Regulations § 1.1273-2(h), the Borrower, the Administrative Agent and the Lenders acknowledge that the “issue price” of the Tranche A-1 Term Loans is 98% of the stated principal amount of the Tranche A-1 Term Loans minus the Final Valuation ~~of the Company Warrant~~ (as that term is defined in Section 16 of the Company Warrant) of the Company Warrants issued on the Closing Date. Each of the Borrower, the Administrative Agent and the Lenders agree (i) to use the foregoing issue price and Final Valuation for U.S. federal income tax purposes with respect to the transactions contemplated hereby, and (ii) to prepare and file all Tax returns in a manner consistent with such allocation, and shall not to take any position that is inconsistent with the provision of this **Section 5.03(h)** on any Tax return or in any audit (unless otherwise required by a final determination by the IRS or a court of competent jurisdiction).

5.05 Mitigation Obligations. If the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or to any Governmental Authority for the account of any Lender pursuant to **Section 5.01** or **Section 5.03**, then such Lender shall (at the request of the Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the sole reasonable judgment of such Lender, such designation or assignment and delegation would (i) eliminate or reduce amounts payable pursuant to **Section 5.01** or **Section 5.03**, as the case may be, in the future, (ii) not subject such Lender to any unreimbursed cost or expense and (iii) not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment and delegation.

5.06 Inability to Determine Rates.

(a) Replacement of Relevant Rate or Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Majority Lenders notify the Administrative Agent (with, in the case of the Majority Lenders, a copy to the Borrower) that the Borrower or Majority Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining three month interest periods of Term SOFR, including, without limitation because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be; or

(ii) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity has made a public statement identifying a specific date after which three month interest periods of Term SOFR or the Term SOFR Screen Rate shall or will no longer be representative or made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent that will continue to provide such interest periods of Term SOFR after such specific date (the latest date on which such interest periods of Term SOFR or the Term SOFR Screen Rate are no longer representative or available permanently or indefinitely, the “Scheduled Unavailability Date”); or

(iii) syndicated loans currently being executed and agented in the U.S. are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the Interest Rate;

then,

(A) in the case of events or circumstances of the type described in Section 5.05(a)(i), (ii) or (iii) affecting Term SOFR, on a date and time determined by the Administrative Agent (any such date, the “Term SOFR Replacement Date”), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any Loan Document with Daily Simple SOFR, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document, and all interest payments on Loans with a Successor Rate of Daily Simple SOFR will be payable on the next Payment Date; or

(B) (x) if the Administrative Agent determines that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date, or (y) if the events or circumstances of the type described in Section 5.05(a)(i), (ii) or (iii) affecting any Successor Rate are then in effect, then, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing the Interest Rate or any then current Successor Rate in accordance with this Section 5.05 with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the U.S. and denominated in Dollars for such alternative benchmarks, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the U.S. and denominated in Dollars for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated (and any such proposed rate, including for the avoidance of doubt, any adjustment thereto, a “Successor Rate”), and any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Majority Lenders have delivered to the Administrative Agent written notice that such Majority Lenders object to such amendment.

(b) The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of the implementation of any Successor Rate.

(c) Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent (in consultation with the Borrower).

(d) Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

(e) In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

5-055.07 Survival. Each party's obligations under this **Section 5** shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations under any Loan Document.

SECTION 6. CONDITIONS

6.01 Conditions to Closing. The effectiveness of this Agreement shall be subject to the satisfaction (or waiver by the Lenders in accordance with **Section 14.04**) of each of the conditions precedent set forth below in this **Section 6.01**.

(a) **Loan Documents.** The Administrative Agent shall have received each Loan Document required to be executed by the appropriate Obligor on the Closing Date and delivered by each applicable Obligor in such number as reasonably requested by the Administrative Agent (which may be delivered by facsimile or other electronic means for the purposes of satisfying this clause (a) on the Closing Date) and such Loan Documents shall be in form and substance satisfactory to the Administrative Agent and the Lenders and their respective counsels.

(b) **Secretary's Certificate, Etc.** The Administrative Agent shall have received from each Obligor (x) a copy of a good standing certificate, dated a date reasonably close to the Closing Date, for each such Person and (y) a certificate, dated as of the Closing Date, duly executed and delivered by such Person's Responsible Officer, as to:

- (i) resolutions of each such Person's Board then in full force and effect authorizing the execution, delivery and performance of each Loan Document to be executed by such Person and the Transactions;
- (ii) the incumbency and signatures of Responsible Officers authorized to execute and deliver each Loan Document to be executed by such Person; and
- (iii) the full force and validity of each Organic Document of such Person and copies thereof;

upon which certificates shall be in form and substance reasonably satisfactory to the Administrative Agent and upon which the Administrative Agent and the Lenders may conclusively rely until they shall have received a further certificate of the Responsible Officer of any such Person cancelling or amending the prior certificate of such Person.

(c) **Information Certificate.** The Administrative Agent shall have received a fully completed Information Certificate in form and substance reasonably satisfactory to the Administrative Agent, dated as of the Closing Date, duly executed and delivered by a Responsible Officer of the Borrower. All documents and agreements required to be appended to the Information Certificate, shall be in form and substance reasonably satisfactory to the Administrative Agent, shall have been executed and delivered by the requisite parties and shall be in full force and effect.

(d) **Financial Information, Etc.** The Administrative Agent shall have received, or such information shall be publicly available on "EDGAR", audited consolidated financial statements of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2021.

(e) **Solvency.** The Administrative Agent shall have received a solvency certificate, substantially in the form of **Exhibit K**, duly executed and delivered by the chief financial officer of the Borrower, dated as of the Closing Date, in form and substance reasonably satisfactory to the Administrative Agent.

(f) **Security Documents.** The Administrative Agent shall have received executed counterparts of a Security Agreement, in form and substance reasonably acceptable to the Administrative Agent, dated as of the Closing Date, duly executed and delivered by each Obligor, together with all documents (including share certificates, transfers and stock transfer forms, notices or any other instruments) required to be delivered or filed under the Security Documents and evidence satisfactory to it that arrangements have been made with respect to all registrations, notices or actions required under the Security Documents to be effected, given or made in order to establish a valid and perfected first priority (subject to Permitted Priority Liens) security interest in the Collateral in accordance with the terms of the Security Documents, including:

- (i) delivery of all certificates (in the case of Equity Interests that are certificated securities (as defined in the UCC)) evidencing the issued and outstanding capital securities owned by each Obligor that are required to be pledged and so delivered under the Security Agreement, which certificates in each case shall be accompanied by undated instruments of transfer duly executed in blank, or, in the case of Equity Interests that are uncertificated securities (as defined in the UCC), confirmation and evidence reasonably satisfactory to the Administrative Agent and the Lenders that the security interest required to be pledged therein under the Security Agreement has been transferred to and perfected by the Administrative Agent and the Lenders in accordance with Articles 8 and 9 of the NY UCC and all laws otherwise applicable to the perfection of the pledge of such Equity Interests;

(ii) financing statements naming each Obligor as a debtor and the Administrative Agent as the secured party, or other similar instruments or documents, in each case suitable for filing, filed under the UCC (or equivalent law) of all jurisdictions as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Liens of the Secured Parties pursuant to the Security Agreement;

(iii) UCC-3 termination statements, if any, necessary to release all Liens and other rights of any Person in any collateral described in the Security Agreement previously granted by any Person; and

(iv) all applicable Short-Form IP Agreements required to be provided under the Security Agreement, each dated as of the Closing Date, duly executed and delivered by each applicable Obligor.

(g) **Lien Searches.** The Administrative Agent shall be satisfied with Lien searches regarding the Borrower made as of a date reasonably close to the Closing Date.

(h) **Warrants.** The Lenders shall have received executed counterparts of the Company ~~Warrant~~Warrants and the Registration Rights Agreement.

(i) **Opinion of Counsel.** The Administrative Agent shall have received a duly executed legal opinion of counsel to the Obligors dated as of the Closing Date, in form and substance reasonably acceptable to the Administrative Agent.

(j) **Fee Letter.** The Administrative Agent shall have received an executed counterpart of the Fee Letter, duly executed and delivered by the Borrower.

(k) **Closing Fees, Expenses, Etc.** Each of the Administrative Agent and each Lender shall have received for its own account, (i) the upfront fee as set forth in the Fee Letter, which shall be paid by way of the Administrative Agent retaining such amount from the proceeds of the Loan and (ii) all fees, costs and expenses due and payable to it pursuant to the Fee Letter and **Section 14.03**, including all reasonable closing costs and fees and all unpaid reasonable expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions (including the Administrative Agent's and the Lenders' legal fees and expenses), subject to the cap set forth in **Section 14.03(a)**, to the extent invoiced (or as to which a good faith estimate has been provided to the Borrower) at least two (2) Business Days prior to the Closing Date.

(l) **Material Adverse Change.** Since December 31, 2021, no Material Adverse Change shall have occurred, both before and after giving effect to the Loans to be made on the Closing Date.

(m) **Know Your Customer.** The Administrative Agent shall have received, as applicable, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and Anti-Terrorism Laws.

(n) **No Default.** No event shall have occurred or be continuing that would constitute a Default or Event of Default.

(o) **Representations and Warranties.** The representations and warranties contained in this Agreement and in the other Loan Documents delivered pursuant to **Section 6.01(a)** shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Closing Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all respects on and as of such earlier date.

(p) **Beneficial Ownership Certificate.** To the extent requested by any Lender or the Administrative Agent, the Borrower shall have provided to such Lender and the Administrative Agent all documentation and other information so requested, including a duly executed W-9 of the Borrower (or such other applicable tax form), in connection with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, and if the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a Beneficial Ownership Certification, in each case prior to the Closing Date.

6.02 Conditions to the Borrowing of All Loans. The obligation of each Lender to make each tranche of Loans shall be subject to the delivery of a Borrowing Notice as required pursuant to Section 2.02, and the prior or concurrent satisfaction (or waiver by the Lenders in accordance with Section 14.04) of each of the conditions precedent set forth below in this Section 6.02:

(a) **Closing Date.** The Closing Date shall have occurred and the conditions set forth in **Section 6.01** shall have been satisfied.

(b) **Applicable Funding Date Certificate.** The Administrative Agent shall have received a Funding Date Certificate dated as of the Applicable Funding Date, duly executed and delivered by a Responsible Officer of the Borrower.

(c) **Delivery of Notes.** The Administrative Agent shall have received a Note to the extent requested by any Lender pursuant to **Section 2.04** for the Loans made on such Applicable Funding Date duly executed and delivered by a Responsible Officer of the Borrower.

(d) **Solvency.** The Administrative Agent shall have received a solvency certificate, substantially in the form of **Exhibit K**, duly executed and delivered by the chief accounting officer of the Borrower, dated as of the Applicable Funding Date, in form and substance reasonably satisfactory to the Administrative Agent.

(e) **Fees, Expenses, Etc.** Each of the Administrative Agent and each Lender shall have received for its own account all Ticking Fees and other fees, costs and expenses due and payable to it on or prior to the Applicable Funding Date pursuant to the Fee Letter, **Section 2.06** and **Section 14.03**, including all reasonable closing costs and fees and all unpaid reasonable expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions (including the Administrative Agent’s and the Lenders’ legal fees and expenses) in each case, to the extent invoiced (or as to which a good faith estimate has been provided to the Borrower) at least two (2) Business Days prior to the Applicable Funding Date.

(f) **No Default.** No event shall have occurred or be continuing or would result from the making of the Loans on the Applicable Funding Date that would constitute a Default or Event of Default.

(g) **Representations and Warranties.** The representations and warranties contained in this Agreement and in the other Loan Documents delivered pursuant to **Section 6.01(a)** shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Applicable Funding Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all respects on and as of such earlier date.

(h) **701 Warrant.** The Lenders shall have received executed counterparts of (i) in the case of the Tranche A-1 Term Loans, 701 Warrants in an aggregate amount equal to 0.875% of the Fully-Diluted Capitalization (as defined therein) of OnkosXcel Therapeutics, LLC, (ii) in the case of the Tranche B Term Loans, 701 Warrants in an aggregate amount equal to 0.4375% of the Fully-Diluted Capitalization (as defined therein) of OnkosXcel Therapeutics, LLC and (iii) in the case of the Tranche C Term Loans, 701 Warrants in an aggregate amount equal to 0.4375% of the Fully-Diluted Capitalization (as defined therein) of OnkosXcel Therapeutics, LLC.

(i) **Contribution. BXCL 701 Asset Contribution.** The Borrower shall have completed the BXCL 701 Asset Contribution.

(j) **Agreements.**

(i) The Borrower shall have entered into an amendment to the Shared Services Agreement with BioXcel LLC pursuant to which the Collaboration Agreement Option shall be extended through at least December 31, 2024;

(ii) The Borrower and BioXcel LLC shall have entered into an agreement, in form and substance reasonably acceptable to the Administrative Agent, licensing BioXcel LLC's rights, title and interest in the BIOXCEL trademark to the Borrower; provided, that, such license shall (x) be (A), during the Initial Period, exclusive (including as to BioXcel LLC) within the field of neuroscience, (B) irrevocable (except as set forth in the termination provisions thereof), (C) freely sublicensable during the Initial Period within the scope of the license, (D) royalty-free, and (E) freely transferable during the Initial Period to any Affiliates of the Borrower, and to any Person who becomes the owner of the portion of Borrower's business with which the BIOXCEL trademark has been associated (or in connection with such Person's acquisition of such portion of such business) following the occurrence and during the continuance of an Event of Default, (y) provide that during the Initial Period BioXcel LLC shall not, and shall cause its controlled Affiliates not to, (A) license or grant other permissions to use the BIOXCEL trademark to any other entity other than its or their Affiliates or (B) use the BIOXCEL trademark in the field of neuroscience, and (z) provide Borrower with sufficient rights to bring, take, control and conduct any enforcement action to halt any infringement, dilution, or other conflicting use of the BIOXCEL trademark in the field of neuroscience, (such agreement, the "**BioXcel Trademark Agreement**"); and

(k) **Applicable Funding Condition.** The Applicable Funding Condition shall have been satisfied in form and substance reasonably satisfactory to the Administrative Agent and the Oaktree Lender.

(l) **Applicable Availability Period.** The Loans shall be borrowed on or prior to the last day of the Applicable Availability Period.

SECTION 7.
REPRESENTATIONS AND WARRANTIES

The Borrower and each other Obligor hereby jointly and severally represents and warrants to the Administrative Agent and each Lender on the Closing Date, on the Second Amendment Effective Date and each date on which a Loan is advanced pursuant to **Section 2.01**, and any other date such representation and warranty is required to be made under the Loan Documents, as set forth below:

7.01 Power and Authority. Each Obligor and each of its Subsidiaries (i) is duly organized and validly existing under the laws of its jurisdiction of organization, (ii) has all requisite corporate or other power, and has all Governmental Approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted, except to the extent that failure to have the same would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (iii) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary except where failure so to qualify would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, and (iv) has full power, authority and legal right to enter into and perform its obligations under each of the Loan Documents to which it is a party and, in the case of the Borrower, to borrow the Loans hereunder.

7.02 Authorization; Enforceability. Each Transaction to which an Obligor is a party (or to which it or any of its assets or properties is subject) is within such Obligor's corporate or other organizational powers and has been duly authorized by all necessary corporate or other organizational action including, if required, approval by all necessary holders of Equity Interests. This Agreement has been duly executed and delivered by each Obligor and constitutes, and each of the other Loan Documents to which it is a party when executed and delivered by such Obligor will constitute, a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.03 Governmental and Other Approvals; No Conflicts. None of the execution, delivery and performance by each Obligor of the Loan Documents to which it is a party or the consummation by each Obligor of the Transactions (i) requires any Governmental Approval of, registration or filing with, or any other action by, any Governmental Authority or any other Person, except for (x) such as have been obtained or made and are in full force and effect and (y) filings and recordings in respect of perfecting or recording the Liens created pursuant to the Security Documents, (ii) will violate (1) any Law, (2) any Organic Document of any Obligor or any of its Subsidiaries or (3) any order of any Governmental Authority, that in the case of **clause (ii)(1) or clause (ii)(3)**, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect, (iii) will violate or result in a default under any Material Agreement binding upon any Obligor or any of its Subsidiaries that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect or (iv) will result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of any Obligor or any of its Subsidiaries.

7.04 Financial Statements; Material Adverse Change.

(a) **Financial Statements.** The Borrower has heretofore furnished to the Administrative Agent (who shall forward to the Lenders) consolidated financial statements required to be delivered pursuant to this Agreement. Such financial statements present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements of the type described in **Section 8.01(a)**.

(b) **No Material Adverse Change.** Since December 31, 2021, there has been no Material Adverse Change; provided, that for purposes of this **Section 7.04(b)**, the impacts of the COVID-19 pandemic on the business, operations or financial condition of the Borrower and its Subsidiaries that (x) occurred prior to the Closing Date and (y) were disclosed in public filings made with the SEC or in writing to the Administrative Agent and the Lenders, in each case prior to the Closing Date, shall be disregarded.

7.05 Properties.

(a) **Property Generally.** Each Obligor and each of its Subsidiaries has good and marketable fee simple title to, or valid leasehold interests in, all its real and personal property material to its business, including all properties and assets, whether tangible or intangible, relating to its Products or Product Commercialization and Development Activities and all Material Intellectual Property, subject only to Permitted Liens and except for minor defects in title that (i) do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes and (ii) would not reasonably be expected to prevent or interfere with the ability of any Obligor or any of its Subsidiaries to conduct any Product Commercialization and Development Activities with respect to any of its Products in any material respect.

(b) Intellectual Property.

(i) The Obligors are the sole and exclusive legal and beneficial (and to the extent applicable, record) owners of all right, title and interest in and to all Material Intellectual Property and all other Intellectual Property that is, in each case, owned or purported to be owned by the Obligors, free and clear of any Liens or Claims other than Permitted Liens. The Obligors own or have sufficient and valid, written rights to use all Material Intellectual Property. The Collateral includes all Material Intellectual Property owned by the Obligors except for the Intellectual Property included within the BXCL 701 Assets. Without limiting the foregoing, and except as set forth in **Schedule 7.05(b)(i)**:

(A) other than (1) customary restrictions in in-bound licenses of Intellectual Property and non-disclosure Contracts, or (2) as would have been or is permitted by **Section 9.09**, there are no judgments, covenants not to sue, grants, Liens (other than Permitted Liens), or other Claims, agreements or arrangements relating to any Material Intellectual Property, which materially restrict any Obligor or any of its Subsidiaries with respect to its use, enforcement, or other exploitation of any Material Intellectual Property;

(B) the operation and conduct of the business of the Borrower or any of its Subsidiaries, including their use of their respective Material Intellectual Property, does not violate, infringe or constitute a misappropriation of Intellectual Property rights of any other Person, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect;

(C) (1) there are no pending Claims, or Claims threatened in writing, against any Obligor or any of their Subsidiaries asserted by any other Person relating to Intellectual Property, including any material Claims alleging ownership, invalidity or unenforceability of any Material Intellectual Property, or infringement, misappropriation, or violation of such Person's Intellectual Property rights in any material respect; and (2) neither any Obligor nor any of their Subsidiaries has received any notice from, or Claim by, any Person that the operation and conduct of the businesses of the Borrower or any of its Subsidiaries (including their use of Material Intellectual Property), infringes upon, violates or constitutes a misappropriation of, any Intellectual Property of any other Person in each case of **clause (1)** and **(2)**, that would reasonably be expected to result in material liability to any Obligor or any of their Subsidiaries;

(D) to the knowledge of any Borrower and their Subsidiaries, no Material Intellectual Property is being infringed, violated, or misappropriated by any other Person in any material respect; and neither such Obligor nor any of its Subsidiaries has put any other Person on notice of such actual or potential infringement, violation or misappropriation of any such Material Intellectual Property, and neither any Obligor nor any of their Subsidiaries has initiated any Claim with respect to any such Material Intellectual Property;

(E) all current and former employees and contractors that have developed Material Intellectual Property for or on behalf of any Obligor or any of their Subsidiaries have executed written confidentiality and invention assignment Contracts with such Obligor or Subsidiary, as applicable, that irrevocably and presently assign to such Obligor or Subsidiary, as applicable, all rights of such employees and contractors to any such Material Intellectual Property; and

(F) each Obligor and each of its Subsidiaries has taken reasonable precautions to protect the secrecy, confidentiality and value of its Material Intellectual Property consisting of Trade Secrets, and no such Trade Secret constituting Material Intellectual Property has been used or discovered by, or disclosed to, any Person except pursuant to written, valid and enforceable non-disclosure agreements protecting the confidentiality thereof, which agreements, to the knowledge of each Obligor and their Subsidiaries, have not been breached in any material respect.

