Table of Contents

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2022

OR

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

For the transition period from to

Commission File Number: 001-38410

BioXcel Therapeutics, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**82-1386754**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
555 Long Wharf Drive **New Haven, CT**	**06511**
(Address of principal executive offices)	(Zip Code)

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

N/A
(Former name, former address and former fiscal year, if changed since last report)

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, $0.001 par value per share	BTAI	Nasdaq Capital Market

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

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

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

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

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

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

The number of shares of the registrant's common stock, $0.001 par value per share, outstanding at August 8, 2022 was 28,022,465.

Table of Contents

		Page
	PART I - FINANCIAL INFORMATION	
	Forward Looking Statements	3
	Summary Risk Factors	4
Item 1.	Financial Statements (Unaudited)	6
	Consolidated Balance Sheets as of June 30, 2022 and December 31, 2021	6
	Consolidated Statements of Operations for the three and six months ended June 30, 2022 and 2021	7
	Consolidated Statements of Changes in Stockholders' Equity for the three and six months ended June 30, 2022 and 2021	8
	Consolidated Statements of Cash Flows for the six months ended June 30, 2022 and 2021	9
	Notes to Consolidated Financial Statements	10
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	28
Item 3.	Quantitative and Qualitative Disclosures About Market Risk	46
Item 4.	Controls and Procedures	46
	PART II OTHER INFORMATION	
Item 1.	Legal Proceedings	47
Item 1A.	Risk Factors	47
Item 2.	Unregistered Sales of Equity Securities and Use of Proceeds	98
Item 3.	Defaults Upon Senior Securities	98
Item 4.	Mine Safety Disclosures	98
Item 5.	Other Information	99
Item 6.	Exhibits	100
Signatures		102

FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements that involve risks and uncertainties. We make such forward-looking statements pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 and other federal securities laws. All statements other than statements of historical facts contained in this Quarterly Report on Form 10-Q are forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "expects," "intends," "plans," "anticipates," "believes," "estimates," "predicts," "potential," "continue" or the negative of these terms or other comparable terminology. These forward-looking statements include, but are not limited to, statements about:

- our commercialization plans for IGALMI™;
- our plans relating to clinical trials for our product candidates;
- our plans for 505(b)(2) regulatory path approval;
- our plans to research, develop and commercialize our current and future product candidates;
- our plans to seek to enter into collaborations for the development and commercialization of certain product candidates;
- the potential benefits of any future collaboration;
- the timing of and our ability to obtain and maintain regulatory approvals for our product candidates;
- the rate and degree of market acceptance and clinical utility of IGALMI™ and any product candidates for which we receive marketing approval;
- our commercialization, marketing and manufacturing capabilities and strategy;
- our intellectual property position and strategy;
- our estimates regarding expenses, future revenue, capital requirements and need for additional financing;
- potential investments in, or other strategic options for, our subsidiary, OnkosXcel Therapeutics, LLC ("OnkosXcel");
- developments relating to our competitors and our industry;
- the impact of government laws and regulations; and
- our relationship with BioXcel LLC.

These forward-looking statements are based on management's current expectations. These statements are neither promises nor guarantees, but involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. Factors that may cause actual results to differ materially from current expectations include, among other things, those listed under "Summary Risk Factors," Part II, Item 1A. "Risk Factors," and Part I, Item 2. "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere in this Quarterly Report on Form 10-Q. Given these uncertainties, you should not rely on these forward-looking statements as predictions of future events. Except as required by law, we assume no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future.

This Quarterly Report on Form 10-Q also contains estimates, projections and other information concerning our industry, our business, and the markets for certain diseases, including data regarding the estimated size of those markets, and the incidence and prevalence of certain medical conditions. Information that is based on estimates, forecasts, projections, market research or similar methodologies is inherently subject to uncertainties and actual events or circumstances may differ materially from events and circumstances reflected in this information. Unless otherwise expressly stated, we obtained this industry, business, market and other data from reports, research surveys, studies and similar data prepared by market research firms and other third parties, industry, medical and general publications, government data and similar sources.

As used in this Quarterly Report on Form 10-Q, unless otherwise specified or the context otherwise requires, the terms "we," "our," "us," the "Company" or "BTI" refer to BioXcel Therapeutics, Inc. and "BioXcel LLC" refers to the Company's former parent company and significant stockholder, BioXcel LLC and its predecessor, BioXcel Corporation. All brand names or trademarks appearing in this Quarterly Report on Form 10-Q are the property of their respective owners, including IGALMI™, which is a trademark of BioXcel Therapeutics, Inc.

We may use our website as a distribution channel of material information about the Company. Financial and other important information regarding the Company is routinely posted on and accessible through the Investors & Media section of its website at *www.bioxceltherapeutics.com*. In addition, you may automatically receive email alerts and

other information about the Company when you enroll your email address by visiting the "Email Alerts" option under the News / Events menu of the Investors & Media section of our website at *www.bioxceltherapeutics.com*.

SUMMARY RISK FACTORS

Our business is subject to numerous risks and uncertainties, including those described in Part II, Item 1A. "Risk Factors" in this Quarterly Report on Form 10-Q. You should carefully consider these risks and uncertainties when investing in our common stock. The principal risks and uncertainties affecting our business include the following:

- We have a limited operating history and have never generated any substantial product revenues, which may make it difficult to evaluate the success of our business to date and to assess our future viability.
- We have incurred significant operating losses since inception and anticipate that we will continue to incur substantial operating losses for the foreseeable future and may never achieve or maintain profitability.
- We will need substantial additional funding, and if we are unable to raise capital when needed, we could be forced to delay, reduce or eliminate our product development programs or commercialization efforts.
- We have significant indebtedness and other contractual obligations that could impair our liquidity, restrict our ability to do business and thereby harm our business, results of operations and financial condition. We may not have sufficient cash flow from operations to satisfy our obligations under our financing facilities.
- We have limited experience in drug discovery and drug development.
- In the near term, we are dependent on the success of IGALMI™, BXCL501 and BXCL701. If we are unable to complete the clinical development of, obtain marketing approval for or successfully commercialize IGALMI™ or our product candidates, either alone or with a collaborator, or if we experience significant delays in doing so, our business could be substantially harmed.
- Interim "top-line" and preliminary data from our clinical trials that we announce or publish from time to time may change as more patient data become available and are subject to audit and verification procedures that could result in material changes in the final data.
- The regulatory approval processes of the United States of America ("U.S.") Food and Drug Administration ("FDA"), and comparable foreign authorities are lengthy, time consuming, expensive and inherently unpredictable, and if we are ultimately unable to obtain regulatory approval for our product candidates, our business will be substantially harmed.
- Clinical trials are expensive, time-consuming and difficult to design and implement, and involve an uncertain outcome.
- Our product candidates may cause undesirable side effects or have other properties that could delay or prevent their regulatory approval, limit the commercial profile of an approved label, or result in significant negative consequences following marketing approval.
- BioXcel LLC's approach to the discovery and development of product candidates based on EvolverAI, its proprietary pharmaceutical discovery and development engine, is novel and unproven, and we do not know whether we will be able to develop any products of commercial value.
- If we are required by the FDA or similar regulatory authorities to obtain approval (or clearance, or certification) of a companion diagnostic device in connection with approval of one of our product candidates, and we do not obtain or face delays in obtaining approval (or clearance, or certification) of a companion

diagnostic device, we will not be able to commercialize the product candidate and our ability to generate revenue will be materially impaired.

- Even though the FDA has approved IGALMI™ for the acute treatment of agitation associated with schizophrenia or bipolar I or II disorder, we will still face extensive and ongoing regulatory requirements and obligations for IGALMI™ and for any product candidates for which we obtain approval.

- The FDA and other regulatory agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses.

- If our products do not gain market acceptance, our business will suffer because we might not be able to fund future operations.

- If we are unable to develop satisfactory sales and marketing capabilities, we may not succeed in commercializing IGALMI™ or any product candidate for which we may obtain regulatory approval.

- Although we obtained FDA approval for IGALMI™, our products and product candidates may not be accepted by physicians or the medical community in general.

- We continue to depend on BioXcel LLC to provide us with certain services for our business.

- We are substantially dependent on third parties for the manufacture of our clinical supplies of our product candidates, and we intend to rely on third parties to produce commercial supplies of any approved product candidate. Therefore, our development of our products could be stopped or delayed, and our commercialization of any future product could be stopped or delayed or made less profitable if third-party manufacturers fail to obtain approval of the FDA or comparable regulatory authorities or fail to provide us with drug product in sufficient quantities or at acceptable prices.

- Our failure to find third-party collaborators to assist or share in the costs of product development could materially harm our business, financial condition and results of operations.

- It is difficult and costly to protect our proprietary rights, and we may not be able to ensure their protection. If our patent position does not adequately protect our product candidates, others could compete against us more directly, which would harm our business, possibly materially.

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

BIOXCEL THERAPEUTICS, INC.

CONSOLIDATED BALANCE SHEETS

(amounts in thousands, except per share amounts)

	June 30, 2022 (unaudited)	December 31, 2021
ASSETS		
Current assets		
Cash and cash equivalents	$ 233,452	$ 232,968
Inventory	1,395	—
Prepaid expenses	8,384	2,888
Other current assets	1,693	956
Total current assets	$ 244,924	$ 236,812
Property and equipment, net	1,272	1,294
Operating lease right-of-use assets	1,114	1,247
Other assets	925	86
Total assets	$ 248,235	$ 239,439
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	$ 6,021	$ 4,678
Accrued expenses	13,372	11,492
Due to related party	296	204
Other current liabilities	306	293
Total current liabilities	$ 19,995	$ 16,667
Long-term portion of operating lease liabilities	949	1,105
Derivative liabilities	1,954	—
Long-term debt	61,075	—
Total liabilities	$ 83,973	$ 17,772
Commitments and contingencies (Note 15)		
Stockholders' equity		
Common stock, $0.001 par value, 100,000 shares authorized as of June 30, 2022 and December 31, 2021; 28,018 and 27,980 shares issued and outstanding as of June 30, 2022 and December 31, 2021, respectively	$ 28	$ 28
Preferred stock, $0.001 par value, 10,000 shares authorized; no shares issued and outstanding as of June 30, 2022 and December 31, 2021	—	—
Additional paid-in-capital	479,164	467,427
Accumulated deficit	(314,930)	(245,788)
Total stockholders' equity	$ 164,262	$ 221,667
Total liabilities and stockholders' equity	$ 248,235	$ 239,439

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

BIOXCEL THERAPEUTICS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

(amounts in thousands, except per share amounts)
(unaudited)

	Three Months Ended June 30,		Six months ended June 30,	
	2022	2021	2022	2021
Operating expenses				
Research and development	$ 17,906	$ 13,509	$ 36,593	$ 28,250
Selling, general and administrative	18,382	14,104	31,175	25,742
Total operating expenses	$ 36,288	$ 27,613	$ 67,768	$ 53,992
Loss from operations	$ (36,288)	$ (27,613)	$ (67,768)	$ (53,992)
Other income (expense)				
Interest income	204	10	219	20
Interest expense	(1,586)	(16)	(1,593)	(23)
Net loss and comprehensive loss	$ (37,670)	$ (27,619)	$ (69,142)	$ (53,995)
Basic and diluted net loss per share attributable to common stockholders	$ (1.35)	$ (1.11)	$ (2.47)	$ (2.18)
Weighted average shares outstanding - basic and diluted	27,989	24,962	27,985	24,744

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

BIOXCEL THERAPEUTICS, INC.

CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY

(amounts in thousands)
(unaudited)

	Common stock		Additional paid-in-capital	Accumulated deficit	Total
	Shares	Amount			
Balance as of December 31, 2020	24,417	$ 24	$ 345,529	$ (138,857)	$ 206,696
Stock-based compensation	—	—	5,565	—	5,565
Exercise of stock options	214	1	851	—	852
Net loss	—	—	—	(26,376)	(26,376)
Balance as of March 31, 2021	24,631	$ 25	$ 351,945	$ (165,233)	$ 186,737
Issuance of common stock, net of issuance costs of $3,542	3,279	3	101,024	—	101,027
Stock-based compensation	—	—	6,769	—	6,769
Exercise of stock options	59	—	497	—	497
Net loss	—	—	—	(27,619)	(27,619)
Balance as of June 30, 2021	27,969	$ 28	$ 460,235	$ (192,852)	$ 267,411

	Common stock		Additional paid-in-capital	Accumulated deficit	Total
	Shares	Amount			
Balance as of December 31, 2021	27,980	$ 28	$ 467,427	$ (245,788)	$ 221,667
Stock-based compensation	—	—	3,825	—	3,825
Net loss	—	—	—	(31,472)	(31,472)
Balance as of March 31, 2022	27,980	$ 28	$ 471,252	$ (277,260)	$ 194,020
Stock-based compensation	—	—	4,482	—	4,482
Issuance of stock purchase warrants	—	—	3,245	—	3,245
Exercise of stock options	38	—	185	—	185
Net loss	—	—	—	(37,670)	(37,670)
Balance as of June 30, 2022	28,018	$ 28	$ 479,164	$ (314,930)	$ 164,262

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

BIOXCEL THERAPEUTICS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(amounts in thousands)
(unaudited)

	Six months ended June 30,	
	2022	2021
OPERATING CASH FLOW ACTIVITIES:		
Net loss	$ (69,142)	$ (53,995)
Reconciliation of net loss to net cash used in operating activities		
Depreciation	161	144
Accretion of debt discount and amortization of financing costs	321	—
Stock-based compensation expense	8,307	12,334
Changes in operating assets and liabilities:		
Inventory	(1,395)	—
Prepaid expenses, other current assets and other assets	(7,072)	(1,064)
Operating lease right-of-use assets	133	—
Accounts payable, accrued expenses, and other liabilities	3,315	559
Operating lease liabilities	(144)	—
Net cash used in operating activities	$ (65,516)	$ (42,022)
INVESTING CASH FLOW ACTIVITIES:		
Purchases of equipment and leasehold improvements	$ (139)	$ (416)
Net cash used in investing activities	$ (139)	$ (416)
FINANCING CASH FLOW ACTIVITIES:		
Proceeds from long-term debt	$ 68,600	$ —
Debt issuance costs	(2,646)	—
Proceeds from issuance of common stock, net of issuance costs	—	101,027
Exercise of stock options	185	1,349
Net cash provided by financing activities	$ 66,139	$ 102,376
Net increase in cash and cash equivalents	$ 484	$ 59,938
Cash and cash equivalents, beginning of the period	232,968	213,119
Cash and cash equivalents, end of the period	$ 233,452	$ 273,057

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

BIOXCEL THERAPEUTICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(amounts in thousands, except per share amounts and where otherwise noted)
(unaudited)

Note 1. Nature of the Business

BioXcel Therapeutics, Inc. (“BTI”) is a commercial stage biopharmaceutical company focused on drug development that utilizes artificial intelligence (“AI”) to identify improved therapies in neuroscience and immuno-oncology. BTI's drug re-innovation approach leverages existing approved drugs and/or clinically validated product candidates together with big data and proprietary machine learning algorithms to identify new therapeutic indices. BTI's two most advanced clinical development programs are BXCL501, a proprietary, orally dissolving, thin film formulation of the adrenergic receptor agonist dexmedetomidine (“Dex”), for the treatment of agitation, and BXCL701, an orally administered, systemic innate immune activator for the treatment of a rare form of prostate cancer and advanced solid tumors that are refractory or treatment naïve to checkpoint inhibitors.

As used in these consolidated financial statements, unless otherwise specified or the context otherwise requires, the terms the “Company” or “BTI” refer to BioXcel Therapeutics, Inc., and “BioXcel LLC” refers to BioXcel LLC and, its predecessor, BioXcel Corporation.

The Company was incorporated under the laws of the State of Delaware on March 29, 2017. The Company’s principal office is in New Haven, Connecticut.

Impact of COVID-19 Pandemic

During the first quarter ended March 31, 2020, the novel coronavirus disease (“COVID-19”) was declared a pandemic and spread to multiple regions across the globe, including the U.S. and Europe. The outbreak and government measures taken in response had a significant impact, both direct and indirect, on businesses and commerce, as worker shortages have occurred; supply chains have been disrupted; facilities and production were suspended; and demand for certain goods and services spiked, while demand for other goods and services decreased.

We continue to work closely with our clinical sites to monitor the potential impact of the evolving COVID-19 pandemic and the spread of its variants. We remain committed to our clinical programs and development plans. To-date, we have not experienced significant delays in any of our ongoing or planned clinical trials except for our TRANQUILITY II trial where screenings and enrollment have been slower than expected but continues at a steady rate. However, this could rapidly change.

Note 2. Basis of Presentation

The accompanying unaudited consolidated financial statements do not include all of the information and notes required by Generally Accepted Accounting Principles in the U.S. (“GAAP”). The accompanying year-end balance sheet was derived from audited financial statements but does not include all disclosures required by GAAP. The unaudited interim consolidated financial statements have been prepared on the same basis as the audited annual financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary for the fair statement of the Company’s financial position as of June 30, 2022, the results of its operations for the three and six months ended June 30, 2022 and 2021 and its cash flows for the six months ended June 30, 2022 and 2021, respectively. The results for the three and six months ended June 30, 2022 are not necessarily indicative of results to be expected for the year ending December 31, 2022, any other interim periods or any future year or period. The accompanying unaudited consolidated financial statements of the Company should be read in

conjunction with the audited financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2021 filed with the Securities and Exchange Commission on March 10, 2022.

Our consolidated financial statements include the accounts for the Company and all entities where we have a controlling financial interest after elimination of all intercompany accounts and transactions.

As of June 30, 2022, the Company had cash and cash equivalents of $233,452 and an accumulated deficit of $314,930. BTI has incurred substantial net losses and negative cash flows from operating activities in nearly every fiscal period since inception and expects this trend to continue for the foreseeable future. The Company recognized net losses of $37,670 and $27,619 for the three months ended June 30, 2022 and 2021, respectively and $69,142 and $53,995 for the six months ended June 30, 2022 and 2021, respectively, and had net cash used in operating activities of $65,516 and $42,022 for the six months ended June 30, 2022 and 2021, respectively. The Company believes that its existing cash and cash equivalents will be sufficient to cover its cash flow requirements for at least the next twelve months from the issuance date of these consolidated financial statements. However, the Company's future requirements may change and will depend on numerous factors.

Note 3. Summary of Significant Accounting Policies

Use of Estimates

The preparation of financial statements in accordance with GAAP requires management to make estimates and assumptions that affect amounts reported in the consolidated financial statements and notes thereto. Although these estimates are based on the Company's knowledge of current events and actions it may undertake in the future, actual results may ultimately materially differ from these estimates.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less at the date of purchase to be cash equivalents. As of June 30, 2022 and December 31, 2021, cash equivalents were comprised primarily of money market funds. Cash and cash equivalents held at financial institutions may at times exceed federally insured amounts. We believe we mitigate such risk by investing in or through major financial institutions.

Inventory

Inventories are stated at the lower of cost or net realizable value. Cost of inventory is determined on a first-in, first-out basis.

BTI capitalizes inventory costs associated with the Company's products prior to regulatory approval, when, based on management's judgment, future commercialization is considered probable and the future economic benefit is expected to be realized; otherwise, such costs are expensed as research and development expense in the Consolidated Statements of Operations.

The Company performs an assessment of the recoverability of capitalized inventory during each reporting period and writes down any excess and obsolete inventories to their estimated realizable value in the period in which the impairment is first identified. Such impairment charges, should they occur, will be recorded within the cost of sales in the Consolidated Statements of Operations. The determination of whether inventory costs will be realizable requires estimates by management. If actual market conditions are less favorable than projected, write-downs of inventory may be required.

Property and Equipment

Property and equipment are recorded at cost and depreciated and amortized over the shorter of their remaining lease term or their estimated useful life on a straight-line basis as follows:

Equipment	3-5 years
Furniture	7 years
Leasehold improvements	Lesser of life of improvement or lease term

Expenditures for maintenance and repairs which do not improve or extend the useful lives of the respective assets are expensed as incurred. When assets are sold or retired, the related cost and accumulated depreciation are removed from their respective accounts and any resulting gain or loss is included within selling, general and administrative expenses in the Consolidated Statements of Operations.

The Company follows the guidance provided by the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 360-10, *Property, Plant, and Equipment-Overall*. Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to undiscounted future net cash flows expected to be generated. Impairment charges are recognized at the amount by which the carrying amount of an asset exceeds the fair value of the asset. Assets to be disposed of are reported at the lower of the carrying amount or the fair value less costs to sell.

Leases

We determine if an arrangement is a lease at inception. Operating leases are included in operating lease right-of-use ("ROU") assets, other current liabilities, and the long-term portion of operating lease liabilities in the Consolidated Balance Sheets.

ROU assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. Operating lease ROU assets and lease liabilities are recognized at commencement date based on the present value of lease payments over the lease term. As our leases do not provide an implicit rate, we used an incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. We use the implicit rate when readily determinable. The operating lease ROU asset also includes any prepaid lease payments made and excludes lease incentives. Our leases may include options to extend the lease; such options are included in determining the lease term when it is reasonably certain that we will exercise that option. Renewal options were not included in our calculation of the related asset and liability since it is not reasonably certain we will exercise the relevant option. Lease expense for lease payments is recognized on a straight-line basis over the lease term.

Debt and Detachable Warrants

Detachable warrants are evaluated for classification as either equity instruments, derivative liabilities, or liabilities depending on the specific terms of the warrant agreement. In circumstances in which debt is issued with equity-classified warrants, the proceeds from the issuance of debt are first allocated to the debt and the warrants at their estimated fair values. The portion of the proceeds allocated to the warrants are accounted for as paid-in capital and a debt discount. The remaining proceeds, as further reduced by discounts created by the bifurcation of any embedded derivatives, are allocated to the debt. Detachable warrants classified as derivative liabilities are accounted for as indicated under "Derivative Assets and Liabilities" section of this Note and as a debt discount. The Company accounts for debt as liabilities measured at amortized cost and amortizes the resulting debt discount from the allocation of proceeds, to interest expense using the effective interest method over the expected term of the debt instrument. The Company considers whether there are any embedded features in debt instruments that require bifurcation and separately accounts for them as derivative financial instruments pursuant to ASC 815, *Derivatives and Hedging*.

The Company entered into financing arrangements, the terms of which involve significant assumptions and estimates, including future net product sales, in determining interest expense, amortization period of the debt discount, as well as the classification between current and long-term portions. In estimating future net product sales, the Company assesses prevailing market conditions using various external market data against the Company's anticipated sales and planned commercial activities. Consequently, the Company imputes interest on the carrying value of the debt and records interest expense using an imputed effective interest rate. The Company reassesses the expected payments

during each reporting period and accounts for any changes through an adjustment to the effective interest rate on a prospective basis, with a corresponding impact to the classification of the Company's current and long-term portions of the debt.

Derivative Assets and Liabilities

Derivative assets and liabilities are recorded on the Company`s Consolidated Balance Sheets at their fair value on the date of issuance and are revalued on each balance sheet date until such instruments are settled or expire, with changes in the fair value between reporting periods to be recorded as other income or expense.

The Company does not use derivative instruments for speculative purposes or to hedge exposures to cash-flow or market risks. Certain financing facilities entered into by the Company include freestanding financial instruments and/or embedded features that require separate accounting as derivative assets and/or liabilities.

Stock-Based Compensation

The Company accounts for stock-based compensation in accordance with ASC 718, *Compensation-Stock Compensation*, which requires the measurement and recognition of compensation expense based on estimated fair value for all share-based awards made to employees, non-employees and directors, including stock options and restricted stock units ("RSUs"). The Company's 2017 Equity Incentive Plan (the "2017 Plan") became effective in August 2017. The Company's 2020 Incentive Award Plan (the "2020 Plan") became effective in May 2020. Following the effective date of the 2020 Plan, the Company ceased granting awards under the 2017 Plan; however the terms and conditions of the 2017 Plan continue to govern any outstanding awards granted thereunder.

The Company's stock-based awards are valued at fair value on the date of grant and that fair value is recognized as an expense in the Consolidated Statements of Operations over the requisite service period using the accelerated attribution method. The estimated fair value of stock-based awards was determined using the Black-Scholes pricing model on the date of grant. Prior to the Company's initial public offering ("IPO"), significant judgment and estimates were used to estimate the fair value of these awards. Stock awards granted by the Company subsequent to the IPO are valued using market prices at the date of grant.

The Black-Scholes pricing model is affected by the Company's stock price, as well as assumptions regarding a number of variables including, but not limited to, the strike price of the instrument, the risk-free rate, the expected stock price volatility over the term of the awards, and time until expiration of the instrument. The Company has elected to account for forfeitures as they occur, by reversing compensation cost when the award is forfeited.

Research and Development Costs

Research and development expenses include wages, benefits, facilities, supplies, external services, clinical study, manufacturing costs and other expenses that are directly related to the Company's research and development activities. At the end of the reporting period, the Company compares payments made to third-party service providers to the estimated progress toward completion of the research or development objectives. Depending on the timing of payments to the service providers and the progress that the Company estimates has been made for the program as a result of the level of service provided, the Company may record net prepaid or accrued expense relating to these costs. Such estimates are subject to change as additional information becomes available. The Company expenses research and development costs as incurred.

Expenses Accrued Under Contractual Arrangements

As part of the process of preparing our consolidated financial statements, we are required to estimate our accrued expenses. This process involves reviewing open contracts and purchase orders, communicating with our applicable personnel to identify services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for the service when we have not yet been invoiced or otherwise notified of actual cost. The majority of our service providers invoice us monthly in arrears for services performed. We make estimates of our

accrued expenses as of each balance sheet date in our consolidated financial statements based on facts and circumstances known to us at that time. We periodically confirm the accuracy of our estimates with the service providers and make adjustments if necessary.

We base our expenses related to clinical trials on our estimates of the services received and efforts expended pursuant to contracts with multiple research institutions and contract research organizations ("CROs") that conduct and manage clinical trials on our behalf. The financial terms of these agreements are subject to negotiation, vary from contract to contract and may result in uneven payment flows. Payments under some of these contracts depend on factors such as the successful enrollment of patients and the completion of clinical trial milestones. In accruing expenses, we estimate the time period over which services will be performed and the level of effort to be expended in each period, which is based on an established protocol specific to each clinical trial. If the actual timing of the performance of services or the level of effort varies from our estimate, we adjust the accrual accordingly. Although we do not expect our estimates to be materially different from amounts actually incurred, our understanding of the status and timing of services performed relative to the actual status and timing of services performed may vary and may result in us reporting amounts that are too high or too low in any particular period.

Patent Costs

Costs related to filing and pursuing patent applications are recorded in selling, general and administrative expenses and are expensed as incurred since recoverability of such expenditures is uncertain.

Fair Value of Financial Instruments

The Company applies the provisions of ASC 820, *Fair Value Measurement*, for financial assets and liabilities measured on a recurring basis which requires disclosure that establishes a framework for measuring fair value. ASC 820 defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. ASC 820 establishes a fair value hierarchy that distinguishes between (1) market participant assumptions developed based on market data obtained from independent sources, or observable inputs, and (2) an entity's own assumptions about market participant assumptions developed based on the best information available in the circumstances, or unobservable inputs. The fair value hierarchy consists of three broad levels, which gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). ASC 820 requires that fair value measurements be classified and disclosed in one of three categories:

Level 1: Quoted prices (unadjusted) in active markets that are accessible at the measurement date for assets or liabilities. The fair value hierarchy gives the highest priority to Level 1 inputs.

Level 2: Directly or indirectly observable inputs as of the reporting date through correlation with market data, including quoted prices for similar assets and liabilities in active markets and quoted prices in markets that are not active. Level 2 also includes assets and liabilities that are valued using models or other pricing methodologies that do not require significant judgment since the input assumptions used in the models, such as interest rates and volatility factors, are corroborated by readily observable data from actively quoted markets for substantially the full term of the financial instrument.

Level 3: Unobservable inputs that are supported by little or no market activity and reflect the use of significant management judgment. These values are generally determined using pricing models for which the assumptions utilize management's estimates of market participant assumptions.

In determining fair value, the Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible, as well as considering counterparty credit risk in its assessment of fair value.

Earnings (Loss) Per Share

Earnings (loss) per share ("EPS") is calculated in accordance with ASC 260, *Earnings Per Share.* Basic EPS is calculated by dividing net income or loss attributable to common stockholders by the weighted average number of shares of common stock that were outstanding. Diluted EPS is calculated by adjusting the weighted average number of shares of common stock that were outstanding for the dilutive effect of common stock equivalents. In periods in which a net loss is recorded, no effect is given to potentially dilutive securities, since the effect would be antidilutive.

Segment Information

The Company operates in a single segment. Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision maker in making decisions regarding resource allocation and assessing performance. To date, our chief operating decision maker has made such decisions and assessed performance at the Company level as one segment.

Recent Accounting Pronouncements

Recently adopted accounting pronouncements

In December 2019, the FASB issued Accounting Standards Update ("ASU") No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* ("ASU No. 2019-12"), which amends the existing guidance relating to the accounting for income taxes. ASU No. 2019-12 is intended to simplify the accounting for income taxes by removing certain exceptions to the general principles of accounting for income taxes and to improve the consistent application of GAAP for other areas of accounting for income taxes by clarifying and amending existing guidance. ASU No. 2019-12 was effective for interim and annual periods beginning after December 15, 2020. The adoption of ASU No. 2019-12 did not have a material impact on the Company's consolidated financial statements.

Accounting Pronouncements effective in future periods

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, and subsequent amendments to the initial guidance (collectively, "Topic 326"). Topic 326 requires measurement and recognition of expected credit losses for financial assets held. Topic 326 was to be effective for reporting periods beginning after December 15, 2019, with early adoption permitted. In November 2019, the FASB issued ASU No. 2019-10, *Financial Instruments - Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842) - Effective Dates*, which deferred the effective dates of Topic 326 for the Company, until fiscal year 2023. The Company does not expect that the adoption of Topic 326 will have a material impact on its consolidated financial statements.

Note 4. Common Stock Financing Activities

In June 2021, the Company sold, in a registered offering, 3,155 shares of its common stock at a public offering price of $31.70 per share. The Company received proceeds of $96,971, net of issuance costs of $3,042.

In May 2021, the Company entered into an Open Market Sale Agreement (the "Sale Agreement") with Jefferies LLC ("Jeffries") pursuant to which the Company could offer and sell shares of its common stock, having an aggregate offering price of up to $100,000, from time to time, through an "at the market offering" program under which Jefferies will act as sale agent. The Company sold 124 shares under the Sale Agreement in June 2021. As of December 31, 2021, the Company received proceeds of $4,056, net of issuance costs of $500. The Company did not sell any shares, and thus did not receive any proceeds under this program, for the six months ended June 30, 2022.

Note 5. Transactions with BioXcel LLC

The Company entered into a Separation and Shared Services Agreement with BioXcel LLC that took effect on June 30, 2017 (as amended and restated, the "Services Agreement"), pursuant to which services provided by BioXcel

LLC, through its subsidiaries in India and the U.S., will continue indefinitely, as agreed upon by the parties. These services are primarily for drug discovery, chemical, manufacturing and controls ("CMC") and administrative support.

Service charges recorded under the Services Agreement for the three and six months ended June 30, 2022 and 2021 were as follows:

	Three Months Ended June 30,		Six months ended June 30,	
	2022	2021	2022	2021
Research and development	$ 299	$ 310	$ 605	$ 630
Selling, general and administrative	58	45	129	94
Total	$ 357	$ 355	$ 734	$ 724

As of June 30, 2022, $210 related to these service charges are included in due to related parties in the Company's Consolidated Balance Sheets.

Under a Second Amended and Restated Shared Services Agreement signed in April 2022, the Company has an option, exercisable until December 31, 2024, to enter into a collaborative services agreement with BioXcel LLC pursuant to which BioXcel LLC shall perform product identification and related services for us utilizing EvolverAI, its proprietary pharmaceutical discovery and development engine. The parties are obligated to negotiate the collaborative services agreement in good faith and to incorporate reasonable market-based terms, including consideration for BioXcel LLC reflecting a low, single-digit royalty on net sales and reasonable development and commercialization milestone payments, provided that (i) development milestone payments shall not exceed $10,000 in the aggregate and not be payable prior to proof of concept in humans and (ii) commercialization milestone payments shall be based on reaching annual net sales levels, be limited to 3% of the applicable net sales level, and not exceed $30,000 in the aggregate. In conjunction with the Second Amended and Restated Shared Services Agreement, the Company agreed to pay BioXcel LLC $18 per month to extend the option to December 31, 2024 from its prior expiration of March 13, 2023.

Note 6. Earnings Net (Loss) Per Share

The calculations of basic and diluted net loss per share are as follows:

	Three Months Ended June 30,		Six months ended June 30,	
	2022	2021	2022	2021
Net loss (numerator)	$ (37,670)	$ (27,619)	$ (69,142)	$ (53,995)
Weighted average shares (denominator)	27,989	24,962	27,985	24,744
Basic and diluted net loss per share (in whole dollars)	$ (1.35)	$ (1.11)	$ (2.47)	$ (2.18)

Potentially dilutive securities outstanding consists of stock options and RSUs. The Company had common stock equivalents outstanding at June 30, 2022 and 2021 of 4,916 and 4,041 shares, respectively.

Note 7. Inventory, net

Inventories consist of the following:

	June 30, 2022
Raw materials	$ 692
Work-in-process	403
Finished goods	300
Total inventory, net	$ 1,395

There were no write-downs of inventory for the six months ended June 30, 2022. The Company did not have commercial inventory as of December 31, 2021.

Note 8. Property and Equipment, net

Property and Equipment, net consists of the following:

	June 30, 2022	December 31, 2021
Computers and related equipment	$ 167	$ 167
Furniture	687	572
Leasehold improvements	1,156	1,133
Work in process	25	24
Total property and equipment	$ 2,035	$ 1,896
Accumulated depreciation	(763)	(602)
Total property and equipment, net	$ 1,272	$ 1,294

Depreciation expense was $84 and $80 for the three months ended June 30, 2022 and 2021, respectively, and $161 and $144 for the six months ended June 30, 2022 and 2021, respectively.

Note 9. Accrued Expenses

Accrued expenses consist of the following:

	June 30, 2022	December 31, 2021
Accrued research and development expenses	$ 5,923	$ 5,762
Accrued compensation and benefits	3,342	3,968
Accrued professional expenses	3,608	1,324
Accrued taxes	258	302
Other accrued expenses	241	136
Total accrued expenses	$ 13,372	$ 11,492

Note 10. Debt and Credit Facilities

Debt, net of unamortized discounts and financing costs, consists of the following:

	June 30, 2022
Term loan	$ 70,000
Less:	
Original issue discount	(1,400)
Discount from issuance of BTI Warrants	(3,245)
Discount from issuance of Equity Investment Right	(1,340)
Discount from issuance of OnkosXcel Warrants	(614)
Debt issuance costs	(2,647)
Plus:	
Accretion of discounts and amortization of financing costs	321
Long-term debt, net	$ 61,075

On April 19, 2022 (the "Effective Date"), the Company entered into two strategic financing agreements: a Credit Agreement and Guaranty (the "Credit Agreement") 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 (the "Lenders"), and Oaktree Fund Administration LLC ("OFA") as administrative agent, and a Revenue Interest Financing Agreement (the "RIFA"; and together with the Credit Agreement, the "OFA Facilities") by and among the Company, the purchasers party thereto (the "Purchasers") and OFA as administrative agent. Under the OFA Facilities, the Lenders and the Purchasers have agreed to, in the aggregate between the two OFA Facilities, provide up to $260,000 in gross funding to support the Company's commercial activities of IGALMI™ sublingual film. In addition, the OFA Facilities are intended to support the expansion of clinical development efforts of BXCL501, which includes a Phase 3 program for the acute treatment of agitation in patients with Alzheimer's disease, and for general corporate purposes. The Lenders and Purchasers are comprised of funds of Oaktree Capital Management, L.P. ("Oaktree") and Qatar Investment Authority ("QIA").

A high-level summary of the OFA Facilities is provided below.

Credit Agreement

The Credit Agreement provides up to $135,000 in senior secured term loans, of which the initial Tranche A of $70,000 was funded on April 28, 2022, and the remaining tranches may be borrowed at the Company's option prior to December 31, 2024, subject to satisfaction of certain conditions, including regulatory and financial milestones. Tranche B of the Credit Agreement is $35,000 and is available upon satisfaction of certain conditions, including receipt of certain regulatory and financial milestones.

Tranche C of the Credit Agreement is $30,000 and is available upon satisfaction of certain conditions, including specified minimum net sales of the Company attributable to sales of BXCL501 for a trailing twelve consecutive month period.

The loans under the Credit Agreement do not amortize and mature on the fifth anniversary of the effective date; provided that the Company may, at its option, extend the maturity date to the sixth anniversary if, prior to December 31, 2024, the Company receives and satisfies certain conditions including receipt of certain regulatory and financial milestones. Borrowings under the Credit Agreement are issued at a 200-basis point original issue discount and bear interest at a fixed annual rate of 10.25%, payable quarterly. Of such interest, 225 basis points per annum is, at the Company's option, payable in kind by capitalizing and adding such interest to the outstanding principal amount of loans from the first payment date on which such interest is owed through, and including, the third anniversary of such payment date, unless, with respect to any payment date, the Company elects to pay all or a portion of such interest in cash. The Company is required to pay a ticking fee equal to 0.750% per annum on the undrawn amount of the commitments, payable quarterly commencing 120 days after the funding of the Tranche A term loan through the

termination of the commitments, which is expensed as incurred. The Company may voluntarily prepay the Credit Agreement at any time subject to a prepayment fee.

The Company's obligations under the Credit Agreement are guaranteed by BTI's existing and subsequently acquired or organized subsidiaries, subject to certain exceptions. Our obligations under the Credit Agreement and the related guarantees thereunder are secured, subject to customary permitted liens and other agreed upon exceptions, by (i) a pledge of all of the equity interests of all of our existing and any future direct subsidiaries, and (ii) a perfected security interest in all of our and the guarantors' tangible and intangible assets (except that the guarantees provided by the BXCL 701 Subsidiaries (defined below) are unsecured).

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. We must also comply with certain financial covenants, including (i) maintenance of cash or permitted cash equivalent investments in accounts controlled by OFA for the Lenders, of at least (a) $15,000 from the Effective Date until the date on which the second tranche of loans are funded (the "Step-Up Date") and (b) $20,000 from and after the Step-Up Date, provided, in the case of (a) and (b), that following any Permitted BXCL701 Release Event (as defined below), such amount will increase by $12,500, and following such time as unaffiliated third parties hold ownership of at least 30% of the equity interests in the BXCL701 Subsidiaries (as defined below), such amount will increase by an additional $5,000 (provided, that such amount will in no event exceed 50% of the aggregate amount of loans outstanding at any time); and (ii) a minimum revenue test, measured quarterly beginning with our fiscal quarter ending on December 31, 2023, that requires our and our subsidiaries' consolidated net revenue for the six consecutive month period ending on the last day of each such fiscal quarter to not be less than a minimum revenue amount specified in the Credit Agreement. Our failure to comply with the financial covenants will result in an event of default, subject to certain cure rights with respect to the revenue covenant.

Notwithstanding the foregoing, the Credit Agreement permits OnkosXcel (together with OnkosXcel Employee Holdings LLC, a wholly owned subsidiary of BTI, and their respective subsidiaries, the "BXCL701 Subsidiaries") to receive third-party investment or transfer all or substantially all of their assets to an unaffiliated third-party, in each case subject to terms and conditions set forth in the Credit Agreement, including the escrow of certain proceeds received by us and our subsidiaries (other than the BXCL701 Subsidiaries) in respect of these disposition events and, under circumstances set forth in the Credit Agreement, the mandatory prepayment of such escrowed amounts. Our equity interests in the BXCL701 Subsidiaries have been pledged in support of our obligations under the Credit Agreement, and the BXCL701 Subsidiaries have provided direct guarantees of our obligations under the Credit Agreement on an unsecured basis. However, the pledge, guarantee and other obligations of the BXCL701 Subsidiaries under the Credit Agreement will be released upon certain agreed upon events ("Permitted BXCL701 Release Events"), including an initial public offering by the BXCL701 Subsidiaries or the ownership by unaffiliated third parties of at least 20% of the equity interests in the BXCL701 Subsidiaries.

The Credit Agreement contains events of default that are customary for financings of this type relating to, among other things, payment defaults, breach of covenants, breach of representations and warranties, cross default to material indebtedness, bankruptcy-related defaults, judgment defaults, breach of the financial covenants described above, and the occurrence of certain change of control events. In certain circumstances, events of default are subject to customary cure periods. Following an event of default and any applicable cure period, the Lenders will have the right upon notice to terminate any undrawn commitments and may accelerate all amounts outstanding under the Credit Agreement, in addition to other remedies available to them as our secured creditors.

Revenue Interest Financing Agreement

The RIFA provides up to $120,000 in financing in exchange for a capped revenue interest on net sales of IGALMI™, and other future BXCL501 products, if any, that receive regulatory approval for sale. The financing under

the RIFA may be drawn by the Company at its option prior to December 31, 2024, subject to satisfaction of certain conditions, including certain regulatory, patent and financial milestones.

Under the terms of the RIFA, the Purchasers will receive tiered revenue interest payments on U.S. net sales of IGALMI™, and other future BXCL501 products, if any, that receive regulatory approval for sale, equal to a royalty ranging from 0.375% to 7.750% of net sales of IGALMI™, and other future BXCL501 products, if any, approved for sale in the U.S., subject to a hard cap equal to 1.75x the total amount funded. In addition, if the conditions to the second tranche of the financing provided under the RIFA have been met, once payments equal to the hard cap have been received by the Purchasers, the Company will be required to make revenue interest payments equal to a flat 0.375% royalty on U.S. net sales of IGALMI™, and other future BXCL501 products, if any, that receive regulatory approval for sale, through and including March 31, 2036 (the "Tail Royalty"). The Company is also required to make certain additional payments to the Purchasers from time to time to ensure that the aggregate amount of payments received by the Purchasers under the RIFA is at least equal to certain agreed upon minimum levels as of certain specified dates, subject to terms and conditions set forth in the RIFA. Revenue interest payments due under the RIFA are payable quarterly based on net sales.

Any time after the initial funding of the RIFA, BTI has the right (the "BTI Call Option"), but not the obligation, to buy out the Purchasers' interests in the revenue interest payments at an agreed upon repurchase price. The BTI Call Option can be exercised in year one, two, three and thereafter at a multiple of the Purchasers invested capital of 1.225x, 1.375x, 1.525x and 2.25x, respectively. The Purchasers will not be entitled to any Tail Royalty if the BTI Call Option is exercised before the third anniversary of the Effective Date.

The Company's obligations under the RIFA are secured, subject to customary permitted liens and other agreed upon exceptions and subject to an intercreditor agreement between OFA for the Credit Agreement and RIFA, by a perfected security interest in (i) accounts receivable arising from net sales of BXCL501 products in the U.S. and one or more segregated bank accounts maintained for the purpose of receiving payments in respect of such accounts receivable, (ii) intellectual property that is claiming or covering BXCL501 itself or any method of using, making or manufacturing BXCL501 and (iii) regulatory approvals, clinical data, and all other assets that underlie BXCL501.

The RIFA contains customary representations and warranties and certain restrictions on the Company's ability to incur indebtedness and grant liens on intellectual property related to BXCL501. In addition, the RIFA provides that if certain events occur, including certain bankruptcy events, failure to make payments, a change of control, an out-license or sale of all of the rights in and to BXCL501 in the U.S., in each case except a permitted licensing transaction (as defined in the RIFA) and, subject to applicable cure periods, material breach of the covenants in the RIFA, OFA, at the direction of the Purchasers, may require the Company to repurchase the Purchasers' interests in the revenue interest payments at an agreed upon repurchase price.

Tranche A of the RIFA is $30,000 and is available upon FDA approval of BXCL501 for acute treatment of agitation associated with Schizophrenia or Bipolar I or II Disorder, which was obtained by the Company on April 5, 2022.

Tranche B of the RIFA is $45,000 and is available upon satisfaction of certain conditions, including receipt of certain regulatory and patent related milestones and specified minimum net sales of BXCL501 during any consecutive twelve-month period.