(G) except as would not, individually or in the aggregate, be reasonably expected to be material to the Borrower or any of its Subsidiaries or to the value of any of their material software constituting Collateral ("**Material Software**"), neither the Borrower nor any of its Subsidiaries has embedded, used, linked to, distributed or made available any open source or copyleft source code, in each case in a manner that requires (i) any such Material Software owned or purported to be owed by the Borrower or any of its Subsidiaries (other than the open source software itself) be disclosed or distributed in source code form or be licensed for the purpose of making derivative works; (ii) any restriction on the consideration to be charged for the distribution of such Material Software; or (iii) the grant to any third Person of any rights or immunities under such software.

(ii) With respect to Material Intellectual Property consisting of Patents, except as set forth in **Schedule 7.05(b)(ii)**, and without limiting the representations and warranties in **Section 7.05(b)(i)**:

(A) each of the issued claims in such Patents is valid and enforceable;

(B) subsequent to the issuance of such Patents, no Obligor nor any of its Subsidiaries or predecessors-in-interest, has filed any disclaimer or made or permitted any other voluntary reduction in the scope of the Inventions claimed in such Patents;

(C) to the knowledge of any Obligor, no allowable or allowed subject matter of such Patents is subject to any competing conception claims of allowable or allowed subject matter of any patent applications or patents of any third party and have not been the subject of any interference, and are not and have not been the subject of any re-examination, opposition or any other post-grant proceedings, nor is any Obligor or its Subsidiaries aware of any basis for any such interference, re-examination, opposition, *inter partes* review, post grant review, or any other post-grant proceedings; and

(D) no such Patents have ever been finally adjudicated to be invalid, unpatentable or unenforceable for any reason in any administrative, arbitration, judicial or other proceeding, and, with the exception of publicly available documents with respect to any such Material Intellectual Property, no Obligor nor any of its Subsidiaries has received any written notice asserting that such Patents are invalid, unpatentable or unenforceable.

(iii) All maintenance fees, registration fees, renewal fees, annuities, and the like due or payable on or with respect to any Material Intellectual Property consisting of Patents or Trademarks owned, not licensed, by Borrower have been timely paid or the failure to so pay would not reasonably be expected to result in a Material Adverse Change; provided, that Administrative Agent and the Lenders hereby acknowledge that Borrower is not responsible for the maintenance of trademark filings owned by BioXcel LLC or other parties.

7.06 No Actions or Proceedings.

(a) **Litigation.** There is no litigation, investigation or proceeding pending or, to the knowledge of any Obligor or any of its Subsidiaries threatened in writing, with respect to such Obligor or any such Subsidiaries by or before any Governmental Authority or arbitrator that, (i) if adversely determined, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect or (ii) involves this Agreement or any other Loan Document.

(b) **Environmental Matters.** No Obligor nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, except for any such failure to comply with such Environmental Law or failure to obtain, maintain or comply with a permit that would not reasonably be expected to have a Material Adverse Effect, (ii) has become subject to any Environmental Liability that would reasonably be expected to have a Material Adverse Effect, (iii) except as disclosed on **Schedule 7.06(b)**, has received any Environmental Claim, or has knowledge that any is threatened, (iv) has entered into any agreement in which such Obligor or any Subsidiary has assumed or undertaken material responsibility or obligations of any other person with respect to any Environmental Liability or (v) has knowledge of any basis for any other material Environmental Liability.

(c) **Labor Matters.** No Obligor or any of its Subsidiaries has engaged in unfair labor practices as defined in 29 U.S.C. § 152(8) and 158 of the National Labor Relations Act and there are no pending or threatened in writing labor actions, disputes, grievances, arbitration proceedings, or similar Claims or actions involving the employees of any Obligor or any of its Subsidiaries, in each case that would reasonably be expected to have a Material Adverse Effect. There are no strike or work stoppages in existence or threatened in writing against any Obligor and to the knowledge of such Obligor, no union organizing activity is taking place. There are no collective bargaining agreements covering employees of any Obligor or any of its Subsidiaries.

7.07 Compliance with Laws and Agreements.

(a) Each Obligor is in compliance with all Laws binding on it and all Contracts binding upon it or its property, except, in each case, where the failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing. The Obligors and their Subsidiaries are, and all Product Commercialization and Development Activities of such Persons are being conducted, in material compliance with all applicable Healthcare Laws.

(b) To the knowledge of the Obligors and their respective Subsidiaries, any physician, other licensed healthcare professional, or any other Person who is in a position to refer patients or other business to the Borrower, any other Obligor or any Subsidiaries (collectively, a “*Referral Source*”) who has a direct ownership, investment, or financial interest in the Borrower, any other Obligor or any such Subsidiary paid fair market value for such ownership, investment or financial interest; any ownership or investment returns distributed to any Referral Source is in proportion to such Referral Source’s ownership, investment or financial interest; and no preferential treatment or more favorable terms were or are offered to such Referral Source compared to investors or owners who are not in a position to refer patients or other business. No Obligor, nor any of its Subsidiaries, directly or indirectly, has or will guarantee a loan, make a payment toward a loan or otherwise subsidize a loan for any Referral Source including any loans related to financing the Referral Source’s ownership, investment or financial interest in the Borrower, any other Obligor or any such Subsidiary.

(c) Without limiting the generality of the foregoing:

(i) To the knowledge of the Obligors and their respective Subsidiaries (after due inquiry), on the one hand, and any Referral Source, on the other hand (a) comply, in all material respects, with all applicable Healthcare Laws including the Federal Anti-Kickback Statute, the Stark Law and other applicable anti-kickback and self-referral laws, whether U.S. or non-U.S.; (b) reflect fair market value, have commercially reasonable terms, and were negotiated at arm’s length; and (c) do not obligate the Referral Source to purchase, use, recommend or arrange for the use of any products or services of any Obligor or any of its Subsidiaries; and

(ii) each Obligor and each of its Subsidiaries have implemented policies and procedures to monitor, collect, and report any payments or transfers of value to certain healthcare providers and teaching hospitals, in accordance, in all material respects, with industry standards and the Affordable Care Act of 2010 and the Physician Payments Sunshine Act and their implementing regulations and state disclosure and transparency laws.

7.08 Taxes. Except as set forth on **Schedule 7.08**, each Obligor and its Subsidiaries has timely filed or caused to be filed all income and other Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Obligor or such Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

7.09 Full Disclosure. None of the reports, financial statements, certificates or other written information concerning the Obligors and their Subsidiaries furnished by or on behalf of the Obligors or any of their Subsidiaries to the Administrative Agent (on behalf of itself and the Lenders) in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished, including the Borrower’s filings publicly available on “EDGAR”) contains any material misstatement of material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time, and it being understood that such projected financial information and all other forward looking information are not to be viewed as facts and that actual results during the period or periods covered thereby may differ from such projected results and that the differences may be material.

7.10 Investment Company Act and Margin Stock Regulation.

(a) **Investment Company Act.** No Obligor is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

(b) **Margin Stock.** No Obligor is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of the Loans will be used to buy or carry any Margin Stock in violation of Regulation T, U or X.

7.11 Solvency. The Obligors, on a consolidated basis, are and, immediately after giving effect to the making of the Loans, the use of proceeds thereof, and the consummation of the Transactions, will be, Solvent.

7.12 Subsidiaries. Set forth on **Schedule 7.12** is a complete and correct list of all direct and indirect Subsidiaries of the Borrower. Each such Subsidiary is duly organized and validly existing under the jurisdiction of its organization shown in said **Schedule 7.12**, and the percentage ownership by each Obligor of each such Subsidiary thereof is as shown in said **Schedule 7.12**.

7.13 Indebtedness and Liens. Set forth on **Schedule 7.13(a)** is a complete and correct list of all Indebtedness of each Obligor and each of its Subsidiaries outstanding as of the Closing Date. Set forth on **Schedule 7.13(b)** is a complete and correct list of all Liens granted by the Obligors and each of their respective Subsidiaries with respect to their respective property and outstanding as of the Closing Date.

7.14 Material Agreements. Except as set forth on **Schedule 7.14**, no Obligor or any of its Subsidiaries is in material default under any Material Agreement, nor does any Obligor have knowledge of (i) any Claim against it or any of its Subsidiaries for any material breach of any such Material Agreement or (ii) as of the Closing Date, any material default by any party to any such Material Agreement.

7.15 Restrictive Agreements. Except as set forth in **Schedule 7.15**, as of the Closing Date, no Obligor or any of its Subsidiaries is subject to any Restrictive Agreement, except (i) those permitted under **Section 9.11**, (ii) restrictions and conditions imposed by Law or by this Agreement, (iii) any stockholder agreement, charter, by-laws, or other organizational documents of an Obligor or any of its Subsidiaries as in effect on the ~~date hereof~~ [Closing Date](#) and (iv) limitations associated with Permitted Liens.

7.16 Real Property. **Schedule 7.16** correctly sets forth all real property that is owned or leased by the Obligors, indicating in each case whether the respective property is owned or leased, the identity of the owner and lessee (if applicable) and the location of the respective property. Except as set forth in **Schedule 7.16**, no Obligor owns or leases (as tenant thereof) any real property as of the Closing Date.

7.17 Pension Matters. Schedule 7.17 sets forth, as of the Closing Date, a complete and correct list of, and that separately identifies, (i) all Title IV Plans, (ii) all Multiemployer Plans and (iii) all material Benefit Plans. Each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Laws so qualifies. Except for those that would not, in the aggregate, reasonably be expected to result in a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Laws, (y) there are no existing or pending (or to the knowledge of any Obligor or any of its Subsidiaries, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Obligor or Subsidiary thereof incurs or otherwise has or could have an obligation or any liability or Claim and (z) no ERISA Event is reasonably expected to occur. The Borrower and each of its ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Title IV Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained. As of the most recent valuation date for any Title IV Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least sixty percent (60%), and neither any Obligor nor any of its ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below sixty percent (60%) as of the most recent valuation date. As of the Closing Date, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. No ERISA Affiliate would have any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

7.18 Regulatory Approvals.

(a) Each Obligor and each of its Subsidiaries holds, and will continue to hold, either directly or through licensees and agents, all Product Authorizations necessary or required for the Borrower and each of its Subsidiaries to conduct, in all material respects, their respective operations and businesses in the manner currently conducted and to conduct its Product Commercialization and Development Activities.

(b) No Obligor or its Subsidiaries has received any written notice from the FDA or any Governmental Authority that (i) it is considering suspending, revoking or materially limiting any Product Authorization or (ii) it is not likely to approve any applications made to such Governmental Authority with respect to any of the Products or any Material Agreement. The Obligors and their Subsidiaries have made all material required notices, registrations and reports (including field alerts or other reports of adverse experiences) and other filings with respect to each such Person's Products and Product Commercialization and Development Activities.

(c) Except as set forth on **Schedule 7.18(c)**, and without limiting the generality of any other representation or warranty made by any Obligor hereunder or under any other Loan Document: (i) no Obligor, nor any of its Subsidiaries nor, to the knowledge of any Obligor, any of their respective agents, suppliers, licensors or licensees have received any inspection reports, warning letters or notices or similar documents with respect to any Product or any Product Commercialization and Development Activities from any Regulatory Authority within the last two (2) years that asserts material lack of compliance with any applicable Healthcare Laws or Product Authorizations; (ii) no Obligor, nor any of its Subsidiaries nor, to the knowledge of any Obligor, any of their respective agents, suppliers, licensors or licensees have received any material notification from any Regulatory Authority within the last two (2) years, asserting that any Product or any Product Commercialization and Development Activities lacks a required Product Authorization; (iii) there is no pending regulatory action, investigation or inquiry (other than non-material routine or periodic inspections or reviews) against any Obligor, any of its Subsidiaries or, to the knowledge of any Obligor, any of their respective suppliers, licensors or licensees with respect to any Product or any Product Commercialization and Development Activities, and, to the knowledge of any Obligor, there is no basis in fact for any material adverse regulatory action against such Obligor or any of its Subsidiaries or, to the knowledge of any Obligor, any of their respective suppliers agents, licensors or licensees with respect to any Product or any Product Commercialization and Development Activities; and (iv) without limiting the foregoing, (A) (1) there have been no material product recalls, safety alerts, corrections, withdrawals, marketing suspensions, removals or the like conducted, undertaken or issued by any Obligor or any of its Subsidiaries, whether voluntary, at the request, demand or order of any Regulatory Authority or otherwise, with respect to any Product, any Product Commercialization and Development Activities or any Product Authorization within the last two (2) years, (2) no such product recall, safety alert, correction, withdrawal, marketing suspension, removal or the like has been requested, demanded or ordered by any Regulatory Authority within the last two (2) years, and, to the knowledge of any Obligor, there is no basis in fact for the issuance of any such product recall, safety alert, correction, withdrawal, marketing suspension, removal or the like with respect to any Product or any Product Commercialization and Development Activities, and (B) no criminal, injunctive, seizure, detention or civil penalty action has been commenced or threatened in writing by any Regulatory Authority within the last two (2) years with respect to or in connection with any Product or any Product Commercialization and Development Activities, and there are no consent decrees (including plea agreements) that relate to any Product or any Product Commercialization and Development Activities, and, to the knowledge of each Obligor, there is no basis in fact for the commencement of any criminal injunctive, seizure, detention or civil penalty action by any Regulatory Authority relating to any Product or any Product Commercialization and Development Activities or for the issuance of any consent decree. No Obligor nor any of its Subsidiaries, nor, to the knowledge of any Obligor, any of their respective agents, suppliers, licensees or licensors, is employing or utilizing the services of any individual, in connection with Product Commercialization and Development Activities, who has been debarred from any federal healthcare program.

7.19 Transactions with Affiliates. Except as set forth on **Schedule 7.19**, no Obligor nor any of its Subsidiaries has entered into, renewed, extended or been a party to, any transaction (including the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate.

7.20 OFAC; Anti-Terrorism Laws.

(a) Neither the Borrower nor any of its Subsidiaries is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the Anti-Terrorism Laws.

(b) Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers, or employees (i) is currently the target of any Sanctions, (ii) is located, organized or residing in any Designated Jurisdiction in violation of Sanctions, or (iii) is or has been (within the previous five (5) years) engaged in any transaction with, or for the benefit of, any Person who is now or was then the target of Sanctions or who is located, organized or residing in any Designated Jurisdiction, in violation of Sanctions. No Loan, nor the proceeds from any Loan, has been or will be used, directly or, to the knowledge of the Borrower, indirectly, to lend, contribute or provide to, or has been or will be otherwise made available for the purpose of funding, any activity or business in any Designated Jurisdiction in violation of Sanctions or for the purpose of funding any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, in violation of Sanctions, or in any manner that will result in any violation by any party to this Agreement of Sanctions.

7.21 Anti-Corruption. Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers or employees, directly or, to the knowledge of the Borrower, indirectly, has (i) materially violated or is in material violation of any applicable anti-corruption Law, or (ii) made, offered to make, promised to make or authorized the payment or giving of, directly or, to the knowledge of the Borrower, indirectly, any Prohibited Payment.

7.22 BXCL 701 Assets. The BXCL 701 Subsidiaries do not own, license or have the right to use any assets other than (i) following the BXCL 701 Asset Contribution, the BXCL 701 Assets and (ii) other assets transferred to, or acquired by, the BXCL 701 Subsidiaries in compliance with **Sections 9.09 and 9.19**. The Intellectual Property included in the BXCL 701 Assets relate exclusively to BXCL 701 and the Emerging 701 Pipeline, and none of the Intellectual Property included in BXCL 701 Assets is used in connection with any other Products, including BXCL 501.

7.23 Priority of Obligations. The Obligations constitute unsubordinated obligations of the Obligor, and except for any obligations which have priority under applicable Law, rank at least pari passu in right of payment with all other unsubordinated Indebtedness of the Obligor.

7.24 Royalty and Other Payments. Except as set forth on **Schedule 7.24**, no Obligor, nor any of its Subsidiaries, is obligated to pay any royalty, milestone payment, deferred payment or any other contingent payment in respect of any Product.

7.25 Non-Competes. Neither the Borrower, any other Obligor, nor any of their respective Subsidiaries, nor any of their respective directors, officers or employees, is subject to a non-compete agreement that prohibits or will interfere with any of the Product Commercialization and Development Activities, including the development, commercialization or marketing of any Product.

7.26 Security Interest. Each Security Document is effective to create in favor of Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest in the Collateral subject thereto and, upon satisfaction of the Perfection Requirements, each such security interest is perfected to the extent required by (and has the priority required by) the applicable Security Document. The Security Documents collectively are effective to create in favor of Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest in the Collateral, which security interests are first-priority (subject only to Permitted Priority Liens).

7.27 Data Privacy. Neither any Obligor nor any of their Subsidiaries has experienced any breach of security or unauthorized access by third parties of any personally identifiable information from any individuals, including, without limitation, any customers, prospective customers, employees or other third parties that is in its possession, custody, or control, in each case, except as would not reasonably be expected to have a Material Adverse Effect.

SECTION 8. AFFIRMATIVE COVENANTS

Each Obligor covenants and agrees with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than inchoate indemnification and expense reimbursement obligations for which no claim has been made) have been indefeasibly paid in full in cash:

8.01 Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent:

(a) as soon as available and in any event within forty-five (45) days after the end of the first three (3) fiscal quarters of each fiscal year (i) the consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal quarter and (ii) the related consolidated statements of income and cash flows of the Borrower and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such fiscal quarter, in each case prepared in all material respects in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year, together with (iii) a certificate of a Responsible Officer of the Borrower stating that (x) such financial statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as at such date and (y) the results of operations of the Borrower and its Subsidiaries for the period ended on such date have been prepared in all material respects in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes; provided that documents required to be furnished pursuant to this Section **8.01(a)** shall be deemed furnished on the date that such documents are publicly available on “EDGAR” (with the related certificate separately delivered);

(b) as soon as available and in any event within ninety (90) days after the end of each fiscal year (i) the consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal year and (ii) the related consolidated statements of income, stockholders’ equity and cash flows of the Borrower and its Subsidiaries for such fiscal year, in each case prepared in all material respects in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, accompanied by a report and opinion thereon of Ernst & Young U.S. LLP or another firm of independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and such report and opinion shall not be subject to any “going concern” or like qualification or exception or emphasis of matter of going concern footnote or any qualification or exception as to the scope of such audit, and in the case of such consolidated financial statements, certified by a Responsible Officer of the Borrower; provided that documents required to be furnished pursuant to this Section **8.01(b)** shall be deemed furnished on the date that such documents are publicly available on “EDGAR”;

(c) together with the financial statements required pursuant to **Section 8.01(a)** and **(b)**, a compliance certificate signed by the chief financial or accounting Responsible Officer of the Borrower as of the end of the applicable accounting period (which delivery may be by electronic communication including fax or email and shall be deemed to be an original, authentic counterpart thereof for all purposes) substantially in the form of **Exhibit E** (a “**Compliance Certificate**”) including (i) details of any issues that are material that are raised by auditors and any occurrence or existence of any event, circumstance, act or omission that would cause any representation or warranty contained in **Section 7.07**, **Section 7.18** or **Section 7.23** to be incorrect in any material respect (or in any respect if such representation or warranty is qualified by materiality or by reference to Material Adverse Effect or Material Adverse Change) if such representation or warranty were to be made at the time of delivery of a Compliance Certificate, and (ii) for any fiscal period when the Minimum Revenue Covenant is in effect, a certification as to whether or not the Borrower is in compliance with the Minimum Revenue Covenant as of the last day of such period;

(d) after being prepared by the Borrower and approved by its Board, and promptly following the Administrative Agent's request therefor, a consolidated financial forecast for the Borrower and its Subsidiaries for the fiscal year to which such forecast relates; provided that, for each fiscal year, on or before the seventy-fifth (75th) day following the beginning of such fiscal year, the Borrower shall prepare, and its Board shall approve such consolidated financial forecast for such fiscal year, and the Borrower shall notify the Administrative Agent promptly after the Board has given such approval;

(e) promptly after the same are released, copies of any press release required by U.S. securities laws to be filed with the SEC (excluding, for the avoidance of doubt, marketing press releases); provided that documents required to be furnished pursuant to this Section **8.01(e)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

(f) promptly, and in any event within five (5) Business Days after receipt thereof by an Obligor thereof, copies of each notice or other correspondence received from any securities regulator or exchange to the authority of which the Borrower may become subject from time to time concerning any investigation or possible investigation or other inquiry (other than routine comment letters from the SEC) by such agency regarding financial or other operational results of such Obligor; provided that documents required to be furnished pursuant to this Section **8.01(f)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

(g) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of each Obligor and its Subsidiaries, and copies of all annual, regular, periodic and special reports and registration statements which any Obligor or its Subsidiaries may file or be required to file with any securities regulator or exchange to the authority of which such Obligor or such Subsidiary, as applicable, may become subject from time to time; provided that documents required to be furnished pursuant to this Section **8.01(g)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

(h) the information regarding insurance maintained by the Borrower and its Subsidiaries as required under **Section 8.05**;

(i) as soon as possible and in any event within five (5) Business Days after the Borrower obtains knowledge of any Claim related to any Product or inventory involving more than \$3,750,000 (or the Equivalent Amount in other currencies), written notice thereof from a Responsible Officer of the Borrower which notice shall include a statement setting forth details of such return, recovery, dispute or claim;

(j) together with the delivery of the Compliance Certificate, evidence satisfactory to the Administrative Agent, based upon the Borrower's bank account statements that the Borrower is in compliance with the Minimum Liquidity Covenant; and

(k) such other information respecting the businesses, financial performance, operations condition of the assets or liabilities of the Obligors (including with respect to the Collateral), taken as a whole, as the Administrative Agent may from time to time reasonably request.