Tranche C of the RIFA is $45,000 and is available upon satisfaction of certain conditions, including receipt of certain regulatory and patent related milestones and specified minimum net sales of BXCL501 during any consecutive twelve-month period (as defined in the RIFA). No amounts were funded under the RIFA as of June 30, 2022. See Note 16, *Subsequent Events* for information relating to the draw-down of Tranche A.

Warrants and Equity Investment Right

In connection with the Credit Agreement, on the Effective Date, the Company granted warrants to the Lenders to purchase up to 278 shares of our common stock (the " BTI Warrants") at an exercise price of $20.04 per share, which

represents the arithmetic average of the volume-weighted average price of the Company's common stock on the Nasdaq Capital Market during the 30 trading days preceding the issuance of the BTI Warrants. The BTI Warrants will expire on April 19, 2029, are freely transferable and may be net exercised at the holder's election. In addition, pursuant to the Credit Agreement, the Lenders have the right to purchase shares of the Company's common stock after the Effective Date, so long as borrowings under the Credit Agreement are outstanding, for a purchase price of $5,000 at a price per share equal to a 10% premium to the volume-weighted average price of the common stock over the 30 trading days prior to the Lenders' election to proceed with such equity investment (the "Equity Investment Right"). We entered into a registration rights agreement with the Lenders and filed a registration statement on Form S-3 to register the shares issuable upon exercise of the BTI Warrants and, if issued, the shares related to the Equity Investment Right, for resale. The maximum shares of BTI common stock issuable under the BTI Warrants and Lenders' Equity Investment Right is 5,593.

As part of the Credit Agreement, OnkosXcel, a wholly owned subsidiary of BTI, granted warrants to the Lenders to purchase 175 individual limited liability company units (which number of units is not in thousands; referred to herein as the "OnkosXcel Warrants"). The strike price of the OnkosXcel Warrants is formulaic based on the value of OnkosXcel at the time of exercise and can only be exercised upon occurrence of an equity related liquidity event for OnkosXcel of at least $20,000. The exercise price per unit of the OnkosXcel Warrants will be set upon the earlier of the closing of the next sale (or series of related sales) by OnkosXcel of equity securities of OnkosXcel with aggregate proceeds of not less than $20,000 to unrelated third parties (the "Next Equity Financing") at an exercise price per unit equal to a 10% premium over the price per unit of the equity securities sold by OnkosXcel in such Next Equity Financing or, in the event of a sale of OnkosXcel prior to the Next Equity Financing or an initial public offering constituting the Next Equity Financing, the lesser of (x) 75% of the fair value of the consideration to be paid for a unit upon the consummation of such transaction and (y) 150% of the valuation applicable to the initial profits units issued by OnkosXcel after the closing of the Credit Agreement. The OnkosXcel Warrants are transferable with approval from BTI, which cannot be unreasonably withheld, expire on April 19, 2029, and may be net exercised at the holder's election.

Maturities of long-term debt are as follows:

	June 30, 2022
Remainder of 2022	$ —
2023	$ —
2024	$ —
2025	$ —
2026	$ —
2027	$ 70,000

Interest expense was as follows:

	Three Months Ended June 30,		Six months ended June 30,	
	2022	2021	2022	2021
Interest expense	$ 1,265	$ 16	$ 1,272	$ 23
Accretion of debt discount and amortization of financing costs	321	—	321	—
Total interest expense	$ 1,586	$ 16	$ 1,593	$ 23

Note 11. Derivative Financial Instruments

The Company does not enter into derivative financial instruments for speculative or hedging purposes. Derivative financial instruments recognized and accounted for by BTI are the result of transactions entered into as part of the ongoing operations of the Company.

BTI identified certain freestanding financial instruments and/or embedded features that require separate accounting from the borrowings under the OFA Facilities. This includes the OnkosXcel Warrants and Equity Investment Right held by the Lenders, along with certain put/call options. The OnkosXcel Warrants and Equity Investment Right do not meet certain scope exceptions under ASC 815, primarily because the exercise prices and number of shares of the Company's common stock issuable under the instruments are variable, and the instruments meet the definition of a derivative under ASC 815. Therefore, these instruments are recorded as derivative liabilities in the Consolidated Balance Sheets. The respective derivative liabilities are recorded on the Company`s Consolidated Balance Sheets at their fair value on the date of issuance and are revalued on each balance sheet date until such instruments are settled or expire, with changes in the fair value between reporting periods recorded as other income or expense.

Note 12. Fair Value Measurements

The Company groups its assets and liabilities measured at fair value in three levels based on the nature of the inputs and assumptions used to determine fair value. Refer to Note 3, *Summary of Significant Accounting Policies*, for additional information on the accounting policies related to fair value.

The carrying amounts of cash and accounts payable approximate fair value due to the short-term nature of these instruments. As of June 30, 2022 and December 31, 2021, the Company had $188,798 and $228,584, respectively, primarily in U.S. government cash equivalent instruments (included in cash and cash equivalents) which was valued based on Level 1 inputs. There were no transfers between levels within the hierarchy during the six months ended June 30, 2022 and the year ended December 31, 2021.

Derivative liabilities measured at fair value on a recurring basis are summarized below.

	Six months ended June 30, 2022				
	Fair Value	Level 1	Level 2	Level 3	Total
Derivative liability - Equity Investment Right	$ 1,340	$ —	$ —	$ 1,340	$ 1,340
Derivative liability - OnkosXcel Warrants	614	—	—	614	614
Total derivative liabilities	$ 1,954	$ —	$ —	$ 1,954	$ 1,954

Derivative liabilities are comprised of the OnkosXcel Warrants and Equity Investment Right held by the Lenders. The fair value of the derivative liabilities was determined using Monte Carlo simulation models for the Equity Investment Right, and Binomial Option Pricing and Distribution models for the OnkosXcel Warrants.

The following table presents changes in Level 3 liabilities measured at fair value for the six months ended June 30, 2022. Both observable and unobservable inputs were used to determine the fair value of positions that the Company has classified within the Level 3 category.

	Derivative liabilities
Balance - December 31, 2021	$ —
Addition of derivative liabilities	1,954
Change in fair value	—
Balance - June 30, 2022	$ 1,954

The Level 3 balances comprised derivative liabilities related to the OnkosXcel Warrants and Equity Investment Right. BTI executed the Credit Agreement with the Lenders on April 19, 2022. The day one fair value of the derivative liabilities approximates their fair value at June 30, 2022. Consequently, no change in fair value was reported in the Consolidated Balance Sheets or Consolidated Statements of Operations as of and for the six months ended June 30, 2022, respectively.

Inputs to the Level 3 estimated fair value for the Equity Investment Right are as follows:

	Equity Investment Right
Strike price relative to volume weighted 30-day average	110 %
Volatility (annual)	95 %
Probability of exercise	95 %
Time period	7 years

In estimating the fair value of the derivative liability related to the OnkosXcel Warrants, inputs included third-party fair value estimates of OnkosXcel limited liability company units along with the volatility of those units (which was set at 100% based on the historical volatility of the Company's stock, along with a peer group of comparable publicly traded companies), and the timing and probability of the relevant capital transactions occurring.

The estimated fair value of long-term debt as of June 30, 2022 was $62,604. Both observable and unobservable inputs were used to determine the fair value of long-term debt, which was classified within the Level 3 category. The fair value of the long-term debt was determined using the Black-Derman Toy Model, Binomial Option Pricing and present value calculations, with inputs related to market spot interest rates, a calibrated discount rate of 13.2% and historical volatility of the five year U.S. Treasury note plus a spread adjustment for credit worthiness.

The fair value of the BTI warrants, which is a non-recuring fair value, was determined as of the date of issuance using a Black-Scholes pricing model and the fair value of $3,245 was recorded as a component of stockholders' equity in additional-paid-in-capital in the Consolidated Balance Sheets, with the offset recorded as a discount on the amounts funded under the OFA Facilities. This non-recurring measurement is classified as a Level 3 within the fair value hierarchy since it is based on external valuation models whose inputs include market interest rates, present value calculations and stock price volatilities; the inputs used were a strike price of $20.04, the Company's stock price of $14.93, volatility of 95%, term of 7 years and risk-free rate of 2.95%.

Note 13. Stock-Based Compensation

2017 Equity Incentive Plan

The Company's 2017 Plan became effective in August 2017. Following the effective date of the Company's 2020 Plan (as defined below), the Company ceased granting awards under the 2017 Plan, however, the terms and conditions of the 2017 Plan continue to govern any outstanding awards granted thereunder.

2020 Incentive Award Plan

The Company's 2020 Plan was approved and became effective at the Company's 2020 annual meeting of stockholders on May 20, 2020, and unless earlier terminated by the Board of Directors, will remain in effect until March 26, 2030. The 2020 Plan originally authorized for issuance the sum of (i) 911 shares of the Company's common stock authorized for issuance and (ii) 233 shares of the Company's common stock, which represents the number of shares that remained available for issuance under the 2017 Plan immediately prior to the approval of the 2020 Plan by the Company's stockholders. Any shares of common stock which, immediately prior to the approval of the 2020 Plan by the Company's stockholders, were subject to awards granted under the 2017 Plan that are forfeited or lapse unexercised and are not issued under the 2017 Plan will increase the number of shares of common stock available for grant under the 2020 Plan. In addition, the number of shares available for issuance under the 2020 Plan will increase on the first day of each calendar year, beginning January 1, 2021 and ending on and including January 1, 2030, by a

number of shares equal to the lesser of (A) 4% of the aggregate number of shares of the Company's common stock outstanding on the final day of the immediately preceding calendar year and (B) such smaller number of shares of common stock as determined by the Board of Directors. The shares available for issuance under the 2020 Plan increased by 1,119 shares and 977 shares on January 1, 2022 and 2021, respectively.

Stock-based awards granted under the 2020 Plan have a term of ten years with the vesting schedule determined by the Board of Directors, which is generally four years.

As of June 30, 2022, there were 813 shares available to be granted under the 2020 Plan.

Restricted stock units

The table below summarizes activity relating to RSUs.

	Number of shares
Outstanding as of January 1, 2022	—
Granted	122
Forfeited	(3)
Outstanding as of June 30, 2022	119

In March and May of 2022, the Company granted 97 and 25 time-based RSUs, respectively, to certain employees and consultants. The majority of RSUs granted to employees vest over four years, with 25% vesting at the one-year anniversary of the grant date and the balance vesting ratably over the remaining 12 quarters of the vesting period. The 25 RSUs granted to employees in May 2022 cliff-vest 100% at the one-year anniversary of the grant date. RSUs granted to a third-party consultant vest 50% one each of the first and second anniversaries of the grant date. None of the RSUs had vested as of June 30, 2022. The weighted average grant date fair value per share for the March and May 2022 grants were $15.31 and $10.76, respectively. Unrecognized stock-based compensation expense related to these awards was $1,561 at June 30, 2022. No RSUs were issued and outstanding as of December 31, 2021.

Stock options

A summary of the status of the Company's stock option activity for the six months ended June 30, 2022 is presented below.

	Number of shares		Weighted average exercise price per share
Outstanding as of January 1, 2022	4,000	$	18.89
Granted	1,068	$	15.24
Forfeited	(155)	$	30.25
Cancelled	(78)	$	54.00
Exercised	(38)	$	4.83
Outstanding as of June 30, 2022	4,797	$	17.25
Options vested and exercisable as of June 30, 2022	2,949	$	11.91

As of June 30, 2022, the intrinsic value of options outstanding was $23,676. The intrinsic value for stock options is calculated based on the difference between the exercise prices of the underlying awards and the quoted stock price of the Company's common stock as of the reporting date.

The total intrinsic value of stock options exercised for the six months ended June 30, 2022 and 2021 was $292 and $11,727, respectively. The total intrinsic value of stock options exercisable at June 30, 2022 and 2021 was $23,424 and $58,008, respectively.

The weighted average grant date fair value of options granted during the six months ended June 30, 2022 and 2021 was $11.98 and $32.30, respectively.

The weighted average grant date fair value of options vested at June 30, 2022 was $8.78.

The weighted average remaining contractual life is 6.0 years for options exercisable as of June 30, 2022. The weighted average remaining contractual life is 7.2 years for options outstanding.

Stock-Based Compensation

The fair value of options granted during the six months ended June 30, 2022 and 2021 was estimated using the Black-Scholes pricing model with the following assumptions:

	Six months ended June 30, 2022			Six months ended June 30, 2021		
Expected term	6.08 years	-	6.08 years	5.50 years	-	6.25 years
Expected stock price volatility	92.74 %	-	95.59 %	95.00 %	-	98.00 %
Risk-free rate of interest	2.41 %	-	3.03 %	0.96 %	-	1.22 %
Expected dividend	0.0 %	-	0.0 %	0.0 %	-	0.0 %

In 2021, the Company began using a combination of the historical volatility of publicly traded peer companies and the limited historical information related to the Company's common stock to estimate volatility. The expected term of the employee awards is estimated based on the simplified method, which calculates the expected term based upon the midpoint of the term of the award and the vesting period. The Company uses the simplified method because it does not have sufficient option exercise data to provide a reasonable basis upon which to estimate the expected term. The expected dividend yield is 0% as the Company has no history of paying dividends nor does management expect to pay dividends over the contractual terms of these options. The risk-free interest rates are determined by reference to the U.S. Treasury yield curve in effect at the time of grant, with maturities approximating the expected term of the stock options. The fair value of the underlying common stock is generally determined as the closing price of the Company's common stock on the Nasdaq Capital Market on the grant date, with consideration of whether there is material nonpublic information that could impact that estimated fair value when it is released.

The Company recognized stock-based compensation expense related to awards issued under the 2017 Plan and the 2020 Plan of $4,482 and $6,769 for the three months ended June 30, 2022 and 2021, respectively, and $8,307 and $12,334, for the six months ended June 30, 2022 and 2021, respectively, which were comprised as follows:

	Three Months Ended June 30,		Six months ended June 30,	
	2022	2021	2022	2021
Research and development	$ 1,269	$ 2,173	$ 2,271	$ 4,205
Selling, general and administrative	3,213	4,596	6,036	8,129
Total	$ 4,482	$ 6,769	$ 8,307	$ 12,334

Unrecognized compensation expense related to unvested stock option awards as of June 30, 2022 was $21,436 and will be recognized over the remaining vesting periods of the underlying awards. The weighted-average period over which such compensation is expected to be recognized is 1.7 years.

2020 Employee Stock Purchase Plan

The Company's 2020 Employee Stock Purchase Plan (the "ESPP") was also approved and became effective at the Company's 2020 annual meeting of stockholders on May 20, 2020. The ESPP is designed to assist eligible employees of the Company with the opportunity to purchase the Company's common stock at a discount through accumulated payroll deductions during successive offering periods. The aggregate number of shares that may be issued pursuant to rights granted under the ESPP is 100 shares of common stock. In addition, the number of shares available for issuance under the ESPP will increase on the first day of each calendar year, beginning on January 1, 2021 and ending on and including January 1, 2030, by a number of shares of common stock equal to the lesser of (a) 1% of the shares outstanding on the final day of the immediately preceding calendar year and (b) such smaller number of shares as determined by the Board of Directors. The number of shares that may be issued or transferred pursuant to rights granted under the component of the ESPP that is intended to qualify for favorable U.S. federal tax treatment under Section 423 of the Internal Revenue Code (the "Section 423 Component") shall not exceed 500 shares. The purchase price will be determined by the administrator of the ESPP and, for purposes of the Section 423 Component, shall not be less than 85% of the fair value of a share on the first trading day or on the last trading day of the applicable offering period, whichever is lower. The shares available for issuance under the 2020 ESPP increased by 156 shares and 244 shares on January 1, 2022 and 2021, respectively. To date, no shares have been sold under the ESPP.

Note 14. Leases

BTI leases office space for its corporate headquarters at 555 Long Wharf Drive, New Haven, Connecticut (the "HQ Lease") under an operating lease. The HQ Lease was effective in February 2019, was subject to an amendment for additional office space in August 2020 and expires in February 2026. The Company has an option to renew the HQ Lease for one additional five-year term at 95% of the then-prevailing market rates but not less than the rental rate at the end of the initial lease term. Payments under the HQ Lease are fixed.

The Company also leases equipment such as copiers and information technology equipment.

The future minimum annual lease payments under operating leases, as of June 30, 2022, are as follows:

Year ending December 31,	Amount
Remainder of 2022	$ 182
2023	372
2024	381
2025	391
2026	65
Thereafter	—
Total lease payments	$ 1,391
Less imputed interest	(136)
Total lease liability	$ 1,255
Less current portion of lease liability	(306)
Long-term portion of operating lease liability	$ 949

The current portion of the Company's operating lease liability of $306, as of June 30, 2022, is included in other current liabilities on the Consolidated Balance Sheets.

The Company recorded lease expense of $107 and $85 related to its operating lease ROU asset for the three months ended June 30, 2022 and 2021, respectively, and recorded lease expense of $204 and $194 related to its operating lease ROU asset for the six months ended June 30, 2022 and 2021, respectively.

Lease renewal options are not included in the ROU asset.

Note 15. Commitments and Contingencies

From time to time, in the ordinary course of business, the Company may be subject to litigation and regulatory examinations as well as information gathering requests, inquiries and/or investigations. The Company is not currently subject to any matters where it believes there is a reasonable possibility that a material loss may be incurred. As of June 30, 2022, there were no matters which would have a material impact on the Company's financial results.

In addition, on April 1, 2022, the Company signed a commercial supply agreement with ARx, LLC ("ARx"), whereby ARx agreed to manufacture, and supply Dex product related to IGALMI™ and BXCL501. The commercial supply agreement contemplates specified minimum annual payments, which increase in intervals at specified points in time during the term of the agreement.

Note 16. Subsequent Events

On July 8, 2022, the Company drew down the initial $30,000 Tranche A funding under the RIFA portion of the OFA Facilities discussed previously herein under Note 10, *Debt and Credit Facilities.*

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

You should read the following discussion and analysis of our financial condition and results of operations together with our unaudited consolidated financial statements and related notes appearing elsewhere in this report and the audited financial statements and related notes contained in our Annual Report on Form 10-K for the year ended December 31, 2021. In addition to historical information, this discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. Our actual results may differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to these differences include, without limitation, those discussed in this Management's Discussion and Analysis of Financial Condition and Results of Operations, those listed under "Summary Risk Factors," and those discussed in the section titled "Risk Factors" included in Part II, Item 1A. of this report. All dollar amounts in the below Management's Discussion and Analysis of Financial Condition and Results of Operations are presented in U.S. dollars, and all dollar amounts are presented in thousands, unless otherwise noted or the context otherwise provides. All share amounts are also presented in thousands, unless otherwise noted.

Overview

BioXcel Therapeutics, Inc. ("BTI" or the "Company") is a commercial stage biopharmaceutical company utilizing artificial intelligence ("AI") approaches to develop transformative medicines in neuroscience and immuno-oncology. We are focused on utilizing cutting-edge technology and innovative research to develop high-value therapeutics aimed at transforming patients' lives. We employ a unique AI platform to reduce therapeutic development costs and potentially accelerate timelines while aiming to increase the possibility of success. Our approach leverages existing approved drugs and/or clinically evaluated product candidates together with big data and proprietary machine learning algorithms to identify new therapeutic indices. We believe this differentiated approach has the potential to reduce the expense and time associated with drug development in diseases with substantial unmet medical needs.

Our most advanced clinical development program is BXCL501, an investigational proprietary, orally dissolving, thin film formulation of dexmedetomidine ("Dex") for the treatment of agitation associated with psychiatric and neurological disorders.

On April 6, 2022, we announced that the United States of America ("U.S.") Food and Drug Administration ("FDA") had approved IGALMI™ (Dex sublingual film) for the acute treatment of agitation associated with schizophrenia or bipolar I or II disorder in adults. IGALMI™ is approved to be self-administrated by patients under the supervision of a healthcare provider. We deployed the first phase of our sales team for high priority targets in May 2022. Furthermore, on July 6, 2022, we announced that IGALMI™, was available in doses of 120 and 180 microgram ("mcg") through the Company's third-party logistics provider and was available for order through wholesalers.

We continue to conduct clinical trials evaluating BXCL501 for the acute treatment of agitation in Alzheimer's disease patients, and for adjunctive treatment of patients with Major Depressive Disorder ("MDD"). We are also planning clinical trials for at-home use for agitation associated with bipolar disorders and schizophrenia.

Our advanced oncology asset, BXCL701, is an investigational orally administered systemic innate immune activator for the treatment of a rare form of prostate cancer and advanced solid tumors that are refractory or treatment naïve to checkpoint inhibitors.

The novel coronavirus disease ("COVID-19") pandemic and government measures taken in response have significantly impacted, both directly and indirectly, businesses and commerce, as worker shortages have occurred; supply chains have been disrupted; facilities and production have been suspended; and demand for certain goods and services spiked, while demand for other goods and services have fallen.

Since the onset of the COVID-19 pandemic, we have taken steps in line with guidance from the U.S. Centers for Disease Control and Prevention and the State of Connecticut to protect the health and safety of our employees and community. We have instituted a return-to-the-office policy and continue to evaluate that policy.

We also continue to work closely with our clinical sites to monitor the potential impact of the evolving COVID-19 pandemic and the spread of its variants. To date, we have not experienced any significant delays in any of our ongoing or planned clinical trials, except for occasional COVID-19 related disruptions to our TRANQUILITY II trial. However, this could change rapidly.

Commercial Progress

We officially launched IGALMI™ in the trade as of July 1, 2022, with all three major wholesalers able to intake and process orders for our hospital customers. We completed the first phase of commercial build-out and deployment of sales teams in the high priority targets, including Integrated Delivery Networks (“IDNs”). We continue to expand our commercial and medical field footprint in other key territories during the second half of 2022 in tandem with market access. This sales team is highly experienced, averaging over 21 years of industry experience (14 in the hospital setting), eight product launches and over six years’ experience in Central Nervous System disorders. The team has made significant progress penetrating their assigned target hospitals, identifying key institution stakeholders, communicating IGALMI’s™ value proposition and assessing the Pharmacy & Therapeutics (“P&T”) process, which is the process used to determine the medications that will appear on a hospital drug formulary.

The Market Access team has also made good progress with Group Purchasing Organizations (“GPOs”) since May. We have been in discussions with all three major GPOs and are in varying stages of negotiation with each. The team has also executed an agreement with the U.S. Centers for Medicare & Medicaid Services (“CMS”), the federal agency that administers the Medicaid Drug Rebate Program ("MDRP") and Medicare programs, which will allow state hospitals to access IGALMI™ over time, and initiated meetings with high value IDNs that will solicit input from member hospitals to help guide their decisions.

We recently initiated peer-to-peer educational programs, with our first wave of trained healthcare personnel speakers now deployed for regional live and virtual programs. We expect field-based programs to ramp up over the second half of 2022 to complement the efforts of our field sales efforts to facilitate interest in IGALMI™ for hospital formulary adoption and utilization. Additionally, branded digital media assets have been launched in conjunction with the trade availability, driving over 100,000 website visits and engagement.

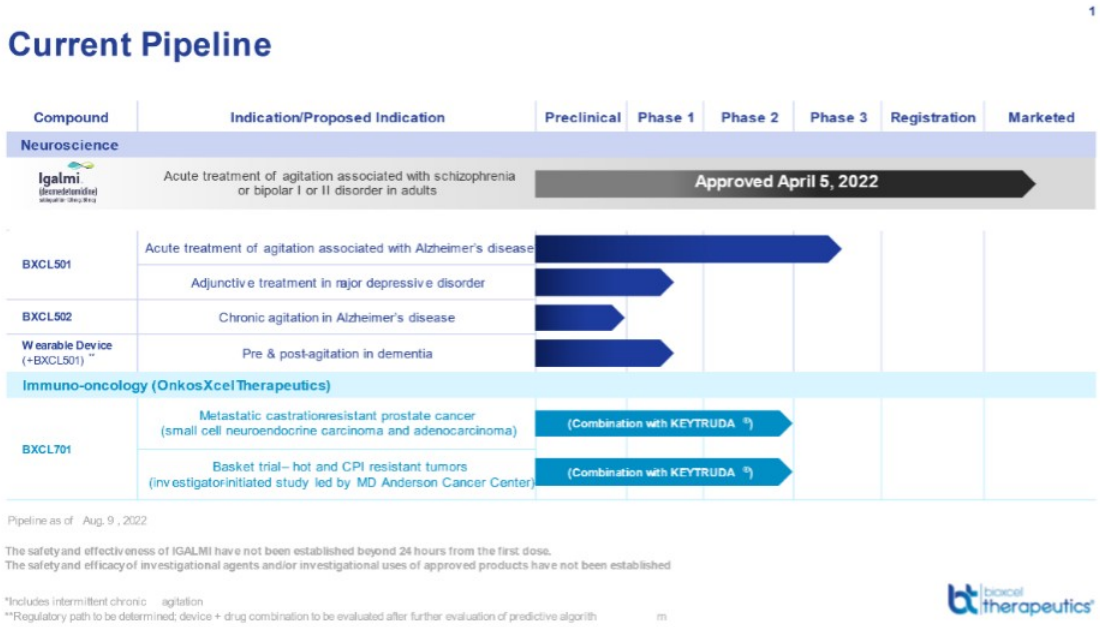
On April 1, 2022, the Company signed a commercial supply agreement with ARx, LLC (“ARx”), whereby ARx agreed to manufacture, and supply Dex product related to IGALMI™ and BXCL501. The supply agreement has an initial term of 10 years and can be extended for successive one-year periods, subject to BXCL501 still being marketed or sold. The supply agreement can be canceled upon mutual agreement, for cause or upon certain conditions being met, including BXCL501 no longer being marketed or sold by or on behalf of BTI.

Strategic Financing

As disclosed further under “Liquidity and Capital Resources” below, on April 19, 2022 (the “Effective Date”), we entered into two strategic financing agreements; a Credit Agreement and Guaranty (the “Credit Agreement”) 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 (the “Lenders”), and Oaktree Fund Administration LLC (“OFA”) as administrative agent, and a Revenue Interest Financing Agreement (the “RIFA”; and together with the Credit Agreement, the “OFA Facilities”) by and among the Company, the purchasers party thereto (the “Purchasers”) and OFA as administrative agent. Under the OFA Facilities, the Lenders and the Purchasers have agreed to, in the aggregate between the two OFA Facilities, provide up to $260,000 in gross funding to support the Company’s commercial activities of IGALMI™ sublingual film. In addition, the OFA Facilities are intended to support the expansion of clinical development efforts of BXCL501, which includes a pivotal Phase 3 program for the acute treatment of agitation in patients with Alzheimer’s disease, and for general corporate purposes. With the FDA approval of IGALMI™ we met the conditions precedent for the first tranche of both the Credit Agreement and RIFA. We drew $70,000 under the Credit Agreement on April 28, 2022 and $30,000 under the RIFA on July 8, 2022.

Our Clinical Programs

The following is a summary of the status of our clinical development programs as of the date of this Quarterly Report on Form 10-Q:



BXCL501 Neuroscience Program

In indications other than approved by the FDA as IGALMI™, BXCL501 remains an investigational, proprietary, orally dissolving, thin film formulation of Dex, a selective alpha-2a receptor agonist, targeting symptoms from stress-related behaviors such as agitation. BXCL501 is our most advanced neuroscience clinical program, developed or being developed for the acute treatment of agitation related to schizophrenia, bipolar disorders for at home use and Alzheimer's disease, as well as an adjunctive treatment for MDD in conjunction with the use of Selective Serotonin Reuptake Inhibitors ("SSRI") or Serotonin Norepinephrine Reuptake Inhibitors alone ("SNRI").

As a selective adrenergic agent with a sublingual or buccal route of administration, BXCL501 is designed to be easily administered and has shown a rapid onset of action in multiple clinical trials, including clinical trials studying patients with schizophrenia, bipolar disorders and Alzheimer's disease. We believe results from these studies suggest that BXCL501 has the potential to generate a calming effect without producing excessive sedation. We also believe BXCL501 is highly differentiated from antipsychotics, which often produce unwanted side effects such as excessive sedation or extra pyramidal motor effects, currently used as a standard of care to treat agitation. Managing patient agitation in neuropsychiatric and neurodegenerative disorders represents a significant challenge for physicians and caregivers. We believe BXCL501 has the potential to address these challenges while providing an efficient treatment regimen for patients.

BXCL501 Clinical Trials

TRANQUILITY Program

The TRANQUILITY I study of agitation in dementia concluded with a total of four sites enrolling 46 subjects in Part B testing the 40mcg dose versus placebo. Topline data were reviewed with respect to efficacy, safety and

tolerability. The purpose of enrolling this additional cohort was to gather additional evidence supporting dose selection and statistical powering of multiple-site Phase 3 pivotal trials. All patients were able to take the film themselves and properly place it. There were no serious adverse events ("SAEs") related to the drug, and no falls, loss of consciousness or syncopal events reported. There were no local tolerability issues. The adverse events ("AEs") observed for 40mcg were consistent with those previously observed for 30mcg, 60mcg and placebo doses. As expected, the incidence of individual and categorical AEs for the 40mcg dose were lower than the 60mcg group, and similar to the 30mcg dose group.

Efficacy was measured by the change from pre-dose baseline Positive and Negative Syndrome Scale Excitatory Component ("PEC") total score at two hours, the same primary endpoint utilized in prior pivotal trials of BXCL501. The 40mcg dose showed statistically significant reductions in PEC total score at two hours and demonstrated statistically significant separation from placebo as early as one hour. The magnitude of change in PEC total score was greater for the 40mcg dose than that of 30mcg and somewhat less than the 60mcg dose in previous cohorts. Overall, we believe the 40mcg data support continued evaluation of both 40 and 60mcg doses in Phase 3 pivotal trials.

We believe that, taken as a whole, these data support the initiation of pivotal trials evaluating patients with acute agitation associated with possible Alzheimer's dementia.

On December 15, 2021, after our initial Breakthrough Therapy designation meetings with FDA, we announced the initiation of our program to evaluate BXCL501 for the treatment of acute agitation associated with dementia in Alzheimer's patients. The program's two studies, TRANQUILITY II and TRANQUILITY III, are designed to evaluate the safety and efficacy of BXCL501 in adults 65 years and older across the range of illness including mild, moderate and severe illness in assisted living or residential facilities and nursing homes. Patient enrollment is currently underway for TRANQUILITY II.

- The program consists of two randomized, double-blind placebo-controlled, adaptive, parallel group pivotal trials, TRANQUILITY II and TRANQUILITY III.

- Each study will enroll approximately 150 dementia patients 65 years and older. Patients will self-administer 40mcg or 60mcg of BXCL501 or placebo whenever agitation episodes may occur.

- TRANQUILITY II will enroll patients with mild to moderately severe dementia in assisted living or residential care facilities who generally require minimal assistance with activities of daily living. On May 3, 2022, we announced the first patient had been dosed in this study and patient enrollment has been progressing.

- TRANQUILITY III will enroll patients with moderate to severe dementia who require moderate or greater assistance with their activities of daily living.

- Despite COVID outbreaks amongst residents and staff at elderly care facilities, access to patients for research has not been overly hampered. TRANQUILITY II screening and enrollment have been continuing at a steady rate with occasional disruptions due to COVID-19. However, this could rapidly change.

- We currently anticipate top line data from TRANQUILITY II in the first half of 2023 and expect to begin TRANQUILITY III enrollment in the second half of 2022.

- The studies are designed to assess agitation as measured by the changes from baseline in the PEC total score and total Pittsburgh Agitation Scale scores. For both studies, the primary efficacy endpoint will be the change in PEC total score from baseline measured at two hours after the initial dose.

- Patients who complete TRANQUILITY II or TRANQUILITY III will be eligible to enroll in an open label, 52-week safety study designed to describe the safety and efficacy of BXCL501 in continued use.

At-Home Setting

We met with the FDA in July 2022 to discuss the design of a registrational study to support potential expansion of BXCL501 for at-home use for the acute treatment of agitation related to schizophrenia and bipolar disorders. We have alignment with the FDA on key design features with respect to our SERENITY III study which will be a two-part study. The first part is comparable to the pivotal SERENITY I and II studies. Using similar inclusion and exclusion criterion under well-controlled in-patient setting, acutely agitated patients with schizophrenia or bipolar disorders will be randomized to self-administer 60mcg or placebo in a double-blind placebo-controlled trial. The primary endpoint will be efficacy as measured by the PEC Total score change from baseline at two hours post-dose. The secondary objective will be safety and tolerability. The primary objective of the second part of the study is to assess the safety of a 60mcg dose when self-administered in an at-home setting. Patients with schizophrenia or bipolar disorder and a history of agitation will be randomized to self-administer 60mcg of BXCL501, or placebo, when they may experience an episode of agitation in an at-home setting over a period of two months. Investigators and sites for SERENITY III will be similar to SERENITY I and II trials.

Major Depressive Disorder ("MDD")

We recently expanded our development pipeline to evaluate BXCL501 as an adjunctive treatment for MDD. The initial clinical study in this program is a double-blind, placebo-controlled, multiple ascending dose trial to evaluate the safety and tolerability of daily doses of BXCL501 in healthy volunteers. This trial is currently underway, and we expect to report top-line results in the first half of 2023. Two dosing cohorts of healthy adult volunteers have been tested; one with 30mcg and a second cohort receiving 60mcg (or placebo) daily for seven days without untoward effects. Dose escalation is progressing with the next cohort to receive 80mcg. Additional dose cohorts are planned to characterize safety and tolerability, as well as determine the range of potential doses administered daily morning and nightly (twice daily or BID dose schedules). We have alignment with the FDA on key design features as to our overall MDD development plans with the results of this multiple ascending dose trial informing dose selection for a proof-of-concept Phase 2 trial in MDD patients. The Phase 2 proof of concept study will enroll MDD patients initiating SSRIs or SNRIs as the current standards of care. The Phase 2 trial will be a multicenter double-blinded placebo-controlled trial to evaluate whether concomitant daily use of BXCL501provides a more rapid initial clinical antidepressant response than placebo when initiating SSRIs or SNRIs. All patients will be initiating standard of care antidepressant treatment with oral SSRI or SNRI for MDD. Subjects will be randomized to receive daily BXCL501 or matching placebo, with efficacy measures, as well as safety and tolerability, monitored periodically over the treatment period.

Pediatric Study

In June 2021, we initiated a global clinical trial designed to evaluate the safety and efficacy of BXCL501 in the acute treatment of agitation associated with pediatric schizophrenia and bipolar I or II disorder, in part to fulfill pediatric study requirements agreed to with the FDA in connection with IGALMI's™ approval. The trial protocol has been reviewed by the FDA, as well as by the European Medicines Agency ("EMA") to fulfill potential commitments to study the effects of BXCL501 in pediatric patients ages 13-17 with schizophrenia and ages 10-17 with bipolar I or II disorder. The multisite double-blind placebo controlled parallel group trial will enroll patients with schizophrenia, schizoaffective disorder, bipolar I and bipolar II disorder. Similar to our registration trials in schizophrenia and bipolar disorder, (SERENITY I and II), the primary endpoint is the change from baseline PEC total score at two hours. The trial has been initiated in the U.S. and patients are currently enrolling in multiple sites. Clinical trial authorizations and

ethics committee approvals have been obtained in Europe and we continue to work towards enrolling pediatric patients in Europe.

Additional Neuroscience Opportunities

BXCL501 Pipeline Opportunities for Franchise Expansion

Given the differentiated design of BXCL501 and its selective mechanism of action, we believe BXCL501 has the potential for broad applicability across several indications where agitation is a symptom of a condition or underlying disease.

As announced on August 1, 2022, recently, the National Institute on Drug Abuse awarded a grant to Columbia University to fund clinical testing of BXCL501 as a potential treatment for opioid withdrawal. The Company will supply the drug product for the conduct of this study.

In December 2020, the VA Connecticut Healthcare System and Yale University Medical School were awarded a grant by the U.S. Department of Defense's Congressionally Directed Medical Research Programs to evaluate BXCL501 in patients with post-traumatic stress disorder who suffer from alcohol use disorder ("AUD"). The Company is providing BXCL501 for studies that will evaluate whether BXCL501 has the potential to treat AUD in this patient population.

We are currently conducting studies designed to develop algorithms for wearable technologies that are designed to detect the early signs of agitation. Feasibility studies demonstrated that patients were able to wear these devices and that these devices were able to transmit data to our service vendor. The goal of this program is to establish a predictive algorithm that would allow caregivers to treat patients before they become highly agitated.

Geographic Focus (Non-U.S. Strategy)

Given the significant near-term U.S. market opportunities the Company has available by developing BXCL501 for bipolar I and II and schizophrenia patients in the at-home setting, agitation associated with Alzheimer's disease and as an adjunctive treatment for MDD, we have made the strategic choice to prioritize resources to execute on U.S. strategy over international. As a result, we have chosen not to file a marketing authorization application at this time. We intend to pursue a well-timed geographic expansion at the most appropriate and opportune time.

BXCL502 Development

We recently identified a second neuropsychiatric drug candidate, BXCL502, through our AI-based platform. We plan to evaluate BXCL502 initially as a monotherapy and possibly as a combination with BXCL501 for the chronic treatment of agitation in patients with dementia. The active pharmaceutical ingredient ("API") underlying BXCL502 is designed to affect serotonergic signaling in the brain. Our preclinical data suggests BXCL502 has potential to treat stress-related neuropsychiatric symptoms in dementia. In previously published third party clinical trial data, daily administration of the API of BXCL502 demonstrated improvement in behaviors using a well-established, clinically validated symptom scale. Formulation and clinical development planning are currently underway with BXCL502.

Other Product Candidates Leveraging AI-Platform

We are targeting neuropsychiatric disorders with high unmet medical needs. Our focus is on treating stress-related symptoms, such as agitation, that are responsible for increased levels of healthcare burden. We are also using AI approaches and machine learning to identify new candidates for rare neurological diseases.

We utilize proprietary algorithms to identify associated mechanisms with existing pharmacology to test whether these agents can improve the disease profile in the animal model either through disease modification or symptomatic manner. The agents identified must be those we believe can enter the clinic with the potential for an efficient development path (similar to BXCL501).

OnkosXcel Therapeutics, Inc.

On April 19, 2022, we announced the formation of a wholly owned subsidiary, OnkosXcel Therapeutics, Inc. (“OnkosXcel”) to develop potentially transformative medicines in oncology. OnkosXcel is focused on the sustained expansion and optimization of our oncology franchise, while providing maximum strategic and financial flexibility. OnkosXcel plans to progress the development of BXCL701. To support the development of BXCL701, we may pursue third party investments in or other strategic options for OnkosXcel.

BXCL701 Immuno-Oncology Program

BXCL701 is a potential first-in-class, oral, small-molecule immunomodulator designed to stimulate both the innate and acquired immune systems by inhibiting dipeptidyl peptidase (“DPP”) 8/9. DPP 8/9 behave as "checkpoints" of pyroptosis and inflammasome activation. We believe that BXCL701, if successfully developed and approved, may establish a differentiated immuno-oncology platform by modulating multiple steps in the cancer immunity cycle and, when combined with checkpoint inhibitors and/or immune activating agents, may be able to convert immuno-resistant (“cold”) tumors to immuno-sensitive (“hot”) tumors.

BXCL701 Clinical Trials

BXCL701 is currently being evaluated in two Phase 2 combination therapy clinical trials for the treatment of metastatic castration resistant prostate cancer (“mCRPC”) in patients with either adenocarcinoma or small cell neuroendocrine carcinoma (“SCNC”) type, and in patients with advanced solid cancers.

SCNC (Orphan Segment of Prostate Cancer) and mCRPC

BXCL701 was previously studied in multiple clinical trials and demonstrated single agent anti-tumor activity in melanoma, an immune-sensitive tumor. Our Phase 2 efficacy portion of the Phase 1b/2 trial evaluating BXCL701 in combination with KEYTRUDA® (pembrolizumab, a Programmed Cell Death Protein 1 (“PD 1”) inhibitor) for SCNC, continues. In addition to the efficacy cohort in SCNC patients, we are also pursuing a separate cohort for adenocarcinoma patients who have failed taxane-based chemotherapy and up to two lines of second-generation androgen pathway blockers. Topline results from the Phase 1b portion of this trial were presented at the American Society of Clinical Oncology Genitourinary Symposium in February 2021. Interim data from the Phase 2 portion of the study were also presented at the European Society for Medical Oncology conference in September 2021. We reported interim data from the Phase 2 portion of this trial for the SCNC cohort and final results for the adenocarcinoma cohort at the American Society of Clinical Oncology (“ASCO”) Genitourinary Cancers Symposium in February 2022.

BXCL701 is being evaluated in combination with KEYTRUDA® (pembrolizumab) in an ongoing Phase 2 trial in mCRPC patients with either adenocarcinoma or SCNC phenotype. The first adenocarcinoma patients were enrolled in the Phase 2b randomized 60-patient expansion of the study.

Basket Trial

BXCL701 is also being evaluated in an open-label Phase 2 basket trial led by MD Anderson. The investigator-led study is designed to evaluate the response rate of orally administered BXCL701, combined with pembrolizumab (KEYTRUDA®), in patients with advanced solid cancers. The study will evaluate patients who are naïve to checkpoint therapy and those who are refractory to checkpoint therapy in two separate cohorts. Interim data were presented at the June 2021 ASCO annual meeting. In the second half of 2022, we expect to present additional interim efficacy data from the trial.

Other Immuno-oncology Indications

In addition to mCRPC and checkpoint inhibitor-refractory tumors, we plan to leverage our existing preclinical and clinical data to identify other cancer types with high unmet medical need that we believe would benefit from BXCL701’s novel potential mechanism of action. We are prioritizing indications where the immunosuppressive

microenvironment is driven by the potential molecular and cellular targets of BXCL701 and where the single agent activity of approved immune checkpoint inhibitors is limited.

We believe that BXCL701, if successfully developed and approved, may provide a platform for combination with immunotherapy modalities that go beyond the currently approved immune checkpoint agents that target the PD 1 / Programmed Cell Death Ligand 1 ("PD L1") axis. Following our proof-of-concept trials, we plan to conduct clinical trials covering a broad range of additional combinations with other immunotherapy agents, including:

- immune checkpoint inhibitors (other than PD 1/PD L1);
- cellular therapies (i.e., chimeric antigen receptor T-cell and natural killer cell therapies);
- therapeutic vaccines; and
- Antibody-dependent cellular cytotoxicity driven monoclonal antibodies.

Other Immuno-Oncology Product Candidates

Our immuno-oncology program is based on utilizing a comprehensive map of all currently known relationships that link immuno-evasion and immuno-activation pathways and targets with thousands of pharmacological agents and tumor indications. This comprehensive map permits us to select a potential pipeline of candidates based on our ability to alter the tumor micro-environment and the potential to address relevant unmet medical needs for various tumor types.

Finally, we continually leverage the Company's AI platform to select and prioritize additional development opportunities to expand the current portfolio and broaden the addressable market for our lead programs through the identification of new indications. This includes exploring additional combination therapy approaches to expand BXCL701's target indications beyond neuroendocrine prostate cancer and castration resistant prostate cancer.

Intellectual Property

Our policy is to protect and enhance the proprietary technologies, inventions, and improvements that are commercially important to our business by filing patent applications in the U.S. and other jurisdictions related to our proprietary technology, inventions, improvements, and product candidates. We also rely on trademarks, trade secrets, and know-how relating to our proprietary technologies and product candidates, continuing innovation, and in-licensing technology and products. This reliance is expected to develop, maintain, and strengthen, our proprietary position for novel therapeutics and novel formulations of existing therapeutics across multiple therapeutic areas. We also plan to rely on data exclusivity, market exclusivity, and patent term extensions when available.

Patent Portfolio

As of July 26, 2022, our patent portfolio included six Patent Cooperation Treaty ("PCT") applications, 18 U.S. utility applications (three of which are allowed), one issued U.S. utility patent, three U.S. provisional patent applications, 109 pending non-U.S. applications, 13 allowed or granted non-U.S. patents (including four in Japan), one design patent application, which is a U.S. design application, and 34 allowed or registered design patents (including two in Japan). U.S. Pat. No. 10,792,246, directed to our proprietary sublingual thin-film formulation of Dex, was issued on October 6, 2020 and has a term set to expire no earlier than 2039. U.S. Patent No. 10,792,246 is now listed in the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations (the "Orange Book"). Three additional U.S. applications in this family are allowed. In the same family, we also have a granted patent in China, an allowed patent in Eurasia, and pending applications in the U.S., China, and other major markets. We expect that patents issuing in this family will expire no earlier than 2039. We have also filed applications in additional patent families that are relevant to BXCL501. We have applications pending in the U.S., Europe and Japan directed to methods of treating insomnia using sublingual Dex. We expect that patents issuing from these applications, if any, will expire no earlier than 2035. We also have applications filed in 16 regions, including the U.S., Europe, Japan, and China, directed to methods of treating

agitation. We expect that patents issuing from these applications, if any, will expire no earlier than 2037. We have one U.S. application and one European application directed to intravenous administration of Dex. We expect that patents issuing from these applications, if any, will expire no earlier than 2039. We also have one PCT application directed to treating mania and another to treating depression. If patents issue from those cases, we expect them to expire no earlier than 2041 and 2042, respectively.