8.02 Notices of Material Events. The Borrower will furnish to the Administrative Agent written notice of the following (x) with respect to **clause (a)** below within three (3) Business Days and (y) with respect to **clause (b)** through **(m)** below, within five (5) Business Days, in each case, after a Responsible Officer of the Borrower first learns of or acquires knowledge with respect to:

(a) the occurrence of any Default or Event of Default;

(b) the occurrence of any event with respect to the property or assets of the Borrower or any of its Subsidiaries resulting in a Loss aggregating \$3,750,000 (or the Equivalent Amount in other currencies) or more;

(c) (i) any proposed acquisition of stock, assets or property by the Borrower or any of its Subsidiaries that would reasonably be expected to result in material Environmental Liability, and (ii) any spillage, leakage, discharge, disposal, leaching, migration or release of any Hazardous Material by the Borrower or any of its Subsidiaries required to be reported to any Governmental Authority or that would reasonably be expected to result in material Environmental Liability;

(d) the assertion of any Claim under any Environmental Law by any Person against, or with respect to the activities of, the Borrower or any of its Subsidiaries and any alleged liability or non-compliance with any Environmental Laws or any permits, licenses or authorizations issued pursuant to Environmental Laws which would reasonably be expected to involve damages in excess of \$2,500,000 (or the Equivalent Amount in other currencies) other than any such Claim or alleged violation that would not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect;

(e) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any of its Affiliates that would reasonably be expected to result in a Material Adverse Effect;

(f) (i) the intention of any ERISA Affiliate to file any notice of intent to terminate any Title IV Plan, a copy of such notice and (ii) the filing by any ERISA Affiliate of a request for a minimum funding waiver under Section 412 of the Code with respect to any Title IV Plan or Multiemployer Plan, in each case in writing and in reasonable detail (including a description of any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto);

(g) (i) the termination of any Permitted License that is an exclusive license and material to the Product Commercialization and Development Activities or any Material Agreement other than in accordance with its terms and not as a result of a breach or default, (ii) the receipt by the Borrower or any of its Subsidiaries of any notice of a material breach or default under any Permitted License that is an exclusive license and material to the Product Commercialization and Development Activities or any Material Agreement (and a copy thereof) asserting a default by such Obligor or any of its Subsidiaries where such alleged default would permit such counterparty to terminate such Permitted License or Material Agreement, (iii) the entering into of (A) any new Material Agreement by any Obligor (and a copy thereof) or (B) any Permitted License that is an exclusive license and material to the Product Commercialization and Development Activities or (iv) any material amendment to a Permitted License that is an exclusive license and material to the Product Commercialization and Development Activities or Material Agreement that would be adverse in any material respect to the Lenders (and a copy thereof); provided, that the Borrower shall not be required to provide such notice if such documents become publicly available on "EDGAR" within the time period notice would otherwise be required pursuant to this **Section 8.02**;

(h) any material change in accounting policies or financial reporting practices by the Borrower or any of its Subsidiaries;

(i) any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving an Obligor;

(j) any Contract entered into by the Borrower or any of its Subsidiaries in connection with any Claim of actual or alleged infringement, misappropriation or violation of any Material Intellectual Property by or against the Borrower or any of its Subsidiaries;

(k) the creation, development or other acquisition (including any in-bound exclusive licenses) of any Material Intellectual Property by the Borrower or any Subsidiary after the Closing Date that is issued, registered or becomes issued or registered or the subject of an application for issuance or registration with any Governmental Authority; provided that, with respect to any such Material Intellectual Property created, developed or acquired (including through any in-bound exclusive license) in any fiscal year, notice thereof pursuant to this **Section 8.02(k)** shall be made in accordance with the timing of the financial statements for such fiscal year required pursuant to **Section 8.01(b)**;

(l) any change to any Obligor's or any of its Subsidiaries' ownership of any Controlled Account, by delivering the Administrative Agent a notice setting forth a complete and correct list of all such accounts as of the date of such change; and

(m) any other development that results in, or would reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this **Section 8.02** shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto. Nothing in this **Section 8.02** is intended to waive, consent to or otherwise permit any action or omission that is otherwise prohibited by this Agreement or any other Loan Document.

8.03 Existence. Such Obligor shall, and shall cause each of its Subsidiaries to, preserve, renew and maintain in full force and effect its legal existence; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under **Section 9.03**.

8.04 Payment of Obligations. Such Obligor will, and will cause each of its Subsidiaries to, pay and discharge its obligations, including (i) all material Taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all lawful claims for labor, materials and supplies which, if unpaid, might become a Lien upon any properties or assets of the Borrower or any of its Subsidiaries, except to the extent such Taxes, fees, assessments or governmental charges or levies or such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP and (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien.

8.05 Insurance. Such Obligor will, and will cause each of its Subsidiaries to maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses, including commercial property, liability and business interruption coverage. Upon the request of the Administrative Agent, the Borrower shall furnish the Administrative Agent from time to time with (i) material information as to the insurance carried by it and, if so requested, copies of all such insurance policies and (ii) a certificate from the Borrower's insurance broker or other insurance specialist stating that all premiums then due on the policies relating to insurance on the Collateral have been paid and that such policies are in full force and effect. Receipt of notice of termination or cancellation of any such insurance policies or reduction of coverages or amounts thereunder shall entitle the Secured Parties to renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to the first sentence of this **Section 8.05** or otherwise to obtain similar insurance in place of such policies, in each case, the Borrower will be responsible for the reasonable and documented cost of such insurance (to be payable on demand). The amount of any such reasonable and documented expenses shall accrue interest at the Default Rate if not paid on demand and shall constitute "Obligations." Such Obligor shall cause each such policy of insurance (with respect to each such policy outstanding as of the Closing Date, within the time period set forth in **Section 8.19(b)**) to (i) name the Administrative Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear, and (ii) in the case of each casualty insurance policy (including business interruption, if any) contain a lender loss payable clause or endorsement naming the Administrative Agent, on behalf of the Secured Parties, as loss payee thereunder and providing for at least thirty (30) days' prior written notice to the Agent (ten (10) days' prior written notice in the event of cancellation for nonpayment) of any material modification or cancellation of such policy, and otherwise reasonably satisfactory in form and substance to the Administrative Agent.

8.06 Books and Records; Inspection Rights. Such Obligor will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct (in all material respects) entries are made of all dealings and transactions in relation to its business and activities. Such Obligor will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or the Lenders, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition (financial or otherwise) with its officers and independent accountants, during normal business hours (but not more often than once per fiscal year unless an Event of Default has occurred and is continuing) as the Administrative Agent or the Lenders may request; provided that such representative shall use its commercially reasonable efforts to minimize disruption to the business and affairs of the Borrower as a result of any such visit, inspection, examination or discussion. Notwithstanding anything to the contrary contained herein, no Obligor nor any of its Subsidiaries will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) that constitutes trade secrets or proprietary information, (ii) in respect of which disclosure to any Lender (or their respective representatives or contractors) is prohibited by any applicable Law or any binding agreement with a third party (so long as such agreement is not entered into in contemplation of this Agreement) or (iii) that is subject to attorney-client or similar privilege, which could reasonably be expected to be lost or forfeited if disclosed to the Administrative Agent or any Lender. The Borrower shall pay all reasonable and documented costs of all such inspections.

8.07 Compliance with Laws and Other Obligations. Such Obligor will, and will cause each of its Subsidiaries to, (i) comply with all Laws (including Anti-Terrorism Laws, Sanctions and Environmental Laws) applicable to it and its business activities, (ii) comply in all material respects with all Healthcare Laws and Governmental Approvals (including Product Authorizations) applicable to it and its business activities and (iii) maintain in full force and effect, remain in compliance with, and perform all obligations under all Material Agreement to which it is a party, except, in the case of **clauses (i) and (iii)** above, where the failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Within 30 days after the Closing Date, each Obligor shall institute (if not already in effect) and thereafter maintain in effect and enforce policies and procedures reasonably designed to promote compliance by such Obligor, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Terrorism Laws and Sanctions.

8.08 Maintenance of Properties, Etc. Such Obligor shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its assets and properties, including all assets and properties, whether tangible or intangible, relating to its Products or Product Commercialization and Development Activities, necessary or useful in the conduct of its business in good working order and condition in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear and damage from casualty or condemnation excepted and except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

8.09 Licenses. Such Obligor shall, and shall cause each of its Subsidiaries to, obtain and maintain all Governmental Approvals necessary in connection with the execution, delivery and performance of the Loan Documents, the consummation of the Transactions or the operation and conduct of its business and ownership of its properties (including its Product Commercialization and Development Activities), except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

8.10 Use of Proceeds. The proceeds of the Loans will be used only as provided in **Section 2.05**. No part of the proceeds of the Loans will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulations T, U and X.

8.11 Certain Obligations Respecting Subsidiaries; Further Assurances.

(a) **Subsidiary Guarantors, etc.** Subject to **clauses (c) and (d)** below, in the event that the Borrower or any of its Subsidiaries shall form or acquire any new Subsidiary, the Borrower shall promptly (and in any event within forty-five (45) calendar days):

(i) cause such new Subsidiary to become (x) a “Subsidiary Guarantor” hereunder pursuant to a Guarantee Assumption Agreement and (y) a “Grantor” under the Security Agreement;

(ii) take such action or cause such Subsidiary to take such action (including joining the Security Agreement and delivering shares of stock together with undated transfer powers executed in blank, applicable control agreements and other instruments) as shall be reasonably necessary or desirable or reasonably requested by the Administrative Agent in order to create and perfect, in favor of the Administrative Agent, for the benefit of the Secured Parties, valid and enforceable first priority (subject to Permitted Priority Liens) Liens on substantially all of the personal property of such new Subsidiary as collateral security for the Obligations hereunder; provided that any such security interest or Lien shall be subject to the relevant requirements of the Security Documents and the Intercompany Subordination Agreement;

(iii) to the extent that the parent of such Subsidiary is not a party to the Security Agreement or has not otherwise pledged Equity Interests in its Subsidiaries in accordance with the terms of the Security Agreement and this Agreement, cause the parent (if possible) of such Subsidiary to execute and deliver a pledge agreement in favor of the Administrative Agent, for the benefit of the Secured Parties, in respect of all outstanding issued shares of such Subsidiary;

(iv) deliver such proof of corporate action, incumbency of officers, and other applicable documents as is consistent with those delivered by each Obligor pursuant to **Section 6.01** or as the Administrative Agent shall reasonably request; and

(v) cause each new Subsidiary to become a party to the Intercompany Subordination Agreement.

(b) **Further Assurances.** Subject to **clauses (c) and (d)** below:

(i) such Obligor will take such action from time to time as shall reasonably be requested by the Administrative Agent to effectuate the purposes and objectives of this Agreement and the Security Agreement;

(ii) in the event that such Obligor creates, develops or otherwise acquires Intellectual Property during the term of this Agreement, then the provisions of this Agreement and the Security Agreement shall and hereby does automatically apply thereto and any such Intellectual Property shall automatically constitute and hereby does constitute part of the Collateral under the Security Documents, without further action by any party, in each case from and after the date of such creation, development or acquisition;

(iii) without limiting the generality of the foregoing, each Obligor will, and will cause each Person that is required to be a Subsidiary Guarantor to, take such action from time to time (including joining the Security Agreement and delivering shares of stock together with undated transfer powers executed in blank, applicable control agreements and other instruments) as shall be reasonably requested by the Administrative Agent to create, in favor of the Secured Parties, perfected security interests and Liens in substantially all of the personal property (other than Excluded Assets (as defined in the Security Agreement)) of such Obligor as collateral security for the Obligations; provided that any such security interest or Lien shall be subject to the relevant requirements of the Security Documents;

(iv) promptly (and in any event within five (5) Business Days) following the acquisition by any Obligor following the Closing Date of any fee interest in real property or lessee interest under a ground lease having a value in excess of \$1,000,000, such Obligor shall notify Administrative Agent of such fact and shall, if so requested by Administrative Agent, within thirty (30) days following such request by Administrative Agent (or such longer period as agreed by Administrative Agent in its reasonable discretion), with respect to any such owned or leased real estate, deliver or cause to be delivered to Administrative Agent the following (collectively, "**Mortgage Deliverables**"): (A) a mortgage or deed of trust, as applicable, in form and substance reasonably satisfactory to Administrative Agent, executed by the title holder thereof and recorded in the applicable jurisdiction, granting Administrative Agent, on behalf of the Lenders, a first priority Lien on the fee or lessee interest in such real estate, (B) a lender's title insurance policy issued by a title insurer reasonably satisfactory to Administrative Agent in form and substance and in amounts reasonably satisfactory to Administrative Agent insuring Administrative Agent's, for itself and on behalf of the Lenders', first priority Lien in the fee or lessee interest in such real estate, free and clear of all defects and encumbrances except Permitted Liens, (C) a current ALTA survey, certified to Administrative Agent, for itself and on behalf of the Lenders, by a licensed surveyor, in form and substance reasonably satisfactory to Administrative Agent, or survey affidavits sufficient to allow the issuer of the lender's title insurance policy to issue such policy without a survey exception, (D) a certificate, in form and substance reasonably acceptable to Administrative Agent, to Administrative Agent from a national certification agency acceptable to Administrative Agent, indicating whether such real estate is located in a special flood hazard area and (E) legal opinions in form and substance reasonably acceptable to Administrative Agent from one or more law firms reasonably acceptable to Administrative Agent opining as to due execution, authority, noncircumvention, recordability, perfection and enforceability of such mortgage or deed of trust; and

(v) in the event that such Obligor is party to (i) any lease agreement with respect to real property or (ii) any warehousing or bailment arrangement pursuant to which inventory, equipment or other assets of the Obligors are stored at a third-party warehouse or other facility, such Obligor shall use its commercially reasonable efforts to obtain a Landlord Consent or Bailee Letter, as applicable, within 30 days after entry into such agreement or arrangement.

(c) **Excluded Subsidiaries.** Notwithstanding any term or provision of this Agreement to the contrary, (x) no Subsidiary that is a (i) CFC, (ii) CFC Holding Company or (iii) Domestic Subsidiary of either of the foregoing, shall be required to become a Subsidiary Guarantor, (y) the Obligors shall not be required to pledge (or cause to be pledged) to the Administrative Agent, for the benefit of the Secured Parties, Equity Interests of any Subsidiary representing, in the aggregate, more than sixty-five percent (65%) of the Equity Interests of any CFC or CFC Holding Company, and (z) no Immaterial Subsidiary shall be required to become a Subsidiary Guarantor.

(d) **Limitations on Certain Obligations.** Notwithstanding any term or provision of this Agreement to the contrary:

(i) the foregoing clauses (a)(i)(y), (a)(ii), (a)(iii) and (b) of this **Section 8.11** shall not apply to the BXCL 701 Subsidiaries; and

(ii) (A) no Obligor shall be required to enter into or obtain any leasehold mortgage or any similar agreement in respect of any leasehold interest in real property and (B) no actions or undertakings described in the foregoing clauses (a)(ii) or (b) of this **Section 8.11**, and no collateral or security filings, shall be required in any jurisdiction outside the United States.

8.12 Termination of Non-Permitted Liens. In the event that any Obligor shall become aware of, or be notified by the Administrative Agent or any Lender of the existence of, any outstanding Lien against any assets or property of such Obligor or any of its Subsidiaries, which Lien is not a Permitted Lien, such Obligor shall use its commercially reasonable efforts to promptly terminate or cause the termination of such Lien. This provision shall not limit any rights or remedies the Administrative Agent and Lenders have upon the occurrence and during the continuance of an Event of Default.

8.13 Board Materials; Oaktree Lender Board Observer.

(a) Regardless of whether the Oaktree Lender has the right to designate a Board Observer (as defined below): (i) the Borrower shall deliver to the Administrative Agent copies of any agenda and other written materials provided to the board of directors (or any committee thereof) of the Borrower prior to any meeting of the board of directors (or such committee thereof), at or reasonably promptly after such materials are furnished to the members of the board of directors (or such committee thereof), (ii) copies of all minutes of meetings of the board of directors (or any committee thereof) of the Borrower at or promptly after such minutes are furnished to the members of the board of directors (or such committee thereof), (iii) copies of all material written consents duly passed by the board of directors (or any committee thereof) of the Borrower and (iv) promptly upon presentation of any regular periodic materials to the board of directors (or any committee thereof) of the Borrower reporting on the current, past or future financial performance and business and operations of the Borrower or any of its Subsidiaries (which shall include, among other things, development updates with respect to material Products, and updates with respect to material events relating to other Material Agreements), copies of such materials shall be delivered to the Administrative Agent; provided that any such material may be redacted by the Borrower to (A) exclude information pertaining to the Borrower's strategy regarding the Loans, (B) preserve attorney-client privilege or (C) protect individually identifiable health information (as defined under HIPAA) or other confidential information relating to healthcare patients; provided, further that such redactions are restricted so as to be only as extensive as is reasonably necessary in order to exclude information described in clauses (A), (B) or (C).

(b) Upon the request of the Oaktree Lender and after both Tranche A-1 Loan and Tranche B Loan have been funded, the Borrower shall permit a single designee of the Oaktree Lender to be a board observer to the Borrower or any committee thereof performing such functions (the “**Board Observer**”). In such capacity, the Board Observer shall be entitled to attend all meetings of the board of directors of the Borrower and any committee thereof. The Borrower shall ensure that the Board Observer is invited to each such meeting at the same time as each other member of the board of directors and that such Board Observer receives all board materials at the same time as each other member of the board of directors; provided that any such material may be redacted by Borrower, and Borrower may exclude the Board Observer from meetings of the board of directors or any committee thereof, in order to (i) prevent the Board Observer from receiving or learning information relating to the Borrower’s strategy regarding the Loans, (ii) preserve attorney-client privilege or (iii) protect individually identifiable health information (as defined under HIPAA) or other confidential information relating to healthcare patients; provided, further, that such redactions and the exclusion of the Board Observer are restricted so as to be only as extensive as is reasonably necessary in order to exclude or prevent access to the Board Observer to information described in clauses (i), (ii) or (iii). If appointed, the Board Observer may resign or withdraw at any time, or, at the request of the Oaktree Lender, be replaced by a designee of the Oaktree Lender that is reasonably acceptable to the Borrower.

(c) Without otherwise limiting the Administrative Agent’s and Lenders’ right to expense reimbursement hereunder, the Borrower shall reimburse the Oaktree Lender for all reasonable and documented out-of-pocket expenses incurred by or on behalf of the Oaktree Lender or the Board Observer in attending any meetings of the board of directors or any committee thereof or otherwise in connection with the exercise of their rights hereunder.

8.14 [Reserved].

8.15 Maintenance of Regulatory Approvals, Contracts, Intellectual Property, Etc. With respect to the Products and all Product Commercialization and Development Activities, such Obligor will, and will cause each of its Subsidiaries (to the extent applicable) to, (i) maintain in full force and effect all Regulatory Approvals, Material Agreements, Material Intellectual Property and other rights, interests or assets (whether tangible or intangible) reasonably necessary for the operations of such Person’s business, except as would not reasonably be expected to have a Material Adverse Effect, (ii) maintain in full force and effect, and pay all costs and expenses relating to, such Regulatory Approvals, Material Agreements and Material Intellectual Property owned, used or controlled by such Obligor or any such Subsidiary that are used in or necessary for any related Product Commercialization and Development Activities, except as would not be reasonably expected to have a Material Adverse Effect, (iii) promptly after obtaining knowledge thereof, notify the Administrative Agent of any infringement or other violation by any Person of such Obligor’s or any such Subsidiaries’ Material Intellectual Property, and use commercially reasonable efforts to stop, curtail or abate such infringement if determined appropriate by the Borrower in the exercise of its business judgment and (iv) promptly after obtaining knowledge thereof, notify the Administrative Agent of any Claim by any Person that the conduct of the business of any Obligor or any of its Subsidiaries, including in connection with any Product Commercialization and Development Activities, has infringed upon any Intellectual Property of such Person, where such Claim would reasonably be expected to have a Material Adverse Effect.

8.16 ERISA Compliance. Such Obligor shall comply, and shall cause each of its Subsidiaries to comply, with the provisions of ERISA with respect to any Plans to which such Obligor or such Subsidiary is a party as an employer in all material respects.

8.17 Cash Management. Such Obligor (in each case, except for any BXCL 701 Subsidiary) shall, and shall cause each of its Subsidiaries to:

(a) cause each deposit account, disbursement account, investment account (or other similar account) and lockbox of any Obligor (in each case, other than any Excluded Accounts) opened after the Closing Date to, within thirty (30) days of account opening and at all times thereafter be subject to an account control agreement between the applicable Obligor, the Administrative Agent and the applicable depository institution in favor of the Administrative Agent in form and substance reasonably acceptable to the Administrative Agent (each such deposit account, disbursement account, investment account (or similar account) and lockbox, a “**Controlled Account**”) that (A) ensures, to the extent necessary under applicable law, the perfection of a first priority (subject to Permitted Priority Liens) security interest in favor of the Administrative Agent on such Controlled Account, (B) provides that, upon written notice from the Administrative Agent, such depository institution shall comply with instructions originated by the Administrative Agent directing disposition of the funds in such Controlled Account without further consent of the applicable Obligor and (C) may not be terminated without prior written consent of the Administrative Agent; and

(b) at any time after the occurrence and during the continuance of an Event of Default, at the request of the Administrative Agent, each Obligor shall cause all payments constituting proceeds of accounts to be directed into lockbox accounts under agreements in form and substance satisfactory to the Administrative Agent.

8.18 Amendments to Agreements. The Collaboration Agreement Option, the BioXcel Trademark Agreement and the Commercial Supply Agreement shall not be amended or otherwise modified in a manner materially adverse to the interest of the Lenders without the prior written consent of the Majority Lenders.

8.19 Post-Closing Obligations.

(a) By July 19, 2022 (or such later date as agreed by the Administrative Agent in its sole discretion), the Borrower shall deliver to Administrative Agent evidence in form and substance satisfactory to the Administrative Agent that the Borrower has (i) obtained from each inventor who is obligated to assign to Borrower, a customary invention assignment agreement presently assigning all of such inventor’s right, title and interest in and to each Patent set forth on **Schedule 8.19** to Borrower and (ii) made the necessary filings with the United States Patent and Trademark Office (“**USPTO**”) to evidence in the records of the USPTO that the Borrower is the sole assignee and owner (or, solely with respect to those Patents identified on **Schedule 8.19** as jointly owned, an assignee and joint owner) of each of the Patents set forth on **Schedule 8.19**.

(b) By June 3, 2022 (or such later date as agreed by the Administrative Agent in its sole discretion), Borrower shall cause all insurance policies so required pursuant to the Loan Documents to (i) name the Administrative Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear, and (ii) in the case of each casualty insurance policy (including business interruption, if any) contain a lender loss payable clause or endorsement naming the Administrative Agent, on behalf of the Secured Parties, as loss payee thereunder and providing for at least thirty (30) days' prior written notice to the Administrative Agent (ten (10) days' prior written notice in the event of cancellation for nonpayment) of any material modification or cancellation of such policy.

(c) In the event that BioXcel LLC shall at any time cease to own, directly or indirectly, at least 20% of the Equity Interests in the Borrower, the Borrower shall use its commercially reasonable efforts to enter into an amendment to the Shared Services Agreement with BioXcel LLC pursuant to which the Borrower's option to enter into a collaborative services agreement with BioXcel LLC by which the Collaboration Agreement Option shall be extended through at least the 91st day following the Maturity Date.

(d) Within five (5) Business Days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion) (the "**Account Control Agreement Completion Date**"), the Administrative Agent shall have received evidence that (i) all deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts (other than Excluded Accounts) of each Obligor located within the U.S. are Controlled Accounts and (ii) such Controlled Accounts are subject to one or more account control agreements, in favor of, and satisfactory in form and substance to, the Administrative Agent that (A) ensures, to the extent necessary under applicable law, the perfection of a first priority (subject to Permitted Priority Liens) security interest in favor of the Administrative Agent on such Controlled Account, (B) provides that, upon written notice from the Administrative Agent, such depository institution shall comply with instructions originated by the Administrative Agent directing disposition of the funds in such Controlled Account without further consent of the applicable Obligor and (C) may not be terminated without prior written consent of the Administrative Agent.

8.20 Enforcement of Trademark Rights. Borrower shall, promptly after becoming aware of any breach by BioXcel LLC of the BioXcel Trademark Agreement or any use of the BIOXCEL trademark within the field of neuroscience (including by BioXcel LLC's other Affiliates), in each case, in a manner that is, or would reasonably be expected to be, material to the businesses of Borrower, the Obligors, or any of their respective Subsidiaries, use its commercially reasonable efforts to enforce its rights, including under the BioXcel Trademark Agreement, to prevent such further breach or use, and to otherwise mitigate any risk and adverse impact to such businesses.

SECTION 9.
NEGATIVE COVENANTS

Each Obligor covenants and agrees with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than inchoate indemnification and expense reimbursement obligations for which no claim has been made), have been indefeasibly paid in full in cash:

9.01 Indebtedness. Such Obligor will not, and will not permit any of its Subsidiaries (in each case, except for the BXCL 701 Subsidiaries following a Permitted BXCL 701 Release Event) to, create, incur, assume or permit to exist any Indebtedness, whether directly or indirectly, except:

- (a) the Obligations;
- (b) Indebtedness existing on the date hereof Closing Date and set forth on Schedule 7.13(a) and Permitted Refinancings thereof; provided that, if such Indebtedness is intercompany Indebtedness, (i) any Permitted Refinancing of such Indebtedness shall also be intercompany Indebtedness among the same parties and (ii) such Indebtedness and any Permitted Refinancing thereof shall be subject to the Intercompany Subordination Agreement;
- (c) accounts payable to trade creditors for goods ~~and services and current operating liabilities (not the result of the borrowing of money)~~ incurred in the Ordinary Course of such Obligor's or such Subsidiary's business in accordance with customary terms and paid within the specified time, unless contested in good faith by appropriate proceedings and reserved for in accordance with GAAP;
- (d) Indebtedness consisting of guarantees resulting from the endorsement of negotiable instruments for collection in the Ordinary Course;
- (e) Indebtedness of an Obligor owing to any other Obligor, in each case, subject to the Intercompany Subordination Agreement;
- (f) Indebtedness of any Subsidiary that is not an Obligor owing to any other Subsidiary that is not an Obligor;
- (g) Indebtedness of any Obligor owing to any Subsidiary that is not an Obligor, subject to the Intercompany Subordination Agreement; provided that the aggregate outstanding principal amount of such Indebtedness shall not exceed \$5,000,000 at any time;
- (h) Indebtedness of any Subsidiary that is not an Obligor owing to any Obligor; provided that the aggregate outstanding principal amount of such Indebtedness, together with Investments made pursuant to Section 9.05(e)(iii), shall not exceed \$5,000,000 at any time;
- (i) Guarantees by any Obligor of Permitted Indebtedness of any other Obligor;
- (j) Ordinary Course Capital Lease Obligations and equipment and software financing and leasing; provided that (i) if secured, the collateral therefor consists solely of the assets being financed, the products and proceeds thereof and books and records related thereto and (ii) the outstanding principal amount of such Indebtedness does not exceed \$10,000,000 (or the Equivalent Amount in other currencies) in the aggregate at any time;

(k) Indebtedness under (i) Permitted Hedging Agreements and (ii) Permitted Bond Hedge Transactions not exceeding, net of the proceeds of any Permitted Warrant Transactions entered in connection therewith, 15% of the proceeds obtained in the related Permitted Convertible Debt issuance;

(l) Indebtedness assumed pursuant to any Permitted Acquisition; provided that (i) no such Indebtedness (individually) shall exceed 15% of the total purchase price paid in connection with such Permitted Acquisition, (ii) the aggregate outstanding principal amount of Indebtedness permitted pursuant to this **Section 9.01(l)** (and any Permitted Refinancing thereof) shall not exceed \$10,000,000 (or the Equivalent Amount in other currencies) at any time outstanding and (iii) no such Indebtedness was created or incurred in connection with, or in contemplation of, such Permitted Acquisition;

(m) ~~Indebtedness pursuant to the Revenue Interest Financing Agreement~~ [\[reserved\]](#);

(n) other Indebtedness in an aggregate outstanding principal amount not to exceed \$10,000,000 (or the Equivalent Amount in other currencies);

(o) Permitted Convertible Debt in aggregate principal amount not to exceed \$150,000,000 in principal amount at any time outstanding;

(p) Indebtedness in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created, or related to obligations or liabilities incurred, in the Ordinary Course, including in respect of workers compensation claims, health, disability or other employee benefits or property, leases, commercial contracts, Indebtedness permitted pursuant to **Section 9.01(r)**, casualty or liability insurance or self-insurance or other reimbursement-type obligations regarding workers compensation claims;

(q) Indebtedness arising in connection with the financing of insurance premiums in the Ordinary Course;

(r) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations arising in the Ordinary Course;

(s) Indebtedness in respect of (i) netting services, (ii) overdraft protections, (iii) business credit cards, (iv) purchasing cards, (v) payment processing, (vi) automatic clearinghouse arrangements, (vii) arrangements in respect of pooled deposit or sweep accounts, (viii) check endorsement guarantees, and (ix) otherwise in connection with deposit accounts or cash management services, in each case, in the Ordinary Course;

(t) purchase price adjustments, indemnity payments and other Deferred Acquisition Consideration in connection with any Permitted Acquisition, in each case that are permitted pursuant to the definition of "Permitted Acquisition"; and

(u) Permitted Warrant Transactions that constitute Indebtedness.

9.02 Liens. Such Obligor will not, and will not permit any of its Subsidiaries (in each case, except for the BXCL 701 Subsidiaries following a Permitted BXCL 701 Release Event) to, create, incur, assume or permit to exist any Lien on any property now owned by it or such Subsidiary, except:

(a) Liens securing the Obligations;

(b) any Lien on any property or asset of such Obligor or any of its Subsidiaries existing on the ~~date hereof~~Closing Date and set forth on **Schedule 7.13(b)** and renewals and extensions thereof in connection with Permitted Refinancings of the Indebtedness being secured by such Lien; provided that (i) no such Lien (including any renewal or extension thereof) shall extend to any other property or asset of such Obligor or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the ~~date hereof~~Closing Date and renewals, extensions and replacements thereof in connection with Permitted Refinancings of the Indebtedness being secured by such Lien that do not increase the outstanding principal amount thereof;

(c) Liens securing Indebtedness permitted under **Section 9.01(j)**; provided that such Liens are restricted solely to the collateral described in **Section 9.01(j)**;

(d) Liens imposed by any operation of Law arising in the Ordinary Course, (including ~~(but not limited to)~~ carriers', warehousemen's, landlords', and mechanics' liens, liens relating to leasehold improvements and other similar Liens arising in the Ordinary Course) and which (x) do not in the aggregate materially detract from the value of the property subject thereto or materially impair the use thereof in the operations of the business of such Person or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property subject to such Liens and for which adequate reserves have been made if required in accordance with GAAP;

(e) pledges, deposits or other Liens made in the Ordinary Course (x) in connection with bids, contract leases, appeal bonds, workers' compensation, unemployment insurance or other similar social security legislation, or (y) securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Borrower or any Subsidiary;

(f) Liens securing Taxes, assessments and other governmental charges, the payment of which is not yet due or is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made;

(g) servitudes, easements, rights of way, restrictions and other similar encumbrances on real property imposed by any Law and Liens consisting of zoning or building restrictions, easements, licenses, restrictions on the use of real property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors or any of their Subsidiaries;

(h) with respect to any real property, (i) such defects or encroachments as might be revealed by an up-to-date survey of such real property; (ii) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real property pursuant to all applicable Laws; and (iii) rights of expropriation, access or user or any similar right conferred or reserved by or in any Law, which, in the aggregate for **clauses (i), (ii) and (iii)**, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors or its Subsidiaries;

- (i) Course; Bankers liens, rights of setoff and similar Liens incurred on deposits made in the Ordinary
- (j) Liens securing Indebtedness permitted under **Section 9.01(l)**; provided that (i) such Lien is not created in contemplation of or in connection with such Permitted Acquisition pursuant to which such Indebtedness was assumed, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary other than the assets subject to such Liens immediately prior to the consummation of such Permitted Acquisition and (iii) such Lien shall secure only those obligations that it secured immediately prior to the consummation of such Permitted Acquisition and Permitted Refinancings thereof;
- (k) Liens securing Indebtedness permitted under **Sections 9.01(p), (q), (r), and (s)**.
- (l) any judgment lien or lien arising from decrees or attachments not constituting an Event of Default;
- (m) Liens arising from precautionary UCC financing statement filings regarding operating leases of personal property and consignment arrangements entered into in the Ordinary Course;
- (n) other Liens not securing borrowed money which secure obligations in an aggregate amount not to exceed \$5,000,000 (or the Equivalent Amount in other currencies) at any time outstanding;
- (o) ~~Liens securing Indebtedness permitted under Section 9.01(m) and which are subject to the Permitted Intercreditor Agreement~~ [\[reserved\]](#);
- (p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods and incurred in the Ordinary Course;
- (q) Permitted Licenses and, solely with respect to assets owned by third parties and licensed or leased to such Obligor or any of its Subsidiaries, retained interests or title of licensors or lessors that do not conflict with such Obligor's or any such Subsidiaries' use thereof;
- (r) Liens on cash and Permitted Cash Equivalent Investments securing obligation under Permitted Hedging Agreements;
- (s) (i) Liens to secure payment of workers' compensation, employment insurance, old age pensions, social security and other like obligations incurred in the Ordinary Course (other than Liens imposed by ERISA) and (ii) deposits in respect of letters of credit, bank guarantees or similar instruments issued for the account of any Obligor or any Subsidiary in the Ordinary Course supporting obligations of the type set forth in clause (i) above;
- (t) Liens solely on any cash earnest money deposits made by Borrower or any of the Subsidiaries in connection with any letter of intent or purchase agreement in respect of any Investment permitted hereunder; and

(u) Liens arising out of any sale-leaseback transaction not prohibited by **Section 9.14**, so long as such Liens attach only to the property sold and being leased in such transaction and any accessions and additions thereto or proceeds and products thereof and related property;

provided that no Lien otherwise permitted under any of the foregoing **clauses (b), (c), (d), (e) (g), and (i) through (p)** of this **Section 9.02** shall apply to any Material Intellectual Property, except for Liens securing Indebtedness permitted under clause **(o)** of this **Section 9.02**.

9.03 Fundamental Changes and Acquisitions. Such Obligor will not, and will not permit any of its Subsidiaries (in each case, except for the BXCL 701 Subsidiaries following a Permitted BXCL 701 Release Event) to, (i) other than Permitted Acquisitions, enter into any transaction of merger, amalgamation or consolidation (or otherwise merge, amalgamate or consolidate), (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), (iii) sell or issue any of its Disqualified Equity Interests or (iv) other than Permitted Acquisitions, make any Acquisition or otherwise acquire any business or substantially all the property from, or Equity Interests of, or be a party to any Acquisition of, any Person, except:

(a) the merger, amalgamation or consolidation or liquidation of any (i) Subsidiary with or into any Obligor; provided that with respect to any such transaction involving (x) the Borrower, the Borrower must be the surviving or successor entity of such transaction and (y) any other Obligor, such Obligor must be the surviving or successor entity of such transaction (unless such transaction involves more than one Obligor, then an Obligor must be the surviving or successor entity of such transaction) or (ii) any Subsidiary that is not an Obligor with or into any other Subsidiary that is not an Obligor;

(b) the sale, lease, transfer or other disposition by (i) any Subsidiary of any or all of its property (upon voluntary liquidation or otherwise) to any Obligor or (ii) any Subsidiary that is not an Obligor of any or all of its property (upon voluntary liquidation or otherwise) to any other Subsidiary that is not an Obligor;

(c) the sale, transfer or other disposition of the Equity Interests of (i) any Subsidiary to any Obligor or (ii) any Subsidiary that is not an Obligor to any other Subsidiary that is not an Obligor;

(d) any Permitted BXCL 701 Disposition Event; and

(e) the disposition of any Subsidiary permitted by **Section 9.09**.

9.04 Lines of Business. Such Obligor will not, and will not permit any of its Subsidiaries to, engage in any business other than the business engaged in on the date hereofClosing Date (or in the case of the BXCL 701 Subsidiaries, contemplated on the date hereofClosing Date) by such Persons or a business reasonably related, incidental or complementary thereto or reasonable extensions thereof.

9.05 Investments. Such Obligor will not, and will not permit any of its Subsidiaries (in each case, except for the BXCL 701 Subsidiaries following a Permitted BXCL 701 Release Event) to make, directly or indirectly, or permit to remain outstanding any Investments except:

(a) Investments (but without giving effect to the cash return provision contained in the definition thereof) outstanding on the date hereofClosing Date and identified in **Schedule 9.05** and any renewals, amendments and replacements thereof that do not increase the amount thereof of any such Investment, net of cash returns thereon, or require that any additional Investment be made (unless otherwise permitted hereunder);

(b) operating deposit accounts with banks (or similar deposit-taking institutions) that, in the case maintained by Obligors, are compliant with **Section 8.17(a)**;

(c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the Ordinary Course;

(d) Permitted Cash Equivalent Investments;

(e) Investments by an Obligor (i) in another Obligor, (ii) in connection with a Permitted Acquisition, or (iii) in a Subsidiary that is not an Obligor; provided that (A) Investments made pursuant to this **clause (iii)**, together with any Indebtedness incurred pursuant to **Section 9.01(h)**, shall not exceed \$5,000,000 in the aggregate at any time and (B) no Intellectual Property shall be subject to any Investment pursuant to this **clause (iii)** (other than, with respect to each of the foregoing **clauses (A)** and **(B)**, pursuant to Permitted Licenses and Product Authorizations for non-U.S. jurisdictions contributed or transferred to a non-U.S. Subsidiary solely for purposes of Product Commercialization and Development Activities in non-U.S. jurisdictions);

(f) Investments by a Subsidiary that is not an Obligor in (i) any other Subsidiary that is not an Obligor and (ii) in any Obligor;

(g) Permitted Hedging Agreements;

(h) Investments consisting of prepaid expenses, negotiable instruments held for collection or deposit, security deposits with utilities, landlords and other like Persons and deposits in connection with workers' compensation and similar deposits, in each case, made in the Ordinary Course;

(i) employee loans, travel advances and guarantees in accordance with the Borrower's usual and customary practices with respect thereto (if permitted by applicable Laws) which in the aggregate shall not exceed \$2,500,000 (or the Equivalent Amount in other currencies) outstanding at any time;

(j) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients;

(k) Investments in joint ventures; provided that (A) such Investments consisting of cash and Permitted Cash Equivalent Investments shall not exceed \$5,000,000 (or the Equivalent Amount in other currencies) in the aggregate outstanding at any time and (B) no Intellectual Property shall be subject to an Investment pursuant to this **Section 9.05(k)** (other than pursuant to Permitted Licenses and Product Authorizations in non-U.S. jurisdictions contributed or transferred to a non-U.S. joint venture for purposes of Product Commercialization and Development Activities in non-U.S. jurisdictions);

(l) the increase in value of any Investment otherwise permitted pursuant to this **Section 9.05**;

(m) other Investments in an aggregate amount not to exceed \$15,000,000 (or the Equivalent Amount in other currencies);

- (n) Investments of any Person in existence at the time such Person becomes a Subsidiary; provided such Investment was not made in connection with or anticipation of such Person becoming a Subsidiary and any modification, replacement, renewal or extension thereof;
- (o) Investments (including Permitted Acquisitions) permitted under **Section 9.03**;
- (p) the BXCL 701 Asset Contribution; and
- (q) Investments permitted pursuant to **Section 9.19(a)**.