We have multiple patent families filed to protect our BXCL701 program, including our core patent family directed to methods of using BXCL701 with immune checkpoint inhibitors, which is granted in Japan, Australia, Canada, Russia and South Africa, and pending in the U.S., Mexico, the Republic of Korea, the UAE, New Zealand, Russia, Australia, Brazil, China, and Europe. Patents issuing from this family are expected to expire no earlier than 2036.

Additional applications are directed to administering BXCL701 in combinations with various other molecules and dosing regimens. We also have one provisional application directed to novel formulations. We expect that patents issuing from these applications, if any, will expire no earlier than 2039 to 2042.

We have multiple patent families filed to protect our BXCL701 program, including our core patent family directed to methods of using BXCL701 with immune checkpoint inhibitors, which is filed in the U.S. and 14 other countries. Any patents issuing from that family should expire no earlier than 2036. We have a PCT application directed to combination therapies using BXCL701 with immune checkpoint inhibitors and approaches for modifying T-cell activity. We expect any patents issuing from this family to expire no earlier than 2038. Additional PCT and ex-US applications are directed to administering BXCL701 in combinations with various other molecules and dosing regimens. We expect that patents issuing from these applications, if any, will expire no earlier than 2039. Finally, we have multiple provisional applications directed to various dosing regimens and combination therapies. Any patents issuing from those applications are expected to expire between 2039 and 2041 at the earliest.

The term of individual patents depends upon the legal term for patents in the countries in which they are obtained. In most countries, including the U.S., the patent term is 20 years from the earliest filing date of a non-provisional patent application. Depending upon the timing, duration, and specifics of FDA approval of our product candidates, a U.S. patent we own or license may be eligible for limited patent term extension under the Drug Price Competition and Patent Term Restoration Act of 1984 (a.k.a., the “Hatch-Waxman Act”). The act permits a patent restoration term of up to five years as compensation for patent term lost during product development and the drug approval regulatory review process. However, patent term restoration cannot extend the remaining term of a patent beyond a total of 14 years from the product’s approval date. The patent term restoration period is generally one-half the time between the effective date of an investigational new drug (“IND”), and the submission date of a new drug application (“NDA”), plus the time between the submission date of an NDA and the approval of that application. Only one patent applicable to an approved drug is eligible for the extension, and the application for extension must be made prior to patent expiration. The U.S. Patent and Trademark Office (“USPTO”), in consultation with the FDA, reviews and approves the application for any patent term extension or restoration. In the future, we intend to apply for restorations of patent term for some of our currently owned or licensed patents to add patent life beyond their current expiration date, depending on the expected length of clinical trials and other factors involved in the submission of the relevant NDA.

The patent positions of companies such as ours are generally uncertain and involve complex legal and factual questions. No consistent policy regarding the scope of claims allowable in patents in the field of method of use patents or reformulation patents has emerged in the U.S. Relevant patent laws and their interpretation outside of the U.S. are also uncertain. Changes in either the patent laws or their interpretation in the U.S. and other countries may diminish our ability to protect our technology or product candidates and enforce the patent rights that we license, and also could affect the value of such intellectual property. In particular, our ability to stop third parties from making, using, selling, offering to sell, or importing products that infringe our intellectual property will depend in part on our success in obtaining and enforcing patent claims that cover our technology, inventions, and improvements. With respect to both licensed and company owned intellectual property, we cannot guarantee that patents will be granted with respect to any of our pending patent applications or with respect to any patent applications we may file in the future, nor can we be sure that any patents that may be granted to us in the future will be commercially useful in protecting our products, the methods of use, or the manufacture of those products. Patent and other intellectual property rights in the pharmaceutical and biotechnology space are evolving and involve many risks and uncertainties. For example, third parties may have

blocking patents that could be used to prevent us from commercializing our product candidates and practicing our proprietary technology, and the issued patents that we in-license and those that may issue in the future may be challenged, invalidated, or circumvented, which could limit our ability to stop competitors from marketing related products or could limit the term of patent protection that otherwise may exist for our product candidates. In addition, the scope of the rights granted under any issued patents may not provide us with protection or competitive advantages against competitors with similar technology. Furthermore, our competitors may independently develop similar technologies outside the scope of the rights granted under any issued patents that we own or exclusively in license. For these reasons, we may face competition with respect to our product candidates. Moreover, because of the extensive time required for development, testing, and regulatory review of a potential product, it is possible that, before any particular product candidate can be commercialized, any patent protection for such product may expire or remain in force for only a short period following commercialization, thereby reducing the commercial advantage the patent provides.

Basis of Presentation

The Company's consolidated financial statements are prepared in accordance with U.S Generally Accepted Accounting Principles ("GAAP").

Components of Our Results of Operations

Revenues

We have not recognized any revenue since inception.

Operating Costs and Expenses

Research and Development

Our research and development expenses reflect costs incurred for the research and development of our clinical and preclinical product candidates, which includes payments to BioXcel LLC. Research and development expenses primarily consist of salary, benefits and non-cash stock-based compensation for our research and development personnel, costs incurred under agreements with contract research organizations ("CROs") and sites that conduct our non-clinical studies and clinical trials, costs of outside consultants engaged in research and development activities, including their fees, stock-based compensation and travel expenses, the cost of acquiring, developing and manufacturing preclinical and clinical trial materials and lab supplies, and depreciation and other expenses.

We expense research and development costs as incurred.

Our research and development costs by program for the three and six months ended June 30, 2022 and 2021 were as follows:

	Three Months Ended June 30,		Six months ended June 30,	
	2022	2021	2022	2021
Direct external costs				
BXCL501	$ 9,054	$ 3,972	$ 17,570	$ 10,132
BXCL701	1,785	2,996	4,701	5,068
Other research and development programs	671	325	1,223	674
Total direct external costs	$ 11,510	$ 7,293	$ 23,494	$ 15,874
Internal personnel costs	5,564	5,761	11,416	11,419
Sub-total direct costs	$ 17,074	$ 13,054	$ 34,910	$ 27,293
Indirect costs and overhead	960	665	1,811	1,292
Research and development tax credit	(128)	(210)	(128)	(335)
Total research and development expenses	$ 17,906	$ 13,509	$ 36,593	$ 28,250

Selling, General and Administrative

Selling, general and administrative expenses primarily consist of salaries, benefits and non-cash stock-based compensation for our executive and administrative personnel. Selling, general and administrative expenses also include legal expenses to pursue patent protection of our intellectual property, professional fees for audit and tax services and insurance charges.

We expect that our selling, general and administrative expenses will increase as we expand our clinical programs. We also expect increased administrative costs resulting from our clinical trials and the commercialization of IGALMI™ and potential commercialization of our product candidates. We believe that these increases will likely include increased costs for director and officer liability insurance, hiring additional personnel to support future market research and current and future product commercialization efforts and increased fees for outside consultants, attorneys and accountants. We may also incur increased costs to comply with corporate governance, internal controls, investor relations and disclosures and similar requirements applicable to public companies.

Other Income (Expense)

Other income (expense) primarily consists of interest costs associated with the OFA Facilities, which were entered into on April 19, 2022. We expect that other income (expense) will increase in the future, as we meet additional milestones and draw down additional funds under the OFA Facilities.

Recently Issued Accounting Pronouncements

A description of recently issued accounting pronouncements that may potentially impact our financial position and results of operations is set forth in Note 3 to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

Results of Operations

Comparison of the Three Months Ended June 30, 2022 and 2021

Revenues

We have not recognized any revenues since inception.

Research and Development Expenses

Research and development expenses for the three months ended June 30, 2022 and 2021 were as follows:

	Three Months Ended June 30,			
	2022	2021	Change	% Change
Personnel and related costs	$ 4,329	$ 3,588	$ 741	21 %
Non-cash stock-based compensation	1,235	2,173	(938)	(43)%
Professional fees	3,415	2,789	626	22 %
Clinical trials expense	5,927	3,827	2,100	55 %
Chemical, manufacturing and controls cost	2,264	875	1,389	159 %
Travel and other costs	864	467	397	85 %
Research and development tax credit	(128)	(210)	82	39 %
Total research and development expenses	$ 17,906	$ 13,509	$ 4,397	33 %

The overall increase of $4,397 for the three months ended June 30, 2022 was primarily attributable to:

- An increase in clinical trial expenses due to the initiation of the TRANQUILITY study of BXCL501 for the potential treatment of agitation in patients with Alzheimer's disease.

- An increase in personnel costs related to our efforts to enlarge our clinical team as we expanded our clinical trials for the use of BXCL501 for agitation in patients with Alzheimer's disease and MDD. These efforts also contributed to the increase in the chemical, manufacturing and controls ("CMC") costs. CMC costs increased in 2022 compared to 2021 as we produced materials related to our clinical trials of BXCL501 for the treatment of agitation associated with Alzheimer's disease.

- A decrease in non-cash stock-based compensation which was the result of lower grant date fair values due to lower trading prices of the Company's common stock.

- Increased travel and other costs as the Company resumed a more traditional travel schedule and commercially launched IGALMI™.

Following IGALMI's™ approval by the FDA, we capitalize costs related to commercial production of IGALMI™ as inventory and expense those CMC costs related to clinical trials.

The State of Connecticut provides companies with the opportunity to exchange certain research and development credit carryforwards for cash in exchange for foregoing the carryforward of the research and development credit. The program provides for such exchange of the research and development credit at a rate of 65% of the annual research and development credit. The benefit for such exchange is recorded as a reduction of research and development expenses.

Selling, General and Administrative Expenses

Selling, general and administrative expenses for the three months ended June 30, 2022 and 2021 were as follows:

	Three Months Ended June 30,			
	2022	2021	Change	% Change
Personnel and related costs	$ 4,529	$ 2,304	$ 2,225	97 %
Non-cash stock-based compensation	3,247	4,596	(1,349)	(29)%
Professional fees	3,690	2,701	989	37 %
Commercial and marketing	4,719	3,527	1,192	34 %
Insurance	603	552	51	9 %
Travel and other costs	1,594	424	1,170	276 %
Total selling, general and administrative expenses	$ 18,382	$ 14,104	$ 4,278	30 %

The overall increase of $4,278 for the three months ended June 30, 2022 was primarily attributable to:

- An increase in personnel and related costs due to our continuing efforts to expand our teams for the commercial launch of IGALMI™ in the U.S.
- A decrease in non-cash stock-based compensation, which was the result of lower grant date fair values due to lower trading prices of the Company's common stock.
- An increase in commercial and marketing costs due to the commercial launch of IGALMI™ in the U.S.
- Increased travel and other costs as the Company resumed a more traditional travel schedule and commercially launched IGALMI™.
- An increase in professional fees due to the expanding growth of our operations, primarily for corporate legal fees, consulting and recruiting costs related to the commercial launch of IGALMI™ in the U.S., as well as the formation of OnkosXcel.

Other Income (Expense)

Interest expense increased during the period primarily due to borrowings under the OFA Facilities.

Comparison of the Six Months Ended June 30, 2022 and 2021

Revenues

We have not recognized any revenues since inception.

Research and Development Expenses

Research and development expenses for the six months ended June 30, 2022 and 2021 were as follows:

	Six months ended June 30,			
	2022	2021	Change	% Change
Personnel and related costs	$ 9,205	$ 7,214	$ 1,991	28 %
Non-cash stock-based compensation	2,210	4,205	(1,995)	(47)%
Professional fees	7,339	6,540	799	12 %
Clinical trials expense	12,242	7,108	5,134	72 %
Chemical, manufacturing and controls cost	4,204	2,693	1,511	56 %
Travel and other costs	1,521	825	696	84 %
Research and development tax credit	(128)	(335)	207	62 %
Total research and development expenses	$ 36,593	$ 28,250	$ 8,343	30 %

The overall increase of $8,343 for the six months ended June 30, 2022 was primarily attributable to:

- An increase in clinical trial expenses due to the initiation of the TRANQUILITY study of BXCL 501 for the potential treatment of agitation in patients with Alzheimer's disease.
- An increase in personnel costs related to our efforts to enlarge our clinical team as we expanded our clinical trials for the use of BXCL501 for agitation in patients with Alzheimer's disease and MDD. These efforts also contributed to the increase in the CMC costs. CMC costs increased in 2022 compared to 2021 as we produced materials related to our clinical trials of BXCL501 for the treatment of agitation associated with Alzheimer's disease.
- A decrease in non-cash stock-based compensation which was the result of lower grant date fair values due to lower trading prices of the Company's common stock.
- Increased travel and other costs as the Company resumed a more traditional travel schedule and commercially launched IGALMI™.

Selling, General and Administrative Expenses

Selling, general and administrative expenses for the six months ended June 30, 2022 and 2021 were as follows:

	Six months ended June 30,			
	2022	2021	Change	% Change
Personnel and related costs	$ 7,735	$ 4,594	$ 3,141	68 %
Non-cash stock-based compensation	6,097	8,129	(2,032)	(25)%
Professional fees	7,821	5,311	2,510	47 %
Commercial and marketing	6,202	5,928	274	5 %
Insurance	1,173	1,018	155	15 %
Travel and other costs	2,147	762	1,385	182 %
Total selling, general and administrative expenses	$ 31,175	$ 25,742	$ 5,433	21 %

The overall increase of $5,433 for the six months ended June 30, 2022 was primarily attributable to:

- An increase in personnel and related costs due to our continuing efforts to expand our teams for the commercial launch of BXCL501 in the U.S.

- An increase in professional fees due to the expanding growth of our operations, primarily for corporate legal fees and consulting and recruiting costs related to our commercial launch of IGALMI™ in the U.S., as well as the formation of OnkosXcel.

- A decrease in non-cash stock-based compensation, which was the result of lower grant date fair values due to lower trading prices of the Company's common stock.

- Increased travel and other costs as the Company resumed a more traditional travel schedule and commercially launched BXCL501.

Other Income (Expense)

Interest expense increased during the period primarily due to borrowings under the OFA Facilities.

Inflation

Inflation generally affects us by increasing our cost of labor and clinical trial costs. We do not believe that inflation has had a material effect on our results of operations during the periods presented.

Liquidity and Capital Resources

As of June 30, 2022, we had cash and cash equivalents of $233,452, working capital of $224,929 and stockholders' equity of $164,262. Net cash used in operating activities was $65,516 and $42,022 for the six months ended June 30, 2022 and 2021, respectively. We incurred losses of approximately $37,670 and $27,619 for the three months ended June 30, 2022 and 2021, respectively, and losses of approximately $69,142 and $53,995 for the six months ended June 30, 2022 and 2021, respectively. We have not yet generated any revenues and we have not yet achieved profitability. We expect that our research and development and selling, general and administrative expenses will continue to increase and, as a result, we will need to generate significant product revenues to achieve profitability. We believe that our existing cash and cash equivalents as of June 30, 2022, along with borrowings under the OFA Facilities entered into on April 19, 2022 (discussed in more detail below), will enable us to fund our operating expenses and capital expenditure requirements for at least one year from the date of this Quarterly Report on Form 10-Q.

We may obtain additional financing through sales of the Company's equity securities, entering into strategic partnership arrangements and/or short-term borrowings from banks, stockholders or other related parties, if needed, or a combination of any of the foregoing. There are no assurances that we will be successful in obtaining an adequate level of financing as and when needed to finance our operations on terms acceptable to us or at all, particularly in light of the economic downturn and ongoing uncertainty related to the COVID-19 pandemic. If we are unable to secure adequate additional funding as and when needed on acceptable or commercially reasonable terms, we may have to significantly delay, scale back or discontinue the development and commercialization of one or more product candidates. In addition, there are various macro-economic trends affecting the financing markets whose impact on our liquidity and future funding requirements are uncertain as of the filing date of this Quarterly Report on Form 10-Q. We will need substantial additional funding, and if we are unable to raise capital when needed, we could be forced to delay, reduce or eliminate our product development programs or commercialization efforts. See "Risk Factors – Risks Related to Financial Position and Need for Additional Capital - We will need substantial additional funding, and if we are unable to raise capital when needed, we could be forced to delay, reduce or eliminate our product development programs or commercialization efforts" in Part II. Item 1A. of this Quarterly Report on Form 10-Q.

Sources of Liquidity

We have focused our efforts on raising capital and building the products in our pipeline. Since our inception, our operations have been financed primarily from proceeds from the sale of equity securities, including our IPO, private placements of our common stock, registered offerings of our common stock, an Open Market Sale Agreement (the "Sale Agreement") with Jefferies LLC ("Jeffries"), and borrowings under strategic financing arrangements (as

described below). We have not yet established an ongoing source of revenue sufficient to cover our operating costs and will need to do so in future periods.

In June 2021, we sold 3,155 shares of our common stock in a registered offering at a public offering price of $31.70 per share. We received proceeds of $96,971, net of issuance costs of $3,042.

In May 2021, we entered into the Sale Agreement with Jefferies pursuant to which we can offer and sell shares of our common stock, having an aggregate offering price of up to $100,000, from time to time, through an "at the market offering" program under which Jefferies will act as sale agent. We sold 124 shares under the Sale Agreement in June 2021 for proceeds of $4,056, net of issuance costs of $500. We did not sell any shares, and no proceeds were received under the Sale Agreement during the six months ended June 30, 2022.

In April 2022, we entered into the Credit Agreement with OFA as administrative agent, and the Lenders, and the RIFA with OFA as administrative agent, and the Purchasers. Pursuant to the Credit Agreement, the Lenders agreed to loan us up to $135,000 in senior secured term loans. On April 28, 2022, we borrowed the first tranche of $70,000 of loans. The remaining two tranches of the commitments under the Credit Agreement may be borrowed at our option prior to December 31, 2024 as follows:

- $35,000 upon satisfaction of certain conditions, including receipt of certain regulatory and financial milestones; and

- $30,000 upon satisfaction of certain conditions, including specified minimum net sales of the Company attributable to sales of BXCL501 for a trailing twelve consecutive month period.

Pursuant to the RIFA, the Purchasers agreed to provide us with up to $120,000 in financing for our near-term commercial activities of IGALMI™, development and commercialization of BXCL501 and other general corporate purposes. On July 8, 2022, we drew down the first tranche of $30,000 under the RIFA. The remaining commitments under the RIFA may be drawn at our option prior to December 31, 2024 as follows:

- $45,000 payment upon satisfaction of certain conditions, including receipt of certain regulatory and patent related milestones and specified minimum net sales of BXCL501 during any consecutive twelve-month period; and

- $45,000 payment upon satisfaction of certain conditions, including receipt of certain regulatory and patent related milestones and specified minimum net sales of BXCL501 during any consecutive twelve-month period.

In connection with the Credit Agreement, on the Effective Date, we granted to the Lenders certain warrants to purchase up to 278 shares of our common stock, rights to purchase up to $5,000 of our common stock and warrants to purchase up to 175 individual ownership units (i.e., not in thousands) in OnkosXcel.

See Note 10, *Debt and Credit Facilities* in the Notes to Consolidated Financial Statements included in this Quarterly Report on Form 10-Q for additional information relating to the Credit Agreement and RIFA, including certain restrictive and financial covenants thereunder.

Cash Flows

	Six months ended June 30,	
	2022	**2021**
Cash (used in) provided by:		
Operating activities	$ (65,516)	$ (42,022)
Investing activities	$ (139)	$ (416)
Financing activities	$ 66,139	$ 102,376

Operating Activities

Net cash used in operating activities for the six months ended June 30, 2022 was $65,516, which was primarily attributable to our net loss of $69,142, a $1,395 increase in inventory, a $7,072 increase in prepaid expenses, other current assets and other assets, partially offset by $8,307 in non-cash stock-based compensation, as well as a $3,315 increase in accounts payable, accrued expenses and other liabilities.

Net cash used in operating activities for the six months ended June 30, 2021 was $42,022 which was primarily attributable to our net loss of $53,995, partially offset by $12,334 in non-cash stock-based compensation.

Investing Activities

Net cash used in investing activities for the six months ended June 30, 2022 was $139 and was primarily attributable to the purchase of property and equipment.

Net cash used in investing activities for the six months ended June 30, 2021 was $416 and was attributable to the purchase of property and equipment.

Financing Activities

Net cash provided by financing activities for the six months ended June 30, 2022 was $66,139 and was primarily attributable to proceeds received from the OFA Facilities.

Net cash provided by financing activities for the six months ended June 30, 2021 was $102,376 and was attributable to $96,971 in net proceeds from the issuance of common stock in our June 2021 public offering, $4,056 in net proceeds from the sale of common stock in June 2021 under our Sale Agreement and $1,349 in proceeds from the exercise of stock options during the period.

Operating Capital and Capital Expenditure Requirements

We expect to continue to incur significant and increasing operating losses at least for the next several years as we commercialize IGALMI™ and as we expand our clinical trials of and seek marketing approval for BXCL501, BXCL502 and BXCL701, while pursuing development of additional product candidates. We expect to continue to incur net losses in the near term. Our net losses may fluctuate significantly from quarter-to-quarter and year-to-year, depending on the timing of our planned clinical trials and our expenditures on other research and development activities.

We have based our projections of operating capital requirements on assumptions that may prove to be incorrect and we may use all of our available capital resources sooner than we expect. Because of the numerous risks and uncertainties associated with research, development and commercialization of pharmaceutical products, we are unable to estimate the exact amount of our operating capital requirements. We anticipate that our expenses will increase substantially as we:

- continue our clinical development of our product candidates;
- conduct additional research and development with our product candidates;
- seek to identify, acquire, license, develop and commercialize product candidates;
- integrate acquired technologies into a comprehensive regulatory and product development strategy;
- maintain, expand and protect our intellectual property portfolio;
- hire scientific, clinical, quality control and administrative personnel;

- add operational, financial and management information systems and personnel, including personnel to support our drug development and commercial efforts;
- seek regulatory approvals for any product candidates that successfully complete clinical trials;
- fully develop a sales, marketing and distribution infrastructure and scale up external manufacturing capabilities to commercialize IGALMI™ and any product candidates for which we may obtain regulatory approval; and
- continue to operate as a public company.

We believe that our existing cash and cash equivalents as of June 30, 2022, and the borrowings under the OFA Facilities will be sufficient to enable us to fund operating expenses and capital expenditure requirements for at least the next 12 months from the date of the issuance of the consolidated financial statements included in this Quarterly Report on Form 10-Q, including funding our ongoing research and development efforts and commercialization preparation. We expect that we will need to obtain substantial additional funding in order to fund our ongoing operations. To the extent that we raise additional capital through the sale of common stock, convertible securities or other equity securities, the ownership interests of our existing stockholders may be materially diluted and the terms of these securities could include liquidation or other preferences that could adversely affect the rights of our existing stockholders. In addition, debt financing, if available, would result in increased fixed payment obligations and may involve agreements that include restrictive covenants that limit our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends, that could adversely impact our ability to conduct our business. If we are unable to raise capital when needed or on attractive terms, we could be forced to significantly delay, scale back or discontinue the development or commercialization of our product candidates, seek collaborators at an earlier stage than otherwise would be desirable or on terms that are less favorable than might otherwise be available, and relinquish or license, potentially on unfavorable terms, our rights to our product candidates that we otherwise would seek to develop or commercialize ourselves.

Off-Balance Sheet Arrangements

As of June 30, 2022, we did not have any off-balance sheet arrangements as defined under SEC rules.

Other Contractual Obligations and Commitments

We signed the Distribution Agreement with an affiliate of Cardinal Health, Inc. (“Cardinal”) in February 2022, whereby Cardinal agreed to distribute product related to BXCL501 in the U.S. Cardinal will be paid defined fees for its services under the Distribution Agreement, which can be terminated by either party for cause. The Distribution Agreement can also be terminated by BTI without cause, subject to payment of agreed termination fees.

On April 19, 2022, we entered into the Second Amendment to the Second Amended and Restated Separation and Shared Services Agreement pursuant to which the parties agreed to extend the Company’s option to enter into a Collaborative Services Agreement with BioXcel LLC through December 31, 2024, for which the Company has agreed to pay BioXcel LLC $18 per month, prorated for any partial month, as applicable, for the period beginning March 13, 2023 and ending December 31, 2024. In addition, we and BioXcel LLC, a significant stockholder of the Company, entered into the BioXcel Trademark License Agreement, pursuant to which BioXcel LLC granted us a royalty-free license to use the BIOXCEL trademark in connection with marketing, promoting and selling any products and services in the field of neuroscience, for which the Company agreed to pay BioXcel LLC a one-time fee of $135.

In addition, on April 1, 2022, the Company signed a commercial supply agreement with ARx, LLC (“ARx”), whereby ARx agreed to manufacture, and supply Dex product related to IGALMI™ and BXCL501. The commercial supply agreement contemplates specified minimum annual payments, which increase in intervals at specified points in time during the term of the agreement.

Critical Accounting Policies and Estimates

Our critical accounting policies and estimates are described in "Management's Discussion and Analysis of Financial Condition and Results of Operations-Critical Accounting Policies and Estimates" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021. We have reviewed and determined that those critical accounting policies and estimates remain our critical accounting policies and estimates as of and for the six months ended June 30, 2022. No changes were made to our existing critical accounting policies during the period presented outside of the addition of the Inventory, Debt and Detachable Warrants and Derivative Assets and Liabilities policies. Refer to Note 3, *Summary of Significant Accounting Policies* in the Notes to Consolidated Financial Statements elsewhere in this Form 10-Q.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Interest Rate Risk. As of June 30, 2022, we had $233,452 of cash and cash equivalents. Our cash and cash equivalents are primarily held in U.S. Government money market funds. We do not participate in any foreign currency hedging activities and have limited exposure to other derivative financial instruments, primarily resulting from the terms and conditions of the OFA Facilities. We did not recognize any significant exchange rate losses during the six months ended June 30, 2022 and 2021, respectively. The loans under the Credit Agreement bear interest at a fixed annual rate of 10.25%, payable quarterly, and consequently we do not have material interest rate exposure due to our indebtedness.

We do not believe that our cash and cash equivalents have significant risk of default or illiquidity. While we believe our cash and cash equivalents do not contain material market risk, we cannot provide absolute assurance that in the future our investments will not be subject to adverse changes in market value. In addition, we maintain significant amounts of cash at one or more financial institutions that are in excess of federally insured limits.

Capital Market Risk. We currently have no product revenues and depend on funds raised through other sources. One source of funding includes future debt or equity offerings. Our ability to raise funds in this manner depends upon, among other things, capital market forces affecting our stock price, and on the state of the capital markets generally.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer (our principal executive officer and principal financial officer, respectively), evaluated the effectiveness of our disclosure controls and procedures as of June 30, 2022. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the Securities and Exchange Commission (the “SEC”). Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Based on the evaluation of our disclosure controls and procedures as of June 30, 2022, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the three months ended June 30, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

From time to time, we may be subject to litigation and claims arising in the ordinary course of business. We are not currently a party to any material legal proceedings, and we are not aware of any pending or threatened legal proceeding against us that we believe could have a material adverse effect on our business, operating results, cash flows or financial condition.

Item 1A. Risk Factors

You should carefully consider the risks described below, as well as general economic and business risks and the other information in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the fiscal year ended December 31, 2021. The occurrence of any of the events or circumstances described below or other adverse events could have a material adverse effect on our business, results of operations and financial condition and could cause the trading price of our common stock to decline. Additional risks or uncertainties not presently known to us or that we currently deem immaterial may also harm our business.

Risks Related to Financial Position and Need for Additional Capital

We have a limited operating history and have never generated substantial product revenues, which may make it difficult to evaluate the success of our business to date and to assess our future viability.

We were incorporated in March 2017 and our operations to date have been largely focused on staffing our company, raising capital and advancing the development of our product candidates, including conducting clinical and preclinical studies. We have only one product approved for commercial sale, and have limited experience in obtaining marketing approvals, manufacturing products on a commercial scale, and conducting sales and marketing activities necessary for successful commercialization. Consequently, predictions about our future success or viability may not be as accurate as they could be if we had a longer operating history or a history of successfully commercializing products.

We expect our financial condition and operating results to continue to fluctuate from quarter to quarter and year to year due to a variety of factors, many of which are beyond our control. We are transitioning from a company with primarily a research and development focus to a company also capable of undertaking commercial activities. We may encounter unforeseen expenses, difficulties, complications and delays, and may not be successful in such a transition.

We have incurred significant operating losses since inception and anticipate that we will continue to incur substantial operating losses for the foreseeable future and may never achieve or maintain profitability.

Since our inception, we have incurred significant operating losses. Our net loss was $69.1 million and $54.0 million for the six months ended June 30, 2022 and 2021, respectively. As of June 30, 2022, we had stockholders' equity of $164.3 million. We expect to continue to incur significant expenses and increasing operating losses for the foreseeable future. We have only had one product candidate recently approved for marketing in the U.S., none in any other jurisdiction, and may never receive approval beyond the one product approved to date. It could be several years, if ever, before we have a commercialized product that generates significant revenues through sales of IGALMI™ or our product candidates, if approved. As a result, we are uncertain when or if we will achieve profitability and, if so, whether

we will be able to sustain it. The net losses we incur may fluctuate significantly from quarter to quarter and year to year. We anticipate that our expenses will increase substantially as we:

- continue the development of our product candidates;
- conduct preclinical studies and clinical trials for our current product candidates and any future product candidates that we may pursue;
- continue to build our portfolio of product candidates through the acquisition or in-license of additional product candidates or technologies;
- continue to develop, maintain, expand and protect our intellectual property portfolio;
- pursue regulatory approvals for our current and future product candidates that successfully complete clinical trials;
- fully develop a sales, marketing, and distribution infrastructure to commercialize IGALMI™ and any other product candidates for which we may obtain marketing approval;
- hire additional clinical, regulatory, scientific and accounting personnel; and
- incur additional legal, accounting and other expenses in operating as a public company.

To become and remain profitable, we must develop and eventually commercialize one or more products or product candidates with significant market potential. This will require us to be successful in a range of challenging activities, including completing clinical trials of our product candidates, developing commercial scale manufacturing processes, obtaining marketing approval, manufacturing, marketing, and selling IGALMI™ and any current and future product candidates for which we may obtain marketing approval, and satisfying any post-marketing requirements. We may never succeed in any or all of these activities and, even if we do, we may never generate sufficient revenue to achieve profitability.

Although we have obtained FDA approval for IGALMI™, because of the numerous risks and uncertainties associated with product development, we are unable to accurately predict the timing or amount of expenses or when, or if, we will obtain marketing approval to commercialize any additional product candidates. If we are required by the FDA, or other regulatory authorities such as the EMA to perform studies and trials in addition to those currently expected, or if there are any delays in the development, or in the completion of any planned or future preclinical studies or clinical trials of our current or future product candidates, our expenses could increase and profitability could be further delayed.

Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis.

Our failure to become and remain profitable would decrease the value of our Company and could impair our ability to raise capital, maintain our research and development efforts, expand our business or continue our operations. A decline in the value of our company also could cause you to lose all or part of your investment.

We will need substantial additional funding, and if we are unable to raise capital when needed, we could be forced to delay, reduce or eliminate our product development programs or commercialization efforts.

We anticipate that our expenses will increase substantially if and as we continue to develop and conduct clinical trials with respect to our current and any future product candidates; seek to identify and develop additional product candidates; acquire or in-license other product candidates or technologies; seek regulatory approvals for our product candidates that successfully complete clinical trials, if any; establish sales, marketing, distribution and other

commercial infrastructure to support the commercialization of any products for which we may obtain marketing approval; require the manufacture of larger quantities of product candidates for clinical development and, potentially, commercialization; maintain, expand and protect our intellectual property portfolio; hire and retain additional personnel, such as clinical, quality control and scientific personnel; add operational, financial and management information systems and personnel, including personnel to support our product development and help us comply with our obligations as a public company; and add equipment and physical infrastructure to support our research and development programs.

We expect that our cash and cash equivalents as of June 30, 2022, along with additional fundings available under the OFA Facilities, will be sufficient to fund our ongoing research and development efforts and commercialization preparation for at least twelve months from the date of the issuance of the consolidated financial statements included in this Quarterly Report on Form 10-Q. We will be required to expend significant funds to commercialize IGALMI™ in the U.S. and advance the development of BXCL501, BXCL701, BXCL502 and our other product candidates. In addition, while we may seek one or more collaborators for future development of our current product candidates or any future product candidates that we may develop for one or more indications, we may not be able to enter into a collaboration for any of our product candidates for such indications on suitable terms, on a timely basis or at all. In any event, the net proceeds of our prior equity offerings and our existing cash will not be sufficient to fund all of the efforts that we plan to undertake or to fund the completion of development of our product candidates or our other preclinical programs. Accordingly, we will be required to obtain further funding through public or private equity offerings, debt financings, collaborations and licensing arrangements or other sources. Further financing may not be available to us on acceptable terms, or at all. Additionally, market volatility resulting from the COVID-19 pandemic or other factors could also adversely impact our ability to access capital as and when needed. Our failure to raise capital as and when needed would have a negative impact on our financial condition and our ability to pursue our business strategy.

Our estimate as to how long we expect our existing cash to be able to continue to fund our operations is based on assumptions that may prove to be wrong, and we could use our available capital resources sooner than we currently expect. Further, changing circumstances, some of which may be beyond our control, could cause us to consume capital significantly faster than we currently anticipate, and we may need to seek additional funds sooner than planned. Our future funding requirements, both short-term and long-term, will depend on many factors, including:

- the scope, progress, timing, costs, and results of clinical trials of our product candidates;
- our ability to enter into and the terms and timing of any collaborations, licensing agreements or other arrangements;
- the costs, timing and outcome of seeking regulatory approvals;
- the costs of commercialization activities for IGALMI™ and for any of our product candidates that receive marketing approval, to the extent such costs are not the responsibility of any future collaborators, including the costs and timing of establishing product sales, marketing, distribution and manufacturing capabilities;
- our headcount growth and associated costs as we expand our research and development and establish a commercial infrastructure;
- revenue received from commercial sales, if any, of IGALMI™ and our current and future product candidates;
- the costs of preparing, filing and prosecuting patent applications, maintaining and protecting our intellectual property rights and defending against intellectual property related claims;
- the number of future product candidates that we pursue and their development requirements;
- changes in regulatory policies or laws that may affect our operations;

- changes in physician acceptance or medical society recommendations that may affect commercial efforts;
- the costs of acquiring potential new product candidates or technology; and
- the costs of operating as a public company.

We have significant indebtedness and other contractual obligations that could impair our liquidity, restrict our ability to do business and thereby harm our business, results of operations and financial condition. We may not have sufficient cash flow from operations to satisfy our obligations under the OFA Facilities.

As of July 31, 2022, we had aggregate indebtedness of $100.0 million outstanding under the OFA Facilities, comprised of $70.0 million under the Credit Agreement, pursuant to which the Lenders agreed to loan us up to an additional $65.0 million in senior secured term loans, and $30.0 million under the RIFA , pursuant to which the Purchasers agreed to fund an additional $90.0 million upon satisfaction of certain conditions. The RIFA requires us to make tiered revenue interest payments on U.S. net sales of IGALMI™ and any other future BXCL501 products equal to a royalty ranging from 0.375% to 7.750% of net sales of IGALMI™ and any other future BXCL501 products in the U.S, as well as certain additional payments to the Purchasers from time to time, to ensure that the aggregate amount of payments received by the Purchasers under the RIFA are at least equal to certain agreed upon minimum levels as of certain specified dates, subject to terms and conditions set forth in the RIFA.

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

In addition, historically we have relied on debt and equity financings as our primary sources of liquidity. If our future cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay capital expenditures, sell assets, seek additional capital or seek to restructure or refinance our indebtedness. Any refinancing of our indebtedness could be at higher interest rates and may require us to comply with more onerous covenants. These alternative measures may not be successful and may not permit us to meet our scheduled debt service obligations. In the absence of such cash flows and resources, we could face substantial liquidity problems and might be required to sell material assets or operations to attempt to meet our debt service obligations. If we cannot meet our debt service obligations, the holders of our indebtedness may accelerate such indebtedness and, to the extent such indebtedness is secured, foreclose on our assets. In such an event, we may not have sufficient assets to repay all of our indebtedness.

In addition, incurring indebtedness generally requires that a portion of cash flow from operating activities be dedicated to interest and principal payments. Debt service requirements could reduce our ability to use our cash flow to fund operations and capital expenditures, to capitalize on future business opportunities, including additional acquisitions, or to pay dividends or increase dividends. In addition, our indebtedness may reduce our flexibility to operate our business, adjust to changing business conditions, restrict us from making strategic acquisitions or cause us to make non-strategic divestitures or obtain additional financing. Any of these risks could materially adversely affect our business, results of operations or financial condition.

Restrictive covenants in the Credit Agreement and RIFA each place limits on our ability to conduct our business. 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. We must also comply with certain financial covenants under the Credit Agreement that require we maintain a minimum cash liquidity amount of $15 million and future revenue thresholds beginning in with the fourth quarter of 2023. The

RIFA contains customary representations and warranties and certain restrictions on our ability to incur indebtedness and grant liens on intellectual property related to BXCL501. In addition, the RIFA provides that if certain events occur, including certain bankruptcy events, failure to make payments, a change of control, an out-license or sale of all of the rights in and to BXCL501 in the U.S., in each case except a permitted licensing transaction (as defined in the RIFA) and, subject to applicable cure periods, material breach of the covenants in the RIFA, OFA, at the direction of the Purchasers, may require us to repurchase certain of the Purchasers' interests.

Risks Related to the Discovery and Development of Product Candidates

We have limited experience in drug discovery and drug development.

Prior to the acquisition of our product candidates, we were not involved in and had no control over their preclinical and clinical development. In addition, we are relying upon the parties we acquired our product candidates from to have conducted research and development in accordance with the applicable protocol, legal, regulatory and scientific standards, accurately reported the results of all clinical trials conducted prior to our acquisition of the applicable product candidate, and correctly collected and interpreted the data from these studies and trials. To the extent any of these activities did not occur, our expected development time and costs could increase, which could adversely affect our prospects for marketing approval of, and receiving any future revenue from, these product candidates.

In the near term, we are dependent on the success of IGALMI™, and three of our product candidates, BXCL501, BXCL701 and BXCL502. If we are unable to complete the clinical development of, obtain marketing approval for or successfully commercialize IGALMI™ and our other product candidates, either alone or with a collaborator, or if we experience significant delays in doing so, our business could be substantially harmed.

We currently have only one product that recently received regulatory approval and may never be able to develop additional marketable product candidates. We are continuing to invest a significant portion of our efforts and financial resources in the commercialization of IGALMI™ and development of BXCL701 and BXCL502, as well as our other product candidates. Our prospects are substantially dependent on our ability, or that of any future collaborator, to develop, obtain marketing approval for and successfully commercialize product candidates in one or more disease indications.

The success of IGALMI™, and of BXCL501, BXCL701, BXCL502 and our other product candidates will depend on several factors, including the following:

- acceptance of an IND application by the FDA or acceptance of comparable applications by foreign regulatory authorities allowing us to conduct clinical trials of our product candidates in the U.S. or in foreign jurisdictions;
- initiation, progress, timing, costs and results of clinical trials of our product candidates and potential product candidates;
- demonstration of safety and efficacy of our product candidates to the satisfaction of the FDA, or any comparable foreign regulatory authority, and sufficient for marketing approval;
- the timing and performance of our current and future collaborators;
- the nature of any required post-marketing clinical trials or other commitments to applicable regulatory authorities;
- establishment of supply arrangements with third-party raw materials suppliers and manufacturers;
- establishment of arrangements with third-party manufacturers to obtain finished drug product that is appropriately packaged for sale;

- adequate ongoing availability of raw materials and drug product for clinical development and any commercial sales;
- obtaining and maintaining patent, trade secret protection and regulatory exclusivity, both in the U.S. and internationally;
- protection of our rights in our intellectual property portfolio;
- successful launch of commercial sales following any marketing approval;
- a continued acceptable safety profile following any marketing approval;
- commercial acceptance by patients, the medical community and third-party payors; and
- our ability to compete with other therapies.

Many of these factors are beyond our control, including the results of clinical trials, the time required for the FDA, or any comparable foreign regulatory authorities, to review any regulatory submissions we may make, potential threats to our intellectual property rights and the manufacturing, marketing and sales efforts of any future collaborator. If we are unable to commercialize IGALMI™ or develop, receive marketing approval for and successfully commercialize BXCL501, BXCL701 and our other product candidates, on our own or with any future collaborator, or experience delays because of any of these factors or otherwise, our business could be substantially harmed.

Interim "top-line" and preliminary data from our clinical trials, that we announce or publish from time to time, may change as more patient data become available and are subject to audit and verification procedures that could result in material changes in the final data.

From time to time, we may publicly disclose top-line or preliminary data from our clinical trials, which is based on a preliminary analysis of then-available data. The results and related findings and conclusions based on such preliminary data are subject to change, and have in the past changed, following a more comprehensive review of the data related to the particular study or trial. We also make assumptions, estimations, calculations and conclusions as part of our analyses of data, and we may not have received or had the opportunity to fully and carefully evaluate all data. As a result, the top-line or preliminary results that we report may differ from future results of the same studies, or different conclusions or considerations may qualify such results, once additional data have been received and fully evaluated. Top-line or preliminary data also remain subject to audit and verification procedures that may result in the final data being materially different from the top-line or preliminary data we previously published. As a result, top-line and preliminary data should be viewed with caution until the final data are available.

From time to time, we may also disclose interim data from our preclinical studies and clinical trials. Interim data from clinical trials that we may complete are subject to the risk that one or more of the clinical outcomes may materially change as patient enrollment continues and more patient data become available. Adverse differences between interim data and final data could significantly harm our business prospects. Further, disclosure of interim data by us or by our competitors could result in volatility in the price of our common stock.

Further, others, including regulatory agencies, may not accept or agree with our assumptions, estimates, calculations, conclusions or analyses or may interpret or weigh the importance of data differently, which could impact the value of the particular program, the approvability or commercialization of the particular product candidate or product and our Company in general. In addition, the information we choose to publicly disclose regarding a particular study or clinical trial is based on what is typically extensive information, and you or others may not agree with what we determine is material or otherwise appropriate information to include in our disclosure.

If the interim, top-line or preliminary data that we report differ from actual results, or if others, including regulatory authorities, disagree with the conclusions reached, our ability to obtain approval for, and commercialize, our product candidates may be harmed, which could harm our business, operating results, prospects or financial condition.

The regulatory approval processes of the FDA and comparable foreign authorities are lengthy, time consuming, expensive and inherently unpredictable, and if we are ultimately unable to obtain regulatory approval for our product candidates, our business will be substantially harmed.

The time required to obtain approval by the FDA and comparable foreign authorities is unpredictable but typically takes many years following the commencement of clinical trials and depends upon numerous factors, including the substantial discretion of the regulatory authorities. The results of preclinical studies and early clinical trials of our product candidates may not be predictive of the results of later-stage clinical trials. Product candidates in later stages of clinical trials may fail to show the desired safety and efficacy traits despite having progressed through preclinical studies and initial clinical trials. It is not uncommon for companies in the biopharmaceutical industry to suffer significant setbacks in advanced clinical trials due to nonclinical findings made while clinical studies were underway and safety or efficacy observations made in clinical studies, including previously unreported adverse events. Our future clinical trial results may not be successful, and notwithstanding any potential promising results in earlier studies, we cannot be certain that we will not face similar setbacks. The historical failure rate for product candidates in our industry is high. In addition, approval policies, regulations, or the type and amount of clinical data necessary to gain approval may change during the course of a product candidate's clinical development and may vary among jurisdictions. We recently obtained regulatory approval for our first product candidate for the acute treatment of agitation associated with schizophrenia or bipolar I or II disorder, which has not yet been successfully commercialized. It is possible that none of our product candidates, or any product candidates we may seek to develop in the future, will ever obtain regulatory approval.

Our current product candidates, or any that may be developed in the future, could fail to receive regulatory approval for many reasons, including the following:

- the FDA, or comparable foreign regulatory authorities, may disagree with the design or implementation of our clinical trials;
- we may be unable to demonstrate to the satisfaction of the FDA, or comparable foreign regulatory authorities, that a product candidate is safe and effective for its proposed indication;
- the results of clinical trials may not meet the level of statistical significance required by the FDA, or comparable foreign regulatory authorities, for approval;
- the FDA, or comparable foreign regulatory authorities, may disagree with our interpretation of data from preclinical studies or clinical trials;
- the data collected from clinical trials of our product candidates may not be sufficient to support the submission of an NDA or other submission or to obtain regulatory approval in the U.S. or elsewhere;
- the FDA, or comparable foreign regulatory authorities, may disagree that our changes to branded reference drugs meet the criteria for the 505(b)(2) regulatory pathway or comparable foreign regulatory pathways;
- the FDA, or comparable foreign regulatory authorities, may fail to approve the manufacturing processes or facilities of third-party manufacturers with which we contract for clinical and commercial supplies; and
- the approval policies or regulations of the FDA, or comparable foreign regulatory authorities, may significantly change in a manner rendering our clinical data insufficient for approval.

We have limited experience in completing clinical trials of any of our product candidates. Consequently, we may not have the necessary capabilities, including adequate staffing, to successfully manage the execution and completion of any clinical trials we initiate in a way that leads to our obtaining marketing approval for our product candidates in a timely manner, or at all. This lengthy approval process as well as the unpredictability of future clinical trial results may result in our failing to obtain regulatory approval to market our product candidates, which would significantly harm our business, results of operations and prospects.

In addition, even if we were to obtain approval, regulatory authorities may approve any of our product candidates for fewer or more limited indications than we request, may not approve the price we intend to charge for our products, may grant approval contingent on the performance of costly post-marketing clinical trials, may approve a product candidate with a label that does not include the labeling claims necessary or desirable for the successful commercialization of that product candidate or may restrict its distribution. Any of the foregoing scenarios could materially harm the commercial prospects for our product candidates.

We have only submitted one NDA to the FDA and have not submitted any similar marketing applications to comparable foreign authorities, for any product candidate, and we cannot be certain that any of our product candidates currently in development, or any than may be developed in the future, will be successful in clinical trials or receive regulatory approval. Further, our product candidates currently in development, or any than may be developed in the future, may not receive regulatory approval even if they are successful in clinical trials. If we do not receive regulatory approvals for additional product candidates, we may not be able to continue our operations. Even if we successfully obtain regulatory approvals to market one or more of our product candidates, our revenues will be dependent, in part, upon the size of the markets in the territories for which we gain regulatory approval and have commercial rights. If the markets for patients that we are targeting for our product candidates are not as significant as we estimate, we may not generate significant revenues from sales of such product candidates, if approved.

We plan to seek regulatory approval to commercialize our product candidates in the U.S., the European Union (“EU”) and in additional foreign countries. While the scope of regulatory approval is similar in other countries, to obtain separate regulatory approval in many other countries we must comply with numerous and varying regulatory requirements of such countries regarding safety and efficacy and governing, among other things, clinical trials and commercial sales, pricing and distribution of our product candidates, and we cannot predict success in these jurisdictions.

In addition, the FDA’s and other regulatory authorities’ policies with respect to clinical trials may change and additional government regulations may be enacted. For instance, the regulatory landscape related to clinical trials in the EU recently evolved. The EU Clinical Trials Regulation (“CTR”), which was adopted in April 2014 and repeals the EU Clinical Trials Directive, became applicable on January 31, 2022. While the Clinical Trials Directive required a separate clinical trial application (“CTA”), to be submitted in each member state, to both the competent national health authority and an independent ethics committee, the CTR introduces a centralized process and only requires the submission of a single application to all member states concerned. The CTR allows sponsors to make a single submission to both the competent authority and an ethics committee in each member state, leading to a single decision per member state. The assessment procedure of the CTA has been harmonized as well, including a joint assessment by all member states concerned, and a separate assessment by each member state with respect to specific requirements related to its own territory, including ethics rules. Each member state’s decision is communicated to the sponsor via the centralized EU portal. Once the CTA is approved, clinical study development may proceed. The CTR foresees a three-year transition period. The extent to which ongoing and new clinical trials will be governed by the CTR varies. For clinical trials whose CTA was made under the Clinical Trials Directive before January 31, 2022, the Clinical Trials Directive will continue to apply on a transitional basis for three years. Additionally, sponsors may still choose to submit a CTA under either the Clinical Trials Directive or the CTR until January 31, 2023 and, if authorized, those will be governed by the Clinical Trials Directive until January 31, 2025. By that date, all ongoing trials will become subject to the provisions of the CTR.

If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies governing clinical trials, our development plans may be impacted.

Clinical trials are expensive, time-consuming, and difficult to design and implement, and involve an uncertain outcome.

Before obtaining marketing approval from the FDA, or other comparable foreign regulatory authorities, for the sale of our product candidates, we must complete preclinical development and extensive clinical trials to demonstrate the safety and efficacy of our product candidates. Clinical testing is expensive and can take many years to complete, and its outcome is inherently uncertain. Failure can occur at any time during the clinical trial process. Although we are planning for certain clinical trials relating to BXCL501, BXCL701, BXCL502 and our other product candidates, there can be no assurance that the FDA, or other comparable foreign regulatory authorities, will accept our proposed trial designs. We may experience delays in our clinical trials and we do not know whether planned clinical trials will begin on time, need to be redesigned, enroll patients on time or be completed on schedule, if at all. Clinical trials can be delayed for a variety of reasons, including delays related to:

- the FDA, or comparable foreign regulatory authorities, disagreeing as to the design or implementation of our clinical studies;
- obtaining regulatory authorizations to commence a trial or consensus with regulatory authorities on trial designs;
- reaching agreement on acceptable terms with prospective CROs and clinical trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- diversion of healthcare resources to combat epidemics, such as the COVID-19 pandemic;
- obtaining institutional review board (“IRB”) approval at each site, or independent ethics committee approval at any sites outside the U.S.;
- dependence on the needs and timing of third-party collaborators;
- changes to clinical trial protocols;
- recruiting suitable patients to participate in a trial in a timely manner and in sufficient numbers;
- clinical sites deviating from trial protocol or dropping out of a trial;
- addressing patient safety concerns that arise during the course of a trial;
- having patients complete a trial or return for post-treatment follow-up;
- imposition of a clinical hold by regulatory authorities, including as a result of unforeseen safety issues or side effects or failure of trial sites to adhere to regulatory requirements;
- the occurrence of SAEs in trials of the same class of agents conducted by other companies or institutions;
- subjects choosing an alternative treatment for the indications for which we are developing our product candidates, or participating in competing trials;
- adding a sufficient number of clinical trial sites;
- manufacturing sufficient quantities of a product candidate for use in clinical trials;
- lack of adequate funding to continue the clinical trial;

- selection of clinical end points that require prolonged periods of clinical observation or analysis of the resulting data;

- a facility manufacturing our product candidates or any of their components being ordered by the FDA, or comparable foreign regulatory authorities, to temporarily or permanently shut down due to violations of current good manufacturing practice ("cGMP") regulations or other applicable requirements, or infections or cross-contaminations of product candidates in the manufacturing process;

- any changes to our manufacturing process that may be necessary or desired;

- third-party clinical investigators losing the licenses or permits necessary to perform our clinical trials, not performing our clinical trials on our anticipated schedule or consistent with the clinical trial protocol, good clinical practice ("GCP") or other regulatory requirements; or

- third-party contractors not performing data collection or analysis in a timely or accurate manner; or third-party contractors becoming debarred or suspended or otherwise penalized by the FDA, or other government or regulatory authorities, for violations of regulatory requirements, in which case, we may need to find a substitute contractor, and we may not be able to use some or all of the data produced by such contractors in support of our marketing applications.

In addition, disruptions caused by the COVID-19 pandemic may increase the likelihood that we encounter such difficulties or delays in initiating, enrolling, conducting or completing our planned and ongoing clinical trials. For example, in April 2021, PLACIDITY enrollment was voluntarily paused to assess challenges posed in opening relevant clinical sites and enrolling delirium patients in the intensive care unit ("ICU") settings, including as a result of the burden COVID-19 placed on the ICU.

We could encounter delays if a clinical trial is suspended or terminated by us, by the IRBs of the institutions in which such trials are being conducted, by the Data Safety Monitoring Board ("DSMB") for such trial or by the FDA or other regulatory authorities. Such authorities may impose such a suspension or termination due to a number of factors, including failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols, inspection of the clinical trial operations or trial site by the FDA or other regulatory authorities resulting in the imposition of a clinical hold, unforeseen safety issues or adverse side effects, failure to demonstrate a benefit from using a drug, changes in governmental regulations or administrative actions or lack of adequate funding to continue the clinical trial. Furthermore, we rely on CROs and clinical trial sites to ensure the proper and timely conduct of our clinical trials and, while we have agreements governing their committed activities, we have limited influence over their actual performance.

Further, conducting clinical trials in foreign countries, as we may do for our current and future product candidates, presents additional risks that may delay completion of our clinical trials. These risks include the failure of enrolled patients in foreign countries to adhere to clinical protocol as a result of differences in healthcare services or cultural customs, managing additional administrative burdens associated with foreign regulatory schemes, as well as political and economic risks relevant to such foreign countries. For example, if the current conflict between Russia and Ukraine spreads to other regions, it may adversely impact our ability to conduct trials.

If we experience delays in the completion of, or termination of, any clinical trial of our product candidates, the commercial prospects of our product candidates will be harmed, and our ability to generate product revenues from any of these product candidates will be delayed. In addition, any delays in completing our clinical trials will increase our costs, slow down our product candidate development and approval process and jeopardize our ability to commence product sales and generate revenues. Any of these occurrences may harm our business, financial condition and prospects significantly. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates.

We depend on enrollment of patients in our clinical trials in order for us to continue development of our product candidates. If we are unable to enroll patients in our clinical trials, our research and development efforts could be adversely affected.

The timely completion of clinical trials in accordance with their protocols depends, among other things, on our ability to enroll a sufficient number of patients who remain in the study until its conclusion. We may experience difficulties in patient enrollment in our clinical trials for a variety of reasons. Patient enrollment is affected by many factors including the size and nature of the patient population, the proximity of patients to clinical sites, the eligibility criteria for the trial, the design of the clinical trial, the size of the patient population required for analysis of the trial's primary endpoints, our ability to recruit clinical trial investigators with the appropriate competencies and experience, our ability to obtain and maintain patient consents, the risk that patients enrolled in clinical trials will drop out of the trials before completion, and competing clinical trials and clinicians' and patients' perceptions as to the potential advantages of the drug being studied in relation to other available therapies, including any new drugs that may be approved for the indications we are investigating. Our ability to enroll patients in our clinical trials may be impacted by governmental restrictions and diversion of healthcare resources resulting from the COVID-19 pandemic. Many pharmaceutical companies are conducting clinical trials in patients with the disease indications that our product candidates are designed to target. As a result, we must compete with them for clinical sites, physicians and the limited number of patients who fulfill the stringent requirements for participation in clinical trials. Also, due to the confidential nature of clinical trials, we do not know how many of the eligible patients may be enrolled in competing studies and who are consequently not available to us for our clinical trials. Our clinical trials may be delayed or terminated due to the inability to enroll enough patients. The delay or inability to meet planned patient enrollment may result in increased costs and delay or termination of our trials, which could have a harmful effect on our ability to develop products.

Our product candidates may cause undesirable side effects or have other properties that could delay or prevent their regulatory approval, limit the commercial profile of an approved label, or result in significant negative consequences following marketing approval, if any.

Undesirable side effects caused by our product candidates could cause us or regulatory authorities to interrupt, delay or halt clinical trials and could result in a more restrictive label or the delay or denial of regulatory approval by the FDA or other comparable foreign authorities. The clinical evaluation of BXCL501, BXCL701, BXCL502 and our other product candidates in patients, in many cases, is ongoing and it is possible that there may be side effects associated with their use. Results of our trials could reveal a high and unacceptable severity and prevalence of these or other side effects. For example, in our Phase 2 clinical trial of BXCL701 for the treatment of emergent Neuroendocrine Prostate Cancer, one patient experienced acidosis with a fatal outcome. Although the clinical investigator could not determine that the fatality was related to treatment with BXCL701, it is possible that BXCL701 could be tied to unacceptable side effects in the future.

If we observe drug-related AEs or other unacceptable safety concerns in clinical trials, we, the FDA, the IRBs at the institutions in which our studies are conducted, or the DSMB could suspend or terminate our clinical trials or the FDA, or comparable foreign regulatory authorities, could order us to cease clinical trials or deny approval of our product candidates for any or all targeted indications. For example, the FDA placed Point Therapeutics, Inc.'s IND for BXCL701 on clinical hold following an increase in observed mortality in patients receiving BXCL701 in a Phase 3 trial in patients with non-small cell lung cancer. Though we believe that this result was caused by, among other things, an imbalance in the disease severity of patients enrolled in the active arm of the clinical trial, there is no guarantee that excess mortality will not be observed in future clinical studies. Treatment-related side effects could also affect patient recruitment or the ability of enrolled patients to complete the clinical trial or result in potential product liability claims. In addition, these side effects may not be appropriately recognized or managed by the treating medical staff. We expect to have to train medical personnel using our product candidates to understand the side effect profiles observed in our clinical trials and upon commercialization of any of our product candidates that may receive regulatory approval. Inadequate training in recognizing or managing the potential side effects of our product candidates could result in patient injury or death. Any of these occurrences may harm our business, financial condition and prospects significantly.

Additionally, if we or others later identify undesirable side effects caused by IGALMI™ or any other product candidate that receives marketing approval, a number of potentially significant negative consequences could result, including:

- regulatory authorities may withdraw approvals of such products;
- we may be required to recall a product or change the way such a product is administered to patients;
- additional restrictions may be imposed on the marketing or distribution of the particular product or the manufacturing processes for the product or any component thereof;
- regulatory authorities may require additional warnings on the label, such as a "black box" warning or contraindication;
- we may be required to implement Risk Evaluation and Mitigation Strategies ("REMS") or create a medication guide outlining the risks of such side effects for distribution to patients, or similar risk management measures;
- we could be sued and held liable for harm caused to patients;
- our product may become less competitive; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the particular product or product candidate, if approved, and could significantly harm our business, results of operations and prospects.

BioXcel LLC's approach to the discovery and development of product candidates based on EvolverAI, its proprietary pharmaceutical discovery and development engine, is novel and unproven, and we do not know whether we will be able to develop any products of commercial value.

We are leveraging BioXcel LLC's EvolverAI, a proprietary pharmaceutical discovery and development engine, to create a pipeline of neuroscience and immuno-oncology product candidates for patients whose diseases have not been adequately addressed to date by other approaches and to design and conduct efficient clinical trials with a higher likelihood of success. While we believe that applying BioXcel LLC's EvolverAI to create medicines for defined patient populations may potentially enable drug research and clinical development that is more efficient than conventional drug research and development, our approach is novel. Although we obtained FDA approval for IGALMI™, because our approach is novel, the cost and time needed to develop our product candidates is difficult to predict, and our efforts may not result in the discovery and development of commercially viable medicines. We may also be incorrect about the effects of our product candidates on the diseases of our defined patient populations, which may limit the utility of our approach or the perception of the utility of our approach. Furthermore, our estimates of our defined patient populations available for study and treatment may be lower than expected, which could adversely affect our ability to conduct clinical trials and may also adversely affect the size of any market for medicines we may successfully commercialize. Our approach may not result in time savings, higher success rates or reduced costs as we expect it to, and if not, we may not attract collaborators or develop new drugs as quickly or cost effectively as expected and therefore we may not be able to commercialize our approach as originally expected.

BioXcel LLC's EvolverAI may fail to help us discover and develop additional potential product candidates.

Any drug discovery that we are conducting using BioXcel LLC's EvolverAI may not be successful in identifying compounds that have commercial value or therapeutic utility. BioXcel LLC's EvolverAI may initially show promise in identifying potential product candidates, yet fail to yield viable additional product candidates for clinical development or potential commercialization for a number of reasons, including:

- research programs to identify new product candidates will require substantial technical, financial and human resources, and we may be unsuccessful in our efforts to identify new product candidates. If we are unable to identify suitable additional compounds for preclinical and clinical development, our ability to develop product candidates and obtain product revenues in future periods could be compromised, which could result in significant harm to our financial position and adversely impact our stock price;

- compounds found through BioXcel LLC's EvolverAI may not demonstrate efficacy, safety or tolerability;

- potential product candidates may, on further study, be shown to have harmful side effects or other characteristics that indicate that they are unlikely to receive marketing approval and achieve market acceptance;

- competitors may develop alternative therapies that render our potential product candidates non-competitive or less attractive; or

- a potential product candidate may not be capable of being produced at an acceptable cost.

We obtained Fast Track designation for BXCL501 for the acute treatment of mild-to-moderate agitation associated with schizophrenia, bipolar disorder, or dementia, and we may seek Fast Track designation for other indications or for our other product candidates, but we might not receive such designations, and even if we do, such designations may not actually lead to a faster development or regulatory review or approval process.

If a product candidate is intended for the treatment of a serious condition and nonclinical or clinical data demonstrate the potential to address unmet medical need for this condition, a product sponsor may apply for FDA Fast Track designation. The sponsor of a Fast Track product candidate has opportunities for more frequent interactions with the applicable FDA review team during product development and, once an NDA is submitted, the product candidate may be eligible for priority review if the relevant criteria are met. A Fast Track product candidate may also be eligible for rolling review, where the FDA may consider for review sections of the NDA on a rolling basis before the complete application is submitted, if the sponsor provides a schedule for the submission of the sections of the NDA, the FDA agrees to accept sections of the NDA and determines that the schedule is acceptable, and the sponsor pays any required user fees upon submission of the first section of the NDA. We obtained Fast Track designation for BXCL501 for the acute treatment of mild-to-moderate agitation associated with schizophrenia, bipolar disorder, or dementia, and we may seek Fast Track designation for other indications or for one or more of our other product candidates, but we might not receive such designations from the FDA. However, even if we receive Fast Track designation, Fast Track designation does not ensure that we will receive marketing approval or that approval will be granted within any particular timeframe. We may not experience a faster development or regulatory review or approval process with Fast Track designation compared to conventional FDA procedures. In addition, the FDA may withdraw Fast Track designation if it believes that the designation is no longer supported by data from our clinical development program. Fast Track designation alone does not guarantee qualification for the FDA's priority review procedures.

A Breakthrough Therapy designation by the FDA, even if granted for any of our product candidates, may not lead to a faster development or regulatory review or approval process and it does not increase the likelihood that our product candidates will receive marketing approval.

We obtained Breakthrough Therapy Designations for BXCL501 for the acute treatment of agitation associated with dementia, and we may seek additional Breakthrough Therapy designations for our product candidates if the clinical data support such a designation for one or more product candidates. A Breakthrough Therapy is defined as a drug or biologic that is intended, alone or in combination with one or more other drugs or biologics, to treat a serious or life-threatening disease or condition and preliminary clinical evidence indicates that the drug may demonstrate substantial improvement over existing therapies on one or more clinically significant endpoints, such as substantial treatment effects observed early in clinical development. For product candidates that have been designated as Breakthrough Therapies, interaction and communication between the FDA and the sponsor of the trial can help to identify the most efficient path for clinical development while minimizing the number of patients placed in ineffective control regimens. Product candidates

designated as Breakthrough Therapies by the FDA also receive the benefits associated with Fast Track designation, including the potential for rolling review of an NDA.

Designation as a Breakthrough Therapy is within the discretion of the FDA. Accordingly, even if we believe one of our product candidates meets the criteria for designation as a Breakthrough Therapy, the FDA may disagree and instead determine not to make such designation. In any event, the receipt of a Breakthrough Therapy designation for a product candidate may not result in a faster development process, review or approval compared to drugs considered for approval under non-expedited FDA review procedures and does not assure ultimate approval by the FDA. In addition, even if one or more of our product candidates qualify as breakthrough therapies, the FDA may later decide that the product no longer meets the conditions for qualification or decide that the time period for FDA review or approval will not be shortened.

If the FDA does not conclude that our product candidates satisfy the requirements for the 505(b)(2) regulatory approval pathway, or if the requirements for approval of any of our product candidates under Section 505(b)(2) are not as we expect, the approval pathway for our product candidates will likely take significantly longer, cost significantly more and encounter significantly greater complications and risks than anticipated, and in any case may not be successful.

We intend to seek FDA approval through the 505(b)(2) regulatory pathway for certain of our product candidates. The Hatch-Waxman Act added Section 505(b)(2) to the Federal Food, Drug and Cosmetic Act ("FDCA"). Section 505(b)(2) permits the filing of an NDA where at least some of the information required for approval comes from studies that were not conducted by or for the applicant. If the FDA does not allow us to pursue the 505(b)(2) regulatory pathway for our product candidates as anticipated, we may need to conduct additional clinical trials, provide additional data and information and meet additional standards for regulatory approval. If this were to occur, the time and financial resources required to obtain FDA approval for our product candidates would likely substantially increase. Moreover, the inability to pursue the 505(b)(2) regulatory pathway could result in new competitive products reaching the market faster than our product candidates, which could materially adversely impact our competitive position and prospects. Even if we are allowed to pursue the 505(b)(2) regulatory pathway for a product candidate, we cannot assure you that we will receive the requisite or timely approvals for commercialization of such product candidate. In addition, we expect that our competitors will file citizens' petitions with the FDA in an attempt to persuade the FDA that our product candidates, or the clinical studies that support their approval, contain deficiencies. Such actions by our competitors could delay or even prevent the FDA from approving any NDA that we submit under Section 505(b)(2).

If we are required by the FDA, or similar regulatory authorities, to obtain approval (or clearance, or certification) of a companion diagnostic device in connection with approval of one of our product candidates, and we do not obtain or face delays in obtaining approval (or clearance, or certification) of a companion diagnostic device, we will not be able to commercialize the product candidate and our ability to generate revenue will be materially impaired.

According to FDA guidance, if the FDA determines that a companion diagnostic device is essential to the safe and effective use of a novel therapeutic product or indication, the FDA generally will not approve the therapeutic product or new therapeutic product indication if the companion diagnostic is not also approved or cleared for that indication. If a satisfactory companion diagnostic is not commercially available, we may be required to create or obtain one that would be subject to regulatory approval requirements. For example, we may decide to collaborate with patient diagnostic companies during our clinical trial enrollment process for BXCL701 to help identify patients with tumor gene alterations that we believe may be most likely to respond to treatment with BXCL701. The process of obtaining or creating such diagnostic is time consuming and costly.

Companion diagnostics are developed in conjunction with clinical programs for the associated product and are subject to regulation as medical devices by the FDA and comparable foreign regulatory authorities, and, to date, the FDA has generally required premarket approval of companion diagnostics for cancer therapies. Generally, when a companion diagnostic is essential to the safe and effective use of a therapeutic product, the FDA requires that the companion diagnostic be approved before or concurrent with approval of the therapeutic product and before a product can be commercialized. The approval of a companion diagnostic as part of the therapeutic product's labeling limits the

use of the therapeutic product to only those patients who express the specific genetic alteration that the companion diagnostic was developed to detect.

If the FDA, or a comparable foreign regulatory authority, requires approval (or certification or clearance) of a companion diagnostic for any of our product candidates, whether before or after the product candidate obtains marketing approval, we and/or third-party collaborators may encounter difficulties in developing and obtaining approval (or clearance, or certification) for these companion diagnostics. Any delay or failure by us or third-party collaborators to develop or obtain regulatory approval (or clearance, or certification) of a companion diagnostic could delay or prevent approval or continued marketing of our related product candidates. We may also experience delays in developing a sustainable, reproducible and scalable manufacturing process for the companion diagnostic or in transferring that process to commercial partners or negotiating insurance reimbursement plans, all of which may prevent us from completing our clinical trials or commercializing our product candidates, if approved, on a timely or profitable basis, if at all.

Approval, clearance or certification of companion diagnostics may be subject to further legislative or regulatory reforms notably in the EU. On May 25, 2017, the new In Vitro Medical Devices Regulation No. 2017/746 ("IVDR") entered into force. The IVDR repeals and replaces the EU In Vitro Diagnostic Medical Devices Directive. Unlike directives, which must be implemented into the national laws of the EU member states, regulations are directly applicable (i.e., without the need for adoption of EU member states laws implementing them) in all EU member states and are intended to eliminate current differences in the regulation of medical devices among EU member states. The IVDR, among other things, is intended to establish a uniform, transparent, predictable and sustainable regulatory framework across the EU for medical devices and ensure a high level of safety and health while supporting innovation. The IVDR became effective in May 2022. However, on October 14, 2021, the European Commission proposed a "progressive" roll-out of the IVDR to prevent disruption in the supply of in vitro diagnostic medical devices. The European Parliament and Council adopted the proposed regulation on December 15, 2021. The IVDR fully applied as of May 26, 2022, but there is a tiered system extending the grace period for many devices (depending on their risk classification) before they have to be fully compliant with the regulation.

The regulation of companion diagnostics in the EU will be subject to further requirements since the IVDR introduces a new classification system for companion diagnostics. Companion diagnostics will have to undergo a conformity assessment by a notified body. Before it can issue a CE certificate, the notified body must seek a scientific opinion from the EMA on the suitability of the companion diagnostic to the medicinal product concerned if the medicinal product falls exclusively within the scope of the centralized procedure for the authorization of medicines, or the medicinal product is already authorized through the centralized procedure, or a marketing authorization application for the medicinal product has been submitted through the centralized procedure. For other substances, the notified body can seek the opinion from a national competent authority or the EMA.

These modifications may make it more difficult and costly for us to obtain regulatory clearances, approvals or certifications for our companion diagnostics or to manufacture, market or distribute our products after clearance, approval or certification is obtained.

Even though the FDA has approved IGALMI™ for the acute treatment of agitation associated with schizophrenia or bipolar I or II disorder, we will still face extensive and ongoing regulatory requirements and obligations for IGALMI™ and for any product candidates for which we obtain approval.

Any regulatory approvals that we may receive for IGALMI™ or any of our product candidates will require the submission of reports to regulatory authorities and surveillance to monitor the safety and efficacy of the product, may contain significant limitations related to use restrictions for specified age groups, warnings, precautions or contraindications, and may include burdensome post-approval study or risk management requirements. For example, the FDA-approved label for IGALMI™ includes certain warnings and precautions regarding hypotension, orthostatic hypotension, bradycardia, somnolence, and QT interval prolongation. The FDA may also require a REMS in order to approve a product candidate, which could entail requirements for a medication guide, physician training and communication plans or additional elements to ensure safe use, such as restricted distribution methods, patient registries and other risk minimization tools.

In addition, the manufacturing processes, labeling, packaging, distribution, AE reporting, storage, advertising, promotion, import, export and recordkeeping for IGALMI™ are and will remain subject to extensive and ongoing regulatory requirements. These requirements include submissions of safety and other post-marketing information and reports, registration, as well as on-going compliance with cGMPs, and GCPs for any clinical trials that we conduct post-approval. In addition, manufacturers of drug products and their facilities are subject to continual review and periodic, unannounced inspections by the FDA and other regulatory authorities for compliance with cGMP regulations and standards. If we or a regulatory authority discover previously unknown problems with a product, such as AEs of unanticipated severity or frequency, or problems with the facilities where the product is manufactured, a regulatory authority may impose restrictions on that product, the manufacturing facility or us, including requiring recall or withdrawal of the product from the market or suspension of manufacturing.

In addition, later discovery of previously unknown AEs or other problems with our products, manufacturers or manufacturing processes or failure to comply with regulatory requirements, may yield various results, including:

- restrictions on manufacturing such products;
- restrictions on the labeling or marketing of products;
- restrictions on product manufacturing, distribution or use;
- requirements to conduct post-marketing studies or clinical trials;
- warning letters or untitled letters;
- withdrawal of the products from the market;
- refusal to approve pending applications or supplements to approved applications that we submit;
- recall of products;
- fines, restitution or disgorgement of profits or revenues;
- suspension or withdrawal of marketing approvals;
- refusal to permit the import or export of our products;
- product seizure; or
- injunctions or the imposition of civil or criminal penalties.

Further, the policies of the FDA and other regulatory authorities may change, and additional government regulations may be enacted that could impose extensive and ongoing regulatory requirements and obligations on any product candidate for which we obtain marketing approval. We also cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative or executive action, either in the U.S. or abroad.

The FDA and other regulatory agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses.

The FDA and other regulatory authorities strictly regulate marketing, labeling, advertising and promotion of prescription drugs. These regulations include standards and restrictions for direct-to-consumer advertising, industry-sponsored scientific and educational activities, promotional activities involving the internet and off-label promotion. Any regulatory approval that the FDA or any other regulatory authority may grant is limited to those specific diseases

and indications for which a product is deemed to be safe and effective. For example, the FDA-approved label for IGALMI™ is currently limited to the acute treatment of agitation associated with schizophrenia or bipolar I or II disorder in adults.

While physicians in the U.S. may choose, and are generally permitted, to prescribe drugs for uses that are not described in the product's labeling and for uses that differ from those tested in clinical trials and approved by the regulatory authorities, our ability to promote the products is narrowly limited to those indications that are specifically approved by the FDA. These "off-label" uses are common across medical specialties and may constitute an appropriate treatment for some patients in varied circumstances. For example, other formulations of Dex, the active ingredient in IGALMI™, have been approved for uses beyond those authorized in IGALMI™ approved labeling, such as for use in sedation of surgical patients, and we are continuing to develop BXCL501 for potential use in patients with dementia, MDD, Alzheimer's disease and other indications. We do not market or promote IGALMI™ for these uses.

Regulatory authorities in the U.S. generally do not regulate the behavior of physicians in their choice of treatments. Regulatory authorities do, however, restrict communications by pharmaceutical companies on the subject of off-label use. If we are found to have promoted our products for any off-label uses, the U.S. federal government (and other foreign governments) could levy civil, criminal and/or administrative penalties, and seek fines against us. The FDA, or other regulatory authorities, could also require that we enter into a consent decree or a corporate integrity agreement, or seek a permanent injunction against us under which specified promotional conduct is monitored, changed or curtailed. If we cannot successfully manage the promotion of IGALMI™ or our product candidates, if approved, we could become subject to significant liability, which would materially adversely affect our business and financial condition.

Disruptions at the FDA and other government agencies caused by funding shortages or global health concerns could hinder their ability to hire, retain or deploy key leadership and other personnel, or otherwise prevent new or modified products from being developed, approved or commercialized in a timely manner or at all, which could negatively impact our business.

The ability of the FDA and foreign regulatory authorities to review and approve new products can be affected by a variety of factors, including government budget and funding levels, statutory, regulatory and policy changes, the FDA's or foreign regulatory authorities' ability to hire and retain key personnel and accept the payment of user fees, and other events that may otherwise affect the FDA's or foreign regulatory authorities' ability to perform routine functions. Average review times at the FDA and foreign regulatory authorities have fluctuated in recent years as a result. In addition, government funding of other government agencies that fund research and development activities is subject to the political process, which is inherently fluid and unpredictable. Disruptions at the FDA and other agencies, such as the EMA, following its relocation to Amsterdam and corresponding staff changes, may also slow the time necessary for new drug or modifications to approved drugs to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. For example, over the last several years, the U.S. government has shut down several times and certain regulatory agencies, such as the FDA, have had to furlough critical FDA employees and stop critical activities.

Separately, in response to the COVID-19 pandemic, in March 2020, the FDA postponed most inspections of domestic and foreign manufacturing facilities. Subsequently, in July 2020, the FDA resumed certain on-site inspections of domestic manufacturing facilities subject to a risk-based prioritization system. The FDA utilized this risk-based assessment system to assist in determining when and where it was safest to conduct prioritized domestic inspections. Additionally, on April 15, 2021, the FDA issued a guidance document in which the FDA described its plans to conduct voluntary remote interactive evaluations of certain drug manufacturing facilities and clinical research sites, among other facilities. According to the guidance, the FDA may request such remote interactive evaluations where the FDA determines that remote evaluation would be appropriate based on mission needs and travel limitations. In July 2021, the FDA generally resumed standard inspectional operations of domestic facilities. More recently, the FDA has continued to monitor and implement changes to its inspectional activities to ensure the safety of its employees and those of the firms it regulates as it adapts to the evolving COVID-19 pandemic. Regulatory authorities outside the U.S. have adopted similar restrictions or other policy measures in response to the COVID-19 pandemic. If a prolonged government shutdown occurs, or if global health concerns continue to prevent the FDA or other regulatory authorities from conducting their regular inspections, reviews or other regulatory activities, it could significantly impact the ability

of the FDA or other regulatory authorities to timely review and process our regulatory submissions, which could have a material adverse effect on our business.

We may conduct certain of or portions of our clinical trials for our product candidates outside of the U.S. and the FDA may not accept data from such trials, in which case our development plans will be delayed, which could materially harm our business.

We may choose to conduct one or more of our clinical trials or a portion of our clinical trials for our product candidates outside the U.S. The acceptance of study data from clinical trials conducted outside the U.S. or another jurisdiction by the FDA or comparable foreign regulatory authority may be subject to certain conditions or may not be accepted at all. In cases where data from foreign clinical trials are intended to serve as the sole basis for marketing approval in the U.S., the FDA will generally not approve the application on the basis of foreign data alone unless (i) the data are applicable to the U.S. population and U.S. medical practice; (ii) the trials were performed by clinical investigators of recognized competence and pursuant to GCP regulations; and (iii) the data may be considered valid without the need for an on-site inspection by the FDA, or if the FDA considers such inspection to be necessary, the FDA is able to validate the data through an on-site inspection or other appropriate means. In addition, even where the foreign study data are not intended to serve as the sole basis for approval, the FDA will not accept the data as support for an application for marketing approval unless the study is well-designed and well-conducted in accordance with GCP requirements and the FDA is able to validate the data from the study through an onsite inspection if deemed necessary. Many foreign regulatory authorities have similar approval requirements. In addition, such foreign trials would be subject to the applicable local laws of the foreign jurisdictions where the trials are conducted. There can be no assurance that the FDA or any comparable foreign regulatory authority will accept data from trials conducted outside of the U.S. or the applicable jurisdiction. If the FDA or any comparable foreign regulatory authority does not accept such data, it would result in the need for additional trials, which could be costly and time-consuming, and which may result in current or future product candidates that we may develop not receiving approval for commercialization in the applicable jurisdiction.

We may be subject to extensive regulations outside the U.S. and may not obtain marketing approvals for products in Europe and other jurisdictions.

In addition to regulations in the U.S., should we or our collaborators pursue marketing approvals for IGALMI™, and for BXCL501, BXCL701, BXCL502 and our other product candidates internationally, we and our collaborators will be subject to a variety of regulations in other jurisdictions governing, among other things, clinical trials and any commercial sales and distribution of our products. Whether or not we, or our collaborators, obtain FDA approval for a product, we must obtain the requisite approvals from regulatory authorities in foreign countries prior to the commencement of clinical trials or marketing of the product in those countries. The requirements and process governing the conduct of clinical trials, product licensing, pricing and reimbursement vary from country to country.

We expect to pursue marketing approvals for IGALMI™, and for BXCL501, BXCL701, BXCL502 and our other product candidates in Europe and other jurisdictions outside the U.S. with collaborative partners. The time and process required to obtain regulatory approvals and reimbursement in Europe and other jurisdictions may be different from those in the U.S. Also, regulatory approval in one jurisdiction does not ensure approvals in any other jurisdiction; however, negative regulatory decisions in any jurisdiction may have a negative impact on the regulatory process in other jurisdictions.

Following a national referendum and enactment of legislation by the government of the United Kingdom (“UK”), the UK formally withdrew from the EU on January 31, 2020 and ratified a trade and cooperation agreement governing its future relationship (commonly referred to as “Brexit”). The agreement, which was applied provisionally from January 1, 2021 and entered into force on May 1, 2021, addresses trade, economic arrangements, law enforcement, judicial cooperation and a governance framework including procedures for dispute resolution, among other things. Because the agreement merely sets forth a framework in many respects and will require complex additional bilateral negotiations between the UK and the EU as both parties continue to work on the rules for implementation, significant political and economic uncertainty remains about how the precise terms of the relationship between the parties will differ from the terms before withdrawal.

Since January 1, 2021, the UK operates under a distinct regulatory regime to the EU. EU pharmaceutical laws only apply in respect of the UK to Northern Ireland (as set out in the Protocol on Ireland/Northern Ireland). EU laws which have been transposed into UK law through secondary legislation continue to be applicable as "retained EU law". While the UK has indicated a general intention that new laws regarding the development, manufacture and commercialization of medicinal products in the UK will align closely with EU law, there are limited detailed proposals for future regulation of medicinal products. The trade and cooperation agreement includes specific provisions concerning medicinal products, which include the mutual recognition of cGMP, inspections of manufacturing facilities for medicinal products and cGMP documents issued (such mutual recognition can be rejected by either party in certain circumstances) but does not foresee wholesale mutual recognition of UK and EU pharmaceutical regulations. For example, it is not clear to what extent the UK will adopt legislation aligned with, or similar to, the EU CTR which became applicable on January 31, 2022 and which significantly reforms the assessment and supervision processes for clinical trials throughout the EU. On January 17, 2022, the UK Medicines and Healthcare products Regulatory Agency ("MHRA") launched an eight-week consultation on reframing the UK legislation for clinical trials. The consultation closed on 14 March 2022 and aims to streamline clinical trials approvals, enable innovation, enhance clinical trials transparency, enable greater risk proportionality, and promote patient and public involvement in clinical trials. The outcome of the consultation will be closely watched and will determine whether the UK chooses to align with the regulation or diverge from it to maintain regulatory flexibility. A decision by the UK not to closely align its regulations with the new approach that will be adopted in the EU may have an effect on the cost of conducting clinical trials in the UK as opposed to other countries and/or make it harder to seek a marketing authorization in the EU for our product candidates on the basis of clinical trials conducted in the UK.

Therefore, there remains political and economic uncertainty regarding to what extent the regulation of medicinal products will differ between the UK and the EU in the future. Any divergences will increase the cost and complexity of running our business, including with respect to the conduct of clinical trials. Brexit also materially impacted the regulatory regime with respect to the approval of our product candidates. Great Britain is no longer covered by the EU's procedures for the grant of marketing authorizations (Northern Ireland is covered by the centralized authorization procedure and can be covered under the decentralized or mutual recognition procedures). As of 1 January 2021, all existing centralized marketing authorizations were automatically converted into UK marketing authorizations effective in Great Britain and issued with a UK marketing authorization number on January 1, 2021 (unless marketing authorization holders opted out of this scheme). A separate marketing authorization is now required to market drugs in Great Britain. It is currently unclear whether the regulator in the UK, the MHRA, is sufficiently prepared to handle the increased volume of marketing authorization applications that it is likely to receive. Any delay in obtaining, or an inability to obtain, any regulatory approvals, as a result of Brexit or otherwise, would prevent us from commercializing our product candidates in Great Britain and restrict our ability to generate revenue and achieve and sustain profitability. If any of these outcomes occur, we may be forced to restrict or delay efforts to seek regulatory approval in Great Britain for our product candidates, which could significantly and materially harm our business. The UK's withdrawal from the EU and the associated uncertainty has had and may continue to have a significant adverse effect on global economic conditions and the stability of global financial markets, and could significantly reduce global market liquidity and restrict the ability of key market participants to operate in certain financial markets. Asset valuations, currency exchange rates and credit ratings may be especially subject to increased market volatility. Any of these factors could have a significant adverse effect on our business, financial condition, results of operations and prospects.

Further, the UK's withdrawal from the EU has resulted in the relocation of the EMA from the UK to the Netherlands. This relocation has caused, and may continue to cause, disruption in the administrative and medical scientific links between the EMA and the MHRA, including delays in granting clinical trial authorization or marketing authorization, disruption of importation and export of active substance and other components of new drug formulations, and disruption of the supply chain for clinical trial product and final authorized formulations. The cumulative effects of the disruption to the regulatory framework may add considerably to the development lead time to marketing authorization and commercialization of products in the EU and/or the UK.

If we are found in violation of federal, state or foreign healthcare "fraud and abuse" laws, we may be required to pay significant fines and penalties, including, without limitation, debarment, suspension or exclusion from participation in federal, state or similar healthcare programs, which may adversely affect our business, financial condition and results of operations.

In the U.S., we are subject to various federal and state healthcare "fraud and abuse" laws, including anti- kickback laws, false claims laws and other laws intended to reduce fraud and abuse in federal and state healthcare programs, which could affect us, and our ability to successfully commercialize our products in the U.S. We may have to comply with similar laws and regulations outside the U.S. These laws include:

- the federal Anti-Kickback Statute makes it illegal for any person, including a prescription drug manufacturer (or a party acting on its behalf), to knowingly and willfully solicit, receive, offer or pay any remuneration that is intended to induce the referral of business, including the purchase, order or prescription of a particular drug for which payment may be made under a federal healthcare program, such as Medicare or Medicaid. A person or entity does not need to have actual knowledge of this statute or specific intent to violate it to have committed a violation;

- false claims laws prohibit anyone from knowingly and willfully presenting or causing to be presented for payment to third-party payers, including government payers, claims for reimbursed drugs or services that are false or fraudulent, claims for items or services that were not provided as claimed, or claims for medically unnecessary items or services. Cases have been brought under false claims laws alleging that off-label promotion of pharmaceutical products or the provision of kickbacks has resulted in the submission of false claims to governmental healthcare programs. In addition, the government may assert that a claim, including items or services resulting from a violation of the federal Anti-Kickback Statute, constitutes a false or fraudulent claim for purposes of the false claims laws. Further, private individuals have the ability to bring actions on behalf of the government under the federal False Claims Act;

- the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") prohibits persons or entities from knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private payers, or knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. Similar to the federal Anti- Kickback Statute, a person or entity does not need to have actual knowledge of these statutes or specific intent to violate them to have committed a violation;

- federal civil monetary penalties laws, which impose civil fines for, among other things, the offering or transfer of remuneration to a Medicare or state healthcare program beneficiary if the person knows, or should know, it is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier of services reimbursable by Medicare or a state healthcare program, unless an exception applies;

- federal consumer protection and unfair competition laws, which broadly regulate marketplace activities and activities that potentially harm consumers;

- the federal physician sunshine requirements under the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act ("ACA"), which requires certain manufacturers of drugs, devices, biologics, and medical supplies to report annually to the U.S. Centers for Medicare & Medicaid Services information related to payments and other transfers of value to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), certain non-physician practitioners (physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, anesthesiologist assistants, and certified nurse midwives), and teaching hospitals, and ownership and investment interests held by physicians and their immediate family members;

- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws, which may apply to items or services reimbursed by any third-party payor, including commercial insurers; state laws

that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government, or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; and state laws that require drug manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures and pricing information; and

- European and other foreign law equivalents of each of the laws, including reporting requirements detailing interactions with and payments to healthcare providers.

The risk of our being found in violation of these laws is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. If our operations are found to be in violation of any of the laws described above or any other governmental laws and regulations that apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines, the curtailment or restructuring of our operations, the exclusion from participation in federal and state or foreign healthcare programs, additional reporting obligations and oversight if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws, any of which could adversely affect our ability to market our products and adversely impact our financial results.

We may be unable to maintain sufficient clinical trial liability insurance.

Our inability to retain sufficient clinical trial liability insurance at an acceptable cost to protect against potential liability claims could prevent or inhibit our ability to conduct clinical trials for product candidates we develop. We may be unable to obtain appropriate levels of such insurance. Even if we do secure clinical trial liability insurance for our programs, we may not be able to achieve sufficient levels of such insurance. Any claim that may be brought against us could result in a court judgment or settlement in an amount that is not covered, in whole or in part, by our insurance or that is in excess of the limits of our insurance coverage. We expect we will supplement our clinical trial coverage with product liability coverage in connection with the commercial launch of IGALMI™, and for any of our other product candidates that may receive regulatory approval, we may be unable to obtain such increased coverage on acceptable terms or at all. If we are found liable in a clinical trial lawsuit or a product liability lawsuit in the future, we will have to pay any amounts awarded by a court or negotiated in a settlement that exceed our coverage limitations or that are not covered by our insurance, and we may not have, or be able to obtain, sufficient capital to pay such amounts.