9.06 Restricted Payments. Such Obligor will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment; provided that the following Restricted Payments shall be permitted so long as no Default (solely in the case of clauses (a), (b), (d), (h), (i) or (j) below) or Event of Default has occurred and is continuing or could reasonably be expected to occur or result from such Restricted Payment:

- (a) dividends with respect to the Borrower's Equity Interests payable solely in shares of its Qualified Equity Interests (or the equivalent thereof);
- (b) the Borrower's purchase, redemption, retirement, or other acquisition of shares of its Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its Qualified Equity Interests;
- (c) dividends or distributions paid in cash by any Subsidiary to any Obligor;
- (d) any purchase, redemption, retirement or other acquisition of Equity Interests of the Borrower held by officers, directors and employees or former officers, directors or employees (or their transferees, estates, or beneficiaries under their estates) of Borrower and its Subsidiaries not to exceed \$2,500,000 (or the Equivalent Amount in other currencies) in any fiscal year;
- (e) cashless exercises of options and warrants;
- (f) cash payments made by the Borrower in lieu of fractional shares upon exercise of warrants or options or conversions of convertible securities;
- (g) Borrower may acquire (or withhold) its Equity Interests pursuant to any employee equity incentive or similar plan to pay withholding taxes for which Borrower is liable in respect of a current or former officer, director, employee, member of management or consultant upon such grant or award (or upon vesting or exercise thereof);
- (h) any Investment permitted pursuant to **Section 9.05** to the extent constituting a Restricted Payment;
- (i) Permitted Tax Distributions; and
- (j) other Restricted Payments in an aggregate amount not to exceed \$2,500,000 (or the Equivalent Amount in other currencies) in any fiscal year.

Notwithstanding anything to the contrary in the foregoing, (i) the issuance of, entry into (including any payments of premiums in connection therewith), performance of obligations under (including any payments of interest), and conversion, exercise, repurchase, redemption, settlement or early termination or cancellation of (whether in whole or in part and including by netting or set-off) (in each case, whether in cash, Common Stock or, following a merger event or other change of the Common Stock, other securities or property), or the satisfaction of any condition that would permit or require any of the foregoing, any Permitted Convertible Debt, any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction, in each case, shall not constitute a Restricted Payment by the Borrower, and (ii) BXCL 701 Disposition Proceeds shall not be used for any Restricted Payments (other than dividends or distributions paid to an Obligor).

9.08 Payments of Indebtedness. Such Obligor will not, and will not permit any of its Subsidiaries (in each case, except for the BXCL 701 Subsidiaries following a Permitted BXCL 701 Release Event) to, make any payments in respect of any Indebtedness other than (i) payments of the Obligations, (ii) scheduled payments of other Indebtedness ~~(including the Revenue Interest Financing)~~ to the extent permitted pursuant to the terms, if any, of any applicable subordination or intercreditor agreement in respect of the Obligations, (iii) intercompany indebtedness permitted under **Section 9.01**, (iv) Indebtedness permitted to be incurred under **Sections 9.01(b), (c), (j), (k), (l), (m), (p), (q), (s) and (t)**, (v) Indebtedness permitted to be incurred under **Section 9.01(o)** and Permitted Refinancings thereof, provided that any such payments shall only be made in Equity Interests and cash in lieu of fractional shares (as well as cash to pay any accrued interest on the date of any Permitted Refinancing, exchange transaction, or payment made in Equity Interests), (vi) scheduled payments of interest on such Indebtedness permitted pursuant to **Section 9.01(o)** and (vii) Permitted Refinancings not prohibited hereunder.

9.09 Change in Fiscal Year. Such Obligor will not, and will not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the ~~date hereof~~Closing Date, except to change the fiscal year of a Subsidiary acquired in connection with an Acquisition to conform its fiscal year to that of the Borrower.

9.10 Sales of Assets, Etc. Such Obligor will not, and will not permit any of its Subsidiaries (in each case, except for the BXCL 701 Subsidiaries following a Permitted BXCL 701 Release Event) to sell, lease or sublease (as lessor or sub-lessor), sale and leaseback, assign, convey, exclusively license (in terms of geography or field of use), transfer, or otherwise dispose of any of its businesses, assets or property of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired (including accounts receivable and Equity Interests of Subsidiaries, but excluding de minimis shares of Equity Interests required for qualification of directors under applicable law), in each case, involving property of the Borrower or any of its Subsidiaries in excess of \$2,000,000 (or the Equivalent Amount in other currencies) in one transaction or series of transactions (any thereof, an “*Asset Sale*”), except:

(a) sales, transfers and other dispositions of receivables in connection with the compromise, settlement or collection thereof in the Ordinary Course;

(b) sales of inventory in the Ordinary Course in an Arm’s-Length Transaction and the use of cash and Cash Equivalents in the Ordinary Course or as otherwise permitted pursuant to this Agreement;

- (c) the forgiveness, release or compromise of any amount owed to any Obligor or Subsidiary in the Ordinary Course;
- (d) Permitted Licenses;
- (e) licenses, transfers of assets, rights or property by Borrower or any Subsidiary to (i) any Obligor or (ii) solely with respect to assets, rights or property other than Intellectual Property, any Subsidiary that is not an Obligor; provided, in that in the case of any Asset Sales made by Obligor to non-Obligors pursuant to this **clause (ii)**, the fair market value of the subject assets (excluding Inventory and foreign Product Authorizations transferred to Subsidiaries formed outside the United States in the Ordinary Course) shall not exceed \$5,000,000 (or the Equivalent Amount in other currencies) in the aggregate;
- (f) dispositions (including by way of abandonment or cancellation) of any equipment and other tangible property that is surplus, obsolete or worn out or no longer used or useful in the business disposed of in the Ordinary Course;
- (g) dispositions resulting from Casualty Events;
- (h) the unwinding of any Hedging Agreements permitted by **Section 9.05** pursuant to its terms;
- (i) in connection with any transaction permitted under **Section 9.03** or **9.05**;
- (j) dispositions identified in **Schedule 9.09**;
- (k) so long as no Event of Default has occurred and is continuing, other Asset Sales with a fair market value not in excess of \$5,000,000 (or the Equivalent Amount in other currencies) in the aggregate in any fiscal year;
- (l) (i) the BXCL 701 Asset Contribution and (ii) any Permitted BXCL 701 Disposition Event;
- (m) other Asset Sales not in excess of (i) \$15,000,000 (or the Equivalent Amount in other currencies) in the aggregate in any fiscal year and (ii) \$50,000,000 (or the Equivalent Amount in other currencies) in the aggregate during the term of this Agreement in which any Obligor or any Subsidiary will receive cash proceeds in an amount equal to no less than seventy-five percent (75%) of the total consideration (fixed or contingent) paid or payable to such Obligor or Subsidiary, but only so long as, unless otherwise waived by Administrative Agent in its sole discretion, the Net Cash Proceeds from such Asset Sale are utilized to repay or prepay, in whole or in part, Indebtedness under and in accordance with this Agreement and the other Loan Documents;
- (n) dispositions in the Ordinary Course consisting of the abandonment of Intellectual Property (other than Material Intellectual Property) which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of the Obligors and the Subsidiaries; and
- (o) the transfer or issuance of no more than 20% of the Equity Interests in any BXCL 701 Subsidiary to officers, directors and employees or former officers, directors or employees (or their transferees, estates, or beneficiaries under their estates) of the Borrower or any of its Subsidiaries pursuant to employee equity incentive or similar plans or otherwise as a component of such Persons' compensation on terms and conditions substantially consistent with the OnkosXcel Therapeutics, LLC and OnkosXcel Employee Holdings, LLC Management Incentive Plan in substantially the form disclosed to the Administrative Agent prior to the Closing Date, as amended in any manner approved by Administrative Agent (such approval not to be unreasonably withheld, conditioned or delayed).

Notwithstanding anything in this Agreement to the contrary, (i) the Borrower shall not, and shall not permit any of its Subsidiaries (other than the BXCL 701 Subsidiaries) to (x) directly or indirectly transfer, by means of contribution, sale, assignment, lease or sublease, license or sublicense, disposition of any kind or otherwise, Material Intellectual Property held by the Borrower or any other Obligor to any Person other than the Borrower or a Subsidiary Guarantor, other than pursuant to Permitted Licenses or as permitted pursuant to **Section 9.09(j)**, **Section 9.03** or **Section 9.19**, or (y) permit any Person other than the Borrower or a Subsidiary Guarantor to hold any interest in such Material Intellectual Property (other than (A) pursuant to non-exclusive intercompany licenses or Permitted Licenses, (B) as permitted by **Section 9.09(g)**, **Section 9.03** or **Section 9.19**, or (C) in the case of a foreign subsidiary, a foreign Regulatory Approvals), and (ii) no Material Intellectual Property held by the Borrower or a Subsidiary Guarantor shall be contributed as an Investment to any Subsidiary other than a Subsidiary Guarantor (other than pursuant to Permitted Licenses). Notwithstanding the foregoing, prior to a Qualifying IPO, the BXCL 701 Subsidiaries shall hold no Material Intellectual Property other than any Intellectual Property included in the BXCL 701 Assets or otherwise related to the oncology field and no Material Intellectual Property (other than the BXCL 701 Assets) shall be directly or indirectly transferred by means of contribution, sale, assignment, lease or sublease, license or sublicense, disposition of any kind or otherwise, by the Borrower or its Subsidiaries to the BXCL 701 Subsidiaries.

9.11 Transactions with Affiliates. Such Obligor will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction to sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, unless such arrangement or transaction (i) is an Arm's-Length Transaction, (ii) is of the kind which would be entered into by a prudent Person in the position of the Borrower with another Person that is not an Affiliate; provided that (x) in connection with any such transaction involving aggregate consideration or payments of at least \$5,000,000, such transaction shall have been approved by a majority of the directors serving on the Borrower's board of directors that do not have any material direct or indirect financial interest in or with respect to such transaction and (y) in connection with any such transaction involving aggregate consideration or payments of at least \$10,000,000, the Borrower shall have received a fairness opinion from a nationally recognized appraisal or investment banking firm with respect to such transaction, (iii) is between or among (x) one or more Obligors, on the one hand, and, on the other hand, one or more Obligors, (y) one or more Subsidiaries of the Obligors that are not Obligors, on the one hand, and, on the other hand, one or more Subsidiaries of the Obligors that are not Obligors and (z) one or more Obligors or their Subsidiaries that are not Obligors, on the one hand, and, on the other hand, one or more Obligors or their Subsidiaries that are Obligors (*provided* that, with respect to **clause (z)** only, the terms thereof are no less favorable to the Obligors than those that would be obtained in a comparable arm's-length transaction with a non-affiliated Person); provided that the BXCL 701 Subsidiaries shall be deemed not to be Obligors for purposes of this clause (iii), (iv) constitutes customary compensation and indemnification of, and other employment arrangements with, directors, officers, and employees of any Obligor or its Subsidiaries in the Ordinary Course, (v) constitutes payment of customary fees, reimbursement of expenses, and payment of indemnification to officers and directors and customary payment of insurance premiums on behalf of officers and directors by the Obligors or their Subsidiaries, in each case, in the ordinary course of business, (vi) is permitted pursuant to **Section 9.05(i)** or **Section 9.06(d)** or **(g)**, or (vii) are the transactions set forth on **Schedule 7.19**. Notwithstanding anything to the contrary in this Agreement, no transaction shall be entered into between the Borrower and the BXCL 701 Subsidiary other than the provision of shared services by the Borrower to the BXCL 701 Subsidiary on terms no less favorable to the Borrower than those that would be obtained in a comparable arm's-length transaction with a non-affiliated Person; provided, that notwithstanding the foregoing or anything to the contrary herein, nothing herein shall prohibit the execution, delivery and performance of customary documentation (and customary amendments to existing documentation) and customary transactions governing the relations between and among the equity owners of a BXCL 701 Subsidiary, a BXCL 701 Subsidiary and an IPO Co., if applicable, in connection with a Qualifying IPO, including, without limitation, the execution, delivery and performance of an amended and restated limited liability company operating agreement and tax receivable agreement, in each case, on customary terms for similar "Up-C" transactions and such other customary transactions incidental to the foregoing as the board of directors or equivalent body of such BXCL 701 Subsidiary shall determine, in its good faith judgment, to be necessary in order to effect such Qualifying IPO.

9.12 Restrictive Agreements. Such Obligor will not, and will not permit any of its Subsidiaries (in each case, except for the BXCL 701 Subsidiaries following a Permitted BXCL 701 Release Event) to, directly or indirectly, enter into, incur or permit to exist any Restrictive Agreement other than (i) restrictions and conditions imposed by applicable Laws or by the Loan Documents, (ii) Restrictive Agreements listed on **Schedule 7.15**, (iii) limitations associated with Permitted Liens or any document or instrument governing any Permitted Lien, (iv) any documentation governing Indebtedness referenced in **clauses (l), (m) or (o) of Section 9.01** (or any Permitted Refinancing thereof), (v) customary provisions in leases, Permitted Licenses and other Contracts restricting the assignment thereof or restricting the assignment or sublease or sublicense of the property leased, licensed or otherwise the subject thereof; (vi) any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Subsidiary (but not any modification or amendment expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Subsidiary; (vii) restrictions or conditions in any Indebtedness permitted pursuant to **Section 9.01** that is incurred or assumed by Subsidiaries that are not Obligors to the extent such restrictions or conditions are no more restrictive in any material respect than the restrictions and conditions in the Loan Documents; (viii) restrictions or conditions imposed by any agreement relating to purchase money Indebtedness and other secured Indebtedness or to leases and licenses permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness or the property leased or licensed; (ix) customary provisions in contracts for the disposition of any assets; *provided* that the restrictions in any such contract shall apply only to the assets or Subsidiary that is to be disposed of and such disposition is permitted hereunder (or, in the case of the sale of Borrower, such agreement contemplates the repayment in full of the Obligations hereunder); (x) customary provisions regarding confidentiality or restricting assignment, pledges or transfer of any Permitted License or any other agreement entered into in the Ordinary Course; and (xi) customary net worth provisions or similar financial maintenance provisions contained in any agreement entered into by a Subsidiary.

9.13 Modifications and Terminations of Material Agreements and Organic Documents. Such Obligor will not, and will not permit any of its Subsidiaries (in each case, except for the BXCL 701 Subsidiaries following a Permitted BXCL 701 Release Event) to:

(a) waive, amend, terminate, replace or otherwise modify any term or provision of any Organic Document in any way or manner materially adverse to the interests of the Administrative Agent and the Lenders; or

(b) waive, amend, replace or otherwise modify any term or provision of any Permitted License in a manner materially adverse to the rights and remedies the Administrative Agent and the Lenders hereunder; or

(c) (x) take or omit to take any action that results in the termination of, or permits any other Person to terminate, any Material Agreement or Material Intellectual Property or (y) take any action that permits any Material Agreement or Material Intellectual Property to be terminated by any counterparty thereto prior to its stated date of expiration, in each such case if such action or omission would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(d) enter into, waive, terminate, replace or otherwise modify any joint venture agreement, distribution agreement, collaboration agreement or any agreement similar to any of the foregoing, in each case, that involves the disposition, assignment or licensing of any Material Intellectual Property, unless such agreement is (i) a Permitted License, (ii) permitted pursuant to **Section 9.09** or (iii) approved in writing by the Administrative Agent.

9.14 Outbound Licenses. No Obligor shall, nor shall it permit any of its Subsidiaries (in each case, except for the BXCL 701 Subsidiaries following a Permitted BXCL 701 Release Event) to, enter into or become or remain bound by any outbound license, covenant not to sue or other grant of rights under Intellectual Property, except for Permitted Licenses.

9.15 Sales and Leasebacks. Except as otherwise consented to in writing by the Administrative Agent in its sole discretion, such Obligor will not, and will not permit any of its Subsidiaries (in each case, except for the BXCL 701 Subsidiaries following a Permitted BXCL 701 Release Event) to, become liable, directly or indirectly, with respect to any lease, whether an operating lease or a Capital Lease Obligation, of any property (whether real, personal, or mixed), whether now owned or hereafter acquired, (i) which such Person has sold or transferred or is to sell or transfer to any other Person and (ii) which such Obligor or Subsidiary intends to use for substantially the same purposes as property which has been or is to be sold or transferred.

9.16 Hazardous Material. Such Obligor will not, and will not permit any of its Subsidiaries to, use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. If the Administrative Agent at any time has a reasonable basis to believe that there is any material violation by an Obligor of any Environmental Law or the presence or release of any Hazardous Material which could result in an Environmental Liability that would be reasonably expected to result in a Material Adverse Effect, each Obligor shall, and shall cause each Subsidiary to, (i) prepare an environmental assessment of such condition, including where appropriate environmental testing, and the preparation of such environmental report, at the Borrower's sole cost and expense, as the Administrative Agent may reasonably request with respect to any affected parcel of real property subject to a Collateral Document that is a mortgage, deed of trust or similar instrument, which shall be conducted by Persons reasonably acceptable to the Administrative Agent and shall be in form and substance reasonably acceptable to the Administrative Agent, and (ii) if such report is not delivered within thirty (30) days, permit the Administrative Agent or its representatives to have access to all such real property for the purpose of conducting, at the Borrower's sole cost and expense, such environmental audits and testing as the Administrative Agent shall reasonably deem appropriate.

9.17 Accounting Changes. Such Obligor will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP.

9.18 Compliance with ERISA. No ERISA Affiliate shall cause or suffer to exist (i) any event that could result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (ii) any other ERISA Event that would, in the aggregate, reasonably be expected to result in a Material Adverse Effect. No Obligor or any of its Subsidiaries shall cause or suffer to exist any event that could result in the imposition of a Lien with respect to any Benefit Plan.

9.19 Sanctions; Anti-Corruption Use of Proceeds.

(a) Neither the Borrower or any of its Subsidiaries or their respective agents shall (i) conduct any business or engage in any transaction or dealing with any Sanctioned Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Sanctioned Person; (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to any Sanctions; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Sanctions, the Patriot Act or any other Anti-Terrorism Law.

(b) The Borrower will not, directly or, to the knowledge of the Borrower, indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable anti-corruption Law, or (ii) (A) for the purpose of funding any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of country- or territory-wide Sanctions, in violation of Sanctions or (B) in any manner that would result in a violation of Sanctions by any party to this Agreement.