Risks Related to Commercialization of Our Product Candidates

If our products do not gain market acceptance, our business will suffer because we might not be able to fund future operations.

A number of factors may affect the market acceptance of our products or any other products or product candidates we develop or acquire, including, among others:

- the price of our products relative to other products for the same or similar treatments;
- the perception by patients, physicians and other members of the healthcare community of the effectiveness and safety of our products for their indicated applications and treatments;
- our ability to fund our sales and marketing efforts; and
- the effectiveness of our sales and marketing efforts.

If our products do not gain market acceptance, we may not be able to fund future operations, including developing, testing and obtaining regulatory approval for new product candidates and expanding our sales and marketing efforts for our approved products, which would cause our business to suffer.

We obtained Orphan Drug Designation for BXCL701 for the treatment of pancreatic cancer, melanoma, acute myeloid leukemia and soft tissue sarcoma and we may seek Orphan Drug Designation for other indications or product candidates, and we may be unable to maintain the benefits associated with Orphan Drug Designation, including the potential for market exclusivity, and may not receive Orphan Drug Designation for other indications or for our other product candidates.

Regulatory authorities in some jurisdictions, including the U.S. and EU, may designate drugs intended for relatively small patient populations as orphan drugs. Under the Orphan Drug Act, the FDA may designate a drug as an orphan drug if it is a drug intended to treat a rare disease or condition, which is generally defined as a patient population of fewer than 200,000 individuals in the U.S., or a patient population greater than 200,000 individuals in the U.S. where there is no reasonable expectation that the cost of developing the drug will be recovered from sales in the U.S. In the EU, orphan drug designation is granted by the European Commission based on a scientific opinion of the EMA's Committee for Orphan Medicinal Products. A medicinal product may be designated as orphan if its sponsor can establish that (i) the product is intended for the diagnosis, prevention or treatment of a life-threatening or chronically debilitating condition; (ii) either (a) such condition affects no more than 5 in 10,000 persons in the EU when the application is made, or (b) the product, without the benefits derived from orphan status, would not generate sufficient return in the EU to justify investment; and (iii) there exists no satisfactory method of diagnosis, prevention or treatment of such condition authorized for marketing in the EU, or if such a method exists, the medicinal product will be of significant benefit to those affected by the condition. The application for orphan designation must be submitted before the application for marketing authorization.

In the U.S., orphan drug designation entitles a party to financial incentives such as opportunities for grant funding towards clinical trial costs, tax advantages and user-fee waivers. In addition, if a product that has orphan drug designation subsequently receives the first FDA approval for the disease or condition for which it has such designation, the product is entitled to orphan drug exclusivity. Orphan drug exclusivity in the U.S. provides that the FDA may not approve any other applications, including a full NDA, to market the same drug for the same disease or condition for seven years. In limited circumstances, the applicable exclusivity period is ten years in the EU. The EU exclusivity period can be reduced to six years if, at the end of the fifth year, it is established that a drug no longer meets the criteria for orphan drug designation or if the drug is sufficiently profitable so that market exclusivity is no longer justified.

In January 2021, the FDA granted Orphan Drug Designation to BXCL701 for the treatment of soft tissue sarcoma. In September 2019, the FDA granted Orphan Drug Designation to BXCL701 for the treatment of acute myeloid leukemia. Prior to 2019, the FDA granted Orphan Drug Designation to BXCL701 for the treatment of pancreatic cancer and melanoma. We may seek Orphan Drug Designations for BXCL701 in other diseases or conditions or for our other product candidates. There can be no assurances that we will be able to obtain such designations.

Even if we, or any future collaborators, obtain orphan drug designation for a product candidate, we, or they, may not be able to obtain or maintain orphan drug exclusivity for that product candidate. We may not be the first to obtain marketing approval of any product candidate for which we have obtained orphan drug designation for the orphan-designated indication due to the uncertainties associated with developing pharmaceutical products, and it is possible that another company also holding orphan drug designation for the same product candidate will receive marketing approval for the same disease or condition before we do. If that were to happen, our applications for that disease or condition may not be approved until the competing company's period of exclusivity expires. In addition, exclusive marketing rights in the U.S. and abroad may be limited if we seek approval for an indication broader than the orphan-designated disease or condition or may be lost if the FDA or foreign regulatory authorities later determines that the request for designation was materially defective or if we are unable to assure sufficient quantities of the product to meet the needs of patients with the rare disease or condition. Further, even if we, or any future collaborators, obtain orphan drug exclusivity for a product, that exclusivity may not effectively protect the product from competition because different drugs with different active ingredients may be approved for the same disease or condition. Even after an orphan drug is approved, the FDA or foreign regulatory authorities can subsequently approve the same drug with the

same active ingredient for the same condition if the FDA or foreign regulatory authorities conclude that the later drug is clinically superior in that it is shown to be safer, more effective or makes a major contribution to patient care or the manufacturer of the product with orphan exclusivity is unable to maintain sufficient product quantity. Orphan drug designation neither shortens the development or regulatory review time of a drug, nor gives the drug any advantage in the regulatory review or approval process, and does not prevent competitors from obtaining approval of the same product candidate as ours for indications other than those in which we have been granted orphan drug designation.

If we are unable to develop satisfactory sales and marketing capabilities, we may not succeed in commercializing IGALMI™ or any product candidate for which we may obtain regulatory approval.

We have limited experience in marketing and selling drug products. We have not entered into arrangements for the sale and marketing of IGALMI™ or BXCL501, BXCL701, BXCL502 or any other product candidate. Typically, pharmaceutical companies would employ groups of sales representatives and associated sales and marketing staff numbering in the hundreds to thousands of individuals to call on the large number of physicians and hospitals. We may seek to collaborate with a third-party to market our drugs or may seek to market and sell our drugs by ourselves. If we seek to collaborate with a third-party, we cannot be sure that a collaborative agreement can be reached on terms acceptable to us. If we seek to market and sell our drugs directly, we will need to hire additional personnel skilled in marketing and sales. We cannot be sure that we will be able to acquire, or establish third-party relationships to provide, any or all of these marketing and sales capabilities. The establishment of a direct sales force or a contract sales force, or a combination thereof, to market our products will be expensive and time-consuming and could delay any product launch. Further, we can give no assurances that we will be able to maintain a direct and/or contract sales force for any period of time or that our sales efforts will be sufficient to grow our revenues or that our sales efforts will ever lead to profits.

We operate in a highly competitive and rapidly changing industry.

Biopharmaceutical product development is highly competitive and subject to rapid and significant technological advancements. Our success is highly dependent upon our ability to in-license, acquire, develop and obtain regulatory approval for new and innovative products on a cost-effective basis and to market them successfully. In doing so, we face and will continue to face intense competition from a variety of businesses, including large, fully integrated, well-established pharmaceutical companies who already possess a large share of the market, specialty pharmaceutical and biopharmaceutical companies, academic institutions, government agencies and other private and public research institutions in the U.S., the EU and other jurisdictions.

Many of the companies against which we are competing or against which we may compete in the future have significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, conducting clinical trials, obtaining regulatory approvals and marketing approved drugs than we do. These third parties compete with us in recruiting and retaining qualified scientific and management personnel, establishing clinical trial sites and patient registration for clinical trials, as well as in acquiring technologies complementary to, or necessary for, our programs. Mergers and acquisitions in the biopharmaceutical industry could result in even more resources being concentrated among a small number of our competitors.

Competition may further increase as a result of advances in the commercial applicability of technologies and greater availability of capital for investment in these industries. Our competitors may succeed in developing, acquiring or licensing, on an exclusive basis, products that are more effective or less costly than any product candidate that we may develop.

Established biopharmaceutical companies may invest heavily to accelerate discovery and development of novel compounds or to in-license novel compounds that could make our product candidates less competitive. In addition, any new product that competes with an approved product must demonstrate compelling advantages in efficacy, convenience, tolerability and safety in order to overcome price competition and to be commercially successful. Accordingly, our competitors may succeed in obtaining patent protection, discovering, developing, receiving FDA approval for or commercializing drugs before we do, which would have an adverse impact on our business and results of operations.

The availability of our competitors' products could limit the demand and the price we are able to charge for product candidate we commercialize, if any. The inability to compete with existing or subsequently introduced drugs would harm our business, financial condition and results of operations.

Although we obtained FDA approval for IGALMI™, our products and product candidates may not be accepted by physicians or the medical community in general.

There can be no assurance that IGALMI™, or BXCL501, BXCL701, BXCL502 and our other product candidates or any other product candidate successfully developed by us, independently or with partners, if approved, will be accepted by physicians, hospitals and other healthcare facilities. IGALMI™ competes, and BXCL501, BXCL701, BXCL502 and any future product candidates we develop will compete, with a number of products manufactured and marketed by major pharmaceutical and biotechnology companies. The degree of market acceptance of IGALMI™ and any drugs we develop depends on a number of factors, including:

- our demonstration of the clinical efficacy and safety of our products and product candidates;
- timing of market approval and commercial launch of our products and product candidates;
- the clinical indication(s) for which our products and product candidates are approved;
- product label and package insert requirements;
- advantages and disadvantages of our products and product candidates compared to existing therapies;
- continued interest in and growth of the market for anti-cancer or anti-agitation drugs;
- strength of sales, marketing, and distribution support;
- product pricing in absolute terms and relative to alternative treatments;
- future changes in healthcare laws, regulations, and medical policies; and
- availability of coverage and reimbursement in select jurisdictions, and future changes to coverage and reimbursement policies of government and third-party payors.

Significant uncertainty exists as to the coverage and reimbursement status of any product candidate for which we obtain regulatory approval. In the U.S. and other countries, sales of IGALMI™ and any other products for which we receive regulatory approval for commercial sale will depend in part on the availability of coverage and reimbursement from third-party payors. Third-party payors include government health administrative authorities, managed care providers, private health insurers and other organizations.

Third-party payors are increasingly challenging the prices charged for medical products and services. It will be time consuming and expensive for us to go through the process of seeking coverage and reimbursement from Medicare and private payors. IGALMI™ and any other products for which we receive regulatory approval may not be considered cost-effective, and coverage and reimbursement may not be available or sufficient to allow us to sell our proposed products on a profitable basis. Further federal, state and foreign government proposals and healthcare reforms are likely which could limit the prices that can be charged for IGALMI™ and the product candidates that we develop and may further limit our commercial opportunities. Our results of operations could be materially adversely affected by proposed healthcare reforms, by the Medicare prescription drug coverage legislation in the U.S., by the possible effect of such current or future legislation on amounts that private insurers will pay and by other healthcare reforms that may be enacted or adopted in the future.

Healthcare reform measures could hinder or prevent our product candidates' commercial success.

The U.S. government and other governments have shown significant interest in pursuing healthcare reform. Any government-adopted reform measures could adversely impact the pricing of healthcare products and services in the U.S. or internationally and the amount of reimbursement available from governmental agencies or other third-party payors. The continuing efforts of the U.S. and foreign governments, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce healthcare costs may adversely affect our ability to set prices for our products, which we believe are fair, and our ability to generate revenues and achieve and maintain profitability.

New laws, regulations and judicial decisions, or new interpretations of existing laws, regulations and decisions, that relate to healthcare availability, methods of delivery or payment for products and services, or sales, marketing or pricing, may limit our potential revenue, and we may need to revise our research and development programs. The pricing and reimbursement environment may change in the future and become more challenging due to several reasons, including policies advanced by the current executive administration in the U.S., new healthcare legislation or fiscal challenges faced by government health administration authorities. Specifically, in both the U.S. and some foreign jurisdictions, there have been a number of legislative and regulatory proposals to change the healthcare system in ways that could affect our ability to sell our products profitably.

For example, in the U.S., the ACA has substantially changed the way healthcare is financed by both government health plans and private insurers, and significantly impacts the pharmaceutical industry. The ACA contained a number of provisions that are expected to impact our business and operations in ways that may negatively affect our potential revenues in the future. For example, the ACA imposed a non-deductible excise tax on pharmaceutical manufacturers or importers that sell branded prescription drugs to government programs which we believe will increase the cost of our products. In addition, as part of the ACA's provisions closing a funding gap that existed in the Medicare Part D prescription drug program, manufacturers are now required to provide a discount on branded prescription drugs equal to 70% of the government-negotiated price, for drugs provided to certain beneficiaries who fall within the "donut hole." Similarly, the ACA increased the level of Medicaid rebates payable by manufacturers of brand-name drugs from 15.1% to 23.1% of the average manufacturer price and required collection of rebates for drugs paid by Medicaid managed care organizations. The ACA also included significant changes to the 340B drug discount program including expansion of the list of eligible covered entities that may purchase drugs under the program. At the same time, the expansion in eligibility for health insurance benefits created under ACA is expected to increase the number of patients with insurance coverage who may receive our products.

Since its enactment, there have been judicial, executive and Congressional challenges to certain aspects of the ACA. On June 17, 2021, the U.S. Supreme Court dismissed the most recent judicial challenge to the ACA brought by several states without specifically ruling on the constitutionality of the ACA. Thus, the ACA will remain in effect in its current form. Further, prior to the U.S. Supreme Court ruling, President Biden issued an executive order that initiated a special enrollment period for purposes of obtaining health insurance coverage through the ACA marketplace from February 15, 2021 through August 15, 2021. The executive order instructed certain governmental agencies to review and reconsider their existing policies and rules that limit access to healthcare, including among others, reexamining Medicaid demonstration projects and waiver programs that include work requirements, and policies that create unnecessary barriers to obtaining access to health insurance coverage through Medicaid or the ACA.

In addition, other legislative changes have been proposed and adopted in the U.S. since the ACA was enacted. These changes include the Budget Control Act of 2011, which resulted in aggregate reductions of Medicare payments to providers of 2% per fiscal year, which went into effect on April 1, 2013, and, due to subsequent legislative amendments to the statute, will remain in effect through 2030, except for a temporary suspension from May 1, 2020 through March 31, 2022. Under current legislation, the actual reduction in Medicare payments varies from, 1% from April 1, 2022 through June 30, 2022, to up to 3% in the final fiscal year of this sequester, unless additional Congressional action is taken. Furthermore, the American Taxpayer Relief Act of 2012, further reduced Medicare payments to several types of providers, including hospitals, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. More recently, on March 11, 2021, President

Biden signed the American Rescue Plan Act of 2021 into law, which eliminates the statutory Medicaid drug rebate cap, currently set at 100% of a drug's average manufacturer price, beginning January 1, 2024.

The cost of prescription pharmaceuticals in the U.S. has also been the subject of considerable discussion. There have been several Congressional inquiries, as well as legislative and regulatory initiatives and executive orders designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drug products. Members of Congress and the Biden Administration have indicated they will continue to pursue legislative or administrative measures to control prescription drug costs, although the likelihood of such measures being adopted remains uncertain. For example, the Inflation Reduction Act, if enacted, would introduce substantial drug pricing reforms, including the establishment of a drug price negotiation program within the U.S. Department of Health and Human Services that would require manufacturers to charge a negotiated "maximum fair price" for certain selected drugs or pay an excise tax for noncompliance, and the establishment of rebate payment requirements on manufacturers of certain drugs payable under Medicare Parts B and D. If the Inflation Reduction Act is not enacted, similar or other drug pricing proposals could appear in future legislation. We cannot predict with certainty what impact any federal or state health reforms will have on us, but such changes could impose new or more stringent regulatory requirements on our activities or result in reduced reimbursement for our products, any of which could adversely affect our business, results of operations and financial condition.

Individual states in the U.S. have also become increasingly active in passing legislation and implementing regulations designed to control pharmaceutical product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, are designed to encourage importation from other countries and bulk purchasing. Furthermore, there has been increased interest by third-party payors and governmental authorities in reference pricing systems and publication of discounts and list prices.

It is likely that federal and state legislatures within the U.S. and foreign governments will continue to consider changes to existing healthcare legislation. We cannot predict the reform initiatives that may be adopted in the future or whether initiatives that have been adopted will be repealed or modified. The continuing efforts of governments, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce costs of healthcare may adversely affect the demand for any drug products for which we may obtain regulatory approval, our ability to set a price that we believe is fair for our products, our ability to obtain adequate coverage and reimbursement approval for a product, our ability to generate revenues and achieve or maintain profitability, and the level of taxes that we are required to pay.

If we fail to comply with reporting and payment obligations under the Medicaid Drug Rebate Program or other governmental pricing programs in the United States, we could be subject to additional reimbursement requirements, penalties, sanctions and fines, which could have a material adverse effect on our business, results of operations and financial condition.

Upon marketing IGALMI™, we expect to participate in the MDRP and other federal and state government pricing programs in the U.S., and we may participate in additional government pricing programs in the future. These programs generally require manufacturers to pay rebates or otherwise provide discounts to government payors in connection with drugs that are dispensed to beneficiaries of these programs. As a condition of having federal funds being made available for covered outpatient drugs under Medicaid and Medicare Part B, a manufacturer must enroll in the MDRP. Under this program, the manufacturer must pay a rebate to state Medicaid programs for each unit of a covered outpatient drug dispensed to a Medicaid beneficiary and paid for by a state Medicaid program. Medicaid drug rebates are based on pricing data that the manufacturer must report on a monthly and quarterly basis to CMS. For the MDRP, this data includes the average manufacturer price ("AMP") for each drug and, in the case of an innovator product, the best price ("BP"). If a manufacturer becomes aware that its MDRP price reporting submission for a prior period was incorrect or has changed as a result of recalculation of the pricing data, the manufacturer must resubmit the corrected data for up to three years after the data originally was due. In addition, there is increased focus by the Office of Inspector General within the U.S. Department of Health and Human Services on the methodologies used by manufacturers to calculate AMP, and BP, to assess manufacturer compliance with MDRP reporting requirements. If a manufacturer fails to provide information timely or is found to have knowingly submitted false information to the government, the manufacturer may be subject to civil monetary penalties and other sanctions, including termination from the MDRP, which would result in payment not being available for its covered outpatient drugs under Medicaid or, if applicable, Medicare Part B. Failure to make necessary disclosures and/or to identify overpayments could result in allegations against a manufacturer under the Federal False Claims Act and other laws and regulations.

Federal law requires that a manufacturer that participates in the MDRP also participate in the Public Health Service's 340B drug pricing program (the "340B program") in order for federal funds to be available for the manufacturer's drugs under Medicaid and Medicare Part B. The 340B program is administered by the Health Resources and Services Administration ("HRSA") and requires a participating manufacturer to charge statutorily defined covered entities no more than the 340B "ceiling price" for its covered outpatient drugs used in an outpatient setting. These 340B covered entities include a variety of community health clinics and other entities that receive health services grants from the Public Health Service, as well as hospitals that serve a disproportionate share of low-income patients. The 340B ceiling price is calculated using a statutory formula, which is based on the AMP and rebate amount for the covered outpatient drug as calculated under the MDRP. In general, products subject to Medicaid price reporting and rebate liability are also subject to the 340B ceiling price calculation and discount requirement. Manufacturers must report 340B ceiling prices to HRSA on a quarterly basis, and HRSA publishes them to 340B covered entities. HRSA has finalized regulations regarding the calculation of the 340B ceiling price and the imposition of civil monetary penalties on manufacturers that knowingly and intentionally overcharge covered entities for 340B-eligible drugs. HRSA has also finalized an administrative dispute resolution process through which 340B covered entities may pursue claims against participating manufacturers for overcharges, and through which manufacturers may pursue claims against 340B covered entities for engaging in unlawful diversion or duplicate discounting of 340B drugs. In addition, legislation may be introduced that, if passed, would further expand the 340B program, such as adding further covered entities or requiring participating manufacturers to agree to provide 340B discounted pricing on drugs used in an inpatient setting.

In order to be eligible to have drug products paid for with federal funds under Medicaid and Medicare Part B and purchased by certain federal agencies and grantees, a manufacturer also must participate in the U.S. Department of Veterans Affairs ("VA") Federal Supply Schedule ("FSS") pricing program. Under the VA/FSS program, the manufacturer must report the Non-Federal Average Manufacturer Price ("Non-FAMP") for its covered drugs to the VA and charge certain federal agencies no more than the Federal Ceiling Price, which is calculated based on Non-FAMP using a statutory formula. These four agencies are the VA, the U.S. Department of Defense, the U.S. Coast Guard, and the U.S. Public Health Service (including the Indian Health Service). The manufacturer must also pay rebates on products purchased by military personnel and dependents through the TRICARE retail pharmacy program. If a manufacturer fails to provide timely information or is found to have knowingly submitted false information, the manufacturer may be subject to civil monetary penalties.

Individual states continue to consider and have enacted legislation to limit the growth of healthcare costs, including the cost of prescription drugs and combination products. A number of states have either implemented or are considering implementation of drug price transparency legislation that may prevent or limit our ability to take price increases at certain rates or frequencies. Requirements under such laws include advance notice of planned price increases, reporting price increase amounts and factors considered in taking such increases, wholesale acquisition cost information disclosure to prescribers, purchasers, and state agencies, and new product notice and reporting. Such legislation could limit the price or payment for certain drugs, and a number of states are authorized to impose civil monetary penalties or pursue other enforcement mechanisms against manufacturers who fail to comply with drug price transparency requirements, including the untimely, inaccurate, or incomplete reporting of drug pricing information. If we are found to have violated state law requirements, we may become subject to penalties or other enforcement mechanisms, which could have a material adverse effect on our business.

Pricing and rebate calculations are complex, vary among products and programs, and are often subject to interpretation by manufacturers, governmental or regulatory agencies, and the courts. The terms, scope and complexity of these government pricing programs change frequently, as do interpretations of applicable requirements for pricing and rebate calculations. Responding to current and future changes may increase our costs and the complexity of compliance will be time consuming. Any required refunds to the U.S. government or responding to a government investigation or enforcement action would be expensive and time consuming and could have a material adverse effect on our business, results of operations and financial condition. Price recalculations under the MDRP also may affect the ceiling price at which we may be required to offer products under the 340B program. Civil monetary penalties can be applied if we are found to have knowingly submitted any false price or product information to the government, if we fail to submit required price data on a timely basis, or if we are found to have charged 340B covered entities more than the statutorily mandated ceiling price. In the event that CMS were to terminate a manufacturer's Medicaid rebate agreement, no federal payments would be available under Medicaid or Medicare for its covered outpatient drugs. We cannot assure you that submissions we make will not be found to be incomplete or incorrect.

Risks Related to Our Relationship with BioXcel LLC

BioXcel LLC has significant influence over the direction of our business, and the concentrated ownership of our common stock will prevent you and other stockholders from influencing significant decisions.

As of June 30, 2022, BioXcel LLC owned approximately 31% of the economic interest and voting power of our outstanding common stock. Drs. Vimal Mehta and Krishnan Nandabalan are the co-founders and serve as senior executives and members of the board of BioXcel LLC. See "The management of and beneficial ownership in BioXcel LLC by our executive officers and our directors may create, or may create the appearance of, conflicts of interest." below. Even though BioXcel LLC controls less than a majority of the voting power of our outstanding common stock, it may influence the outcome of such corporate actions so long as it owns a significant portion of our common stock.

Approval of commercial terms between us and BioXcel LLC does not preclude the possibility of stockholder litigation, including but not limited to derivative litigation nominally against BioXcel LLC and against its directors and officers and also against us and our directors and officers.

The commercial terms of the Separation and Shared Services Agreement (the "Services Agreement") and the Amended and Restated Asset Contribution Agreement (the "Contribution Agreement") that we entered into with BioXcel LLC have not been negotiated on behalf of BioXcel LLC by persons consisting solely of disinterested BioXcel LLC directors.

No assurance can be given that any stockholder of BioXcel LLC will not claim in a lawsuit that such terms in fact are not in the best interests of BioXcel LLC and its stockholders, that the directors and officers of BioXcel LLC breached their fiduciary duties in connection with such agreements and that any disclosures by BioXcel LLC to its stockholders regarding these agreements and the relationship between BioXcel LLC and us did not satisfy applicable requirements. In any such instance, we and our directors and officers may also be named as defendants and we would have to defend ourselves and our directors and officers. While we will seek indemnification from BioXcel LLC under the terms of these agreements against any damages or other costs, which could be substantial, no such indemnification

has yet been agreed to or may be agreed to and be in effect. Further, any such litigation would be time-consuming and would divert focus and resources from the development of our product candidates and our business, including but not limited to possibly delaying our clinical trials due to our management having to spend time and attention on such litigation.

We continue to depend on BioXcel LLC to provide us with certain services for our business.

We rely, in part, on BioXcel LLC and access to its EvolverAI, a research and development engine created and owned by BioXcel LLC, to identify, research and develop potential product candidates in neuroscience and immuno-oncology. We negotiated the Services Agreement with BioXcel LLC pursuant to which BioXcel LLC shall perform product identification and related services for us utilizing its EvolverAI. Under the Services Agreement, we have an option, exercisable until December 31, 2024, to enter into a collaborative services agreement with BioXcel LLC pursuant to which BioXcel LLC shall perform product identification and related services for us utilizing its EvolverAI. The parties are obligated to negotiate the collaborative services agreement in good faith and to incorporate reasonable market-based terms, including consideration for BioXcel LLC reflecting a low, single-digit royalty on net sales and reasonable development and commercialization milestone payments, provided that (i) development milestone payments shall not exceed $10 million in the aggregate and not be payable prior to proof of concept in humans and (ii) commercialization milestone payments shall be based on reaching annual net sales levels, be limited to 3% of the applicable net sales level, and not exceed $30 million in the aggregate. BioXcel LLC shall continue to make such product identification and related services available to us until at least December 31, 2024. In addition, BioXcel LLC has granted us a first right to negotiate exclusive rights to any additional product candidates in the fields of neuroscience and immuno-oncology that BioXcel LLC may identify on its own and not in connection with BioXcel LLC's provision of services to us under the Services Agreement. This first right to negotiate is valid for a period of five years from the date of our IPO. If our rights and access to BioXcel LLC's collaborative services and to its EvolverAI were to become limited, terminated, or if we were otherwise precluded from conducting research and development using its EvolverAI, or if BioXcel LLC is unable to fulfill its obligations under the agreements, such development could materially adversely affect our future operating results, financial condition and prospects. Furthermore, certain individuals conducting services on our behalf are not our employees, and except for remedies available to us under our agreements with BioXcel LLC, we cannot control whether or not they devote sufficient time, skill and resources to our ongoing development programs. We also cannot ensure that BioXcel LLC retains sufficient resources or personnel or otherwise to conduct its operations. BioXcel LLC may also have relationships with other commercial entities, including our competitors, for whom they may also be conducting research and development activities, which could impede their ability to devote appropriate time to our research and development programs. In addition, if we fail to comply with our diligence, payment or other obligations under the agreements, any such collaboration may terminate or we may not be able to successfully negotiate agreements for future product candidates or collaborations with BioXcel LLC.

The management of and beneficial ownership in BioXcel LLC by our executive officers and our directors may create, or may create the appearance of, conflicts of interest.

The management of and beneficial ownership in BioXcel LLC by our executive officers and our directors may create, or may create the appearance of, conflicts of interest. For example, our Chief Executive Officer and a director on our Board, Vimal Mehta, Ph.D., and our Chief Digital Officer and a director on our Board, Krishnan Nandabalan, Ph.D., are managers of BioXcel LLC, as well as directors, officers and stockholders of BioXcel LLC, BTI's former parent company. Additionally, as of June 30, 2022, Dr. Mehta and Dr. Nandabalan, through their beneficial ownership of BioXcel LLC, owned approximately 33% and 32%, respectively of the Company. Management and ownership by our executive officers and directors in BioXcel LLC, creates, or, may create the appearance of, conflicts of interest when these individuals are faced with decisions that could have different implications for BioXcel LLC than the decisions have for us, including decisions that relate to our Services Agreement, Contribution Agreement, as well as potential agreements relating to future product candidates and AI-related services or collaborations. Any perceived conflicts of interest resulting from investors questioning the independence of our management or the integrity of corporate governance procedures may materially affect our stock price.

Any disputes that arise between us and BioXcel LLC with respect to our past and ongoing relationships could harm our business operations.

Disputes may arise between BioXcel LLC and us in a number of areas relating to our past and ongoing relationships, including:

- intellectual property, technology and business matters, including failure to make required technology transfers and failure to comply with non-compete provisions applicable to BioXcel LLC and us;
- labor, tax, employee benefit, indemnification and other matters arising from the separation of BTI from BioXcel LLC;
- distribution and supply obligations;
- employee retention and recruiting;
- business combinations involving us;
- sales or distributions by BioXcel LLC of all or any portion of its ownership interest in us;
- the nature, quality and pricing of services BioXcel LLC has agreed to provide us; and
- business opportunities that may be attractive to both BioXcel LLC and us.

We entered into the Services Agreement with BioXcel LLC related to the separation of our business operations from those of BioXcel LLC that contains certain limitations on BioXcel LLC's ability to control various aspects of our business and operations, notwithstanding BioXcel LLC's substantial ownership position. This agreement may be amended upon agreement between us and BioXcel LLC.

BioXcel LLC may experience challenges with the acquisition, development, enhancement or deployment of technology necessary for EvolverAI.

BioXcel LLC operates in businesses that require sophisticated computer systems and software for data collection, data processing, cloud-based platforms, analytics, statistical projections and forecasting, mobile computing, social media analytics and other applications and technologies. BioXcel LLC seeks to address its technology risks by increasing its reliance on the use of innovations by cross-industry technology leaders and adapt these for their pharmaceutical, biotechnology, biopharmaceutical, diagnostic, medical device and contract research and manufacturing clients. Some of the technologies supporting the industries they serve are changing rapidly and we must continue to adapt to these changes in a timely and effective manner at an acceptable cost. They also must continue to deliver data to their clients in forms that are easy to use while simultaneously providing clear answers to complex questions. There can be no guarantee that we or BioXcel LLC will be able to develop, acquire or integrate new technologies, that these new technologies will meet our and BioXcel LLC's needs or achieve our expected goals, or that we will be able to do so as quickly or cost-effectively as our competitors. Significant technological change could render BioXcel LLC's EvolverAI obsolete. BioXcel LLC's continued success will depend on its ability to adapt to changing technologies, manage and process ever-increasing amounts of data and information and improve the performance, features and reliability of its services in response to changing client and industry demands. BioXcel LLC may experience difficulties that could delay or prevent the successful design, development, testing, and introduction of advanced versions of EvolverAI, limiting our ability to identify new product candidates. New services, or enhancements to existing EvolverAI services, may not adequately meet our requirements. Any of these failures could have a material adverse effect on our operating results and financial condition.

Risks Related to Our Reliance on Third Parties

We are substantially dependent on third parties for the manufacture of our clinical supplies of our product candidates and our commercial supplies of IGALMI™, and we intend to rely on third parties to produce commercial supplies of any other approved product candidate. Therefore, our development of our products could be stopped or delayed, and our commercialization of any future product could be stopped or delayed or made less profitable if third-party manufacturers fail to obtain approval of the FDA or comparable regulatory authorities or fail to provide us with drug product in sufficient quantities or at acceptable prices.

We entered into a commercial supply agreement with ARx pursuant to which ARx agreed to exclusively manufacture and supply us with all of our worldwide demand of thin film formulation of Dex to be used for the commercial supply of IGALMI™ and for ongoing clinical trials of our product candidate BXCL501, subject to certain alternative supply provisions. If ARx is unable to produce our supply of Dex, our business would be harmed because there can be no assurance that we will be able to identify or enter into agreements with alternative suppliers on a timely basis on acceptable terms, if at all. An interruption in our ability to sell our products to customers could occur if we encounter delays or difficulties in securing Dex, or if the quality supplied does not meet our specifications, or if we cannot then obtain an acceptable substitute. If any of these events occur, our business and operating results could be harmed. Our specified minimum annual payment could adversely affect our cash flows, such as in times when we have sufficient inventory and would otherwise be able to use our cash for other purposes.

The manufacture of biotechnology and pharmaceutical products is complex and requires significant expertise, capital investment, process controls and know-how. Common difficulties in biotechnology and pharmaceutical manufacturing may include: sourcing and producing raw materials, transferring technology from chemistry and development activities to production activities, validating initial production designs, scaling manufacturing techniques, improving costs and yields, establishing and maintaining quality controls and stability requirements, eliminating contaminations and operator errors, and maintaining compliance with regulatory requirements. We do not currently have nor do we plan to acquire the infrastructure or capability internally to produce an adequate supply of compounds to meet future requirements for clinical trials and commercialization of our products or to produce our products in accordance with cGMP prescribed by the FDA or similar foreign requirements. Drug manufacturing facilities are subject to inspection before the FDA or foreign regulatory authorities will issue an approval to market a new drug product, and ARx and any other manufacturers that we may use must adhere to the cGMP or similar foreign regulations prescribed by the FDA or foreign regulatory authorities.

As such, these third-party manufacturers will be required to comply with cGMPs, and other applicable laws and regulations. We will have no control over the ability of these third parties to comply with these requirements, or to maintain adequate quality control, quality assurance and qualified personnel. If the FDA or any other applicable regulatory authorities do not approve the facilities of these third parties for the manufacture of our other product candidates or any products that we may successfully develop, or if it withdraws any such approval, or if our suppliers or contract manufacturers decide they no longer want to supply or manufacture for us, we may need to find alternative manufacturing facilities, in which case we might not be able to identify manufacturers for clinical or commercial supply on acceptable terms, or at all. Any of these factors would significantly impact our ability to develop, obtain regulatory approval for or market our product candidates and adversely affect our business.

We, ARx and/or our other third-party manufacturers may be adversely affected by developments outside of our control, and these developments may delay or prevent further manufacturing of our products. Adverse developments may include labor disputes, resource constraints, shipment delays, inventory shortages, lot failures, unexpected sources of contamination, lawsuits related to our manufacturing techniques, equipment used during manufacturing, or composition of matter, unstable political environments, acts of terrorism, war, natural disasters, and other natural and man-made disasters. If BioXcel LLC, we, ARx or our other third-party manufacturers were to encounter any of the above difficulties, or otherwise fail to comply with contractual obligations, our ability to provide any product for clinical trial or commercial purposes would be jeopardized. This may increase the costs associated with completing our clinical trials and commercial production. Further, production disruptions may cause us to terminate ongoing clinical trials and/or commence new clinical trials at additional expense. We may also have to take inventory write-offs and incur other charges and expenses for products that fail to meet specifications or pass safety inspections. Moreover, as a

result of the COVID-19 pandemic, third-party manufacturers have been and may in the future be affected, which could disrupt their activities and, as a result, we could face difficulty sourcing key components necessary to produce supply of our product candidates, which may negatively affect our preclinical and clinical development activities. If production difficulties cannot be solved with acceptable costs, expenses, and timeframes, we may be forced to abandon our clinical development and commercialization plans, which could have a material adverse effect on our business, prospects, financial condition, and the value of our securities.

We, or third-party manufacturers on whom we rely, including ARx, may be unable to successfully scale-up manufacturing of our product candidates in sufficient quality and quantity, which would delay or prevent us from developing our product candidates and commercializing any approved products.

In order to conduct clinical trials of our product candidates and commercialize any approved product candidates, we, or our manufacturers, including ARx, will need to manufacture them in large quantities. We, or our manufacturers, may be unable to successfully increase the manufacturing capacity for any of our product candidates in a timely or cost-effective manner, or at all. In addition, quality issues may arise during scale-up activities. If we, or any of our manufacturers, are unable to successfully scale up the manufacture of our product candidates in sufficient quality and quantity, the development, testing, and clinical trials of that product candidate may be delayed or infeasible, and regulatory approval or commercial launch of any resulting product may be delayed or not obtained, which could significantly harm our business. If we are unable to obtain or maintain third-party manufacturing for commercial supply of our product candidates, or to do so on commercially reasonable terms, we may not be able to develop and commercialize our product candidates successfully.

Our failure to find third-party collaborators to assist or share in the costs of product development could materially harm our business, financial condition and results of operations.

Our strategy for the development and commercialization of our proprietary product candidates may include the formation of collaborative arrangements with third parties. Collaborators have significant discretion in determining the efforts and resources they apply and may not perform their obligations as expected. Potential third-party collaborators include biopharmaceutical, pharmaceutical and biotechnology companies, academic institutions and other entities. Third-party collaborators may assist us in:

- funding research, preclinical development, clinical trials and manufacturing;
- seeking and obtaining regulatory approvals; and
- successfully commercializing IGALMI™ or product candidates.

If we are not able to establish collaboration agreements, we may be required to undertake product development and commercialization at our own expense. Such an undertaking may limit the number of product candidates that we will be able to develop, significantly increase our capital requirements and place additional strain on our internal resources. Our failure to enter into collaborations could materially harm our business, financial condition and results of operations.

In addition, our dependence on licensing, collaboration and other agreements with third parties may subject us to a number of risks. These agreements may not be on terms that prove favorable to us and may require us to relinquish certain rights in our product candidates. To the extent we agree to work exclusively with one collaborator in a given area, our opportunities to collaborate with other entities could be curtailed. Lengthy negotiations with potential new collaborators may lead to delays in the research, development or commercialization of product candidates. The decision by our collaborators to pursue alternative technologies or the failure of our collaborators to develop or commercialize successfully any product candidate to which they have obtained rights from us could materially harm our business, financial condition and results of operations.

We rely on third parties to conduct our preclinical and clinical trials. If these third parties do not successfully perform their contractual legal and regulatory duties or meet expected deadlines, we may not be able to obtain regulatory approval for or commercialize our product candidates and our business could be substantially harmed.

We have relied upon and plan to continue to rely upon third-party medical institutions, clinical investigators, contract laboratories and other third-party CROs to monitor and manage data for our ongoing preclinical and clinical programs. We rely on these parties for execution of our preclinical and clinical trials, and control only certain aspects of their activities. Nevertheless, we are responsible for ensuring that each of our studies is conducted in accordance with the applicable protocol, legal, regulatory and scientific standards, and our reliance on the CROs does not relieve us of our regulatory responsibilities. We and our CROs are required to comply with GCPs, which are regulations and guidelines enforced by the FDA, the Competent Authorities of the member states of the European Economic Area ("EEA") and comparable foreign regulatory authorities for all of our products in clinical development.

Regulatory authorities enforce these GCPs through periodic inspections of trial sponsors, principal investigators and trial sites. If we or any of our CROs fail to comply with applicable GCPs, the clinical data generated in our clinical trials may be deemed unreliable and the FDA, the EMA or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials comply with GCP regulations. In addition, our clinical trials must be conducted with product produced under cGMP regulations. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process.

If any of our relationships with these third-party CROs terminate, we may not be able to enter into arrangements with alternative CROs or to do so on commercially reasonable terms. In addition, our CROs are not our employees, and except for remedies available to us under our agreements with such CROs, we cannot control whether or not they devote sufficient time and resources to our on-going clinical, nonclinical and preclinical programs. If CROs do not successfully carry out their contractual duties or obligations or meet expected deadlines, if they need to be replaced or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated and we may not be able to obtain regulatory approval for or successfully commercialize our product candidates. As a result, our results of operations and the commercial prospects for our product candidates would be harmed, our costs could increase and our ability to generate revenues could be delayed.

Many of the third parties with whom we contract may also have relationships with other commercial entities, including our competitors, for whom they may also be conducting clinical trials or other drug development activities that could harm our competitive position. If the third parties conducting our GCP preclinical studies or our clinical trials do not perform their contractual duties or obligations, experience work stoppages, do not meet expected deadlines, terminate their agreements with us or need to be replaced, or if the quality or accuracy of the clinical data they obtain is compromised due to their failure to adhere to our clinical trial protocols or to GCPs, or for any other reason, we may need to enter into new arrangements with alternative third parties. Switching or adding CROs involves additional cost and requires management time and focus. In addition, there is a natural transition period when a new CRO commences work. As a result, delays occur, which can materially impact our ability to meet our desired clinical development timelines. Though we carefully manage our relationships with our CROs, there can be no assurance that we will not encounter similar challenges or delays in the future or that these delays or challenges will not have a material adverse impact on our business, financial condition and prospects.

Risks Related to Our Business and Industry

The COVID-19 pandemic or other pandemics, epidemics or outbreaks of an infectious disease may materially and adversely impact our business, including our preclinical studies and clinical trials.

The COVID-19 pandemic and government measures taken in response have had a significant impact, both direct and indirect, on businesses and commerce, as worker shortages have occurred; supply chains have been disrupted; facilities and production have been suspended; and demand for certain goods and services, such as medical services and

supplies, has spiked, while demand for other goods and services has fallen. We have taken steps to protect our workforce and have instituted a modified return-to-the-office policy that we continue to evaluate.

As a result of the COVID-19 pandemic, outbreaks from variants of COVID-19, or other pandemics, epidemics or outbreaks of infectious disease, we may experience disruptions that could severely impact our business, preclinical studies and clinical trials, including:

- delays or difficulties in enrolling patients in our clinical trials;
- delays or difficulties in clinical site initiation, including difficulties in recruiting clinical site investigators and clinical site staff;
- diversion of healthcare resources away from the conduct of clinical trials, including the diversion of hospitals serving as our clinical trial sites and hospital staff supporting the conduct of our clinical trials;
- interruption of key clinical trial activities, such as clinical trial site data monitoring, due to limitations on travel imposed or recommended by governments, employers and others or interruption of clinical trial subject visits and study procedures, which may impact the integrity of subject data and clinical study endpoints;
- interruption or delays in the operations of the FDA or other regulatory authorities, which may impact review and approval timelines;
- interruption of, or delays in receiving, supplies of our product candidates from our contract manufacturing organizations due to staffing shortages, production slowdowns or stoppages and disruptions in delivery systems;
- interruptions in preclinical studies due to restricted or limited operations resulting from restrictions on our on-site activities;
- limitations on employee resources that would otherwise be focused on the conduct of our preclinical studies and clinical trials, including because of sickness of employees or their families or the desire of employees to avoid contact with large groups of people;
- impacts from prolonged remote work arrangements, such as strains on our business continuity plans, cybersecurity risks, and inability of certain employees to perform their work remotely; and
- interruption or delays to our sourced discovery and clinical activities.

The COVID-19 pandemic continues to rapidly evolve. The extent to which the pandemic impacts our business, preclinical studies and clinical trials will depend on future developments, which are highly uncertain and cannot be predicted with confidence, such as rate of infection, the duration of the pandemic and subsequent waves of infection, the prevalence of new variants of the virus, travel restrictions and social distancing in the U.S. and other countries, business closures or business disruptions, the availability, adoption and effectiveness of any vaccines or treatments and the effectiveness of actions taken in the U.S. and other countries to contain and address the disease. If we or any of the third parties with whom we engage were to experience shutdowns or other business disruptions, our ability to conduct our business in the manner and on the timelines presently planned could be materially and negatively impacted. Additionally, concerns over the economic impact of COVID-19 pandemic have caused extreme volatility in financial and other capital markets which has and may continue to adversely impact our stock price and our ability to access capital markets.

We will need to increase the size of our organization and the scope of our outside vendor relationships, and we may experience difficulties in managing growth.

In addition to our employees, we have access to certain of BioXcel LLC's employees and resources through the various agreements we have entered into with BioXcel LLC. We have been expanding our management team to include an operational ramp up of additional technical staff required to achieve our business objectives. We will need to continue to expand our managerial, operational, technical, and scientific, financial, and other resources to manage our operations and clinical trials, establish independent manufacturing, continue our research and development activities, and commercialize any approved product candidates. Our management and scientific personnel, systems and facilities currently in place may not be adequate to support our future growth.

Our need to effectively manage our operations, growth and various projects requires that we:

- manage our clinical trials effectively, including our planned clinical trials of our current, and any future, product candidates;
- manage our internal development efforts effectively while carrying out our contractual obligations to licensors, contractors and other third parties;
- continue to improve our operational, financial and management controls and reporting systems and procedures; and
- attract and retain sufficient numbers of talented employees.

We may utilize the services of third-party vendors to perform tasks including preclinical and clinical trial management, statistics and analysis, regulatory affairs, medical advisory, market research, formulation development, chemistry, manufacturing and control activities, other drug development functions, legal, auditing, financial advisory, and investor relations. Our growth strategy may also entail expanding our group of contractors or consultants to implement these and other tasks going forward. Because we rely on numerous consultants, to outsource many key functions of our business, we will need to be able to effectively manage these consultants to ensure that they successfully carry out their contractual obligations and meet expected deadlines. However, if we are unable to effectively manage our outsourced activities or if the quality or accuracy of the services provided by consultants is compromised for any reason, our clinical trials may be extended, delayed or terminated, and we may not be able to obtain regulatory approval for our product candidate or otherwise advance our business. There can be no assurance that we will be able to manage our existing consultants or find other competent outside contractors and consultants on economically reasonable terms, or at all. If we are not able to effectively expand our organization by hiring new employees and expanding our groups of consultants and contractors, we may be unable to successfully implement the tasks necessary to further develop and commercialize our product candidate and, accordingly, may not achieve our research, development and commercialization goals.

We depend on our senior management team, and the loss of one or more of our executive officers or key employees or an inability to attract and retain highly skilled employees could adversely affect our business.

Our success depends largely upon the continued services of our key executive officers, Vimal Mehta, our Chief Executive Officer, President and a member of our Board, as well as the other principal members of our management, scientific, clinical teams and commercial readiness teams. We do not maintain "key person" insurance for any of these executive officers or any of our other key employees. We also rely on our leadership team in the areas of research and development, marketing, services and selling, general and administrative functions. We have been relying on our commercial readiness team in connection with the commercialization of IGALMI™. From time to time, there may be changes in our executive management and leadership teams resulting from the hiring or departure of executives or other key employees, which could disrupt our business. The replacement of one or more of our executive officers or other key employees would likely involve significant time and costs and may significantly delay or prevent the achievement of our business objectives.

To continue to execute our growth strategy, we also must attract and retain highly skilled personnel. We might not be successful in maintaining our unique culture and continuing to attract and retain qualified personnel. We have, from time to time, had difficulty hiring and retaining highly skilled personnel with appropriate qualifications, and we have experienced increased costs to recruit such personnel. We expect to experience such difficulties in the future. The pool of qualified personnel with experience working within the biopharmaceutical and biotechnology market is limited overall. In addition, many of the companies with which we compete for experienced personnel have greater resources than we have.

In addition, in making employment decisions, particularly in the biotechnology and high-technology industries, job candidates often consider the value of the stock options or other equity instruments they are to receive in connection with their employment. Volatility in the price of our stock might, therefore, adversely affect our ability to attract or retain highly skilled personnel. Furthermore, the requirement to expense the fair value of stock options and other equity instruments might discourage us from granting the size or type of stock option or equity awards that job candidates require to join our Company. If we fail to attract new personnel or fail to retain and motivate our current personnel, our business and future growth prospects could be severely harmed.

We may acquire other companies or technologies, which could divert our management's attention, result in dilution to our stockholders and otherwise disrupt our operations and adversely affect our operating results.

We may in the future seek to acquire or invest in businesses, applications and services or technologies that we believe could complement or expand our services, enhance our technical capabilities or otherwise offer growth opportunities. The pursuit of potential acquisitions may divert the attention of management and cause us to incur various expenses in identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated.

In addition, we do not have any experience in acquiring other businesses. If we acquire additional businesses, we may not be able to integrate the acquired personnel, operations and technologies successfully, or effectively manage the combined business following the acquisition. We also may not achieve the anticipated benefits from the acquired business due to a number of factors, including:

- inability to integrate or benefit from acquired technologies or services in a profitable manner;
- unanticipated costs or liabilities associated with the acquisition;
- difficulty integrating the accounting systems, operations and personnel of the acquired business;
- difficulties and additional expenses associated with supporting legacy products and hosting infrastructure of the acquired business;
- difficulty converting the customers of the acquired business onto our platform and contract terms, including disparities in the revenue, licensing, support or professional services model of the acquired company;
- diversion of management's attention from other business concerns;
- adverse effects to our existing business relationships with business partners and customers as a result of the acquisition;
- the potential loss of key employees;
- use of resources that are needed in other parts of our business; and
- use of substantial portions of our available cash to consummate the acquisition.

In addition, a significant portion of the purchase price of companies we acquire may be allocated to acquired goodwill and other intangible assets, which must be assessed for impairment at least annually. In the future, if our acquisitions do not yield expected returns, we may be required to take charges to our operating results based on this impairment assessment process, which could adversely affect our results of operations.

Acquisitions could also result in dilutive issuances of equity securities or the incurrence of debt, which could adversely affect our operating results. In addition, if an acquired business fails to meet our expectations, our operating results, business and financial position may suffer.

Our employees may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements and insider trading.

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees could include intentional failures to comply with any regulations applicable to us, to provide accurate information to regulatory authorities, to comply with manufacturing standards we have established, to comply with federal and state healthcare fraud and abuse laws and regulations, or to report financial information or data accurately or disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Employee misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. We have adopted a Code of Business Conduct and Ethics, but it is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risk.

Business interruptions could adversely affect future operations, revenues, and financial conditions, and may increase our costs and expenses.

Our operations, and those of our directors, advisors, contractors, consultants, CROs, and collaborators, could be adversely affected by earthquakes, floods, hurricanes, typhoons, extreme weather conditions, fires, water shortages, power failures, business systems failures, medical epidemics, pandemics such as the COVID-19 pandemic, and other natural and man-made disaster or business interruptions. Our phones, electronic devices and computer systems and those of our directors, advisors, contractors, consultants, CROs, and collaborators are vulnerable to damages, theft and accidental loss, negligence, unauthorized access, terrorism, war, electronic and telecommunications failures, and other natural and man-made disasters. Several of our employees conduct business outside of our headquarters and leased or owned facilities. These locations may be subject to additional security and other risk factors due to the limited control of our employees. If such an event as described above were to occur in the future, it may cause interruptions in our operations, delay research and development programs, clinical trials, regulatory activities, manufacturing and quality assurance activities, sales and marketing activities, hiring, training of employees and persons within associated third parties, and other business activities. For example, the loss of clinical trial data from completed or future clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data.

Likewise, we will rely on third parties, including ARx, to manufacture IGALMI™ and our product candidates and to conduct clinical trials, and similar events as those described in the prior paragraph relating to their business systems, equipment and facilities could also have a material adverse effect on our business. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability and the further development and commercialization of our product candidate could be delayed or altogether terminated.

Data breaches or cyber-attacks could disrupt our business operations and information technology systems, adversely impact our financial results or result in the loss or exposure of confidential or sensitive product candidate, clinical trial, employee or Company information.

Our information technology systems have been and may in the future be attacked or breached by individuals or organizations intending to obtain sensitive data regarding our business, our product candidates, clinical trials or other third parties with whom we do business; harm or disrupt our business operations; or otherwise misappropriate information or Company funds. A security compromise of our information technology systems or business operations could occur through a variety of methods such as from cyber-attacks and cyber-intrusions over the Internet, malware, computer viruses, email spoofing, attachments to e-mails, persons inside our organization or persons with access to systems inside our organization. The risk of such intrusions, threats to data and information technology systems and breaches has generally increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased. We use our information technology systems to protect confidential or sensitive product candidate, clinical trial, employee and Company information. Any attack on such systems that results in the unauthorized release or loss of such information could have a material adverse effect on our business reputation, increase our costs and expose us to material legal claims and liability. If the unauthorized release or loss of product candidate, clinical trial, employee or other confidential or sensitive data were to occur, our operations and financial results and our share price could be adversely affected.

While we maintain some of our own critical information technology systems, we also depend on third parties to provide important information technology services relating to several key business functions. Our measures to prevent, detect and mitigate these threats, including password protection, firewalls, backup servers, threat monitoring and periodic penetration testing, may not be successful in preventing a data breach or limiting the effects of a breach. Because the techniques used to obtain unauthorized access to, or to sabotage, systems change frequently and often are not recognized until launched against a target, we may be unable to anticipate these techniques or implement adequate preventative measures. We may also experience security breaches that may remain undetected for an extended period. Even if identified, we may be unable to adequately investigate or remediate incidents or breaches due to attackers increasingly using tools and techniques that are designed to circumvent controls, to avoid detection, and to remove or obfuscate forensic evidence. Furthermore, the security measures employed by third-party service providers may prove to be ineffective at preventing breaches of their systems. Although we maintain insurance for our business, the coverage under our policies may not be adequate to compensate us for all losses that may occur.

Actual or perceived failures to comply with applicable data protection, privacy and security laws, regulations, standards and other requirements could adversely affect our business, results of operations, and financial condition.

The global data protection landscape is rapidly evolving, and we are or may become subject to numerous state, federal and foreign laws, requirements and regulations governing the collection, use, disclosure, retention, and security of personal data, such as information that we may collect in connection with clinical trials in the U.S. and abroad. Additionally, our use of AI and machine learning may be subject to laws and evolving regulations regarding the use of AI or machine learning, controlling for data bias, and antidiscrimination. Implementation standards and enforcement practices are likely to remain uncertain for the foreseeable future, and we cannot yet determine the impact future laws, regulations, standards, or perception of their requirements may have on our business. This evolution may create uncertainty in our business, affect our ability to operate in certain jurisdictions or to collect, store, transfer use and share personal information, necessitate the acceptance of more onerous obligations in our contracts, result in liability or impose additional costs on us. The cost of compliance with these laws, regulations and standards is high and is likely to increase in the future. Any failure or perceived failure by us to comply with federal, state or foreign laws or regulation, our internal policies and procedures or our contracts governing our processing of personal information could result in negative publicity, government investigations and enforcement actions, claims by third parties and damage to our reputation, any of which could have a material adverse effect on our operations, financial performance and business.

As our operations and business grow, we may become subject to or affected by new or additional data protection laws and regulations and face increased scrutiny or attention from regulatory authorities. In the U.S., HIPAA imposes, among other things, certain standards relating to the privacy, security, transmission and breach reporting of individually identifiable health information. Certain states have also adopted comparable privacy and security laws and regulations,

some of which may be more stringent than HIPAA. Such laws and regulations will be subject to interpretation by various courts and other governmental authorities, thus creating potentially complex compliance issues for us and our future customers and strategic partners. In addition, the California Consumer Privacy Act ("CCPA") went into effect on January 1, 2020. The CCPA creates individual privacy rights for California consumers and increases the privacy and security obligations of entities handling certain personal information. The CCPA provides for civil penalties for violations, as well as a private right of action for data breaches that is expected to increase data breach litigation. The CCPA may increase our compliance costs and potential liability, and many similar laws have been proposed at the federal level and in other states in the U.S. Further, the California Privacy Rights Act ("CPRA") recently passed in California, which will impose additional data protection obligations on covered businesses, including additional consumer rights processes, limitations on data uses, new audit requirements for higher risk data, and opt outs for certain uses of sensitive data. It will also create a new California data protection agency authorized to issue substantive regulations and could result in increased privacy and information security enforcement. The majority of the provisions will go into effect on January 1, 2023, and additional compliance investment and potential business process changes may be required. In the event that we are subject to or affected by HIPAA, the CCPA, the CPRA or other domestic privacy and data protection laws, any liability from failure to comply with the requirements of these laws could adversely affect our financial condition.

In Europe, the General Data Protection Regulation ("GDPR") went into effect in May 2018 and imposes strict requirements for processing the personal data of individuals within the EEA. Companies that must comply with the GDPR face increased compliance obligations and risk, including more robust regulatory enforcement of data protection requirements and potential fines for noncompliance of up to €20 million or 4% of the annual global revenues of the noncompliant company, whichever is greater. Among other requirements, the GDPR regulates transfers of personal data subject to the GDPR to third countries that have not been found to provide adequate protection to such personal data, including the U.S., and the efficacy and longevity of current transfer mechanisms between the EU and the U.S. remains uncertain. For example, in 2016, the EU and U.S. agreed to a transfer framework for data transferred from the EU to the U.S., called the Privacy Shield, but the Privacy Shield was invalidated in July 2020 by the Court of Justice of the EU ("CJEU"). The European Commission issued revised standard contractual clauses ("SCCs") on June 4, 2021 to account for the decision of the CJEU and recommendations made by the European Data Protection Board. The revised SCCs must be used for relevant new data transfers from September 27, 2021; existing standard contractual clauses arrangements must be migrated to the revised clauses by December 27, 2022. The new SCCs apply only to the transfer of personal data outside of the EEA and not the UK; the UK's Information Commissioner's Office launched a public consultation on its draft revised data transfers mechanisms in August 2021. There is some uncertainty around whether the revised clauses can be used for all types of data transfers, particularly whether they can be relied on for data transfers to non-EEA entities subject to the GDPR. As supervisory authorities issue further guidance on personal data export mechanisms, including circumstances where the standard contractual clauses cannot be used, and/or start taking enforcement action, we could suffer additional costs, complaints and/or regulatory investigations or fines, and/or if we are otherwise unable to transfer personal data between and among countries and regions in which we operate, it could affect the manner in which we provide our services, the geographical location or segregation of our relevant systems and operations, and could adversely affect our financial results.

Further, from January 1, 2021, companies have had to comply with the GDPR and also the UK GDPR, which, together with the amended UK Data Protection Act 2018, retains the GDPR in UK national law. The UK GDPR mirrors the fines under the GDPR (i.e., fines up to the greater of £17,500 or 4% of global turnover). The European Commission adopted an adequacy decision in favor of the UK, enabling data transfers from EU member states to the UK without additional safeguards. However, the UK adequacy decision will automatically expire in June 2025 unless the European Commission re-assesses and renews/extends that decision and remains under review by the Commission during this period. The relationship between the UK and the EU in relation to certain aspects of data protection law remains unclear, and it is unclear how UK data protection laws and regulations will develop in the medium to longer term, and how data transfers to and from the UK will be regulated in the long-term. These changes may lead to additional costs and increase our overall risk exposure.

Although we work to comply with applicable laws, regulations and standards, our contractual obligations and other legal obligations, these requirements are evolving and may be modified, interpreted and applied in an inconsistent manner from one jurisdiction to another, and may conflict with one another or other legal obligations with which we

must comply. Any failure or perceived failure by us or our employees, representatives, contractors, consultants, collaborators, or other third parties to comply with such requirements or adequately address privacy and security concerns, even if unfounded, could result in additional cost and liability to us, damage our reputation, and adversely affect our business and results of operations.

Our failure to successfully acquire, develop and market additional product candidates or approved drug products could impair our ability to grow.

As part of our growth strategy, we may evaluate, acquire, license, develop and/or market third-party product candidates and technologies. Our internal research capabilities are limited and we may be dependent upon pharmaceutical and biotechnology companies, academic scientists and other researchers to sell or license products or technology to us. The success of this strategy depends partly upon our ability to identify, select and acquire promising pharmaceutical product candidates and products. The process of proposing, negotiating and implementing a license or acquisition of a product candidate or approved product is lengthy and complex. Other companies, including some with substantially greater financial, marketing and sales resources, may compete with us for the license or acquisition of product candidates and approved products. We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies and integrate them into our current infrastructure. Moreover, we may devote resources to potential acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts. We may not be able to acquire the rights to additional product candidates on terms that we find acceptable, or at all.

In addition, future acquisitions may entail numerous operational and financial risks, including:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management’s and technical personnel’s time and attention to develop acquired products or technologies;
- incurrence of substantial debt or dilutive issuances of securities to pay for acquisitions;
- higher than expected acquisition and integration costs;
- increased amortization expenses;
- difficulty and cost in combining the operations and personnel of any acquired businesses with our operations and personnel;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to retain key employees of any acquired businesses.

Any product candidate that we acquire may require additional development efforts prior to commercial sale, including extensive clinical testing and approval by the FDA and applicable foreign regulatory authorities. All product candidates are prone to risks of failure typical of pharmaceutical product development, including the possibility that a product candidate will not be shown to be sufficiently safe and effective for approval by regulatory authorities. In addition, we cannot provide assurance that any products that we develop or approved products that we acquire will be manufactured profitably or achieve market acceptance.

Our ability to use our net operating losses and tax credits to offset future taxable income and income tax liabilities may be limited.

At December 31, 2021, the Company had federal net operating loss carryforwards ("NOLs") of approximately $139.0 million and state NOLs of approximately $139.0 million. If not utilized, the federal and state NOLs, which are subject to expiration, will begin to expire in 2037. Federal NOLs generated in taxable years beginning after December 31, 2017 may be carried forward indefinitely but may only be used to offset 80% of our taxable income in taxable years beginning after December 31, 2020. As of December 31, 2021, we also had approximately $6.5 million of federal orphan drug credits and research and development credits, or tax credits, which will begin to expire in 2037 if not utilized. The utilization of such NOLs and tax credits and realization of tax benefits in future years depends upon our having taxable income and income tax liabilities.

In addition, in general, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, a corporation that undergoes an "ownership change" is subject to limitations on its ability to utilize its pre-ownership change NOLs and tax credits to offset future taxable income or income tax liabilities. For these purposes, an ownership change generally occurs where the aggregate change in stock ownership, of one or more stockholders or groups of stockholders owning at least 5% of a corporation's stock, exceeds 50 percentage points over a rolling three-year period. We may have experienced ownership changes in the past, and future changes in our stock ownership, many of which are outside of our control, could result in ownership changes in the future. Our state NOLs or tax credits may also be impaired under state law. Accordingly, even if we attain profitability, we may not be able to utilize a material portion of our NOLs or tax credits. We have recorded a full valuation allowance related to our NOLs and other deferred tax assets due to the uncertainty of the ultimate realization of the future benefits of those assets.

Risks Related to Our Intellectual Property

It is difficult and costly to protect our proprietary rights, and we may not be able to ensure their protection. If our patent position does not adequately protect our product candidates, others could compete against us more directly, which would harm our business, possibly materially.

Our commercial success will depend in part on obtaining and maintaining patent protection and trade secret protection of our current and future product candidates, the processes used to manufacture them and the methods for using them, as well as successfully defending these patents against third-party challenges. We are the owner of record of patents and patent applications pending in the U.S. and in certain foreign jurisdictions. Patents issue from non-provisional applications, which are typically filed from provisional patent applications or from PCT applications that enter the national phase. Neither provisional patent applications nor PCT applications issue directly as patents. We own PCT patent applications relating to our platform technologies covering methods of use and applications of the platform technologies.

As of July 26, 2022, our patent portfolio included six Patent Cooperation Treaty ("PCT") applications, 18 U.S. utility applications, one issued U.S. utility patent, three U.S. provisional patent applications, 109 pending non-U.S. applications, 13 allowed or granted non-U.S. patents (including four in Japan), one design patent application, which is a U.S. design application, and 34 allowed or registered design patents (including two in Japan). We cannot be certain that any future patents will issue with claims that cover our product candidates. Our ability to stop third parties from making, using, selling, offering to sell or importing our product candidates is dependent upon the extent to which we have rights under valid and enforceable patents or trade secrets that cover these activities.

The patent positions of biotechnology and pharmaceutical companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in pharmaceutical patents has emerged to date in the U.S. or in foreign jurisdictions outside of the U.S. Changes in either the patent laws or interpretations of patent laws in the U.S. and other countries may diminish the value of our intellectual property. Accordingly, we cannot predict the breadth of claims that may be enforced in the patents that may be issued from the applications we currently, or may in the future, own or license from third parties. Further, if any patents we obtain or license are deemed invalid and unenforceable, our ability to commercialize or license our technology could be adversely affected.

Others have filed, and in the future are likely to file, patent applications covering products and technologies that are similar, identical or competitive to ours or important to our business. We cannot be certain that any patent application owned by a third-party will not have priority over patent applications filed or in-licensed by us, or that we or our licensors will not be involved in interference, opposition, reexamination, review, reissue, post grant review or invalidity proceedings before U.S. or non-U.S. patent offices.

The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- others may be able to make compounds that are similar to our product candidates, but that are not covered by the claims of our patents;
- we might not have been the first to make the inventions covered by our pending patent applications;
- we might not have been the first to file patent applications for these inventions;
- our pending patent applications may not result in issued patents;
- the claims of our issued patents or patent applications when issued may not cover our products or product candidates;
- any patents that we obtain may not provide us with any competitive advantages;
- any granted patents may be held invalid or unenforceable as a result of legal challenges by third parties; and
- the patents of others may have an adverse effect on our business.

Obtaining and maintaining patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

Periodic maintenance, renewal and annuity fees and various other government fees on any issued patent and pending patent application must be paid to the USPTO and foreign patent agencies in several stages or annually over the lifetime of our owned and in-licensed patents and patent applications. The USPTO and various foreign governmental patent agencies require compliance with various procedural, document submission, fee payment and other requirements during the patent application process. While an inadvertent lapse can in many cases be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. Non-compliance events that could result in abandonment or lapse of a patent or patent application include failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents. In such an event, potential competitors might be able to enter the market with similar or identical products or technology. If we or our licensors fail to maintain the patents and patent applications covering our product candidates, it would have a material adverse effect on our business, financial condition, results of operations, and prospects.

If we fail to comply with our obligations in the agreements under which we may license intellectual property rights from third parties or otherwise experience disruptions to our business relationships with our licensors, we could lose rights that are important to our business.

We may be required to enter into intellectual property license agreements that are important to our business. These license agreements may impose various diligence, milestone payment, royalty, and other obligations on us. For example, we may enter into exclusive license agreements with various universities and research institutions, we may be

required to use commercially reasonable efforts to engage in various development and commercialization activities with respect to licensed products and may need to satisfy specified milestone and royalty payment obligations. If we fail to comply with any obligations under our agreements with any of these licensors, we may be subject to termination of the license agreement in whole or in part; increased financial obligations to our licensors or loss of exclusivity in a particular field or territory, in which case our ability to develop or commercialize products covered by the license agreement will be impaired.

In addition, disputes may arise regarding intellectual property subject to a license agreement, including:

- the scope of rights granted under the license agreement and other interpretation-related issues;
- the extent to which our technology and processes infringe on intellectual property of the licensor that is not subject to the licensing agreement;
- our diligence obligations under the license agreement and what activities satisfy those obligations;
- if a third-party expresses interest in an area under a license that we are not pursuing, under the terms of certain of our license agreements, we may be required to sublicense rights in that area to a third-party, and that sublicense could harm our business; and
- the ownership of inventions and know-how resulting from the joint creation or use of intellectual property by our licensors and us.

If disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on acceptable terms, we may be unable to successfully develop and commercialize the affected product candidates.

We may need to obtain licenses from third parties to advance our research or allow commercialization of our product candidates. We may fail to obtain any of these licenses at a reasonable cost or on reasonable terms, if at all. In that event, we would be unable to further develop and commercialize one or more of our product candidates, which could harm our business significantly.

We may be subject to claims challenging the inventorship or ownership of our patents and other intellectual property.

We or our licensors may be subject to claims that former employees, collaborators or other third parties have an interest in our patents, trade secrets, or other intellectual property as an inventor or co-inventor. For example, we or our licensors may have inventorship disputes arise from conflicting obligations of employees, consultants or others who are involved in developing our product candidates. Litigation may be necessary to defend against these and other claims challenging inventorship or our or our licensors' ownership of our owned or in-licensed patents, trade secrets, or other intellectual property. If we or our licensors fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, intellectual property that is important to our product candidates. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees. Any of the foregoing could have a material adverse effect on our business, financial condition, results of operations and prospects.

An NDA submitted under Section 505(b)(2) subjects us to the risk that we may be subject to a patent infringement lawsuit that would delay or prevent the review or approval of our product candidate.

Our product candidates have been or will be submitted to the FDA for approval under Section 505(b)(2) of the FDCA. Section 505(b)(2) permits the submission of an NDA where at least some of the information required for approval comes from studies that were not conducted by, or for, the applicant and on which the applicant has not obtained a right of reference. The 505(b)(2) application would enable us to reference published literature and/or the

FDA's previous findings of safety and effectiveness for a branded reference drug with the same active ingredient. For NDAs submitted under Section 505(b)(2) of the FDCA, the patent certification and related provisions of the Hatch-Waxman Act apply. In accordance with the Hatch-Waxman Act, such NDAs may be required to include certifications, known as paragraph IV certifications, that certify that any patents listed in the Patent and Exclusivity Information Addendum of the FDA's Orange Book, with respect to any product referenced in the 505(b)(2) application, are invalid, unenforceable or will not be infringed by the manufacture, use or sale of the product that is the subject of the 505(b)(2) NDA.

Under the Hatch-Waxman Act, the holder of patents that the 505(b)(2) application references may file a patent infringement lawsuit after receiving notice of the paragraph IV certification. Filing of a patent infringement lawsuit against the filer of the 505(b)(2) applicant within 45 days of the patent owner's receipt of notice triggers a one-time, automatic, 30 month stay of the FDA's ability to approve the 505(b)(2) NDA, unless patent litigation is resolved in the favor of the paragraph IV filer or the patent expires before that time. Accordingly, we may invest a significant amount of time and expense in the development of one or more product candidates only to be subject to significant delay and patent litigation before such product candidates may be commercialized, if at all. In addition, a 505(b)(2) application will not be approved until any non-patent exclusivity, such as exclusivity for obtaining approval of a new chemical entity, listed in the Orange Book for the branded reference drug product has expired. The FDA may also require us to perform one or more additional clinical studies or measurements to support the change from the branded reference drug, which could be time consuming and could substantially delay our achievement of regulatory approvals for such product candidates. The FDA may also reject our future 505(b)(2) submissions and require us to file such submissions under Section 505(b)(1) of the FDCA, which would require us to provide extensive data to establish safety and effectiveness of the drug product for the proposed use and could cause delay and be considerably more expensive and time consuming. These factors, among others, may limit our ability to successfully commercialize our product candidates.

We may incur substantial costs as a result of litigation or other proceedings relating to patents and other intellectual property rights.

If we choose to commence a proceeding or litigation to prevent another party from infringing our patents, that party will have the right to ask the examiner or court to rule that our patents are invalid or should not be enforced against them. There is a risk that the examiner or court will decide that our patents are not valid and that we do not have the right to stop the other party from using the related inventions. There is also the risk that, even if the validity of our patents is upheld, the examiner or court will refuse to stop the other party on the ground that such other party's activities do not infringe our rights to such patents. In addition, the U.S. Supreme Court has recently modified some tests used by the USPTO in granting patents over the past 20 years, which may decrease the likelihood that we will be able to obtain patents and increase the likelihood of challenge to any patents we obtain or license. Any proceedings or litigation to enforce our intellectual property rights or defend ourselves against claims of infringement of third-party intellectual property rights could be costly and divert the attention of managerial and scientific personnel, regardless of whether such litigation is ultimately resolved in our favor. We may not have sufficient resources to bring these actions to a successful conclusion. Moreover, if we are unable to successfully defend against claims that we have infringed the intellectual property rights of others, we may be prevented from using certain intellectual property and may be liable for damages, which in turn could materially adversely affect our business, financial condition or results of operations.

Third parties may initiate legal proceedings alleging that we are infringing, misappropriating or otherwise violating their intellectual property rights, which may prevent or delay our product development efforts and stop us from commercializing or increase the costs of commercializing our product candidates.

Our success will depend in part on our ability to operate without infringing, misappropriating or otherwise violating the proprietary rights of third parties. There is considerable patent and other intellectual property litigation in the pharmaceutical and biotechnology industries. We may become party to, or threatened with, adversarial proceedings or litigation regarding intellectual property rights with respect to our products, or the manufacture or use of our product candidates, including interference proceedings, post grant review, inter partes review, and derivation proceedings before the USPTO and similar proceedings in foreign jurisdictions. The legal threshold for initiating litigation or contested proceedings is low, so that even lawsuits or proceedings with a low probability of success might be initiated and require significant resources to defend. The costs of these lawsuits could affect our results of operations and divert

the attention of managerial and scientific personnel. Some of these third parties may be better capitalized and have more resources than us. There is a risk that a court would decide that we are infringing the third-party's patents and would order us to stop the activities covered by the patents. In that event, we may not have a viable way around the patent and may need to halt commercialization of the relevant product candidate. In addition, there is a risk that a court will order us to pay the other party damages for having violated the other party's patents. In addition, we may be obligated to indemnify our licensors and collaborators against certain intellectual property infringement claims brought by third parties, which could require us to expend additional resources. The pharmaceutical and biotechnology industries have produced a proliferation of patents, and it is not always clear to industry participants, including us, which patents cover various types of products or methods of use. The coverage of patents is subject to interpretation by the courts, and the interpretation is not always uniform.

If we are sued for patent infringement, we would need to demonstrate that our products or methods either do not infringe the patent claims of the relevant patent or that the patent claims are invalid, and we may not be able to do this. Proving invalidity is difficult. For example, in the U.S., proving invalidity requires a showing of clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents. Even if we are successful in these proceedings, we may incur substantial costs and divert management's time and attention in pursuing these proceedings, which could have a material adverse effect on us. If we are unable to avoid infringing the patent rights of others, we may be required to seek a license, which may not be available, defend an infringement action or challenge the validity of the patents in court. Patent litigation is costly and time consuming. We may not have sufficient resources to bring these actions to a successful conclusion. In addition, if we do not obtain a license, develop or obtain non-infringing technology, fail to defend an infringement action successfully or have infringed patents declared invalid, we may incur substantial monetary damages, encounter significant delays in bringing our product candidates to market and be precluded from manufacturing or selling our product candidates.

We cannot be certain that others have not filed patent applications for technology covered by our pending applications, or that we were the first to invent the technology, because:

- some patent applications in the U.S. may be maintained in secrecy until the patents are issued;
- patent applications in the U.S. are typically not published until 18 months after the priority date; and
- publications in the scientific literature often lag behind actual discoveries.

Our competitors may have filed, and may in the future file, patent applications covering technology similar to ours. Any such patent application may have priority over our patent applications, which could further require us to obtain rights to issued patents covering such technologies. If another party has filed U.S. patent applications on inventions similar to ours that claim priority to any applications filed prior to the priority dates of our applications, we may have to participate in an interference proceeding declared by the USPTO to determine priority of invention in the U.S. The costs of these proceedings could be substantial, and it is possible that such efforts would be unsuccessful if, unbeknownst to us, the other party had independently arrived at the same or similar inventions prior to our own inventions, resulting in a loss of our U.S. patent position with respect to such inventions. Other countries have similar laws that permit secrecy of patent applications and may be entitled to priority over our applications in such jurisdictions.

Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

If we are not able to adequately prevent disclosure of trade secrets and other proprietary information, the value of our technology and products could be significantly diminished.

We also rely on trade secrets to protect our proprietary technologies, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. We rely in part on confidentiality

agreements with our employees, consultants, outside scientific collaborators, sponsored researchers and other advisors to protect our trade secrets and other proprietary information. These agreements may not effectively prevent disclosure of confidential information and may not provide an adequate remedy in the event of unauthorized disclosure of confidential information. Furthermore, any license agreements we enter into in the future may require us to notify, and in some cases license back to the licensor, certain additional proprietary information or intellectual property that we developed using the rights licensed to us under these agreements. Any such licenses back to the licensor could allow our licensors to use that proprietary information or intellectual property in a manner that could harm our business. In addition, others may independently discover our trade secrets and proprietary information. For example, the FDA, as part of its transparency initiative, is currently considering whether to make additional information publicly available on a routine basis, including information that we may consider to be trade secrets or other proprietary information, and it is not clear at the present time how the FDA's disclosure policies may change in the future, if at all. Costly and time-consuming litigation could be necessary to enforce and determine the scope of our proprietary rights, and failure to obtain or maintain trade secret protection could adversely affect our competitive business position.

We may be subject to claims that our employees, consultants or independent contractors have wrongfully used or disclosed alleged trade secrets.

As is common in the biotechnology and pharmaceutical industries, we employ individuals who were previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although we try to ensure that our employees, consultants and independent contractors do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we could lose valuable intellectual property rights or personnel, which could adversely impact our business. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

Our intellectual property may not be sufficient to protect our products from competition, which may negatively affect our business as well as limit our partnership or acquisition appeal.

We may be subject to competition despite the existence of intellectual property we license or own. We can give no assurances that our intellectual property claims will be sufficient to prevent third parties from designing around patents we own or license and developing and commercializing competitive products. The existence of competitive products that avoid our intellectual property could materially adversely affect our operating results and financial condition. Furthermore, limitations, or perceived limitations, in our intellectual property may limit the interest of third parties to partner, collaborate or otherwise transact with us, if third parties perceive a higher than acceptable risk to commercialization of our products or future products.

Our drug re-innovation approach involves the filing of patent applications covering new methods of use and/or new formulations of previously known, studied and/or marketed drugs. Although the protection afforded by our patent and patent applications may be significant with respect to BXCL501 and BXCL701, when looking at our patents' ability to block competition, the protection offered by our patents may be, to some extent, more limited than the protection provided by patents claiming the composition of matter of entirely new chemical structures previously unknown. If a competitor were able to successfully design around any method of use and formulation patents we may have in the future, our business and competitive advantage could be adversely affected.

We may elect to sue a third-party, or otherwise make a claim, alleging infringement or other violation of patents, trademarks, trade dress, copyrights, trade secrets, domain names or other intellectual property rights that we either own or license from BioXcel LLC. If we do not prevail in enforcing our intellectual property rights in this type of litigation, we may be subject to:

- paying monetary damages related to the legal expenses of the third-party;

- facing additional competition that may have a significant adverse effect on our product pricing, market share, business operations, financial condition, and the commercial viability of our products; and

- restructuring our company or delaying or terminating select business opportunities, including, but not limited to, research and development, clinical trial, and commercialization activities, due to a potential deterioration of our financial condition or market competitiveness.

A third-party may also challenge the validity, enforceability or scope of the intellectual property rights that we license or own; and the result of these challenges may narrow the scope or claims of or invalidate patents that are integral to our product candidates in the future. There can be no assurance that we will be able to successfully defend patents we own in an action against third parties due to the unpredictability of litigation and the high costs associated with intellectual property litigation, amongst other factors.

Intellectual property rights and enforcement may be less extensive in jurisdictions outside of the U.S.; thus, we may not be able to protect our intellectual property and third parties may be able to market competitive products that may use some or all of our intellectual property.

Changes to patent law, including the Leahy-Smith America Invents Act of 2011 and the Patent Reform Act of 2009 and other future article of legislation, may substantially change the regulations and procedures surrounding patent applications, issuance of patents, and prosecution of patents. We can give no assurances that our patents and those of our licensor, BioXcel LLC, can be defended or will protect us against future intellectual property challenges, particularly as they pertain to changes in patent law and future patent law interpretations.

In addition, enforcing and maintaining our intellectual property protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by the USPTO, courts and foreign government patent agencies, and our patent protection could be reduced or eliminated for non- compliance with these requirements.

Risks Related to Owning our Common Stock

The price of our common stock may fluctuate substantially.

You should consider an investment in our common stock to be risky, and you should invest in our common stock only if you can withstand a significant loss and wide fluctuations in the market value of your investment. Some factors that may cause the market price of our common stock to fluctuate, in addition to the other risks mentioned in this "Risk Factors" section, are:

- sale of our common stock by our stockholders, executives, and directors;

- volatility and limitations in trading volumes of our shares of common stock;

- speculative trading in and short sales of our stock, as well as trading phenomena such as the “short squeeze”;

- our ability to obtain financings to conduct and complete research and development activities including, but not limited to, our clinical trials, and other business activities;

- possible delays in the expected recognition of revenue due to lengthy and sometimes unpredictable sales timelines;

- the timing and success of introductions of new applications and services by us or our competitors or any other change in the competitive dynamics of our industry, including consolidation among competitors, customers or strategic partners;

- network outages or security breaches;

- our ability to attract new customers;
- customer renewal rates and the timing and terms of customer renewals;
- our ability to secure resources and the necessary personnel to conduct clinical trials on our desired schedule;
- commencement, enrollment or results of our clinical trials for our product candidates or any future clinical trials we may conduct;
- changes in the development status of our product candidates;
- any delays or adverse developments or perceived adverse developments with respect to the FDA's review of our planned preclinical and clinical trials;
- any delay in our submission for studies or product approvals or adverse regulatory decisions, including failure to receive regulatory approval for our product candidates;
- unanticipated safety concerns related to the use of our product candidates;
- failures to meet external expectations or management guidance;
- changes in our capital structure or dividend policy, future issuances of securities, sales of large blocks of common stock by our stockholders;
- our cash position;
- announcements and events surrounding financing efforts, including debt and equity securities;
- our inability to enter into new markets or develop new products;
- reputational issues;
- competition from existing technologies and products or new technologies and products that may emerge;
- announcements of acquisitions, partnerships, collaborations, joint ventures, new products, capital commitments, or other events by us or our competitors;
- changes in general economic, political and market conditions in or any of the regions in which we conduct our business;
- changes in industry conditions or perceptions;
- changes in valuations of similar companies or groups of companies;
- analyst research reports, recommendation and changes in recommendations, price targets, and withdrawals of coverage;
- departures and additions of key personnel;
- disputes and litigations related to intellectual properties, proprietary rights, and contractual obligations;
- changes in applicable laws, rules, regulations, or accounting practices and other dynamics; and

- other events or factors, many of which may be out of our control.

In addition, if the market for stocks in our industry or industries related to our industry, or the stock market in general, experiences a loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, financial condition and results of operations. If any of the foregoing occurs, it could cause our stock price to fall and may expose us to lawsuits that, even if unsuccessful, could be costly to defend and a distraction to management.

Because certain of our stockholders control a significant number of shares of our common stock, they may have significant influence over actions requiring stockholder approval.

As of June 30, 2022, our directors, executive officers and BioXcel LLC, and their respective affiliates, beneficially owned approximately 37% of our outstanding shares of common stock. As a result, these stockholders, acting together, would have significant control over the outcome of matters submitted to our stockholders for approval, including the election of directors and any merger, consolidation or sale of all or substantially all of our assets. In addition, these stockholders, acting together, would have significant control over the management and affairs of our company. Accordingly, this concentration of ownership might harm the market price of our common stock by:

- delaying, deferring or preventing a change in corporate control;
- impeding a merger, consolidation, takeover or other business combination involving us; or
- discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of us.

We do not intend to pay cash dividends on our shares of common stock so any returns will be limited to the value of our shares.

We currently anticipate that we will retain future earnings for the development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends for the foreseeable future. Any return to stockholders will therefore be limited to the increase, if any, of our share price.

If we were deemed to be an investment company under the Investment Company Act of 1940, as amended (the "1940 Act"), applicable restrictions could make it impractical for us to continue our business as contemplated and could have a material adverse effect on our business, financial condition and results of operations.

Under Sections 3(a)(1)(A) and (C) of the 1940 Act, a company generally will be deemed to be an "investment company" for purposes of the 1940 Act if (1) it is, or holds itself out as being, engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities or (2) it engages, or proposes to engage, in the business of investing, reinvesting, owning, holding or trading in securities and it owns or proposes to acquire investment securities having a value exceeding 40% of the value of its total assets (exclusive of U.S. government securities and cash items) on an unconsolidated basis. We do not believe that we are an "investment company," as such term is defined in either of those sections of the 1940 Act.

Notwithstanding Sections 3(a)(1)(A) and (C) of the 1940 Act, we are a research and development company and comply with the safe harbor requirements of Rule 3a-8 of the 1940 Act. We intend to conduct our operations so that we will not be deemed an investment company. However, if we were to be deemed an investment company, restrictions imposed by the 1940 Act, including limitations on our capital structure and our ability to transact with affiliates, could make it impractical for us to continue our business as contemplated and could have a material adverse effect on our business, financial condition and results of operations.

We are an "emerging growth company" and "smaller reporting company" and are able to avail ourselves of reduced disclosure requirements applicable to emerging growth companies and small reporting companies, which could make our common stock less attractive to investors.

We are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act") and we intend to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not "emerging growth companies" including not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. In addition, Section 107 of the JOBS Act also provides that an "emerging growth company" can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act, for complying with new or revised accounting standards. In other words, an "emerging growth company" can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We are not electing to delay such adoption of new or revised accounting standards, and as a result, we will comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile. We may take advantage of these reporting exemptions until we are no longer an "emerging growth company." We will remain an "emerging growth company" until the earliest of (i) the last day of the fiscal year in which we have total annual gross revenues of $1.07 billion or more; (ii) the last day of our fiscal year following the fifth anniversary of the date of the completion of our IPO; (iii) the date on which we have issued more than $1 billion in nonconvertible debt during the previous three years; or (iv) the date on which we are deemed to be a large accelerated filer under the rules of the SEC.

We are also a smaller reporting company, and we will remain a smaller reporting company until, as of fiscal year end, we determine that either (1) our annual revenues are at least $100 million and our voting and non-voting common stock held by non-affiliates is at least $250 million measured on the last business day of our most recent second fiscal quarter or (2) our voting and non-voting common stock held by non-affiliates is at least $700 million measured on the last business day of our most recent second fiscal quarter. Similar to emerging growth companies, smaller reporting companies are able to provide simplified executive compensation disclosure, are exempt from the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, and have certain other reduced disclosure obligations, including, among other things, being required to provide only two years of audited financial statements and not being required to provide selected financial data, supplemental financial information or risk factors.

We have elected to take advantage of certain of the reduced reporting obligations. We cannot predict whether investors will find our common stock less attractive if we rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be reduced or more volatile.

We may be at risk of securities class action litigation.

We may be at risk of securities class action litigation. In the past, biotechnology and pharmaceutical companies have experienced significant stock price volatility, particularly when associated with binary events such as clinical trials and product approvals. If we face such litigation, it could result in substantial costs and a diversion of management's attention and resources, which could harm our business and result in a decline in the market price of our common stock.

Our certificate of incorporation and our bylaws, and Delaware law may have anti-takeover effects that could discourage, delay or prevent a change in control, which may cause our stock price to decline.

Our amended and restated certificate of incorporation and our amended and restated bylaws and Delaware law could make it more difficult for a third-party to acquire us, even if closing such a transaction would be beneficial to our stockholders. We are authorized to issue up to 10 million shares of preferred stock. This preferred stock may be issued in one or more series, the terms of which may be determined at the time of issuance by our board of directors without

further action by stockholders. The terms of any series of preferred stock may include voting rights (including the right to vote as a series on particular matters), preferences as to dividend, liquidation, conversion and redemption rights and sinking fund provisions. No preferred stock is currently outstanding. The issuance of any preferred stock could materially adversely affect the rights of the holders of our common stock, and therefore, reduce the value of our common stock. In particular, specific rights granted to future holders of preferred stock could be used to restrict our ability to merge with, or sell our assets to, a third-party and thereby preserve control by the present management.

Provisions of our amended and restated certificate of incorporation and our amended and restated bylaws and Delaware law also could have the effect of discouraging potential acquisition proposals or making a tender offer or delaying or preventing a change in control, including changes a stockholder might consider favorable. Such provisions may also prevent or frustrate attempts by our stockholders to replace or remove our management. In particular, the certificate of incorporation and bylaws and Delaware law, as applicable, among other things:

- provide the board of directors with the ability to alter the bylaws without stockholder approval;
- place limitations on the removal of directors;
- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon at stockholder meetings; and
- provide that vacancies on the board of directors may be filled by a majority of directors in office, although less than a quorum.

Financial reporting obligations of being a public company in the U.S. are expensive and time-consuming, and our management is required to devote substantial time to compliance matters.

As a publicly traded company we have incurred and will continue to incur significant additional legal, accounting and other expenses that we did not incur as a privately held subsidiary of BioXcel LLC. The obligations of being a public company in the U.S. require significant expenditures and place significant demands on our management and other personnel, including costs resulting from public company reporting obligations under the Exchange Act and the rules and regulations regarding corporate governance practices, including those under the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, and the listing requirements of the stock exchange on which our securities are listed. These rules require the establishment and maintenance of effective disclosure and financial controls and procedures, internal control over financial reporting and changes in corporate governance practices, among many other complex rules that are often difficult to implement, monitor and maintain compliance with. Moreover, despite reforms made possible by the JOBS Act, the reporting requirements, rules, and regulations will make some activities more time-consuming and costly, particularly after we are no longer an “emerging growth company.” In addition, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance and we may be required to incur substantial costs to maintain the same or similar coverage that we had through BioXcel LLC. Our continued compliance with applicable requirements and to keep pace with new regulations requires management and other personnel to devote a substantial amount of their time, otherwise we may fall out of compliance and risk becoming subject to litigation or being delisted, among other potential problems.

General Risk Factors

If securities or industry analysts do not publish research or reports, or publish unfavorable research or reports about our business, our stock price and trading volume may decline.

The trading market for our common stock will rely in part on the research and reports that industry or financial analysts publish about us, our business, our markets and our competitors. We do not control these analysts. If securities analysts do not cover our common stock, the lack of research coverage may adversely affect the market price of our common stock. Furthermore, if one or more of the analysts who do cover us downgrade our stock or if those analysts issue other unfavorable commentary about us or our business, our stock price would likely decline. If one or more of these analysts cease coverage of us or fails to regularly publish reports on us, we could lose visibility in the market and

interest in our stock could decrease, which in turn could cause our stock price or trading volume to decline and may also impair our ability to expand our business with existing customers and attract new customers.