9.20 BXCL 701 Subsidiary Covenants.

(a) Notwithstanding anything to the contrary in this Agreement, the Borrower and its Subsidiaries shall not, and shall not permit any of its Subsidiaries (in each case, except for the BXCL 701 Subsidiaries) to:

(i) make, directly or indirectly, or permit to remain outstanding any Investments in the BXCL 701 Subsidiaries, except for (A) Investments in the BXCL 701 Subsidiaries consisting of the Equity Interests owned by the Borrower on the Closing Date and described on **Schedule 9.05**, (B) the BXCL 701 Asset Contribution and (C) additional Investments in the BXCL 701 Subsidiaries made after the Closing Date in an amount not to exceed \$30,000,000/30,865,000 outstanding at any time (provided that the amount of Investments permitted to be made pursuant to this clause (C) shall be reduced by \$0.50 for each \$1.00 of cash proceeds received by the BXCL 701 Subsidiaries in connection with a Permitted BXCL 701 Disposition Event; provided, that any reduction in such amount of permitted Investments pursuant to the immediately preceding proviso shall apply solely on a prospective basis, and any Investments made in the BXCL 701 Subsidiaries in compliance with this clause (C) prior to the date of such reduction shall be permitted regardless of whether, following such reduction, such Investments are in excess of the amount permitted to be made pursuant to this clause (C));

- (ii) make, directly or indirectly, any Asset Sale (other than the BXCL 701 Asset Contribution) to the BXCL 701 Subsidiaries;
- (iii) prior to a Qualifying IPO, permit the BXCL 701 Subsidiaries to hold any interest in Material Intellectual Property other than any Intellectual Property included in the BXCL 701 Assets or otherwise related to the oncology field;
- (iv) enter into any transaction of merger, amalgamation or consolidation (or otherwise merge, amalgamate or consolidate) with or into the BXCL 701 Subsidiaries; or
- (v) dispose, directly or indirectly, of any Equity Interests in the BXCL 701 Subsidiaries except pursuant to a Permitted BXCL 701 Disposition Event, the Net Cash Proceeds of which are applied in accordance with **Section 3.03(b)(i)(B)** to the extent required to be so applied.

For the avoidance of doubt, any Permitted BXCL 701 Disposition Event, the issuance by any BXCL 701 Subsidiary of its Equity Interests in compliance with **Section 9.09(l)(ii)** or **9.09(o)**, and the transactions contemplated by the 701 Subsidiary Shared Services Agreement shall be permitted.

(b) Prior to the consummation of a Permitted BXCL 701 Release Event, no BXCL 701 Subsidiary shall form or acquire any Subsidiary unless such newly formed or acquired Subsidiary shall become an Obligor hereunder and remain an Obligor at all times prior to the consummation of a Permitted BXCL 701 Release Event.

(c) Following the consummation of a Permitted BXCL 701 Release Event, the Borrower and its Subsidiaries shall not, and shall not permit any of its Subsidiaries (in each case, except for the BXCL 701 Subsidiaries) to, guarantee any indebtedness or other obligations, or otherwise provide any credit support to, any BXCL 701 Subsidiary.

(d) The Borrower and each BXCL 701 Subsidiary agrees to provide the Oaktree Lenders (or such Affiliate or managed fund or account of Oaktree Capital Management, L.P. as the Oaktree Lenders designate) the opportunity to provide a first offer to provide the entire amount of each debt financing or convertible debt financing (excluding any marketed convertible debt following a Qualifying IPO) of any BXCL 701 Subsidiary (the “**First Offer**”); provided that, if after ten (10) Business Days of the Oaktree Lenders’ delivery of such First Offer, the Borrower or such BXCL 701 Subsidiary does not agree to the terms of the financing offered by the Oaktree Lenders (or their designees) after good faith negotiations thereof, the Borrower or the applicable BXCL 701 Subsidiary may retain any other Person to provide such financing on pricing and other terms more favorable (taken as a whole) to the applicable BXCL 701 Subsidiary than those offered by the Oaktree Lenders (or their designees) as reasonably determined in good faith by the Borrower or the applicable BXCL 701 Subsidiary. Notwithstanding anything to the contrary in this Agreement, the provisions of this **Section 9.19(d)** shall not apply after the consummation of a Qualifying IPO.

SECTION 10. FINANCIAL COVENANTS

10.01 Minimum Liquidity. The Borrower shall, at all times after the Account Control Agreement Completion Date, maintain the Minimum Liquidity Amount in cash or Permitted Cash Equivalent Investments in one or more Controlled Accounts that is free and clear of all Liens, other than Liens granted hereunder in favor of the Administrative Agent and Liens permitted under **Section 9.02(i)** (such covenant, the “**Minimum Liquidity Covenant**”).

10.02 Minimum Revenue. Beginning with the fiscal quarter of the Borrower ending on December 31, ~~2023~~2024 and with respect to each subsequent fiscal quarter, Revenue for the six (6) consecutive month period ending on the last day of such fiscal quarter shall not be less than the Minimum Revenue for such period (such covenant, the “*Minimum Revenue Covenant*”). For the avoidance of doubt, for purposes of the Minimum Revenue Covenant, Revenue shall only include Igalmi U.S. product net revenues but exclude EUA contract revenues.

SECTION 11. EVENTS OF DEFAULT

11.01 Events of Default. Each of the following events shall constitute an “*Event of Default*”:

(a) **Principal Payment Default.** The Borrower shall fail to pay any principal of the Loan, when and as the same shall become due and payable, whether at the due date thereof, at a date fixed for prepayment thereof or otherwise.

(b) **Other Payment Defaults.** Any Obligor shall fail to pay interest or any other Obligation (other than an amount referred to in **Section 11.01(a)**) when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) **Representations and Warranties.** Any representation or warranty made or deemed made by or on behalf of any Obligor or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall: (i) prove to have been incorrect in any respect when made or deemed made to the extent that such representation or warranty contains any materiality or Material Adverse Effect qualifier; or (ii) prove to have been incorrect in any material respect when made or deemed made to the extent that such representation or warranty does not otherwise contain any materiality or Material Adverse Effect qualifier.

(d) **Certain Covenants.** Any Obligor shall fail to observe or perform any covenant, condition or agreement contained in (i) **Section 8.02, 8.03** (with respect to the Borrower’s existence), **8.11, 8.15, 8.17, 8.18, Section 9 or Section 10** or (ii) any of the Company ~~Warrant~~Warrants or the 701 Warrants; *provided* that any Event of Default under **Section 10.02** is subject to cure as provided in **Sections 11.04** and an Event of Default with respect to such Section shall not occur until the expiration of the 15th Business Day subsequent to the date on which the financial statements with respect to the applicable fiscal quarter (or the fiscal year ended on the last day of such fiscal quarter) are required to be delivered pursuant to **Section 8.01(a)** or **8.01(b)**, as applicable.

(e) **Other Covenants.** Any Obligor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in **Section 11.01(a), (b)** or **(d)**) or any other Loan Document, and, in the case of any failure that is capable of cure, such failure shall continue unremedied for a period of thirty (30) or more days; *provided* that any breach of **Section 8.01(b)** as a result of any “going concern” or like qualification or exception or emphasis of matter of going concern footnote is subject to a cure period of 120 days.

(f) **Payment Default on Other Indebtedness.** Any Obligor or any of its Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness ~~or the Revenue Interest Financing~~, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as originally provided by the terms of such Indebtedness ~~or the Revenue Interest Financing~~.

(g) **Other Defaults on Other Indebtedness.** (i) Any material breach of, or “event of default” or similar event under, any Contract governing any Material Indebtedness, ~~or a “Put Option Event” or similar event under the Revenue Interest Financing~~, shall occur and such breach or “event of default” or similar event shall continue unremedied, uncured or unwaived after the expiration of any grace or cure period thereunder, or (ii) any event or condition occurs (x) that results in any Material Indebtedness becoming due prior to its scheduled maturity or (y) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or ~~Revenue Interest Financing~~ or any trustee or agent on its or their behalf to cause such Material Indebtedness ~~or Revenue Interest Financing~~ to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity or prior to the final date of its original term; provided that this **Section 11.01(g)** shall not apply to (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness, (y) any conversion of any convertible Indebtedness or satisfaction of any condition giving rise to or permitting a conversion of any convertible Indebtedness; provided that the Borrower has the right to settle any such Indebtedness into Equity Interests of the Borrower (and nominal cash payments in respect of fractional shares and cash payments in respect of accrued and unpaid interest) in accordance with the express terms or conditions thereof) and (z) with respect to any Material Indebtedness consisting of Hedging Agreements, termination events or equivalent events pursuant to the terms of such Hedging Agreements and not as a result of any default thereunder by any Obligor or any Subsidiary.

(h) **Insolvency, Bankruptcy, Etc.**

(i) Any Obligor or any of its Material Subsidiaries becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement or deed of company arrangement between it and any class of its creditors.

(ii) Any Obligor or any of its Material Subsidiaries commits an act of bankruptcy or makes an assignment of its property for the general benefit of its creditors or makes a proposal (or files a notice of its intention to do so).

(iii) Any Obligor or any of its Material Subsidiaries institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any Law, whether U.S. or non-U.S., now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding.

(iv) Any Obligor or any of its Material Subsidiaries applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property.

(v) Any Obligor or any of its Material Subsidiaries takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this **Section 11.01(h)**, or otherwise acts in furtherance thereof or fails to act in a timely and appropriate manner in defense thereof.

(vi) Any petition is filed, application made or other proceeding instituted against or in respect of any Obligor or any of its Material Subsidiaries:

(A) seeking to adjudicate it as insolvent;

(B) seeking a receiving order against it;

(C) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), deed of company arrangement or composition of it or its debts or any other relief under any Law, whether U.S. or non-U.S., now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity; or

(D) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property, and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of forty-five (45) days after the institution thereof; provided that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against such Obligor or such Subsidiary thereunder in the interim, such grace period will cease to apply; provided, further, that if such Obligor or Material Subsidiary files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply.

(vii) Any other event occurs which, under the Laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in this **Section 11.01(h)**.

(i) **Judgments.** One or more judgments for the payment of money in an aggregate amount in excess of \$15,000,000 (or the Equivalent Amount in other currencies) (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) shall be rendered against any Obligor or any of its Subsidiaries or any combination thereof and the same shall remain undischarged for a period of forty-five (45) calendar days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Obligor to enforce any such judgment.

(j) **ERISA.** An ERISA Event shall have occurred that when taken together with all other ERISA Events that have occurred, would reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount in excess of \$15,000,000 (or the Equivalent Amount in other currencies).

(k) **Change of Control.** A Change of Control shall have occurred.

(l) **[Reserved]**.

(m) **Regulatory Matters, Etc.** If any of the following occurs: (i) the FDA or any other U.S. Regulatory Authority initiates enforcement action against, or issues a warning letter with respect to BXCL 501 that causes any Obligor to discontinue or withdraw, or would reasonably be expected to cause any Obligor to discontinue or withdraw, marketing or sales BXCL 501, or causes a material delay in the manufacture or sale of BXCL 501, which discontinuance or delay would reasonably be expected to last for more than ninety (90) days, (ii) an FDA Class I Recall of BXCL 501 in the U.S., to the extent BXCL 501 has generated or is expected to generate at least \$15,000,000 (or the Equivalent Amount in other currencies) in revenue for the Borrower and its Subsidiaries for sales or licenses to third parties over any period of twelve (12) consecutive months, or (iii) any Obligor enters into a settlement agreement with the FDA or any other U.S. Regulatory Authority in respect of BXCL 501 that results in aggregate liability as to any single or related series of transactions, incidents or conditions, in excess of \$15,000,000 (or the Equivalent Amount in other currencies).

(n) **[Reserved]**.

(o) **Impairment of Security, Etc.** Subject in all respects to any applicable post-closing periods and certain other time periods under the Loan Documents for any Obligor or Subsidiary to take perfection actions, if any of the following events occurs: (i) Any Lien created by any of the Security Documents shall at any time not constitute a valid and perfected Lien on the applicable Collateral in favor of the Secured Parties, free and clear of all other Liens (other than Permitted Liens) except due to the action or inaction of the Administrative Agent, (ii) except for expiration in accordance with its terms, any of the Security Documents or any Guarantee of any of the Obligations (including that contained in **Section 13**) shall for whatever reason cease to be in full force and effect, (iii) any Obligor shall, directly or indirectly, contest in any manner such effectiveness, validity, binding nature or enforceability of any such Lien or any Loan Document, or (iv) any injunction, whether temporary or permanent, shall be rendered against any Obligor that prevents the Obligors from selling or manufacturing the Products or their commercially available successors, or any of their other material and commercially available products in the United States for more than forty-five (45) calendar days.

11.02 Remedies.

(a) **Defaults Other Than Bankruptcy Defaults.** Upon the occurrence of any Event of Default, then, and in every such event (other than an Event of Default described in **Section 11.01(h)**), and at any time thereafter during the continuance of such event, the Administrative Agent may (or upon the direction of the Majority Lenders, shall), by notice to the Borrower, declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations, including any applicable Prepayment Fee shall become due and payable immediately (in the case of the Loans, at the Prepayment Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

(b) **Bankruptcy Defaults.** In case of an Event of Default described in **Section 11.01(h)**, the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations, including any applicable Prepayment Fee shall automatically become due and payable immediately (in the case of the Loans, at the Prepayment Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

11.03 Additional Remedies. If an Event of Default has occurred and is continuing, if any Obligor shall be in default under a Material Agreement, the Administrative Agent shall have the right (but not the obligation) to cause the default or defaults under such Material Agreement to be remedied (including by paying any unpaid amount thereunder) and otherwise exercise any and all rights of such Obligor, as the case may be, thereunder, as may be necessary to prevent or cure any default. Without limiting the foregoing, upon any such default, each Obligor shall promptly execute, acknowledge and deliver to the Administrative Agent such instruments as may reasonably be required of such Obligor to permit the Administrative Agent to cure any default under the applicable Material Agreement or permit the Administrative Agent to take such other action required to enable the Administrative Agent to cure or remedy the matter in default and preserve the interests of the Administrative Agent. Any amounts paid by the Administrative Agent pursuant to this **Section 11.03** shall be payable in accordance with **Section 14.03(a)**, shall accrue interest at the Default Rate if not paid when due, and shall constitute “Obligations.”

11.04 Minimum Revenue Covenant Cure.

(a) Notwithstanding anything to the contrary contained in **Section 11.02**, in the event the Borrower fails to comply with the requirements of the Minimum Revenue Covenant, during the period from the end of the relevant fiscal quarter until the expiration of the fifteenth Business Day subsequent to the date the financial statements are required to be delivered pursuant to **Section 8.01(a)** or **8.01(b)**, the Borrower shall have the right to make a Revenue Cure Payment (the “**Minimum Revenue Cure Right**”). Upon the Administrative Agent’s receipt of the applicable Revenue Cure Payment, the Borrower shall then be in compliance with the requirements of the Minimum Revenue Covenant and the Borrower shall be deemed to have satisfied the requirements of the Minimum Revenue Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Minimum Revenue Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement. Any Revenue Cure Payment shall be applied to the prepayment of the Loans, which shall include the Prepayment Fee.

(b) Upon the Administrative Agent’s receipt of a notice from the Borrower that it intends to exercise the Minimum Revenue Cure Right (a “**Notice of Intent to Cure Revenue Covenant**”), until the fifteenth Business Day subsequent to the date the financial statements are required to be delivered pursuant to **Section 8.01(a)** or **8.01(b)** to which such Notice of Intent to Cure Revenue Covenant relates, no Lender shall be required to extend any credit pursuant to its Commitment during such period, and neither the Administrative Agent nor any Lender shall exercise the right to accelerate payment of the Loans or terminate the Commitments and neither the Administrative Agent nor any other Lender shall exercise any right to foreclose on or take possession of the Collateral solely on the basis of an allegation of an Event of Default having occurred and being continuing under Section 10.02 due to failure by the Borrower to comply with the requirements of the Minimum Revenue Covenant for the applicable period. If within such fifteen Business Day period, the Majority Lenders decline the exercise by the Borrower of the Minimum Revenue Cure Right by written notice to the Administrative Agent and the Borrower to that effect, then the Borrower shall be deemed to have satisfied the requirements of the Minimum Revenue Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Minimum Revenue Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement.

(c) Notwithstanding anything else in this Agreement, there shall be no more than three (3) fiscal quarters in which the cure rights set forth in this **Section 11.04** are exercised during the term of this Agreement.

11.05 Payment of Prepayment Fee. Notwithstanding anything in this Agreement to the contrary, the Prepayment Fee shall automatically be due and payable at any time the Obligations become due and payable prior to the Maturity Date in accordance with the terms hereof as though such Indebtedness was voluntarily prepaid and shall constitute part of the Obligations, whether due to acceleration pursuant to the terms of this Agreement (in which case it shall be due immediately, upon the giving of notice to Borrower in accordance with **Section 11.02(a)**, or automatically, in accordance with **Section 11.02(b)**), by operation of law or otherwise (including on account of any bankruptcy filing), in view of the impracticability and extreme difficulty of ascertaining the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such acceleration, and by mutual agreement of the parties as to a reasonable estimation and calculation of the lost profits or damages of the Lenders as a result thereof. Any Prepayment Fee payable pursuant to this Agreement shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination, acceleration or prepayment and each Obligor agrees that such Prepayment Fee is reasonable under the circumstances currently existing. The Prepayment Fee shall also become due and payable under this Agreement in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means or the Obligations are reinstated pursuant to Section 1124 of the Bankruptcy Code. If the Prepayment Fee becomes due and payable pursuant to this Agreement, the Prepayment Fee shall be deemed to be principal of the Loans and Obligations under this Agreement and interest shall accrue on the full principal amount of the Loans (including the Prepayment Fee) from and after the applicable triggering event. In the event the Prepayment Fee is determined not to be due and payable by order of any court of competent jurisdiction, including by operation of the Bankruptcy Code, despite such a triggering event having occurred, the Prepayment Fee shall nonetheless constitute Obligations under this Agreement for all purposes hereunder. EACH OBLIGOR HEREBY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE PREPAYMENT FEE AND ANY DEFENSE TO PAYMENT, WHETHER SUCH DEFENSE MAY BE BASED IN PUBLIC POLICY, AMBIGUITY, OR OTHERWISE. The Obligors, the Administrative Agent and the Lenders acknowledge and agree that any Prepayment Fee due and payable in accordance with this Agreement shall not constitute unmatured interest, whether under Section 5.02(b)(3) of the Bankruptcy Code or otherwise. Each Obligor further acknowledges and agrees, and waives any argument to the contrary, that payment of such amount does not constitute a penalty or an otherwise unenforceable or invalid obligation. Each Obligor expressly agrees that (i) the Prepayment Fee is reasonable and is the product of an arm's-length transaction between sophisticated business people, ably represented by counsel, (ii) the Prepayment Fee shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between the Lenders and the Obligors giving specific consideration in this transaction for such agreement to pay the Prepayment Fee, (iv) the Obligors shall be estopped hereafter from claiming differently than as agreed to in this **Section 11.05**, (v) their agreement to pay the Prepayment Fee is a material inducement to the Lenders to make the Loans, and (vi) the Prepayment Fee represents a good faith, reasonable estimate and calculation of the lost profits, losses or other damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such event.

SECTION 12.
THE ADMINISTRATIVE AGENT

12.01 Appointment and Duties. Subject in all cases to clause (c) below:

(a) **Appointment of the Administrative Agent.** Each of the Lenders hereby irrevocably appoints Oaktree Fund Administration, LLC (together with any successor Administrative Agent pursuant to **Section 12.09**) as the Administrative Agent hereunder and authorizes the Administrative Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Obligor or any of its Subsidiaries, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Administrative Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto. Except as expressly set forth herein, the provisions of this **Section 12** are solely for the benefit of the Administrative Agent and the Lenders, and no Obligor or any Affiliate thereof shall have rights as a third-party beneficiary of any such provisions.