Future sales and issuances of our common stock could result in additional dilution of the percentage ownership of our stockholders and could cause our share price to fall.

We expect that significant additional capital will be needed in the future to continue our planned operations, including increased marketing, hiring new personnel, commercializing our products, and continuing activities as an operating public company. To the extent we raise additional capital by issuing equity securities, our stockholders may experience substantial dilution. We may sell common stock, convertible securities or other equity securities in one or more transactions at prices and in a manner we determine from time to time. If we sell common stock, convertible securities or other equity securities in more than one transaction, investors may be materially diluted by subsequent sales. Such sales may also result in material dilution to our existing stockholders, and new investors could gain rights superior to our existing stockholders.

If we fail to comply with the rules under the Sarbanes-Oxley Act related to accounting controls and procedures in the future, or, if we discover material weaknesses and other deficiencies in our internal control and accounting procedures, our stock price could decline significantly and raising capital could be more difficult.

Section 404 of the Sarbanes-Oxley Act requires annual management assessments of the effectiveness of our internal control over financial reporting. If we fail to comply with the rules under the Sarbanes-Oxley Act related to disclosure controls and procedures in the future, or, if we discover material weaknesses and other deficiencies in our internal control and accounting procedures, our stock price could decline significantly and raising capital could be more difficult. We have discovered material weaknesses in the past. If future material weaknesses or significant deficiencies are discovered or if we otherwise fail to achieve and maintain the adequacy of our internal control, we may not be able to ensure that we can conclude on an ongoing basis that we have effective internal controls over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act. Moreover, effective internal controls are necessary for us to produce reliable financial reports and are important to helping prevent financial fraud. If we cannot provide reliable financial reports or prevent fraud, our business and operating results could be harmed, investors could lose confidence in our reported financial information, and the trading price of our common stock could drop significantly.

Comprehensive tax reform bills could adversely affect our business and financial condition.

In 2017, the U.S. government enacted comprehensive federal income tax legislation that includes significant changes to the taxation of business entities. These changes include, among others, a permanent reduction to the corporate income tax rate. Notwithstanding the reduction in the corporate income tax rate, the overall impact of this tax reform is uncertain, and our business and financial condition could be adversely affected. Future changes in corporate tax rates, the realization of net deferred tax assets relating to our operations, the taxation of any foreign earnings, and the deductibility of expenses under future reform legislation could have a material impact on the value of our deferred tax assets, could result in significant one-time charges, and could increase our future U.S. tax expense.

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

There were no unregistered sales of equity securities by the Company during the three months ended June 30, 2022 except as reported on the Company’s Current Report on Form 8-K filed on April 19, 2022.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

Not applicable.

Item 6. Exhibits

Exhibit Number	Description	Form	File No.	Exhibit	Filing Date	Filed/ Furnished Herewith
3.1	Amended and Restated Certificate of Incorporation, as amended.	10-Q	001-38410	3.1	8/10/2021	
3.2	Amended and Restated Bylaws.	8-K	001-38410	3.2	3/13/2018	
4.1	Form of Warrant Agreement under the Credit Agreement and Guaranty, by and among BioXcel Therapeutic, Inc., Oaktree Fund Administration, LLC, the Subsidiary Guarantors from time to time party thereto and the Lenders from time to time party thereto, dated April 9, 2022	8-K	001-38410	4.1	4/19/2022	
4.2	Registration Rights Agreement, dated April 19, 2022, among the Company and Oaktree-TCDRS Strategic Credit, LLC, Oaktree-Forrest Multi-Strategy, LLC, Oaktree-TBMR Strategic Credit Fund C, LLC, Oaktree-TBMR Strategic Credit Fund F, LLC, Oaktree-TBMR Strategic Credit Fund G, LLC, Oaktree-TSE 16 Strategic Credit, LLC, INPRS Strategic Credit Holdings, LLC, Oaktree Strategic Income II, Inc., Oaktree Specialty Lending Corporation, Oaktree Strategic Credit Fund, Oaktree GCP Fund Delaware Holdings, L.P., Oaktree Diversified Income Fund Inc., Oaktree AZ Strategic Lending Fund, L.P., Oaktree Loan Acquisition Fund, L.P., Oaktree LSL Fund Delaware Holdings EURRC, L.P., and Q Boost Holding LLC	8-K	001-38410	4.2	4/19/2022	
10.1+ #	Credit Agreement and Guaranty, by and among BioXcel Therapeutic, Inc., Oaktree Fund Administration, LLC, the Subsidiary Guarantors from time to time party thereto and the Lenders from time to time party thereto, dated April 9, 2022					*
10.2+ #	Revenue Interest Financing Agreement, between BioXcel Therapeutics, Inc., Oaktree Fund Administration, LLC and the Purchasers from time to time party thereto, dated April 19, 2022					*
10.3+ #	Commercial Supply Agreement, between ARx, LLC and BioXcel Therapeutics, Inc., dated April 1, 2022					*
10.4	BioXcel Therapeutics, Inc. Non-Employee Director Compensation Program, effective May 19, 2022					*
31.1	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					*
31.2	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					*

32.1	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	**
32.2	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	**
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document	*
101.SCH	Inline XBRL Taxonomy Extension Schema Document	*
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	*
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	*
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	*
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	*
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).	*

* Filed herewith.
** Furnished herewith.
\+ Portions of this exhibit have been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K.
\# Annexes, schedules, and certain exhibits have been omitted pursuant to Item 601(a)(5)(b)(2) of Regulation S-K. The Registrant hereby agrees to furnish supplementally a copy of any omitted annex, schedule or exhibit to the SEC upon request.

SIGNATURES

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

BioXcel Therapeutics, Inc.

Dated: August 11, 2022

By:
/s/ Vimal Mehta
Vimal Mehta
Chief Executive Officer
(Principal Executive Officer)

Dated: August 11, 2022

By:
/s/ Richard Steinhart
Richard Steinhart
Chief Financial Officer
(Principal Financial Officer)

Certain information marked as [***] has been excluded from this exhibit because it is both (i) not material and (ii) of the type that the registrant customarily and actually treats as confidential.

Execution Version

CREDIT AGREEMENT AND GUARANTY

dated as of April 19, 2022

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

TABLE OF CONTENTS

SECTION 1. DEFINITIONS 1

1.01 Certain Defined Terms 1

1.02 Accounting Terms and Principles 37

1.03 Interpretation 38

1.04 Division 39

SECTION 2. THE COMMITMENT AND THE LOANS; EQUITY INVESTMENT 39

2.01 Loans 39

2.02 Borrowing Procedures 40

2.03 Funding of Borrowings 40

2.04 Notes 40

2.05 Use of Proceeds 40

2.06 Ticking Fees 40

2.07 Extension of Maturity Date 41

2.08 Equity Investment 41

SECTION 3. PAYMENTS OF PRINCIPAL AND INTEREST, ETC. 42

3.01 Scheduled Repayments and Prepayments Generally; Application 42

3.02 Interest 42

3.03 Prepayments 43

3.04 Commitment Termination 45

SECTION 4. PAYMENTS, ETC. 46

4.01 Payments 46

4.02 Computations 47

4.03 Set-Off 47

SECTION 5. YIELD PROTECTION, TAXES, ETC. 48

5.01 Additional Costs 48

5.02 Illegality 49

5.03 Taxes 49

5.04 Mitigation Obligations 53

5.05 Survival 53

SECTION 6. CONDITIONS 53

6.01 Conditions to Closing 54

6.02 Conditions to the Borrowing of All Loans 56
SECTION 7. REPRESENTATIONS AND WARRANTIES 58
7.01 Power and Authority 58
7.02 Authorization; Enforceability 59
7.03 Governmental and Other Approvals; No Conflicts 59
7.04 Financial Statements; Material Adverse Change 59
7.05 Properties 60
7.06 No Actions or Proceedings 62
7.07 Compliance with Laws and Agreements 63
7.08 Taxes 63
7.09 Full Disclosure 64
7.10 Investment Company Act and Margin Stock Regulation 64
7.11 Solvency 64
7.12 Subsidiaries 64
7.13 Indebtedness and Liens 64
7.14 Material Agreements 64
7.15 Restrictive Agreements 65
7.16 Real Property 65
7.17 Pension Matters 65
7.18 Regulatory Approvals 65
7.19 Transactions with Affiliates 67
7.20 OFAC; Anti-Terrorism Laws 67
7.21 Anti-Corruption 67
7.22 BXCL 701 Assets 67
7.23 Priority of Obligations 67
7.24 Royalty and Other Payments 68
7.25 Non-Competes 68
7.26 Security Interest 68
7.27 Data Privacy.. 68
SECTION 8. AFFIRMATIVE COVENANTS 68
8.01 Financial Statements and Other Information 68
8.02 Notices of Material Events 70
8.03 Existence 72

8.04 Payment of Obligations 72
8.05 Insurance 73
8.06 Books and Records; Inspection Rights 73
8.07 Compliance with Laws and Other Obligations 74
8.08 Maintenance of Properties, Etc. 74
8.09 Licenses 74
8.10 Use of Proceeds 74
8.11 Certain Obligations Respecting Subsidiaries; Further Assurances 74
8.12 Termination of Non-Permitted Liens 77
8.13 [*****]. 77
8.14 [Reserved] 77
8.15 Maintenance of Regulatory Approvals, Contracts, Intellectual Property, Etc. 77
8.16 ERISA Compliance 77
8.17 Cash Management 77
8.18 Amendments to Agreements 78
8.19 Post-Closing Obligations 78
8.20 Enforcement of Trademark Rights 79
SECTION 9. NEGATIVE COVENANTS 79
9.01 Indebtedness 79
9.02 Liens 81
9.03 Fundamental Changes and Acquisitions 84
9.04 Lines of Business 84
9.05 Investments 84
9.06 Restricted Payments 86
9.07 Payments of Indebtedness 87
9.08 Change in Fiscal Year 87
9.09 Sales of Assets, Etc. 87
9.10 Transactions with Affiliates 89
9.11 Restrictive Agreements 90
9.12 Modifications and Terminations of Material Agreements and Organic Documents 91
9.13 Outbound Licenses 91

9.14 Sales and Leasebacks 91
9.15 Hazardous Material 92
9.16 Accounting Changes 92
9.17 Compliance with ERISA 92
9.18 Sanctions; Anti-Corruption Use of Proceeds 92
9.19 BXCL 701 Subsidiary Covenants 93
SECTION 10. FINANCIAL COVENANTS 94
10.01 Minimum Liquidity 94
10.02 Minimum Revenue 94
SECTION 11. EVENTS OF DEFAULT 94
11.01 Events of Default 94
11.02 Remedies 98
11.03 Additional Remedies 98
11.04 Minimum Revenue Covenant Cure 99
11.05 Payment of Prepayment Fee 99
SECTION 12. THE ADMINISTRATIVE AGENT 100
12.01 Appointment and Duties 100
12.02 Binding Effect 102
12.03 Use of Discretion 102
12.04 Delegation of Rights and Duties 103
12.05 Reliance and Liability 103
12.06 Administrative Agent Individually 104
12.07 Lender Credit Decision 104
12.08 Expenses; Indemnities 105
12.09 Resignation of the Administrative Agent 105
12.10 Release of Collateral or Guarantors 106
12.11 Additional Secured Parties 107
12.12 Agent May File Proofs of Claim 107
12.13 Acknowledgements of Lenders 108
SECTION 13. GUARANTY 110
13.01 The Guaranty 110
13.02 Obligations Unconditional 111
13.05 Reinstatement 114

13.06 Subrogation 115
13.07 Remedies 115
13.08 Instrument for the Payment of Money 115
13.09 Continuing Guarantee 116
13.11 General Limitation on Guarantee Obligations 116
SECTION 14. MISCELLANEOUS 117
14.01 No Waiver 117
14.02 Notices 117
14.03 Expenses, Indemnification, Etc. 117
14.04 Amendments, Etc. 119
14.05 Successors and Assigns 119
14.06 Survival 122
14.07 Captions 122
14.08 Counterparts, Effectiveness 122
14.09 Governing Law 122
14.10 Jurisdiction, Service of Process and Venue 122
14.11 Waiver of Jury Trial 123
14.12 Waiver of Immunity 123
14.13 Entire Agreement 123
14.14 Severability 124
14.15 No Fiduciary Relationship 124
14.16 Confidentiality 124
14.17 Interest Rate Limitation 125
14.18 Judgment Currency 125
14.19 USA PATRIOT Act 125
14.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions 126

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 C Revenue Condition Certificate

CREDIT AGREEMENT AND GUARANTY

CREDIT AGREEMENT AND GUARANTY, dated as of April 19, 2022 (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, consisting of (a) a $70,000,000 Tranche A 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

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 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 Authority 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).

[***]

"***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.

"***Commitment Termination Date***" means December 31, 2024.

"***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***" means that certain warrant, 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, replaced or otherwise modified pursuant to the terms thereof.

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

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

"***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.

"***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 depositary 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 Fee Letter, dated as of the date of this Agreement, 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)(i)**.

"***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 (B) accounts payable incurred in the ordinary course of business and not overdue by more than ninety (90) days. 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 Rate***" means 10.25% 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 Notes, the Security Documents, the Company Warrant, 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 $[***] (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 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. 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 400l(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) 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) such Acquisition shall comply in all material respects with all applicable Laws and all applicable Governmental Approvals;

(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) 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**;

(e) to the extent that the purchase price for any such Acquisition is paid in cash, the amount thereof does not exceed $[***] (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) 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) 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 $[***] (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 Obligors and (B) to the extent the cash purchase price exceeds $[***] (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) 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; <u>provided</u> 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 [***] 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 Obligors 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(c)**.

"***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 $[***] and (ii) more than [***]% 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 Registration Rights Agreement, dated as of the Closing 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, Her 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, Her 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)**.

"***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-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 pursuant to **Section 8.11(a)** or **8.11(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**.

"***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 Term Loans*" has the meaning assigned to such term in **Section 2.01(a)(i)**.

"*Tranche B Term Loans*" has the meaning assigned to such term in **Section 2.01(a)(ii)**.

"*Tranche C Term Loans*" has the meaning assigned to such term in **Section 2.01(a)(iii)**.

"***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. 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 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 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 Commitment on the Applicable Funding Date for the Tranche A Term Loans ("***Tranche A Term Loans***");

(ii) 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

(iii) 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***").

(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 (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 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.

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 Commitment Termination Date, commencing with the first Payment Date following the date that is 120 days after the funding of the Tranche A Term Loans, (ii) each date on which a Tranche B Term Loan or Tranche C 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 shall not exceed 5,593,270 (as may be proportionally adjusted for stock splits or combinations following the date of this Agreement), 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, 2.250% 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) [***]% 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

[***]% 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 $[***] 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 [***] or (ii) at the option of the Administrative Agent, upon the occurrence of an Event of Default.

(C) [***].

(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 unmatured. 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 (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 (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 (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 (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 (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 (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 Obligors have not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Obligors 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(g)** (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(g)**, 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 Term Loans are part of an investment unit within the meaning of Section 1273(c)(2) of the Code, which includes the Company Warrant. 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 Term Loans is 98% of the stated principal amount of the Tranche A Term Loans minus the Final Valuation of the Company Warrant (as that term is defined in Section 16 of the Company Warrant). 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).

5.04 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.

5.05 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 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 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) **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 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 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 [***] 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 [***] 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 [***] 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 [***] 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 [***] 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 Obligors, 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 Obligors.

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 $[***] (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 $[***] (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. [***].

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 $[***], 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.

.

8.14 [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 depositary 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 depositary 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 [***]% 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 depositary 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 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 $[***] 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 $[***] 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 $[***] (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, [***]% 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 [***]% 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 $[***] (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;

(n) other Indebtedness in an aggregate outstanding principal amount not to exceed $[***] (or the Equivalent Amount in other currencies);

(o) Permitted Convertible Debt in aggregate principal amount not to exceed $[***] 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(s)**, 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 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 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 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) Bankers liens, rights of setoff and similar Liens incurred on deposits made in the Ordinary Course;

(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 $[***] (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;

(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 hereof (or in the case of the BXCL 701 Subsidiaries, contemplated on the date hereof) 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 hereof 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 $[***] 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 $[***] (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 $[***] (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 $[***] (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 $[***] (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 $[***] (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).

9.07 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.

9.08 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, 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.

9.09 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 Obligors 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 $[***] (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 $[***] (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) $[***] (or the Equivalent Amount in other currencies) in the aggregate in any fiscal year and (ii) $[***] (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 [***]% 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.

9.10 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 $[***], 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 $[***], 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.

9.11 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.

9.12 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.

9.13 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.

9.14 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.

9.15 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.

9.16 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.

9.17 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.

9.18 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.

9.19 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 $[***] outstanding at any time (provided that the amount of Investments permitted to be made pursuant to this clause (C) shall be reduced by $[***] for each $[***] 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) [***].

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 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***").

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 (i) any of the Company Warrant 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 $[***] (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 $[***] (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 1 Recall of BXCL 501 in the U.S., to the extent BXCL 501 has generated or is expected to generate at least $[***] (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 $[***] (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.

12.06 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.

12.07 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.

12.08 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.

12.09 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.

12.10 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.

12.11 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.

12.12 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**.

12.13 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 $[***] (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 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]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement 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

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):

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

ADMINISTRATIVE AGENT:

OAKTREE FUND ADMINISTRATION, LLC

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

By: /s/Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/Kendall Bass
Name: Kendall Bass
Title: Vice President

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

LENDERS:

OAKTREE-TCDRS STRATEGIC CREDIT, LLC

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

By: /s/Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/Kendall Bass
Name: Kendall Bass
Title: Vice President

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 Blaut
Email: blauta@sullcrom.com

OAKTREE-FORREST MULTI-STRATEGY, LLC

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

By: /s/Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/Kendall Bass
Name: Kendall Bass
Title: Vice President

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 Blaut
Email: blauta@sullcrom.com

OAKTREE-TMBR STRATEGIC CREDIT FUND C, LLC

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

By: /s/Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/Kendall Bass
Name: Kendall Bass
Title: Vice President

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 Blaut
Email: blauta@sullcrom.com

OAKTREE-TMBR STRATEGIC CREDIT FUND F, LLC

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

By: /s/Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/Kendall Bass
Name: Kendall Bass
Title: Vice President

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 Blaut
Email: blauta@sullcrom.com

OAKTREE-TMBR STRATEGIC CREDIT FUND G, LLC

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

By: /s/Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/Kendall Bass
Name: Kendall Bass
Title: Vice President

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 Blaut
Email: blauta@sullcrom.com

OAKTREE-TSE-16 STRATEGIC CREDIT, LLC

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

By: /s/Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/Kendall Bass
Name: Kendall Bass
Title: Vice President

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 Blaut
Email: blauta@sullcrom.com

INPRS STRATEGIC CREDIT HOLDINGS, LLC

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

By: /s/Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/Kendall Bass
Name: Kendall Bass
Title: Vice President

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 Blaut
Email: blauta@sullcrom.com

OAKTREE STRATEGIC INCOME II, INC.

By: Oaktree Fund Advisors, LLC
Its: Investment Advisor

By: /s/Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/Kendall Bass
Name: Kendall Bass
Title: Vice President

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 Blaut
Email: blauta@sullcrom.com

OAKTREE SPECIALTY LENDING CORPORATION

By: Oaktree Fund Advisors, LLC
Its: Investment Adviser

By: /s/Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/Kendall Bass
Name: Kendall Bass
Title: Vice President

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 Blaut
Email: blauta@sullcrom.com

OAKTREE STRATEGIC CREDIT FUND

By: Oaktree Fund Advisors, LLC
Its: Investment Advisor

By: /s/Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/Kendall Bass
Name: Kendall Bass
Title: Vice President

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 Blaut
Email: blauta@sullcrom.com

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: /s/Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/Kendall Bass
Name: Kendall Bass
Title: Vice President

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 Blaut
Email: blauta@sullcrom.com

OAKTREE DIVERSIFIED INCOME FUND INC.

By: Oaktree Fund Advisors, LLC
Its: Investment Advisor

By: /s/Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/Kendall Bass
Name: Kendall Bass
Title: Vice President

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 Blaut
Email: blauta@sullcrom.com

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/Jessica Dombroff
Name: Jessica Dombroff
Title: Authorized Signatory

By: /s/Kendall Bass
Name: Kendall Bass
Title: Authorized Signatory

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 Blaut
Email: blauta@sullcrom.com

OAKTREE AZ STRATEGIC LENDING FUND, L.P.

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

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

By: /s/Jessica Dombroff
Name: Jessica Dombroff
Title: Authorized Signatory

By: /s/Kendall Bass
Name: Kendall Bass
Title: Authorized Signatory

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 Blaut
Email: blauta@sullcrom.com

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/Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/Kendall Bass
Name: Kendall Bass
Title: Vice President

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 Blaut
Email: blauta@sullcrom.com

LENDER:
Q BOOST HOLDINGS LLC

By: _____
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

Schedule 1

Loans Schedule

Tranche A Term Loans

Lenders and their respective Applicable Commitments:

Lender	**Applicable Commitment**
Oaktree-TCDRS Strategic Credit, LLC	$722,125
Oaktree-Forrest Multi-Strategy, LLC	$582,626
Oaktree-TBMR Strategic Credit Fund C, LLC	$351,238
Oaktree-TBMR Strategic Credit Fund F, LLC	$550,439
Oaktree-TBMR Strategic Credit Fund G, LLC	$898,752
Oaktree-TSE 16 Strategic Credit, LLC	$902,683
INPRS Strategic Credit Holdings, LLC	$275,483
Oaktree Strategic Income II, Inc.	$1,245,098
Oaktree Specialty Lending Corporation	$5,322,340
Oaktree Strategic Credit Fund	$3,129,878
Oaktree GCP Fund Delaware Holdings, L.P.	$400,416
Oaktree Diversified Income Fund Inc.	$876,366
Oaktree AZ Strategic Lending Fund, L.P.	$5,136,459
Oaktree Loan Acquisition Fund, L.P.	$10,432,926
Oaktree LSL Fund Delaware Holdings EURRC, L.P.	$4,173,171
Q Boost Holding LLC	$35,000,000
Tranche A Commitment	**$70,000,000**

The following defined terms apply to the Tranche A Term Loans:

"***Applicable Availability Period***" means the period starting on the date of the BXCL 501 FDA Approval and ending the 30th calendar day after such date.

"Applicable Funding Condition" means that (i) the Closing Date shall have occurred and (ii) the BXCL 501 FDA Approval shall have been received and the Administrative Agent shall have received evidence thereof.

"BXCL 501 FDA Approval" means the receipt of approval from the FDA of an NDA in respect of the use of BXCL 501 for the acute treatment of agitation associated with schizophrenia or bipolar I or II disorder in adults.

Tranche B Term Loans

Lenders and their respective Applicable Commitments:

Lender	Applicable Commitment
Oaktree-TCDRS Strategic Credit, LLC	$361,062
Oaktree-Forrest Multi-Strategy, LLC	$291,313
Oaktree-TBMR Strategic Credit Fund C, LLC	$175,619
Oaktree-TBMR Strategic Credit Fund F, LLC	$275,220
Oaktree-TBMR Strategic Credit Fund G, LLC	$449,376
Oaktree-TSE 16 Strategic Credit, LLC	$451,341
INPRS Strategic Credit Holdings, LLC	$137,742
Oaktree Strategic Income II, Inc.	$622,549
Oaktree Specialty Lending Corporation	$2,661,170
Oaktree Strategic Credit Fund	$1,564,939
Oaktree GCP Fund Delaware Holdings, L.P.	$200,208
Oaktree Diversified Income Fund Inc.	$438,183
Oaktree AZ Strategic Lending Fund, L.P.	$2,568,230
Oaktree Loan Acquisition Fund, L.P.	$5,216,463
Oaktree LSL Fund Delaware Holdings EURRC, L.P.	$2,086,585
Q Boost Holding LLC	$17,500,000
Tranche B Commitment	**$35,000,000**

The following defined terms apply to the Tranche B Term Loans:

"***Applicable Availability Period***" means the period starting on the date of the funding of the Tranche A Term Loans and ending on the Commitment Termination Date.

"Applicable Funding Condition" means [***].

"BXCL 501 FDA Alzheimer's Approval" means the receipt of approval from the FDA of an NDA in respect of the use of BXCL 501 for the acute treatment of agitation associated with Alzheimer's Disease.

[***].

[***].

Tranche C Term Loans

Lenders and their respective Applicable Commitments:

Lender	Applicable Commitment
Oaktree-TCDRS Strategic Credit, LLC	$309,482
Oaktree-Forrest Multi-Strategy, LLC	$249,697
Oaktree-TBMR Strategic Credit Fund C, LLC	$150,530
Oaktree-TBMR Strategic Credit Fund F, LLC	$235,902
Oaktree-TBMR Strategic Credit Fund G, LLC	$385,180
Oaktree-TSE 16 Strategic Credit, LLC	$386,864
INPRS Strategic Credit Holdings, LLC	$118,064

Oaktree Strategic Income II, Inc.	$533,613
Oaktree Specialty Lending Corporation	$2,281,003
Oaktree Strategic Credit Fund	$1,341,376
Oaktree GCP Fund Delaware Holdings, L.P.	$171,607
Oaktree Diversified Income Fund Inc.	$375,585
Oaktree AZ Strategic Lending Fund, L.P.	$2,201,340
Oaktree Loan Acquisition Fund, L.P.	$4,471,255
Oaktree LSL Fund Delaware Holdings EURRC, L.P.	$1,788,502
Q Boost Holding LLC	$15,000,000
Tranche C Commitment	**$30,000,000**

The following defined terms apply to the Tranche C Term Loans:

"***Applicable Availability Period***" means the period starting on the date of the funding of the Tranche B Term Loans and ending on the Commitment Termination Date.

"Applicable Funding Condition" means that (i) the Closing Date shall have occurred, (ii) the Administrative Agent shall have received the Tranche C Revenue Condition Certificate and (iii) [***].

"Tranche C Revenue Condition Certificate" means a certificate substantially in the form of **Exhibit M** signed by a Responsible Officer of the Borrower as of the end of the applicable quarter indicating that net sales of the Borrower attributable to sales of BXCL 501 for the trailing twelve (12) consecutive month period exceed $[***]. For avoidance of doubt, if the product is out licensed in ex-U.S. jurisdictions (such as the European Union), in such a case the calculation of such trailing twelve month net sales will include the net royalties received by the Borrower on BXCL 501 net sales in such jurisdictions from the licensee.

Equity Purchase Rights

Lender	**Equity Purchase Right**
Oaktree-TCDRS Strategic Credit, LLC	$51,580
Oaktree-Forrest Multi-Strategy, LLC	$41,616
Oaktree-TBMR Strategic Credit Fund C, LLC	$25,088
Oaktree-TBMR Strategic Credit Fund F, LLC	$39,317
Oaktree-TBMR Strategic Credit Fund G, LLC	$64,197
Oaktree-TSE 16 Strategic Credit, LLC	$64,477
INPRS Strategic Credit Holdings, LLC	$19,677
Oaktree Strategic Income II, Inc.	$88,936
Oaktree Specialty Lending Corporation	$380,167
Oaktree Strategic Credit Fund	$223,563
Oaktree GCP Fund Delaware Holdings, L.P.	$28,601
Oaktree Diversified Income Fund Inc.	$62,598
Oaktree AZ Strategic Lending Fund, L.P.	$366,890
Oaktree Loan Acquisition Fund, L.P.	$745,209

Oaktree LSL Fund Delaware Holdings EURRC, L.P.	$298,084
Q Boost Holding LLC	$2,500,000
Total:	**$5,000,000**

Schedule 2
to Credit Agreement

PRODUCTS

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 3
to Credit Agreement

Minimum Revenue

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 4
to Credit Agreement

BXCL 701 ASSETS

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 7.05(b)(i)
to Credit Agreement

CERTAIN INTELLECTUAL PROPERTY

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 7.05(b)(ii)
to Credit Agreement

CERTAIN INTELLECTUAL PROPERTY

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 7.06(b)
to Credit Agreement

ENVIRONMENTAL MATTERS

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 7.08
to Credit Agreement

TAXES

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 7.12
to Credit Agreement

INFORMATION REGARDING SUBSIDIARIES

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 7.13(a)
to Credit Agreement

EXISTING INDEBTEDNESS

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 7.13(b)
to Credit Agreement

EXISTING LIENS

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 7.14
to Credit Agreement

MATERIAL AGREEMENTS

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 7.15
to Credit Agreement

RESTRICTIVE AGREEMENTS

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 7.16 to
Credit Agreement

REAL PROPERTY OWNED OR LEASED BY OBLIGORS

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 7.17
to Credit Agreement

PENSION MATTERS

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 7.18(c)
to Credit Agreement

ADVERSE FINDINGS

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 7.19
to Credit Agreement

TRANSACTIONS WITH AFFILIATES

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 7.24
to Credit Agreement

ROYALTIES AND OTHER PAYMENTS

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 8.19(a)
to Credit Agreement

POST-CLOSING IP ASSIGNMENT

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]
4893-4522-7277 v.1.3

Schedule 9.05
to Credit Agreement

EXISTING INVESTMENTS

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

4890-4135-4761 v.14

Schedule 9.09
to Credit Agreement

SALE OF ASSETS

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

4890-4135-4761 v.14

EXHIBIT A

FORM OF NOTE

TRANCHE [A][B][C]TERM LOAN 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 C

FORM OF GUARANTEE ASSUMPTION AGREEMENT

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT D

EXHIBIT D-1

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT D-2

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT D-3

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT D-4

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT E

FORM OF COMPLIANCE CERTIFICATE

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT F

FORM OF ASSIGNMENT AND ASSUMPTION

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT G

FORM OF LANDLORD CONSENT

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Exhibit H
to Credit Agreement

[FORM OF] STOCK PURCHASE AGREEMENT

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT I

FORM OF INTERCOMPANY SUBORDINATION AGREEMENT

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Exhibit J-1

[FORM OF] BIOXCEL THERAPEUTICS, INC. COMMON STOCK WARRANT

NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON ITS EXERCISE OR CONVERSION HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY APPLICABLE STATE SECURITIES LAW AND MAY NOT BE TRANSFERRED EXCEPT (I) IN ACCORDANCE WITH THE SECURITIES ACT OR SUCH APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM, OR (II) WHERE, IN THE OPINION OF COUNSEL, REGISTRATION UNDER THE SECURITIES ACTS OR SUCH APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED IN CONNECTION WITH SUCH PROPOSED TRANSFER.

[•][1] Shares of Company Common Stock No. [•] WARRANT

This WARRANT (this "**Warrant**") is issued as of [•], 2022 (the "**Initial Issuance Date**"), by BIOXCEL THERAPEUTICS, INC., a Delaware corporation (the "**Company**"), to [•][2], a [•] ("**Purchaser**" and, together with any assignee(s) or transferee(s), "**Holder**" or "**Holders**").

WHEREAS, the Company, certain subsidiaries of the Company as guarantors, the Purchaser as lender and the other lenders party thereto are parties to that certain Credit Agreement and Guaranty, dated as of [•], 2022 (the "**Credit Agreement**"), pursuant to which the Company may borrow from Purchaser and the other lenders party thereto (collectively, the "**Lenders**"), and the Lenders may loan to the Company, up to $135,000,000 from the date of the Credit Agreement through the Maturity Date; and

WHEREAS, the Company is issuing this Warrant to Purchaser as a condition precedent to the making of the loans by Purchaser pursuant to the Credit Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Purchaser agree as follows:

Section 1. **Definitions**. Unless otherwise defined herein, capitalized terms have the meanings set forth in the Credit Agreement (as in effect on the date hereof), however, the following terms when used herein have the following meanings:

"**Aggregate Exercise Price**" means, in connection with any Exercise of this Warrant pursuant to **Section 4** (whether in whole or in part), an amount equal to the product of (i) the number of Underlying Shares in respect of which this Warrant is then being exercised pursuant to such **Section 4**, multiplied by (ii) the Exercise Price.

---

1 Note to Draft: To be equal to common stock representing 0.85% of the Company's fully diluted market capitalization (which will be calculated based on shares of outstanding common stock).

2 Note to Draft: To insert Purchaser entity.

"**Fair Market Value**" means, with respect to any security or other property, the fair market value of such security or other property as determined by the independent members of the Board of Directors of the Company, acting in good faith. If the Holder objects in writing to the Board of Directors' calculation of Fair Market Value within ten (10) days of receipt of written notice thereof and the Holder and the Company are unable to agree on Fair Market Value during the five (5) day period following the delivery of the Holder's objection, the valuation dispute resolution procedure set forth in **Section 21** hereof shall be invoked to determine Fair Market Value.

"**Market Price**" means, with respect to a particular security, on any given day, the last reported sale price, regular way, or, in case no such reported sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case on the principal national securities exchange on which the applicable securities are listed or admitted to trading, or if not listed or admitted to trading on any national securities exchange, the last quoted bid price in the over-the-counter market as reported by Pink Sheets LLC or similar organization. "Market Price" shall be determined without reference to after hours or extended hours trading. If such security is not listed and traded in a manner that the quotations referred to above are available for the period required hereunder, the Market Price per share of Company Common Stock shall be deemed to be the fair market value per share of such security as determined in good faith by the independent members of the Board of Directors in reliance upon an opinion of an accounting firm of nationally recognized standing retained by the Company for this purpose and reasonably acceptable to the Holder (or if there is more than one Holder, a majority in interest of Holders excluding any Holder that is an Affiliate of the Company). For the purposes of determining the Market Price of the Company Common Stock on the Trading Day preceding, on or following the occurrence of an event, (i) that Trading Day shall be deemed to commence immediately after the regular scheduled closing time of trading on the Trading Market on which the Company Common Stock is listed or, if trading is closed at an earlier time, such earlier time and (ii) that Trading Day shall end at the next regular scheduled closing time, or if trading is closed at an earlier time, such earlier time (for the avoidance of doubt, and as an example, if the Market Price is to be determined as of the last Trading Day preceding a specified event and the closing time of trading on a particular day is 4:00 p.m. and the specified event occurs at 5:00 p.m. on that day, the Market Price would be determined by reference to such 4:00 p.m. closing price).

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

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

"**VWAP**" means, for any date, the price determined by the first of the following clauses that applies: (i) if the Company Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Company Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Company 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 Company Common Stock

is not then listed on a Trading Market or quoted for trading on the OTC Bulletin Board and if prices for the Company 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 Company Common Stock so reported or (iii) in all other cases, the fair market value of a share of Company Common Stock as determined by an independent nationally recognized investment banking, accounting or valuation firm selected in good faith by the Company and reasonably acceptable to the Holder, the fees and expenses of which shall be paid by the Company.

Section 2. **Issuance of Warrant; Term**. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company hereby grants to Holder the right to purchase from the Company [•][3] fully paid and nonassessable shares of the Company's voting common stock having a par value $0.001 per share (the "**Company Common Stock**"). The shares of Company Common Stock issuable upon exercise of this Warrant are hereinafter referred to as the "**Underlying Shares**." This Warrant shall be exercisable at any time and from time to time, in whole or in part, during the seven (7) year period commencing on the date hereof (the last day of this seven (7) year period is referred to as the "**Expiration Date**").

Section 3. **Exercise Price**. The exercise price per share of Company Common Stock for which each Underlying Share may be purchased pursuant to this Warrant shall be $[•][4], subject to adjustment pursuant to **Section 7** (the "**Exercise Price**").

Section 4. **Exercise**.

(a) This Warrant may be exercised by the Holder hereof as to all or any portion of the Underlying Shares, upon delivery of written notice to the Company, together with this original Warrant and (x) payment to the Company of the Aggregate Exercise Price or (y) instruction to the Company to withhold a number of the Underlying Shares then issuable upon exercise of this Warrant with an aggregate value (determined on the basis of the average Market Price per share for the Company Common Stock on the last five Trading Days for such stock ended immediately prior to the applicable Exercise Date, as defined below) equal to such Aggregate Exercise Price (collectively, the "**Exercise**", with the date of an Exercise being an "**Exercise Date**"). The Exercise Price (if paid pursuant to clause (x) above) shall be payable by delivery by the Holder of a certified or official bank check payable to the order of the Company or wire transfer of immediately available funds to an account designated by the Company. This Warrant shall be deemed to have been so exercised as of the applicable Exercise Date, and the Holder shall be entitled to receive the Underlying Shares issuable upon such Exercise and be treated for all purposes as the holder of record of the Underlying Shares as of such date. Upon the Exercise of this Warrant, the Company shall, within two (2) Business Days of the applicable Exercise Date (the "**Underlying Share Delivery Date**"), execute and deliver to the Holder of this Warrant (a) a statement confirming the total number of Underlying Shares for which this Warrant is being exercised, and (b) (i) if the Underlying Shares are issued in certificate form, a certificate or certificates for the number of Underlying Shares issuable upon such Exercise, or (ii) if the

---

3 Note to Draft: To be equal to common stock representing 0.85% of the Company's fully diluted market capitalization.

4 Note to Draft: to be equal to the 30-day VWAP immediately prior to the Initial Issuance Date.

Underlying Shares are issued in uncertificated form, a written confirmation evidencing the book-entry registration of such Underlying Shares in the Holder's name; provided that if the Company fails to deliver to Holder such certificate or certificates (in the case of Underlying Shares issued in certificate form) or written confirmation (in the case of Underlying Shares issued in uncertificated form) by the Underlying Share Delivery Date, the Holder will have the right to rescind such Exercise. Any rescission by the Holder pursuant to this **Section 4(a)** shall not affect any other remedies available to the Holder under applicable law or equity or pursuant to **Section 13** hereof as a result of the Company's failure to timely deliver the Underlying Shares. If this Warrant shall be exercised with respect to less than all of the Underlying Shares, the Company shall deliver a new Warrant covering the number of Underlying Shares in respect of which this Warrant shall not have been exercised, which new Warrant shall in all other respects be identical to this Warrant. The Company covenants and agrees that it will pay when due any and all state and federal issue taxes which may be payable in respect of the issuance of this Warrant or the issuance of any Underlying Shares upon exercise.

(b) In the event of any withholding of shares of Underlying Shares pursuant to **Section 4(a)(y)** above where the number of the Underlying Shares then issuable upon exercise of this Warrant with an aggregate value equal to the Aggregate Exercise Price is not a whole number, the number of the Underlying Shares withheld by the Company shall be rounded up to the nearest whole share, and the Company shall make a cash payment to the Holder (by delivery of a certified or official bank check or by wire transfer of immediately available funds) based on the incremental fraction of Underlying Shares being so withheld by the Company in an amount equal to the product of (x) such incremental fraction of Underlying Shares being so withheld or surrendered multiplied by (y) the value per share of Underlying Shares (determined on the basis of the average Market Price per share for the Company Common Stock on the last five Trading Days for such stock ended immediately prior to the applicable Exercise Date).

(c) The Company shall not knowingly effect the exercise of this Warrant, and the Holder shall not have the right to exercise this Warrant to the extent that, after giving effect to such exercise, the Holder (together with such Person's Affiliates) would beneficially own in excess of 9.99% (the "**Maximum Percentage**") of the Company Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Company Common Stock beneficially owned by such Person and its Affiliates shall include the number of shares of Company Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude shares of Company Common Stock which would be issuable upon (i) exercise of the remaining, unexercised portion of this Warrant beneficially owned by such Person and its Affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by such Person and its Affiliates (including, without limitation, any convertible notes or convertible shares or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of this Warrant, in determining the number of outstanding shares of Company Common Stock, a Holder of this Warrant may rely on the number of outstanding shares of Company Common Stock as reflected in the most recent of (1) the Company's Form 10-K, Form 10-Q or other public filing with the Securities and Exchange Commission, as the case may be, (2) a more recent public announcement by the

Company or (3) any other notice by the Company or its transfer agent setting forth the number of shares of Company Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall, within five (5) Business Days, confirm to such Holder the number of shares of its Company Common Stock then outstanding. Furthermore, upon the written request of the Company, a Holder shall confirm to the Company its then current beneficial ownership with respect to the Company's Company Common Stock.

Section 5. **No Fractional Shares**. No fractional shares may be issued upon any exercise of this Warrant or as a consequence of any adjustment pursuant to **Section 7**, and any fractions shall be rounded upwards to the nearest whole number of shares. If upon any exercise or adjustment of this Warrant a fraction of a share results, the Company will pay to the Holder the cash value of any such fractional share, calculated on the basis of the Exercise Price.

Section 6. **Securities Laws**.

(a) Holder acknowledges that the Underlying Shares are being offered and sold by the Company in accordance with Regulation D under the Securities Act and that the Underlying Shares will constitute "restricted securities" as defined in Rule 144 under the Securities Act. Neither this Warrant nor the Underlying Shares have been registered under the Securities Act, or any state securities laws ("**Blue Sky Laws**"). This Warrant has been acquired for the Holder's own account for investment purposes and not with a current view to distribution or resale and may not be sold or otherwise transferred (i) without an effective registration statement for such Warrant under the Securities Act and such applicable Blue Sky Laws, or (ii) unless Holder shall have delivered to the Company an opinion of counsel to the effect that the Warrant or such portion of the Warrant to be sold or transferred may be sold or transferred under an exemption from such registration; provided, that the foregoing conditions shall not apply to any transfer of this Warrant from Purchaser to (i) any Affiliate, managed fund or account of Oaktree Capital Management, L.P. or (ii) an Affiliate of Qatar Investment Authority.

(b) The Company covenants and agrees that all Underlying Shares will, upon issuance and payment therefor, be legally and validly issued and outstanding, free from all taxes, liens, charges and preemptive or similar rights, if any, with respect thereto or to the issuance thereof. The Company will take all such action as may be reasonably necessary or appropriate to assure that the Underlying Shares may be issued as provided herein without violating any applicable law or regulation, or any requirements of the Trading Market upon which the Company Common Stock may be listed.

(c) The certificates representing the Underlying Shares will bear the following or similar legend, unless the Company determines otherwise in compliance with applicable law:

> "THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***ACT***"), OR UNDER THE SECURITIES LAWS OF ANY STATE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS."

Section 7. **Anti-Dilution Adjustments**.

(a) If the Company shall at any time prior to the expiration of this Warrant (i) pay a stock dividend or otherwise make a distribution or distributions on shares of Company Common Stock or any other equity or equity securities, (ii) subdivide the Company Common Stock (by stock split, recapitalization, or any other similar event) into a larger number of shares, (iii) combine the Company Common Stock (by stock split or reverse stock split, recapitalization, combination of shares, or any other similar event) or (iv) issue by reclassification of shares of Company Common Stock any shares of capital stock of the Company (with the exception of any reclassification that constitutes a Fundamental Change, as hereinafter defined), then in each such case the Exercise Price shall be adjusted by multiplying the Exercise Price in effect immediately prior to (x) the record date for the determination of stockholders entitled to receive such dividend or distribution or (y) the effective date in the case of a subdivision, combination or re-classification by a fraction, the numerator of which shall be the number of shares of Company Common Stock outstanding immediately before such event and the denominator of which shall be the number of shares of Company Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the Aggregate Exercise Price shall remain unchanged. Before taking any action which would result in an adjustment in the number of Underlying Shares for which this Warrant is exercisable or to the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(b) If the Company shall at any time prior to the expiration of this Warrant (in each case, occurring after the date hereof) be a party to any merger, consolidation, exchange of shares of Company Common Stock, sale of a majority of the Company Common Stock, sale of all or substantially all of the assets of the Company, separation, reorganization, recapitalization, winding up or liquidation of the Company, or other similar event or transaction (each, a "**Fundamental Change**"), as a result of which shares of Company Common Stock shall be changed into the same or a different number or class or classes of securities of the Company or another entity, or the holders of shares of Company Common Stock are entitled to receive cash or other property, then, upon the Exercise of this Warrant by the Holder, such Holder shall receive, for the Aggregate Exercise Price as in effect immediately prior to such Fundamental Change (subject to all other adjustments under this Warrant), the aggregate number of shares or such other securities, cash or other property which such Holder would have received if this Warrant had been exercised immediately prior to such Fundamental Change (collectively, the "**Fundamental Change Receivable**"), which, upon the Holder's election, may be received net of the Aggregate Exercise Price (for the avoidance of doubt, without payment by the Holder of any cash in an amount equal to the then Exercise Price). In the case of any Fundamental Change, the successor or purchasing party of such merger, consolidation, exchange of shares of Company Common

Stock, sale of all or substantially all of the Assets of the Company or reorganization (if other than the Company) shall duly execute and deliver to the Holder a supplement to this Warrant acknowledging the Company and such party's obligations under this **Section 7(b)**. The terms of this Warrant shall be applicable to the Fundamental Change Receivable due to the Holder upon the consummation of any such Fundamental Change.