(b) **Duties as Collateral and Disbursing Agent.** Without limiting the generality of **Section 12.01(a)**, the Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to the Administrative Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of acquiring, holding, enforcing and perfecting all Liens created by the Loan Documents and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to the Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Laws or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided that the Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for the Administrative Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by a Obligor with, and cash and cash equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) **Limited Duties.** The Lenders and the Obligors hereby each acknowledge and agree that the Administrative Agent (i) has undertaken its role hereunder purely as an accommodation to the parties hereto and the Transactions, (ii) is receiving no compensation for undertaking such role and (iii) subject only to the notice provisions set forth in **Section 12.09**, may resign from such role at any time for any reason or no reason whatsoever. Without limiting the foregoing, the parties hereto further acknowledge and agree that under the Loan Documents, the Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in **Section 12.11**), with duties that are entirely administrative in nature, notwithstanding the use of the defined term “the Administrative Agent”, the terms “agent”, “administrative agent” and “collateral agent” and similar terms in any Loan Document to refer to the Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any duty or obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document (fiduciary or otherwise), in each case, regardless of whether a Default has occurred and is continuing, and each Lender hereby waives and agrees not to assert any claim against the Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in this **clause (c)**. Without in any way limiting the foregoing, the Administrative Agent shall not, except as expressly set forth in this Agreement and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Obligor or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

12.02 Binding Effect. Each Lender agrees that (i) any action taken by the Administrative Agent or the Majority Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by the Administrative Agent in reliance upon the instructions of the Majority Lenders (or, where so required, such greater proportion) and (iii) the exercise by the Administrative Agent or the Majority Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

12.03 Use of Discretion.

(a) **No Action without Instructions.** The Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except (subject to **clause (b)** below) any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to written instructions from the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) **Right Not to Follow Certain Instructions.** Notwithstanding **Section 12.03(a)** or any other term or provision of this **Section 12**, the Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Administrative Agent, any other Secured Party) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent or any Related Party thereof or (ii) that is, in the opinion of the Administrative Agent, in its sole and absolute discretion, contrary to any Loan Document, Law or the best interests of the Administrative Agent or any of its Affiliates or Related Parties, including, for the avoidance of doubt, any action that may be in violation of the automatic stay in connection with any Insolvency Proceeding.

12.04 Delegation of Rights and Duties. The Administrative Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). The Administrative Agent and any such Person may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. Any such Person and its Related Parties shall benefit from this **Section 12** to the extent provided by the Administrative Agent; provided, however, that the exculpatory provisions of this **Section 12** shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and of any such sub-agent, and shall apply to their respective activities in connection with their activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

12.05 Reliance and Liability.

(a) the Administrative Agent may, without incurring any liability hereunder, (i) consult with any of its Related Parties and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Obligor) and (ii) rely and act upon any notice, request, certificate, consent, statement, instrument, document or other writing (including and electronic message, Internet or intranet website posting or other distribution), telephone message or conversation or oral conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan.

(b) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and the Borrower hereby waive and shall not assert (and the Borrower shall cause each other Obligor to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the fraudulent conduct or behavior of the Administrative Agent or, as the case may be, such Related Party (each as determined in a final, non-appealable judgment or order by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, the Administrative Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of, or with the consent of, the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in **Section 14.03**) or for the actions or omissions of any of its Related Parties selected with reasonable care (other than employees, officers and directors of the Administrative Agent, when acting on behalf of the Administrative Agent);

(ii) shall not be responsible to any Secured Party for the (a) validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (b) due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party for, and shall not have any duty to ascertain or inquire into, any statement, document, information, certificate, report, representation or warranty made or furnished by or on behalf of any Related Party, in or in connection with any Loan Document or any transaction contemplated therein, whether or not transmitted by the Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by the Administrative Agent in connection with the Loan Documents, including, for the avoidance of doubt, the satisfaction of any condition set forth in **Section 6** of this Agreement or elsewhere herein (other than to confirm receipt of items expressly required to be delivered to the Administrative Agent); and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document or whether any condition set forth in any Loan Document is satisfied or waived, including, without limiting the generality of the foregoing, as to the financial condition of any Obligor or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower, any Lender describing such Default or Event of Default clearly labeled “notice of default” (in which case the Administrative Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in **clauses (i) through (iv)** above, each Lender and the Borrower hereby waives and agrees not to assert (and the Borrower shall cause each other Obligor to waive and agree not to assert) any right, claim or cause of action it might have against the Administrative Agent based thereon.

12.07 Administrative Agent Individually. The Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, accept deposits from, act as the financial advisor for or in any other advisory capacity for, or engage in any kind of business with, any Obligor or Affiliate thereof as though it were not acting as the Administrative Agent and may receive separate fees and other payments therefor. To the extent the Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms “Lender”, “Majority Lender”, and any similar terms shall, except where otherwise expressly provided in any Loan Document, include the Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Majority Lenders, respectively.

12.08 Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any Lender or any of their Related Parties or upon any document solely or in part because such document was transmitted by the Administrative Agent or any of its Related Parties, conducted its own independent investigation of the financial condition and affairs of each Obligor and has made and continues to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate.

12.09 Expenses; Indemnities.

(a) Each Lender agrees to reimburse the Administrative Agent and each of its Related Parties (to the extent not reimbursed by any Obligor) promptly upon demand for such Lender’s Proportionate Share of any costs and expenses (including fees, charges and disbursements of financial, legal (including charges and disbursements of Sullivan & Cromwell LLP and Hogan Lovells US LLP) and other advisors and Other Taxes paid in the name of, or on behalf of, any Obligor) that may be incurred by the Administrative Agent or any of its Related Parties in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees to indemnify the Administrative Agent (or any sub-agent thereof) and any Related Parties of the Administrative Agent (or any such sub-agent) (to the extent not indefeasibly paid by any Obligor), from and against such Lender's aggregate Proportionate Share of the liabilities (including Taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against the Administrative Agent (or any sub-agent thereof) or any Related Parties of the Administrative Agent (or any such sub-agent) in any matter relating to or arising out of, in connection with or as a result of any Loan Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by the Administrative Agent (or any sub-agent thereof) or any Related Parties of the Administrative Agent (or any such sub-agent) under or with respect to any of the foregoing; provided that no Lender shall be liable to the Administrative Agent (or any sub-agent thereof) or any Related Parties of the Administrative Agent (or any such sub-agent) to the extent such liability has resulted primarily from the gross negligence or willful misconduct of the Administrative Agent (or any sub-agent thereof) or, as the case may be, such Related Party of the Administrative Agent (or any sub-agent thereof), as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

12.10 Resignation of the Administrative Agent.

(a) At any time upon not less than 30 days prior written notice, the Administrative Agent may resign as the "the Administrative Agent" hereunder, in whole or in part (in the sole and absolute discretion of the Administrative Agent). If the Administrative Agent delivers any such notice, the Majority Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be (i) a Lender holding at least thirty percent (30%) of the outstanding principal amount of the Loans or any Affiliate thereof or (ii) any other financial institution consented to by the Borrower (provided that the consent of the Borrower shall not be required to the extent an Event of Default has occurred and is continuing). If a successor Administrative Agent has not been appointed on or before the effectiveness of the resignation of the resigning Administrative Agent (or such earlier date as shall be agreed by the Majority Lenders) (the "**Resignation Effective Date**"), then the resigning Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, appoint any Person reasonably chosen by it as the successor Administrative Agent, notwithstanding whether the Majority Lenders have appointed a successor or the Borrower has consented to such successor. Whether or not a successor has been appointed, such resignation shall become effective on the Resignation Effective Date.

(b) Effective from the Resignation Effective Date, (i) the resigning Administrative Agent shall be discharged from its duties and obligations under the Loan Documents to the extent set forth in the applicable resignation notice, (ii) the Lenders shall assume and perform all of the duties of the Administrative Agent until a successor Administrative Agent shall have accepted a valid appointment hereunder, (iii) the resigning Administrative Agent and its Related Parties shall no longer have the benefit of any provision of any Loan Document other than with respect to (x) any actions taken or omitted to be taken while such resigning Administrative Agent was, or because the Administrative Agent had been, validly acting as the Administrative Agent under the Loan Documents or (y) any continuing duties such resigning Administrative Agent will continue to perform, and (iv) subject to its rights under **Section 12.04**, the resigning Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as the Administrative Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as the Administrative Agent, a successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the resigning Administrative Agent under the Loan Documents.

12.11 Release of Collateral or Guarantors. Each Lender hereby consents to the release and hereby directs the Administrative Agent to release, and the Administrative Agent hereby agrees, (or, in the case of **Section 12.10(b)**, release or subordinate) the following:

(a) any Subsidiary of the Borrower from its guaranty of any Obligation of any Obligor (i) if all of the Equity Interests in such Subsidiary owned by any Obligor or any of its Subsidiaries are disposed of in an Asset Sale permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such Asset Sale, such Subsidiary would not be required to guaranty any Obligations pursuant to **Section 8.11(a)** and (ii) upon (x) termination of the Commitments and (y) payment and satisfaction in full of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable (other than inchoate indemnification and expense reimbursement obligations for which no claim has been made);

(b) any Lien held by the Administrative Agent for the benefit of the Secured Parties against (i) any Collateral that is disposed of by an Obligor in an Asset Sale permitted by the Loan Documents (including pursuant to a valid waiver or consent), (ii) any property subject to a Lien described in **Section 9.02(c)** and (iii) all of the Collateral and all Obligors, upon (x) termination of the Commitments and (y) payment and satisfaction in full of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable (other than inchoate indemnification and expense reimbursement obligations for which no claim has been made); and

(c) any guaranty of any Obligation by any BXCL 701 Subsidiary on the BXCL 701 Release Date.

Each Lender hereby directs the Administrative Agent, and the Administrative Agent hereby agrees, upon receipt of reasonable advance notice from the Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guarantees and Liens when and as directed in this **Section 12.10** and deliver to the Borrower, at the expense of the Borrower, any portion of such Collateral so released pursuant to this **Section 12.10** that is in possession of the Administrative Agent. In addition, in connection with any Permitted Licenses, each Lender hereby authorizes Administrative Agent to, and at the request of the Borrower, the Administrative Agent shall, negotiate and enter into a non-disturbance agreement and other similar agreements in form and substance reasonably satisfactory to Administrative Agent.

12.12 Additional Secured Parties. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender as long as, by accepting such benefits, such Secured Party agrees, as among the Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to the Administrative Agent) this **Section 12** and the decisions and actions of the Administrative Agent and the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; provided that, notwithstanding the foregoing, (i) such Secured Party shall be bound by **Section 12.08** only to the extent of Liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of Pro Rata Share or similar concept, (ii) each of the Administrative Agent and each Lender shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (iii) such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

12.13 Agent May File Proofs of Claim. In case of the pendency of any Insolvency Proceeding or any other judicial proceeding relating to any Obligor, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower or any other Obligor) shall be entitled and empowered (but not obligated) by intervention or such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under **Section 14.03**) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due to the Administrative Agent under **Section 14.03**.

12.14 Acknowledgements of Lenders.

(a) If the Administrative Agent notifies a Lender, or any Person who has received funds on behalf of a Lender (any such Lender or other recipient, a "**Payment Recipient**"), that the Administrative Agent has determined in its reasonable discretion (whether or not after receipt of any notice under immediately succeeding **clause (b)**) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "**Erroneous Payment**") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent, and such Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than five Qatari Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this **clause (a)** shall be conclusive, absent manifest error. Notwithstanding the foregoing, without limiting any other rights or remedies (whether at law or in equity), the Administrative Agent may not make any demand under this clause (a) with respect to an Erroneous Payment unless such demand is made within 5 Business Days of the date of receipt of such Erroneous Payment by the applicable Payment Recipient.

(b) Without limiting immediately preceding **clause (a)**, each Lender, or any Person who has received funds on behalf of a Lender, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender or other such recipient otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case: (i) (A) in the case of immediately preceding **clauses (x) or (y)**, an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding **clause (z)**), in each case, with respect to such payment, prepayment or repayment; and (ii) such Lender shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) use commercially reasonable efforts to notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this **Section 12.13(b)(ii)**.

(c) Each Lender hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender from any source, against any amount due to the Administrative Agent under immediately preceding **clause (a)** or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding **clause (a)**, from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "**Erroneous Payment Return Deficiency**"), upon the Administrative Agent's notice to such Lender at any time, (i) such Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the "**Erroneous Payment Impacted Loans**") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Loans, the "**Erroneous Payment Deficiency Assignment**") at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its Commitments which shall survive as to such assigning Lender and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender under the Loan Documents with respect to each Erroneous Payment Return Deficiency.

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Obligor, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Obligor for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including waiver of any defense based on “discharge for value” or any similar doctrine.

(g) Each party’s obligations, agreements and waivers under this **Section 12.13** shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

SECTION 13. GUARANTY

13.01 The Guaranty. The Subsidiary Guarantors hereby unconditionally jointly and severally guarantee to the Administrative Agent and the Lenders, and their successors and assigns, the full and punctual payment in full or performance (whether at stated maturity, by acceleration or otherwise) of the Obligations, including (i) principal of and interest on the Loans, (ii) all fees and other amounts and Obligations from time to time owing to the Administrative Agent and the Lenders by the Borrower and each other Obligor under this Agreement or under any other Loan Document, in each case strictly in accordance with the terms hereof and thereof and (iii) the punctual and faithful performance, keeping, observance and fulfillment by the Borrower and Subsidiary Guarantors of all the agreements, conditions, covenants and obligations of the Borrower and Subsidiary Guarantors contained in the Loan Documents (such obligations being herein collectively called the “*Guaranteed Obligations*”). The Subsidiary Guarantors hereby further jointly and severally agree that if the Borrower or any other Obligor shall fail to pay any amount in full when due or perform any such obligation (whether at stated maturity, by acceleration or otherwise), the Subsidiary Guarantors will promptly pay the same or perform such obligation at the place and in the manner specified herein or in the relevant Loan Document, as the case may be, without any demand or notice whatsoever, and that in the case of any extension of time of payment or performance or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full or performed when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

13.02 Obligations Unconditional. The obligations of the Subsidiary Guarantors under **Section 13.01** shall constitute a guaranty of payment and performance and not of collection and are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations under this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by all applicable Laws, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this **Section 13.02** that the obligations of the Subsidiary Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Subsidiary Guarantors hereunder, which shall remain absolute and unconditional as described above:

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

(b) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein shall be done or omitted;

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

(d) any lien or security interest granted to, or in favor of, the Secured Parties as security for any of the Guaranteed Obligations shall fail to be perfected or preserved;

(e) any modification or amendment of or supplement to this Agreement or any other Loan Document, including any such amendment which may increase the amount of, or the interest rates applicable to, any of the Guaranteed Obligations guaranteed hereby;

(f) any change in the corporate, partnership, limited liability company or other existence, structure or ownership of the Borrower, any Subsidiary Guarantor or any other guarantor of any of the Guaranteed Obligations, or any Insolvency Proceeding or other similar proceeding affecting the Borrower, any Subsidiary Guarantor or any other guarantor of the Guaranteed Obligations, or any of their respective assets, or any resulting release or discharge of any obligation of the Borrower, any Subsidiary Guarantor or any other guarantor of any of the Guaranteed Obligations;

(g) the existence of any claim, setoff or other rights which any Subsidiary Guarantor may have at any time against the Borrower, any other Subsidiary Guarantor or any other guarantor of any of the Guaranteed Obligations, the Administrative Agent, any Secured Party or any other Person, whether in connection herewith or in connection with any unrelated transactions; *provided* that, notwithstanding any other provisions in this Guaranty, nothing in this Guaranty shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(h) the unenforceability or invalidity of the Guaranteed Obligations or any part thereof or the lack of genuineness, enforceability or validity of any agreement relating thereto or with respect to the collateral, if any, securing the Guaranteed Obligations or any part thereof, or any other invalidity or unenforceability relating to or against the Borrower, any Subsidiary Guarantor or any other guarantor of any of the Guaranteed Obligations, for any reason, related to this Agreement or any other Loan Document, or any provision of applicable Law, decree, order or regulation of any jurisdiction purporting to prohibit the payment of any of the Guaranteed Obligations by the Borrower, any Subsidiary Guarantor or any other guarantor of the Guaranteed Obligations;

(i) the disallowance, under any state or federal bankruptcy, insolvency or similar law, of all or any portion of the claims of the Secured Parties or the Administrative Agent for repayment of all or any part of the Guaranteed Obligations;

(j) the failure of any other guarantor to sign or become party to this Agreement or any amendment, change, or reaffirmation hereof;

(k) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of any collateral securing the Guaranteed Obligations or any part thereof, any other guaranties with respect to the Guaranteed Obligations or any part thereof, or any other obligation of any person or entity with respect to the Guaranteed Obligations or any part thereof, or any nonperfection or invalidity of any direct or indirect security for the Guaranteed Obligations; or

(l) any other act or omission to act or delay of any kind by the Borrower, such Guarantor, any other guarantor of the Guaranteed Obligations, the Administrative Agent, any Secured Party or any other Person or any other circumstance whatsoever which might, but for the provisions of this **Section 13.02** constitute a legal or equitable discharge of any Guarantor's obligations hereunder.

The Subsidiary Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Administrative Agent or any Lender exhaust any right, power or remedy or proceed against the Borrower or any other Subsidiary Guarantor under this Agreement or any other agreement or instrument referred to herein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations.

13.03 Discharge Only Upon Payment in Full. Subject to any prior release herefrom of any Subsidiary Guarantor by the Administrative Agent in accordance with (and pursuant to authority granted to the Administrative Agent under) the terms of this Agreement, each Subsidiary Guarantor's obligations hereunder shall remain in full force and effect until all of the Guaranteed Obligations shall have been indefeasibly paid in full in cash (other than inchoate indemnification and expense reimbursement obligations for which no claim has been made) and all other financing arrangements among the Borrower or any Subsidiary Guarantor and the Secured Parties under or in connection with this Agreement and each other Loan Document shall have terminated (herein, the "**Termination Conditions**"), and until the prior and complete satisfaction of the Termination Conditions all of the rights and remedies under this Guaranty and the other Loan Documents shall survive. Notwithstanding the foregoing, the Administrative Agent hereby agrees to release any Subsidiary of the Borrower from its guaranty of any Obligation of any Obligor if all of the Equity Interests in such Subsidiary owned by any Obligor or any of its Subsidiaries are disposed of in an Asset Sale permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such Asset Sale, such Subsidiary would not be required to guarantee any Obligations pursuant to **Section 8.11(a)**.

13.04 Additional Waivers; General Waivers.

(a) *Additional Waivers.* Notwithstanding anything herein to the contrary, each of the Subsidiary Guarantors hereby absolutely, unconditionally, knowingly, and expressly waives:

(i) any right it may have to revoke this Guaranty as to future indebtedness or notice of acceptance hereof;

(ii) (A) notice of acceptance hereof; (B) notice of any other financial accommodations made or maintained under the Loan Documents or the creation or existence of any Guaranteed Obligations; (C) notice of the amount of the Guaranteed Obligations, subject, however, to each Subsidiary Guarantor's right to make inquiry of the Administrative Agent and the Secured Parties to ascertain the amount of the Guaranteed Obligations at any reasonable time; (D) notice of any adverse change in the financial condition of the Borrower or of any other fact that might increase such Subsidiary Guarantor's risk hereunder; (E) notice of presentment for payment, demand, protest, and notice thereof as to any instruments among the Loan Documents; (F) notice of any Event of Default; and (G) all other notices (except if such notice is specifically required to be given to such Subsidiary Guarantor under this Guaranty or under the other Loan Documents) and demands to which each Subsidiary Guarantor might otherwise be entitled;

(iii) its right, if any, to require the Administrative Agent and the Secured Parties to institute suit against, or to exhaust any rights and remedies which the Administrative Agent and the Secured Parties now have or may hereafter have against, any other guarantor of the Guaranteed Obligations or any third party, or against any collateral provided by such other guarantors or any third party; and each Subsidiary Guarantor further waives any defense arising by reason of any disability or other defense (other than the defense that the Guaranteed Obligations shall have been fully and finally performed and indefeasibly paid) of any other guarantor of the Guaranteed Obligations or by reason of the cessation from any cause whatsoever of the liability of any other guarantor of the Guaranteed Obligations in respect thereof;

(iv) (A) any rights to assert against the Administrative Agent and the Secured Parties any defense (legal or equitable), set-off, counterclaim, or claim which such Subsidiary Guarantor may now or at any time hereafter have against any other guarantor of the Guaranteed Obligations or any third party liable to the Administrative Agent and the Secured Parties; (B) any defense, set-off, counterclaim or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity or enforceability of the Guaranteed Obligations or any security therefor; (C) any defense such Subsidiary Guarantor has to performance hereunder, and any right such Subsidiary Guarantor has to be exonerated, arising by reason of: (1) the impairment or suspension of the Administrative Agent's and the Secured Parties' rights or remedies against any other guarantor of the Guaranteed Obligations; (2) the alteration by the Administrative Agent and the Secured Parties of the Guaranteed Obligations; (3) any discharge of the obligations of any other guarantor of the Guaranteed Obligations to the Administrative Agent and the Secured Parties by operation of law as a result of the Administrative Agent's and the Secured Parties' intervention or omission; or (4) the acceptance by the Administrative Agent and the Secured Parties of anything in partial satisfaction of the Guaranteed Obligations; and (D) the benefit of any statute of limitations affecting such Subsidiary Guarantor's liability hereunder or the enforcement thereof, and any act which shall defer or delay the operation of any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to defer or delay the operation of such statute of limitations applicable to such Subsidiary Guarantor's liability hereunder; and

(v) any defense arising by reason of or deriving from (A) any claim or defense based upon an election of remedies by the Administrative Agent and the other Secured Parties; or (B) any election by the Administrative Agent and the other Secured Parties under any provision of any state or federal bankruptcy, insolvency or similar law to limit the amount of, or any collateral securing, its claim against the Subsidiary Guarantors.

(b) *General Waivers.* Each Subsidiary Guarantor irrevocably waives, to the fullest extent permitted by law, any notice not provided for herein.

13.05 Reinstatement. The obligations of the Subsidiary Guarantors under this **Section 13** shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Guaranteed Obligations is at any time rescinded, annulled, avoided, set aside, invalidated, declared to be fraudulent or must be otherwise restored or repaid by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization, equitable cause or otherwise, and the Subsidiary Guarantors jointly and severally agree that they will indemnify the Secured Parties on demand for all reasonable costs and expenses (including fees of counsel) incurred by such Persons in connection with such rescission, repayment or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any state or federal bankruptcy, insolvency or similar law. The provisions of this **Section 13.05** shall survive termination of this Guaranty.

13.06 Subrogation. The Subsidiary Guarantors hereby jointly and severally agree that, until the prior and complete satisfaction of all Termination Conditions, they (i) shall have no right of subrogation with respect to the Guaranteed Obligations and (ii) waive any right to enforce any remedy which the Secured Parties or the Administrative Agent now have or may hereafter have against the Borrower, any endorser or any other guarantor of all or any part of the Guaranteed Obligations or any other Person, and each Subsidiary Guarantor waives any benefit of, and any right to participate in, any security or collateral that may from time to time be given to the Secured Parties and the Administrative Agent to secure the payment or performance of all or any part of the Guaranteed Obligations or any other liability of the Borrower to the Secured Parties. Should any Subsidiary Guarantor have the right, notwithstanding the foregoing, to exercise its subrogation rights prior to complete satisfaction of the Termination Conditions, each Subsidiary Guarantor hereby expressly and irrevocably (A) subordinates any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set-off that such Subsidiary Guarantor may have prior to the complete satisfaction of the Termination Conditions, and (B) waives any and all defenses available to a surety, guarantor or accommodation co-obligor until all Termination Conditions are satisfied in full. Each Subsidiary Guarantor acknowledges and agrees that this subordination is intended to benefit the Administrative Agent and the Secured Parties and shall not limit or otherwise affect such Subsidiary Guarantor's liability hereunder or the enforceability of this Guaranty, and that the Administrative Agent, the Secured Parties and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this **Section 13.06**.

13.07 Remedies. The Subsidiary Guarantors jointly and severally agree that, as between the Subsidiary Guarantors, on one hand, and the Administrative Agent and the Lenders, on the other hand, the obligations of the Borrower under this Agreement and under the other Loan Documents may be declared to be forthwith due and payable as provided in **Section 11** (and shall be deemed to have become automatically due and payable in the circumstances provided in **Section 11**) for purposes of **Section 13.01** notwithstanding any stay, injunction or other prohibition, including any such stay upon an Insolvency Proceeding, preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Subsidiary Guarantors for purposes of **Section 13.01**.

13.08 Instrument for the Payment of Money. Each Subsidiary Guarantor hereby acknowledges that the guarantee in this **Section 13** constitutes an instrument for the payment of money, and consents and agrees that the Administrative Agent and the Lenders, at their sole option, in the event of a dispute by such Subsidiary Guarantor in the payment of any moneys due hereunder, shall have the right to proceed by motion for summary judgment in lieu of complaint pursuant to N.Y. Civ. Prac. L&R § 3213.

13.09 Continuing Guarantee. The guarantee in this **Section 13** is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

13.10 Contribution with Respect to Guaranteed Obligations.

(a) To the extent that any Subsidiary Guarantor shall make a payment under this Guaranty (a “**Guarantor Payment**”) which, taking into account all other Guarantor Payments then previously or concurrently made by any other Subsidiary Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Subsidiary Guarantor if each Subsidiary Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Subsidiary Guarantor’s “Allocable Amount” (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Subsidiary Guarantors as determined immediately prior to the making of such Guarantor Payment, *then*, following the prior and complete satisfaction of the Termination Conditions, such Subsidiary Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Subsidiary Guarantor for the amount of such excess, *pro rata* based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the “**Allocable Amount**” of any Subsidiary Guarantor shall be equal to the maximum amount of the claim which could then be recovered from such Subsidiary Guarantor under this Agreement without rendering such claim voidable or avoidable under any state or federal bankruptcy, insolvency or similar law or other applicable Law.

(c) This **Section 13.10** is intended only to define the relative rights of the Subsidiary Guarantors, and nothing set forth in this **Section 13.10** is intended to or shall impair the obligations of the Subsidiary Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Subsidiary Guarantor or Subsidiary Guarantors to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Subsidiary Guarantors against other Subsidiary Guarantors under this **Section 13.10** shall be exercisable only upon the prior and complete satisfaction of the Termination Conditions.

13.11 General Limitation on Guarantee Obligations. In any action or proceeding involving any provincial, territorial or state corporate law, or any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under **Section 13.01** would otherwise be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under **Section 13.01**, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, the Administrative Agent, any Lender or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

SECTION 14. MISCELLANEOUS

14.01 No Waiver. No failure on the part of the Administrative Agent or the Lenders to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

14.02 Notices.

(a) All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) or in the other Loan Documents shall be given or made in writing (including by telecopy or email) delivered, if to the Borrower, another Obligor, the Administrative Agent or any Lender, to its address specified on the signature pages hereto or its Guarantee Assumption Agreement, as the case may be, or at such other address as shall be designated by such party in a written notice to the other parties. Except as otherwise provided in this Agreement or therein, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication).

(b) Notwithstanding anything in this Section 14.02 to the contrary, any notice, request, instruction, direction or other communication provided for herein and addressed to a QIA Lender (a “QIA Lender Notice”) shall be effective only if such QIA Lender Notice is (a) delivered either personally by hand or by an international courier service providing delivery service in Qatar to the address of such QIA Lender set forth in this Agreement under the signature pages hereto and, in each case (b) confirmed by email to such QIA Lender’s email addresses listed under the signature pages hereto; provided that (i) all such email addresses listed under the signature pages hereto for copy are copied and (ii) a “failed delivery” message is not received by the sender from such QIA Lender’s primary email addresses listed under the signature pages hereto. Delivery shall be deemed effective only if completed by 1:30 p.m. on a day in which banks are open for business in Qatar (a “Qatari Business Day”) or on the following Qatari Business Day if completed later.

14.03 Expenses, Indemnification, Etc.

(a) **Expenses.** Each Obligor, jointly and severally, agrees to pay or reimburse (i) the Administrative Agent and the Lenders and their respective Affiliates for all of their reasonable and documented out of pocket costs and expenses (including the fees, expenses, charges and disbursements of Sullivan & Cromwell LLP, counsel to the Lenders, the fees (if necessary) of local and regulatory counsel for both of the Administrative Agent and the Lenders in each relevant material jurisdiction, and any sales, goods and services or other similar Taxes applicable thereto, and reasonable and documented printing, reproduction, document delivery, communication and travel costs) in connection with (x) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the making of the Loans (exclusive of post-closing costs), (y) post-closing costs (including costs of the administration of this Agreement and the other Loan Documents) and (z) the negotiation or preparation of any modification, supplement or waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated); provided, that the amount of such costs and expenses obligated to be paid by the Obligors for activities prior to the Closing Date, ~~together with all costs and expenses payable by the Obligors related to the Revenue Interest Financing and any related transactions with the Administrative Agent, the Lenders and/or their Affiliates prior to the Closing Date,~~ shall not exceed \$700,000 (or such greater amount as may be reasonably agreed to by the Borrower), plus the actual cost of any collateral filing and recordation fees and searches and (ii) each of the Administrative Agent and the Lenders for all of their documented out of pocket costs and expenses (including the fees and expenses of any legal counsel) in connection with the enforcement, exercise or protection of their rights in connection with this Agreement and the other Loan Documents, including their rights under this **Section 14.03**, or in connection with the Loans made hereunder, including such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) **Indemnification.** Each Obligor, jointly and severally, hereby indemnifies the Administrative Agent (and any sub-agent thereof), the Lenders and their respective Affiliates, directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an “*Indemnified Party*”) from and against, and agrees to hold them harmless against, any and all Claims and Losses of any kind including reasonable and documented out of pocket fees and disbursements of any counsel for each Indemnified Party (limited to, at most, two legal counsels in each relevant jurisdiction, one for each of (A) the Oaktree Lenders and (B) the QIA Lenders), that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to (i) Agreement or any of the other Loan Documents or the Transactions, (ii) any use made or proposed to be made with the proceeds of the Loans, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Obligor or any of its Subsidiaries, or (iv) any actual or prospective claim, investigation, litigation or proceeding relating to any of the foregoing, whether based on contract, tort, or any other theory, whether or not such investigation, litigation or proceeding is brought by any Obligor, any of its Subsidiaries, shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not any of the conditions precedent set forth in **Section 6** are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence or willful misconduct. No Obligor shall assert any claim against any Indemnified Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans. The Borrower, its Subsidiaries and Affiliates and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties are each sometimes referred to in this Agreement as a “*Borrower Party*”. No Lender shall assert any claim against any Borrower Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans. This Section shall not apply to Taxes other than Taxes relating to a non-Tax Claim or Loss governed by this **Section 14.03(b)**.

14.04 Amendments, Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement and any other Loan Document (except for the Company ~~Warrant~~Warrants or the 701 Warrants, which may be amended, waived or supplemented in accordance with the terms thereof) may be modified or supplemented only by an instrument in writing signed by the **Borrower**, the Administrative Agent and the Majority Lenders; provided that:

(a) any such modification or supplement that is disproportionately adverse to any Lender as compared to other Lenders or subjects any Lender to any additional obligation shall not be effective without the consent of such affected Lender;

(b) the consent of all of the Lenders shall be required to:

(i) amend, modify, discharge, terminate or waive any of the terms of this Agreement or any other Loan Agreement (including by modifying any defined term used therein or any provision referenced therein) if such amendment, modification, discharge, termination or waiver would increase the amount of the Loans or Commitment, reduce the fees payable hereunder, reduce interest rates or other amounts payable with respect to the Loans, extend any date fixed for payment of principal (it being understood that the waiver of any prepayment of Loans shall not constitute an extension of any date fixed for payment of principal), interest or other amounts payable relating to the Loans, extend the repayment dates of the Loans, modify the Commitments, modify the definition of "Proportionate Share" or extend the Commitment Termination Date, provided, for the avoidance of doubt, that any waiver or amendment relating to an Event of Default or Default arising out of a breach or prospective breach of the Minimum Revenue Covenant shall only require the consent of the Majority Lenders;

(ii) amend, modify, discharge, terminate or waive any Security Document or Guarantee if the effect is to release all or substantially all of the Collateral, or to release all or substantially all of the value of the Guarantee, subject thereto other than pursuant to the terms hereof or thereof; or

(iii) amend this **Section 14.04** or the definition of “Majority Lenders”.

14.05 Successors and Assigns.

(a) **General.** The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto or thereto and their respective successors and assigns permitted hereby or thereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder (except in connection with an event permitted under **Section 9.03**) without the prior written consent of each Lender. Any Lender may assign or otherwise transfer any of its rights or obligations hereunder or under any of the other Loan Documents (i) to an assignee in accordance with the provisions of **Section 14.05(b)**, (ii) by way of participation in accordance with the provisions of **Section 14.05(e)**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 14.05(f)**. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 14.05(e)** and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lender.** Any Lender may at any time assign to one or more Eligible Transferees (or, if an Event of Default has occurred and is continuing, to any Person) all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it) and the other Loan Documents; provided that (i) no such assignment shall be made to any Obligor, any Affiliate of any Obligor, any employees or directors of any Obligor at any time and (ii) no such assignment shall be made without the prior written consent of the Administrative Agent, not to be unreasonably withheld, conditioned or delayed. The consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (x) a Default or Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to an Eligible Transferee); provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received written notice thereof; provided further that the consent of the Borrower shall not be required for any assignment to (x) Oaktree Capital Management, L.P. or any of its managed funds or accounts or (y) any Affiliate of the foregoing. Subject to the recording thereof by the Administrative Agent pursuant to **Section 14.05(d)**, and to receipt by the Administrative Agent of a processing and recordation fee in the amount of \$3,500 (provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment) from and after the date such Assignment and Assumption is recorded in the Register, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of the Lender under this Agreement and the other Loan Documents, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto) and the other Loan Documents but shall continue to be entitled to the benefits of **Section 5** and **Section 14.03**. Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this **Section 14.05(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 14.05(e)**.

(c) **Amendments to Loan Documents.** Each of the Administrative Agent, the Lenders and the Obligors agrees to enter into such amendments to the Loan Documents, and such additional Security Documents and other instruments and agreements, in each case in form and substance reasonably acceptable to the Administrative Agent, the Lenders and the Obligors, as shall reasonably be necessary to implement and give effect to any assignment made under this **Section 14.05**.

(d) **Register.** The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior written notice. Notwithstanding anything to the contrary, any assignment of any Loan shall be effective only upon appropriate entries with respect thereto being made in the Register.

(e) **Participations.** Any Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Eligible Transferee (other than a natural person or any Obligor or any of its Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of the Lender's rights and/or obligations under this Agreement (including all or a portion of the Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with such Lender in connection therewith. Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that would (i) increase or extend the term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal of or interest on the Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest. Subject to **Section 14.05(f)**, the Borrower agrees that each Participant shall be entitled to the benefits of **Section 5.01** or **5.03** (subject to the requirements and limitations therein, including the requirements under **Section 5.03(f)** (it being understood that the documentation required under **Section 5.03(f)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 14.05(b)**; provided that such Participant (i) agrees to be subject to the provisions of **Section 5.04** as if it were an assignee under **Section 14.05(b)** and (ii) shall not be entitled to receive any greater payment under **Section 5.01** or **5.03**, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in Law that occurs after the Participant acquired the applicable participation or the sale of the participation to such Participant is made with the Borrower's prior written consent. To the extent permitted by Law, each Participant also shall be entitled to the benefits of **Section 4.03(a)** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) **[Reserved]**.

(g) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under the Loan Documents to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

14.06 Survival. The obligations of the Borrower under **Sections 5.01, 5.02, 5.03, 14.03, 14.05, 14.06, 14.09, 14.10, 14.11, 14.12, 14.13** and **14.14** and the obligations of the Subsidiary Guarantors under **Section 13** (solely to the extent guaranteeing any of the obligations under the foregoing Sections) shall survive the repayment of the Obligations and the termination of the Commitments and, in the case of the Lenders' assignment of any interest in the Commitments or the Loans hereunder, shall survive, in the case of any event or circumstance that occurred prior to the effective date of such assignment, the making of such assignment, notwithstanding that the Lenders may cease to be "Lenders" hereunder. In addition, each representation and warranty made, or deemed to be made by a Borrowing Notice, herein or pursuant hereto shall survive the making of such representation and warranty.

14.07 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

14.08 Counterparts, Effectiveness. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof. This Agreement shall become effective when counterparts hereof executed on behalf of the Obligors, the Administrative Agent and the Lender shall have been received by the Administrative Agent.

14.09 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York.

14.10 Jurisdiction, Service of Process and Venue.

(a) **Submission to Jurisdiction.** Each party hereby irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or tort or otherwise, against such other party in any way relating to this Agreement or any Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) **[Reserved].**

(c) **Waiver of Venue, Etc.** Each party hereto irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document and hereby further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such party is or may be subject, by suit upon judgment.

14.11 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

14.12 Waiver of Immunity. To the extent that any Obligor may be or become entitled to claim for itself or its property or revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), such Obligor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under this Agreement and the other Loan Documents.

14.13 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, including any confidentiality (or similar) agreements. EACH OBLIGOR ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND WILL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH ADMINISTRATIVE AGENT OR THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

14.14 Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

14.15 No Fiduciary Relationship. The Borrower acknowledges that the Administrative Agent and the Lenders have no fiduciary relationship with, or fiduciary duty to, the Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and the Borrower is solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties.

14.16 Confidentiality.

(a) The Administrative Agent and each Lender agree to keep confidential all non-public information provided to them by any Obligor pursuant to this Agreement that is designated by such Obligor as confidential in accordance with its customary procedures for handling its own confidential information; provided that nothing herein shall prevent the Administrative Agent or any Lender from disclosing any such information (i) to the Administrative Agent, any other Lender or any Affiliate of a Lender, (ii) subject to an agreement to comply with the provisions of this Section, to any Eligible Transferee or assignee permitted under **Section 14.05(b)**, and any actual or prospective direct or indirect counterparty to any Hedging Agreement (or any professional advisor to such counterparty), (iii) to its employees, officers, directors, agents, attorneys, accountants, trustees and other professional advisors or those of any of its affiliates (collectively, its “**Related Parties**”), in each case on a need-to-know basis, (iv) upon the requirement or demand of any Governmental Authority or any Regulatory Authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (v) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Law, (vi) if required to do so in connection with any litigation or similar proceeding, (vii) that has been publicly disclosed (other than as a result of a disclosure in violation of this **Section 14.16**), (viii) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender’s investment portfolio in connection with ratings issued with respect to such Lender, (ix) to the extent necessary in connection with the exercise of any remedy hereunder or under any other Loan Document, (x) on a confidential basis to (A) any rating agency in connection with rating the Borrower or its Subsidiaries or the Loans or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers of other market identifiers with respect to the Loans or (xi) to any other party hereto; provided that, in the case of disclosure pursuant to **clause (iv), (v) and (vi)** above, the Administrative Agent or applicable Lender, as applicable, shall promptly provide notice to the Borrower to the extent reasonable and not prohibited by Law or any applicable Governmental Authority.

(b) Notwithstanding any provision of this Agreement otherwise requiring any QIA Lender to provide any information or documents to any Loan Party or any third party, such QIA Lender shall be entitled to withhold, edit, redact and/or otherwise limit disclosure of any such information or documents on the grounds of national security and/or financial or economic sensitivity and such QIA Lender shall have no liability whatsoever and shall be free and harmless from any claims whatsoever for exercising its rights pursuant to this **Section 14.16(b)**.

14.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable Law (collectively, “*charges*”), shall exceed the maximum lawful rate (the “*Maximum Rate*”) that may be contracted for, charged, taken, received or reserved by the Administrative Agent and the Lender holding such Loan in accordance with applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest and charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan so that at no time shall the interest and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

14.18 Judgment Currency.

(a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent permitted by Law, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase Dollars with such other currency at the buying spot rate of exchange in the New York foreign exchange market on the Business Day immediately preceding that on which any such judgment, or any relevant part thereof, is given.

(b) The obligations of the Obligors in respect of any sum due to the Administrative Agent hereunder and under the other Loan Documents shall, notwithstanding any judgment in a currency other than Dollars, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in such other currency the Administrative Agent may, in accordance with normal banking procedures, purchase Dollars with such other currency. If the amount of Dollars so purchased is less than the sum originally due to the Administrative Agent in Dollars, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent against such loss. If the amount of Dollars so purchased exceeds the sum originally due to the Administrative Agent in Dollars, the Administrative Agent shall remit such excess to the Borrower.

14.19 USA PATRIOT Act. The Administrative Agent and the Lenders hereby notify the Obligors that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “*Patriot Act*”), they are required to obtain, verify and record information that identifies the Obligors, which information includes the name and address of each Obligor and other information that will allow such Person to identify such Obligor in accordance with the Patriot Act.

14.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

[Signature Pages Follow]

EXHIBIT A

FORM OF NOTE

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT B

FORM OF BORROWING NOTICE

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT L

FORM OF FUNDING DATE CERTIFICATE

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT M

FORM OF TRANCHE  REVENUE CONDITION CERTIFICATE

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT B

Schedule 1

Loans Schedule

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT C

Schedule 3 to Credit Agreement

Minimum Revenue

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT D

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]