(c) If the Company, at any time while this Warrant is outstanding, shall otherwise distribute to all holders of Company Common Stock (and not to the Holder or Holders) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security (for the avoidance of doubt, excluding in each such case any Fundamental Change Receivable), then in each such case the Exercise Price shall be adjusted by multiplying the Exercise Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction, the numerator of which shall be such VWAP on such record date less the then Fair Market Value at such record date of the portion of such assets or evidence of indebtedness so distributed applicable to one outstanding share of Company Common Stock, and the denominator of which shall be the VWAP determined as of the record date mentioned above. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

(d) Not less than five (5) days prior to the record date or effective date, as the case may be, of any event which requires or might require an adjustment or readjustment pursuant to **Section 7(a)** or **Section 7(b)** (each, an "**Adjustment Event**"), and not less than ten (10) days prior to the record date or effective date, as the case may be, of any Fundamental Change, the Company shall give written notice of such Adjustment Event or Fundamental Change (as applicable) to the Holder or Holders, describing such Adjustment Event or Fundamental Change in reasonable detail and specifying the record date or effective date, as the case may be. Such notice shall additionally include the Company's certification of the following computations, as applicable, each of which shall have been made by the Company in good faith: (i) in the case of an Adjustment Event, if determinable, the required adjustment and the computation thereof or, if the required adjustment is not determinable at the time of such notice, the Company shall give notice to the Holder or Holders of such adjustment and computation promptly after such adjustment becomes determinable, and (ii) in the case of a Fundamental Change, the number of shares or such other securities, cash or other property which is payable to the Holder or Holders upon the Fundamental Change, the computation thereof, and the computation of the then applicable Exercise Price. Except as otherwise prohibited by applicable laws, to the extent that any notice provided pursuant to this **Section 7(d)** contains material, non-public information regarding the Company, the Company shall disclose such information regarding the Company in a Current Report on Form 8-K and file such Current Report on Form 8-K with the SEC no later than the second Trading Day following the date such notice is delivered to the Holder.

(e) Notwithstanding any other provision hereof, if an exercise of all or any portion of this Warrant is to be made in connection with a Fundamental Change or a public offering, such exercise may, at the election of the Holder, be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the consummation of such transaction.

(f) At all times on and prior to the Expiration Date, the Company shall at all times reserve and keep available out of its authorized but unissued Company Common Stock (or other equity interests then constituting Underlying Shares), solely for the purpose of issuance upon the exercise of this Warrant, the maximum number of Underlying Shares issuable upon the exercise of this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates or effectuating the book entry of uncertificated shares to execute and issue, or enter, the necessary certificates or book entries (as applicable) for the Underlying Shares upon the exercise of the purchase rights under this Warrant. The Company shall not increase the par value of any Underlying Shares receivable upon the exercise of this Warrant above the Exercise Price then in effect, and shall take all such actions within its power as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable Underlying Shares upon the exercise of this Warrant.

Section 8. **Transfer of Warrant**. Subject to compliance with applicable federal and state securities laws, the Holder may, from time to time, transfer this Warrant or the Underlying Shares, in each case, in whole or in part, by giving the Company a written notice of the portion of the Warrant or the shares of the Underlying Shares being transferred, such notice to set forth the name, address and taxpayer identification number of the transferee, the anticipated date of such transfer, and surrendering this Warrant or the certificates or book-entry records representing shares of the Underlying Shares, as applicable, to the Company for reissuance to the transferee(s). Upon surrender of this Warrant by a Holder to the Company for transfer, in whole or in part, the Company shall issue a new warrant to such Holder in such denomination as shall be requested by such Holder covering the number of Underlying Shares, if any, in respect of which this Warrant shall not have been transferred. Such new warrant shall be identical in all other respects to this Warrant. This Warrant may be divided or combined with other Warrants upon presentation hereof at the office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with this **Section 8** as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated as of the Initial Issuance Date and shall be identical to this Warrant except as to the number of Underlying Shares issuable pursuant thereto.

Section 9. **No Impairment**. The Company may not, including, without limitation, by amendment of its certificate of incorporation or bylaws, or through a Fundamental Change or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and the Company shall at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder or Holders against impairment. Without limiting the generality of the foregoing, the Company shall take (a) all such action as may be necessary or appropriate in order that the Company may duly and validly issue fully paid and non-assessable Underlying Shares, free from any taxes, liens, charges and preemptive rights, upon the exercise of this Warrant, and (b) use its best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be necessary to enable the Company to perform its obligations under this Warrant.

Section 10. **No Rights or Liabilities as a Stockholder**. This Warrant shall not entitle the Holder or Holders hereof to any voting rights or other rights as a stockholder of the Company with respect to the Underlying Shares prior to the exercise of the Warrant. No provision of this Warrant, in the absence of affirmative action by the Holder or Holders to purchase the Underlying Shares, and no mere enumeration herein of the rights or privileges of the Holder or Holders, shall give rise to any liability of such Holder or Holders for the Exercise Price or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

Section 11. **Representations and Warranties of the Company**. The Company hereby represents and warrants:

(a) As of the Initial Issuance Date, the Company (A) is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, (B) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as currently proposed to be conducted, to issue and enter into the Warrant and to carry out the transactions contemplated thereby, and (C) except where the failure to do so, individually or in the aggregate, has not had, and could not be reasonably expected to have, a material adverse effect on the business, assets, financial condition or operations of the Company, is qualified to do business and, where applicable is in good standing, in every jurisdiction where such qualification is required.

(b) This Warrant is, and any Warrant issued in substitution for or replacement of this Warrant (including pursuant to **Section 15**) shall be, upon issuance, duly authorized and validly issued. This Warrant constitutes, and any Warrant issued in substitution for or replacement of this Warrant shall be, upon issuance, a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(c) As of the Initial Issuance Date, the execution, delivery and performance by the Company of the Warrant does not and will not (A) violate any material provision of applicable law or the organizational documents of the Company, (B) conflict with, result in a breach of, or constitute (with the giving of any notice, the passage of time, or both) a default under any material agreement of the Company or (C) result in or require the creation or imposition of any lien upon any assets of the Company.

Section 12. **Successors**. All the covenants and provisions of this Warrant by or for the benefit of the Company or the Holder or Holders shall bind and inure to the benefit of their respective successors and assigns.

Section 13. **Survival**. The rights of the Holder or Holders under this Warrant, and the covenants and agreements of the Company set forth in this Warrant for the benefit of the Holder or Holders, shall survive exercise of all or any portion of this Warrant and shall inure to the Holder or Holders of any Underlying Shares.

Section 14. **Remedies**. If the Company violates, breaches or defaults under this Warrant, the Holder may proceed to protect and enforce its rights by any action at law, suit in equity or other appropriate proceeding, whether for specific performance of any agreement contained in this Warrant, or for an injunction against a violation of any of the terms hereof, or in and of the exercise of any power granted hereby or by law, in each case without providing any bond or other security in connection with such action, suit or other proceeding. In case of any violation, breach or default under this Warrant, the Company shall pay to the Holder on demand all reasonable costs and expenses of enforcing the Holder's rights under this Warrant, including, without limitation, reasonable attorneys' fees and legal expenses.

Section 15. **Loss, Theft, Destruction or Mutilation of Warrant**. The Company covenants that upon its receipt of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Underlying Shares (and, in the case of mutilation, the surrender and cancellation of this Warrant or such stock certificate), the Company shall make and deliver to the Holder a new Warrant or stock certificate that is identical to this Warrant or to such stock certificate (as applicable).

Section 16. **Tax Treatment**. No later than ninety (90) days after the Initial Issuance Date, Oaktree Fund Administration, LLC ("**Oaktree**"), on behalf of the Purchaser, shall provide the Company with a valuation of the Warrant for tax purposes (the "**Proposed Valuation**"). If the Company disagrees with the Proposed Valuation, it shall propose reasonable comments to the Proposed Valuation within fifteen (15) days of receiving the Proposed Valuation, and Oaktree (on behalf of the Purchaser) shall consider such comments in good faith. If the parties cannot agree as to the Proposed Valuation within one hundred and twenty (120) days after the Initial Issuance Date after good faith discussion, an independent valuation firm shall be engaged (at the Company's expense) to provide the Company and the Purchaser with a final valuation of the Warrant for tax purposes (the "**Final Valuation**") within thirty (30) days of its engagement, and such Final Valuation shall be binding on Purchaser and the Company for all U.S. tax purposes.

Section 17. **Article and Section Headings**. Numbered and titled article and section headings are for convenience only and shall not be construed as amplifying or limiting any of the provisions of this Warrant.

Section 18. **Notice**. Any and all notices, elections or demands permitted or required to be made under this Warrant shall be in writing, signed by the party giving such notice, election or demand and shall be delivered in accordance with the notice provisions in the Credit Agreement.

Section 19. **Severability**. If any provisions(s) of this Warrant or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Warrant and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 20. **Entire Agreement**. This Warrant and between the Company and the Holder represents the entire agreement between the parties concerning the subject matter hereof, and all oral discussions and prior agreement are merged herein.

Section 21. **Valuation Dispute Resolution**. In the case of any dispute as to the determination of any amount or valuation hereunder or in connection with the amount or value of any Company Common Stock or Underlying Shares to be issued, withheld or otherwise determined, the calculation of the Aggregate Exercise Price or any other computation or valuation required to be made hereunder or in connection herewith, in the event the Holder, on the one hand, and the Company, on the other hand, are unable to settle such dispute within five (5) Business Days, then either party may elect to submit the disputed matter(s) for resolution by an accounting firm of nationally recognized standing as may be mutually agreed upon by the Holder and the Company. Such firm's determination of such disputed matter(s) shall be binding upon all parties absent demonstrable error, and the Company and the Holder shall each pay one half of the fees and costs of such firm.

Section 22. **Governing Law**. This Warrant and the rights and obligations of the parties hereunder, and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Warrant and the transactions contemplated hereby shall be governed by, and construed in accordance with, the law of the State of New York.

Section 23. **Jurisdiction; Waiver of Venue; Service of Process**.

(a) Each party hereto irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against any other party hereto in any way relating to this Warrant or the transactions relating hereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof; and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each party hereto irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (a) of this **Section 22**. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party hereto irrevocably consents to service of process in the manner provided for notices in **Section 18**.

Section 24. **Amendment**. No amendment or modification hereof shall be effective except in a writing executed by the Company and the Holder.

Section 25. **Counterparts**. This Warrant may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Warrant.

Section 26. **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 WARRANT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS WARRANT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 26**.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first above written.

COMPANY:

BIOXCEL THERAPEUTICS, INC.
By: _____
Name:
Title:

PURCHASER:

[•]

By: [•]
By: _____
Name:
Title:

Exhibit J-2

[FORM OF] WARRANT TO PURCHASE COMMON UNITS OF ONKOSXCEL THERAPEUTICS, LLC

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT K

FORM OF SOLVENCY CERTIFICATE [_____], 20[]

[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 C REVENUE CONDITION CERTIFICATE

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Certain information marked as [***] has been excluded from this exhibit because it is both (i) not material and (ii) of the type that the registrant customarily and actually treats as confidential.

Execution Version

REVENUE INTEREST FINANCING AGREEMENT

Dated as of April 19, 2022

between

BIOXCEL THERAPEUTICS, INC.,

THE PURCHASERS FROM TIME TO TIME PARTY HERETO,

and

OAKTREE FUND ADMINISTRATION, LLC,

as the Administrative Agent

Table of Contents

ARTICLE I

DEFINITIONS 1
Section 1.01 Definitions. 1

ARTICLE II

PURCHASE OF ASSIGNED INTERESTS 31
Section 2.01 Purchase. 31
Section 2.02 Payments by the Company. 32
Section 2.03 Effective Date; Effective Date Deliveries; Payment of Purchase Price; Payments by the Company. 34
Section 2.04 No Assumed Obligations. 36

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF COMPANY 36
Section 3.01 Organization. 36
Section 3.02 Authorization. 37
Section 3.03 Governmental Authorization. 37
Section 3.04 Ownership. 37
Section 3.05 Financial Statements; Material Adverse Change. 38
Section 3.06 No Undisclosed Liabilities. 38
Section 3.07 Solvency. 38
Section 3.08 Litigation. 38
Section 3.09 Compliance with Laws. 39
Section 3.10 [Reserved]. 40
Section 3.11 Subordination. 40
Section 3.12 Intellectual Property. 40
Section 3.13 Regulatory Approval. 42
Section 3.14 Material Contracts. 43
Section 3.15 Broker’s Fees. 43
Section 3.16 Pension Matters. 43
Section 3.17 Indebtedness and Liens. 44
Section 3.18 [Reserved]. 44
Section 3.19 Data Privacy. 44
Section 3.20 Taxes. 44
Section 3.21 Full Disclosure. 44
Section 3.22 OFAC; Anti-Terrorism Laws 45
Section 3.23 Anti-Corruption 45

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE PURCHASERS 45
Section 4.01 Organization. 45

Section 4.02 Authorization. 45
Section 4.03 Broker's Fees. 46
Section 4.04 Conflicts. 46

ARTICLE V

COVENANTS 46
Section 5.01 Access; Information. 46
Section 5.02 Material Contracts. 49
Section 5.03 Public Announcement. 49
Section 5.04 Efforts; Further Assurance. 49
Section 5.05 Put Option; Call Option. 49
Section 5.06 Intellectual Property. 51
Section 5.07 Protective Covenants. 52
Section 5.08 Notice. 53
Section 5.09 Use of Proceeds. 54
Section 5.10 Taxes. 54
Section 5.11 Compliance with Laws and Other Obligations. 56
Section 5.12 Maintenance of Properties, Etc. 56
Section 5.13 Licenses. 56
Section 5.14 Maintenance of Regulatory Approvals, Contracts, Etc. 56
Section 5.15 ERISA Compliance 57
Section 5.16 Commercialization of the Product. 57
Section 5.17 Payment of Obligations. 57
Section 5.18 Cooperation Regarding Accounts. 58
Section 5.19 Sanctions; Anti-Corruption Use of Proceeds 58

ARTICLE VI

TERMINATION 58
Section 6.01 Termination Date. 58
Section 6.02 Effect of Termination. 59

ARTICLE VII

MISCELLANEOUS 59
Section 7.01 Survival. 59
Section 7.02 Limitations on Damages. 59
Section 7.03 Notices. 60
Section 7.04 Successors and Assigns. 60
Section 7.05 Indemnification. 61
Section 7.06 No Implied Representations and Warranties. 62
Section 7.07 Independent Nature of Relationship. 63
Section 7.08 Tax Treatment. 63
Section 7.09 Entire Agreement. 64
Section 7.10 Amendments; No Waivers. 64
Section 7.11 Interpretation. 64

Section 7.12 Headings and Captions. 64
Section 7.13 Counterparts; Effectiveness. 65
Section 7.14 Severability. 65
Section 7.15 Expenses. 65
Section 7.16 Governing Law; Jurisdiction. 65
Section 7.17 Waiver of Jury Trial. 66
Section 7.18 Release of Liens upon Certain Permitted Financings; Non-Disturbance; Permitted Intercreditor Agreement. 66
Section 7.19 Confidentiality. 67

ARTICLE VIII

THE ADMINISTRATIVE AGENT 67
Section 8.01 Appointments and Duties. 67
Section 8.02 Binding Effect. 69
Section 8.03 Use of Discretion. 69
Section 8.04 Delegation of Rights and Duties 69
Section 8.05 Liability. 70
Section 8.06 Administrative Agent Individually 71
Section 8.07 Purchaser Credit Decision 71
Section 8.08 Expenses; Indemnities 71
Section 8.09 Resignation of the Administrative Agent 72
Section 8.10 [Reserved] 73
Section 8.11 Additional Secured Parties 73
Section 8.12 Agent May File Proofs of Claim 73
Section 8.13 [Reserved] 74
Section 8.14 Acknowledgements of Purchasers 74

EXHIBITS

Exhibit A – Form of Security Agreement
Exhibit B – Form of Funding Notice

REVENUE INTEREST FINANCING AGREEMENT

This **REVENUE INTEREST FINANCING AGREEMENT** (as amended, supplemented or otherwise modified from time to time, this "Agreement") is made and entered into as of April 19, 2022, by and between BioXcel Therapeutics, Inc., a Delaware corporation (the "Company"), the entities listed in Schedule 1 hereto (the "Purchasers"), and Oaktree Fund Administration, LLC, as administrative agent for the Purchasers (in such capacity, the "Administrative Agent" and, together with the Company and the Purchasers, the "Parties", and each a "Party").

WHEREAS, the Company wishes to obtain financing in respect of the Commercialization (as hereinafter defined) of the Product (as hereinafter defined);

WHEREAS, the Company wishes to sell, assign, convey and transfer to the Purchasers the Assigned Interests and Assigned Tail Royalty Interests (each as hereinafter defined) in consideration for its payment of the Purchase Price (as hereinafter defined) to raise such financing;

WHEREAS, the Purchasers wish to purchase from the Company the Assigned Interests and Assigned Tail Royalty Interests, all upon and subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants, agreements representations and warranties set forth herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions.

The following terms, as used herein, shall have the following meanings:

"Acquisition" shall mean 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 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 of directors or equivalent management or oversight body, 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 of directors or equivalent management or oversight body, 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 of directors or equivalent management or oversight body.

"Administrative Agent" shall have the meaning set forth in the preamble hereto.

"Affiliate" shall mean any Person that controls, is controlled by, or is under common control with another Person. For purposes of this definition, "control" shall mean (i) in the case of corporate entities, direct or indirect ownership of at least fifty percent (50%) of the stock or shares

having the right to vote for the election of directors, and (ii) in the case of non-corporate entities, direct or indirect ownership of at least fifty percent (50%) of the Equity Interest with the power to direct the management and policies of such non-corporate entities; provided, that notwithstanding the foregoing, solely with respect to transfers by, or any other rights afforded to, the QIA Purchaser or any of its Affiliates, all references to "Affiliate" or "Affiliates" in the case of the QIA Purchaser, shall mean (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 Purchaser, 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.

"Affiliated Parties" shall have the meaning set forth in Section 7.19.

"Agreement" shall have the meaning set forth in the first paragraph hereof.

"Anti-Terrorism Laws" shall mean any laws relating to terrorism or money laundering, including, without limitation, (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 Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war.

"Applicable Funding Condition" shall mean, with respect to each tranche, the Tranche A Funding Condition, Tranche B Funding Condition, or Tranche C Funding Condition, as applicable.

"Applicable Funding Date" shall mean, with respect to each tranche, the Tranche A Funding Date, Tranche B Funding Date, or Tranche C Funding Date, as applicable.

"Applicable Percentage" shall mean, cumulatively, (i) 7.75% for Net Sales less than or equal to $[***] during any Fiscal Year, (ii) 2.75% for Net Sales greater than $[***] and less than or equal to $[***] during any Fiscal Year, and (iii) 0.375% for Net Sales exceeding $[***] during any Fiscal Year.

"Applicable Tranche" shall mean Tranche A, Tranche B, or Tranche C, as applicable.

"Assigned Interests" shall mean the Purchasers' right to receive amounts equal to the product of the Applicable Percentage multiplied by the applicable Net Sales during the Revenue Interest Period, pursuant to the terms and conditions of this Agreement (including the Hard Cap).

"Assigned Tail Royalty Interests" shall mean the Purchasers' right to receive Tail Royalty Payments, pursuant to the terms and conditions of this Agreement (including the Tail Royalty Condition).

"Audit Costs" shall mean, with respect to any audit of the books and records of the Company with respect to amounts payable or paid under this Agreement, the reasonable and documented out-of-pocket cost of such audit, including all fees, costs and expenses incurred in connection therewith.

"Automatic Put Option Trigger" shall have the meaning set forth in Section 5.05(a)(i).

"Bankruptcy Event" shall mean the occurrence of any of the following:

(a) the Company or any of its Material Subsidiaries shall commence any case, proceeding or other action (i) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, relief of debtors or the like, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (ii) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any portion of its assets, or the Company or any of its Material Subsidiaries shall make a general assignment for the benefit of its creditors;

(b) there shall be commenced against the Company or any of its Material Subsidiaries any case, proceeding or other action of a nature referred to in clause (a) above which remains undismissed, undischarged, unbonded and in effect for a period of forty-five (45) days;

(c) there shall be commenced against the Company or any of its Material Subsidiaries any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against (i) all or a substantial portion of the assets of the Company or such Subsidiary, and/or (ii) the Product or a substantial portion of the Product Intellectual Property, which results in the entry of an order for any such relief which shall not have been vacated, discharged, stayed, satisfied or bonded pending appeal within forty-five (45) days from the entry thereof; or

(d) an affirmative vote by the Board to commence any case, proceeding or other action described in clause (a) above.

"Benefit Plan" shall mean 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 the Company or any Subsidiary thereof incurs or otherwise has any obligation or liability, contingent or otherwise.

"Board" shall mean the board of directors (or similar governing body) of the Company.

"Business Day" shall mean any day other than a Saturday, a Sunday, any day which is a legal holiday under the laws of the State of New York, or any day on which banking institutions located in the State of New York are required by law or other governmental action to close; provided, that with respect to any right or obligation of any QIA Purchaser arising under this

Agreement, "Business Day" shall not include any day on which commercial banks in Qatar are authorized or required to close.

"BXCL 501 FDA Approval" shall mean the receipt of approval from the FDA of an NDA in respect of the use of the Product for the acute treatment of agitation associated with schizophrenia or bipolar I or II disorder in adults.

[***].

[***].

"Call Option" shall have the meaning set forth in Section 5.05(b).

"Call Option Closing Date" shall have the meaning set forth in Section 5.05(b).

"Capital Lease Obligations" shall mean 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. 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."

"Change of Control" shall mean 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 Company entitled to vote for members of the Board of the Company 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 Company entitled to vote for members of the Board of the Company 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); or (iii) that results in the sale of all or substantially all of the assets or businesses of the Company and its Subsidiaries, taken as a whole. 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").

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Collateral" shall mean the property included in the definition of "Collateral" in the Security Agreement.

"Collection Account" shall mean one or more segregated account maintained at JPMorgan Chase Bank, N.A., or any replacement for such account maintained at a deposit bank.

"Combination" shall have the meaning set forth in the definition of "Net Sales."

"Commercialization" shall mean any and all activities with respect to the manufacture, distribution, marketing, detailing, promotion, selling and securing of reimbursement and any other exploitation or commercialization of the Product in the United States after Regulatory Approval for the Product has been obtained, which shall include, as applicable, seeking and negotiating pricing and reimbursement approvals for the Product in the United States, post-marketing approval studies, post-launch marketing, promoting, detailing, marketing research, distributing, customer service, selling the Product, importing, exporting or transporting the Product for sale, and regulatory compliance with respect to the foregoing. When used as a verb, "Commercialize" shall mean to engage in Commercialization.

"Commercially Reasonable Efforts" shall mean, with respect to the efforts to be expended, or considerations to be undertaken, by the Company and its Affiliates with respect to any objective or activity to be undertaken hereunder, such efforts and resources normally used by a reasonably prudent company in the pharmaceutical or biotechnology industry of similar size and resources to Company to accomplish a substantially similar objective or activity for a pharmaceutical product for which substantially the same regulatory structure is involved as for the Product and irrespective of whether such company has any other products that compete with such pharmaceutical product, which pharmaceutical product is owned or licensed in a similar manner as the Product, which pharmaceutical product is at a similar stage in its Development or product life cycle and is of similar market or profit potential as the Product, taking into account efficacy, safety, approved labeling, the competitiveness of alternative products in a given jurisdiction, pricing/reimbursement for the pharmaceutical product in a given jurisdiction, the Intellectual Property and regulatory protection of the pharmaceutical product in a given jurisdiction, the regulatory structure in such jurisdiction and the profitability of the pharmaceutical product in a given jurisdiction, all as measured by the facts and circumstances in existence at the time such efforts are due. It is anticipated that the level of effort and resources that constitute "Commercially Reasonable Efforts" with respect to a particular indication will change over time, reflecting changes in the status of the Product, as applicable.

"Commitment" shall mean, with respect to each Purchaser, the obligation of such Purchaser to fund its applicable Purchase Price set forth opposite such Purchaser's name on Schedule 1 (as such Schedule may be amended from time to time) under the caption "Applicable Commitment" on each of the Tranche A Funding Date, Tranche B Funding Date, and Tranche C Funding Date, as applicable, in accordance with the terms and conditions of this Agreement. The aggregate amount of Commitments on the date of this Agreement equals $120,000,000.

"Company" shall have the meaning set forth in the first paragraph hereof.

"Company Indemnified Party" shall have the meaning set forth in Section 7.05(b).

"Confidential Information" shall mean, as it relates to the Company and its Affiliates and the Product, the non-public Intellectual Property, confidential business information, financial data and other like information (including ideas, research and development, know-how, formulas, schematics, compositions, technical data, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), inventory, ideas, algorithms, processes, computer software programs or applications (in both source code and object code form), client lists and tangible or intangible proprietary information or material, or such other information that either party identifies to the other as confidential or the nature of which or the circumstances of the disclosure of which would reasonably indicate that such information is confidential.

"Contracts" shall mean 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" or "Controlled" shall mean, when used with respect to any item of Intellectual Property, the possession (whether by ownership, license, sublicense or contract) by Company or any of its Affiliates, of the ability to assign or grant to any Third Party the license, sublicense or right to access and use such Intellectual Property as it relates to the manufacture, use, Development and/or Commercialization of the Product, without paying any consideration to any Third Party (now or in the future) or violating the terms of any agreement or other arrangement with any Third Party. Notwithstanding the foregoing, a Party and its controlled Affiliates will not be deemed to "Control" any Intellectual Property that, prior to the consummation of a change of control of such Party, is owned or in-licensed by a Third Party that becomes an Affiliate of such acquired Party (or that merges or consolidates with such Party) after the Effective Date as a result of such change of control unless prior to the consummation of such change of control, such acquired Party or any of its controlled Affiliates also Controlled such Intellectual Property.

"Copyright" shall mean 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.

"Designated Jurisdiction" shall mean any country or territory to the extent that such country or territory is the subject of country- or territory-wide Sanctions.

"Development" shall mean, with respect to the Product, any internal or external research or development activities, and any internal or external regulatory activities related to obtaining and maintaining Regulatory Approval for the Product, including development of data or information for the purpose of submission to a Regulatory Agency to obtain authorization to conduct clinical trials and to obtain, support, or maintain Regulatory Approval of the Product and including

activities directed toward the clinical manufacture and manufacturing process development for the Product. "Develop," "Developing," and "Developed" will be construed accordingly.

"Disqualified Equity Interest" shall mean, 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 (as defined in the Oaktree Term Loan Facility); provided, that if such Equity Interests are issued to any employee or any plan for the benefit of employees of the Company 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 the Company 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 the Company 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.

"Effective Date" shall mean the first date upon which the conditions set forth in Section 2.03(a), shall have occurred. The Effective Date occurred on April 19, 2022.

"Equity Interests" shall mean, 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 Effective 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.

"Equivalent Amount" shall mean, 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 U.S. 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 representation or warranty is made, and the permissibility of actions taken under this Agreement

shall not be affected by, and no default, breach of this Agreement or Put Option Event shall arise as a result of, subsequent fluctuations in exchange rates.

"ERISA" shall mean the United States Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" shall mean, collectively, the Company, any Subsidiary thereof, and any Person under common control, or treated as a single employer, with the Company or any Subsidiary thereof, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"ERISA Event" shall mean (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 the Company or any ERISA Affiliate thereof from a Title IV Plan or the termination of any Title IV Plan resulting in liability under Section 4063 or 4064 of ERISA; (iv) the withdrawal of the Company 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 the Company 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 the Company 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 the Company 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 the Company 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 the Company 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 the Company 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 the Company or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the

Code or under Section 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 the Company 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 the Company 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 the Company 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 the Company.

"ERISA Funding Rules" shall mean 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" shall have the meaning set forth in Section 8.14(a).

"Erroneous Payment Deficiency Assignment" shall have the meaning set forth in Section 8.14(d).

"Erroneous Payment Impacted Assigned Interests and Assigned Tail Royalty Interests" shall have the meaning set forth in Section 8.14(d).

"Erroneous Payment Return Deficiency" shall have the meaning set forth in Section 8.14(d).

"Exchange Rate" shall mean, 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 Liabilities and Obligations" shall have the meaning set forth in Section 2.04.

"Excluded Taxes" shall mean any of the following Taxes imposed on or with respect to any Purchaser or required to be withheld or deducted from a payment to such Purchaser: (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 Purchaser being organized under the laws of, or having its principal office located in, the jurisdiction imposing such Tax (or any political subdivisions thereof) or (y) that are Other Connection Taxes, (ii) U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Purchaser pursuant to a law in effect on the date on which such Purchaser acquires the Assigned Interests, except to the extent that, pursuant to Section 5.10, amounts with respect to such Taxes were payable to such Purchaser's assignor immediately before such Purchaser acquired the Assigned Interests, (iii) Taxes attributable to such Purchaser's failure to comply with Section 5.10(b), and (iv) any U.S. federal withholding Taxes imposed under FATCA.

"FATCA" shall mean 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" shall mean 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" shall mean the United States 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 depositary 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.

"Financial Statements" shall mean the audited consolidated balance sheets of the Company and its Subsidiaries as of December 31, 2021, and the related audited consolidated statements of operations and cash flows for the Fiscal Year then ended.

"Fiscal Quarter" shall mean each three (3) month period commencing January 1, April 1, July 1 or October 1, provided, however, that (a) the first Fiscal Quarter of the Term shall extend from the Effective Date to the end of the first full Fiscal Quarter thereafter, and (b) the last Fiscal Quarter of the Term shall end upon the expiration or termination of this Agreement.

"Fiscal Year" shall mean the calendar year.

"Funded Amount" shall mean, as of any time of determination, the aggregate amount actually funded by the Purchasers under this Agreement in respect of Tranche A, Tranche B, and Tranche C.

"GAAP" shall mean generally accepted accounting principles in the United States in effect from time to time.

"Governmental Approval" shall mean 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" shall mean 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 without limitation 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 the United States, including the FDA and the United States Patent and Trademark Office.

"Governmental Licenses" shall mean all authorizations issuing from a Governmental Authority, including the FDA, based upon or as a result of applications to and requests for approval from a Governmental Authority for the right to manufacture, import, store, market, promote, advertise, offer for sale, sell, use and/or otherwise distribute the Product, which are owned by or licensed to the Company or any Subsidiary, acquired by the Company or any Subsidiary via assignment, purchase or otherwise or that the Company or any Subsidiary is authorized or granted rights under or to.

"Gross Sales" shall have the meaning set forth in the definition of "Net Sales."

"Guarantee" of or by any Person (the "Guarantor") shall mean 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.

"Guarantor" shall have the meaning set forth in the definition of "Guarantee."

"Hard Cap" shall mean an amount equal to the product of (i) the Funded Amount, *multiplied by* (ii) 1.75.

"Healthcare Laws" shall mean, collectively, all Laws applicable to the business, any product or the Product Commercialization and Development Activities of the Company and its Subsidiaries, 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, without limitation, 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" shall mean 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" shall have the meaning set forth in the definition of "Healthcare Laws."

"Immaterial Subsidiary" shall mean any Subsidiary of the Company that (i) individually constitutes or holds less than five percent (5%) of the Company's consolidated total assets and generates less than five percent (5%) of the Company'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 Company's consolidated total assets and generate less than five percent (5%) of the Company'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 5.01(h).

"Indebtedness" of any Person shall mean, 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 (B) accounts payable incurred in the ordinary course of business and not overdue by more than ninety (90) days. 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 Tax" shall mean (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of the Assigned Interests or any other Obligation and (ii) to the extent not otherwise described in clause (i), Other Taxes.

"Intellectual Property" shall mean intellectual property or proprietary rights of any kind anywhere in the world, including any rights in or to Patents, Trademarks, Copyrights and Trade Secrets.

"Intercreditor Agreement" shall mean the Intercreditor Agreement between Oaktree Fund Administration, LLC, as the administrative agent under the Oaktree Term Loan Facility, and Oaktree Fund Administration, LLC, as Administrative Agent on behalf of the Purchasers, acknowledged by the Company and each Subsidiary Guarantor as named therein, providing for the relative rights and priorities of the First Lien Claimholders (as defined therein) and the Purchaser Claimholders (as defined therein) with respect to the Collateral (as defined therein) as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time with the consent of the Administrative Agent.

"Invention" shall mean 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, apparatus, method, process, machine (including article or device), manufacture or composition of matter.

"Law" shall mean, 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.

"License Agreement" shall mean any existing or future license, commercialization, co-promotion, collaboration, distribution, marketing or partnering agreement entered into before or during the Term by the Company or any of its Affiliates that grants a license to a Third Party under the Product Intellectual Property.

"Licensees" shall mean, collectively, the licensees and any sublicensees under each License Agreement; each a "Licensee".

"Liens" shall mean (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.

"Long Stop Date" shall mean December 31, 2024.

"Losses" shall mean collectively, any and all claims, damages, losses, judgments, awards, penalties, liabilities, costs and expenses (including reasonable attorneys' fees and reasonable expenses of investigation) incurred in connection with defending any action, suit or proceeding, giving effect to any tax benefit realized by the indemnified party which is attributable to the Losses to which the indemnity claim relates.

"Majority Purchasers" shall mean, at any time, Purchasers having at such time in excess of fifty percent (50%) of the sum of the Commitments then in effect and the outstanding Funded Amount.

"Market Capitalization" shall mean, as of any date of determination, the total number of outstanding shares of the Company's common Equity Interests as of the most recent Trading Day ending immediately prior to such date *multiplied by* the average of the VWAPs over the 30 consecutive Trading Days preceding the date of determination.

"Marketing Authorization" shall mean, with respect to the Product, the Regulatory Approval required by applicable Law to Commercialize the Product including, to the extent required by applicable Law for the Commercialization of the Product, all pricing approvals and government reimbursement approvals.

"Material Adverse Change" shall mean, with respect to the Company and its Subsidiaries, a material adverse change in the business, financial performance, operations, condition of the assets or liabilities of the Company and its Subsidiaries, taken as a whole.

"Material Adverse Effect" shall mean (a) the effect of a Material Adverse Change, (b) a material adverse change in or effect on the legality, validity, binding effect or enforceability of any of the Transaction Documents or the rights, remedies and benefits available to, or conferred on, the Purchasers thereunder, or (c) any material adverse effect on the Product or the ability of the Company to distribute, market and/or otherwise Commercialize the Product within the United States.

"Material Contract" shall mean any contract specifically related to the Product and the Commercialization and/or Development thereof 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. Notwithstanding the foregoing, employment and management contracts shall not be Material Contracts.

"Material Subsidiary" shall mean any Subsidiary of the Company that is not an Immaterial Subsidiary.

"MOIC" shall mean, as of any date of determination, the aggregate amount of payments received by the Purchasers under this Agreement, *divided* by the Funded Amount as of such date.

[***].

"Multiemployer Plan" shall mean any multiemployer plan, as defined in Section 400l(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise

"NDA" shall mean, with respect to the Product, (i) a new drug application (as defined in the FD&C Act) and (ii) all supplements and amendments that may be filed with respect thereto.

"Net Sales" shall mean the gross amount billed or invoiced in transactions ("Gross Sales") by the Company and any of its Affiliates or a Licensee (each of the foregoing persons and entities, for purposes of this definition, shall be considered a "Selling Party"), for sales or other dispositions of the Product to a Third Party in the United States by the Company, its Affiliates or such Licensee (including amounts received by the Company or its Affiliates in the form of milestone, upfront or other similar payments received pursuant to any agreement relating to Product Commercialization and Development Activities), less the sum of the following (to the extent not reimbursed by any Third Party and without duplication):

(a) reasonable and customary rebates, chargebacks, quantity, trade and similar discounts, credits and allowances and other price reductions reasonably and actually granted, allowed, incurred or paid;

(b) discounts (including cash discounts and quantity discounts), coupons, retroactive price reductions, charge back payments and rebates for sales paid for by managed care organizations or to Governmental Authorities (including, but not limited to, payments made under the "Medicare Part D Coverage Gap Discount Program" and the "Annual Fee for Branded Pharmaceutical Manufacturers" specific to the Product), in each case, as applied to sales of the Product and actually given to customers;

(c) reasonable and customary credits and allowances taken upon rejection, return or recall of the Product;

(d) reasonable and customary freight and insurance costs incurred with respect to the shipment of the Product to customers, in each case if charged separately and invoiced to the customer;

(e) customs duties, surcharges and other similar governmental charges incurred in connection with the exportation or importation of the Product to the extent included in the gross amount invoiced;

(f) Value Added Tax, and that portion of annual fees due under Section 9008 of the United States Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148) and any other fee imposed by any equivalent applicable law, in each of the foregoing cases, that is allocable to sales of the Product in accordance with the Selling Party's standard policies and procedures consistently applied across its products, as adjusted for rebates and refunds, imposed in connection with the sales of the Product to any Third Party (excluding any taxes based on income); and

(g) actual uncollectible debt amounts with respect to sales of the Product, provided that if the debt is thereafter paid, the corresponding amount shall be added to the Net Sales of the period during which it is paid.

Such amounts shall be determined consistent with a Selling Party's customary practices, and in accordance with GAAP. For the avoidance of doubt, Net Sales shall not include any payments or other consideration received by the Company or its Affiliates from any Licensee with respect to the Development and/or Commercialization of the Product.

Sale or transfer of a Product between any of the Selling Parties shall not result in any Net Sales (unless the Selling Party purchaser or transferee is the ultimate end user of the Product), with Net Sales to be based only on any subsequent sales or dispositions to a non-Selling Party. For clarity, (i) Net Sales shall not include amounts or other consideration received by a Selling Party from a non-Selling Party in consideration of the grant of a (sub)license or co-promotion or distribution right to such non-Selling Party, provided that such consideration is not in lieu of all or a portion of the transfer price of the Product, (ii) sales to a Third Party distributor, wholesaler, group purchasing organization, pharmacy benefit manager, or retail chain customer shall be considered sales to a non-Selling Party to the extent that no additional consideration is received by a Selling Party for the subsequent use or re-sale by any such distributor, wholesaler, group purchasing organization, pharmacy benefit manager, or retail chain customer, as applicable, (iii) Net Sales by a Selling Party to a non-Selling Party consignee are not recognized as Net Sales by such Selling Party until the non-Selling Party consignee sells the Product, (iv) if a Selling Party receives in-kind consideration for the sale of the Product, then Net Sales shall be calculated as the fair market value of all consideration received by a Selling Party in respect of the Product, whether such consideration is in cash, payment in kind, exchange or other form, as determined in good faith by the Selling Party and (v) Net Sales shall exclude transfers or dispositions for charitable, promotional, pre-clinical, clinical, regulatory, or governmental purposes, to the extent consideration is not received for such transfers or dispositions that is in excess of the fully burdened manufacturing cost of the applicable quantity of the Product so transferred or disposed.

With respect to sales of the Product invoiced in U.S. dollars, Net Sales shall be determined in U.S. dollars. No amount for which deduction is permitted pursuant to this definition shall be deducted more than once.

If any Product is sold in the U.S. with another product or therapy that is not a Product for a single invoice price (each a "Combination"), then the Net Sales for any such Product shall be calculated by multiplying actual Net Sales of such Combination by the fraction A/(A+B) where "A" is the weighted average invoice price of the Product, when sold separately in the U.S. during the applicable accounting period in which the sales of the Combination were made, and "B" is the combined weighted average invoice prices of all of the products or therapies other than the Product contained in such Combination, when sold separately in the U.S. during such same accounting period. If the Product or any of the other products or therapies contained in such Combination is not sold separately in the U.S. during such accounting period, the Company and Administrative Agent shall mutually determine the Net Sales for the Product based on the relative contribution of the Product and the other products or therapies in the Combination in good faith.

If the Company or any of its Affiliates recover monetary damages, settlement amounts or other monetary recovery with respect to the Product from a Third Party in a claim brought for infringement, misappropriation or other violation of any Intellectual Property, (A) such damages will be allocated first to the reimbursement of any expenses incurred by the Company or such Affiliates, as applicable, for bringing such action (including reasonable attorney's fees) not already reimbursed from other damages awarded under the same action, and (B) any remaining amount of such damages will be reduced, if and to the extent applicable, to allocate recovered damages to Third Party licensors of such Intellectual Property (other than damages for lost royalties), only as required under any then pre-existing license or other agreements, then any other remaining amount of such damages, settlement amounts or other monetary recovery after application of (A) and (B) will be included as Net Sales.

"Oaktree Purchaser" shall mean any Purchaser that is an Affiliate or managed fund or account of Oaktree Capital Management, L.P.

"Oaktree Term Loan Facility" shall mean the Credit Agreement and Guaranty, dated as of April 19, 2022, by and among BioXcel Therapeutics, Inc., as the Borrower, the subsidiary guarantors from time to time party thereto, the lenders from time to time party thereto, and Oaktree Fund Administration, LLC, as the administrative agent (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms of the Intercreditor Agreement).

"Obligations" shall mean any and all obligations of the Company under the Transaction Documents.

"OFAC" shall have the meaning set forth in the definition of "Anti-Terrorism Laws."

"Off-Balance Sheet Liability" of a Person shall mean (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" shall have the meaning set forth in the definition of "Change of Control."

"Ordinary Course" shall mean 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" shall mean, 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" shall mean, with respect to each Purchaser, Taxes imposed as a result of a present or former connection between such Purchaser and the jurisdiction imposing such

Tax (other than connections arising from such Purchaser 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 Transaction Document, or sold or assigned an interest in any Transaction Document).

"Other Taxes" shall mean 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, this Agreement, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

[***].

"Patents" shall mean (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" shall mean the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"Payment Recipient" shall have the meaning set forth in Section 8.14(a).

"PBGC" shall mean the United States Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permits" shall mean licenses, Governmental Licenses, certificates, accreditations, Regulatory Approvals, other authorizations, registrations, permits, consents, clearances and approvals required in connection with the conduct of the Company's or any Subsidiary's business or to comply with any applicable Laws, and those issued by state governments for the conduct of the Company's or any Subsidiary's business.

"Permitted Bond Hedge Transaction" shall mean any call or capped call option (or substantively equivalent derivative transaction) relating to the Company's common stock (or other securities or property following a merger event, reclassification or other change of the common stock of the Company) that is (A) purchased by the Company in connection with the issuance of any Permitted Convertible Debt, (B) settled in common stock of the Company (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of the Company's common stock or such other securities or property), and

cash in lieu of fractional shares of common stock of the Company 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 Company.

"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 Company's investment policy in the form provided to the Administrative Agent prior to the Effective 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" shall mean unsecured Indebtedness of the Company that is convertible into shares of common stock of the Company, cash or a combination thereof (such amount of cash determined by reference to the price of the Company's common stock or such other securities or property), or cash in lieu of fractional shares of common stock of the Company.

"Permitted Holder" shall mean BioXcel LLC and its Affiliates.

"Permitted Indebtedness" shall mean:

(a) any payment obligations hereunder to the extent constituting Indebtedness;

(b) Indebtedness existing on the date hereof and set forth on Schedule 3.17(a) and Permitted Refinancings thereof; provided, that, if such Indebtedness is intercompany Indebtedness, (x) any Permitted Refinancing of such Indebtedness shall also be intercompany Indebtedness among the same parties and (y) such Indebtedness and any Permitted Refinancing thereof, to the extent it is Indebtedness owed by the Company to any Subsidiary of the Company, shall be subject to an intercompany subordination agreement in form and substance acceptable to the Administrative Agent;

(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 the Company'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) Permitted Priority Debt;

(f) Indebtedness of a Subsidiary owing to any other Subsidiary or the Company;

(g) Indebtedness of the Company to a Subsidiary, provided, that such Indebtedness shall be subject to an intercompany subordination agreement in form and substance acceptable to the Administrative Agent; provided, further, that the aggregate outstanding principal amount of such Indebtedness shall not exceed $[***] at any time;

(h) 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 $[***] (or the Equivalent Amount in other currencies) in the aggregate at any time;

(i) 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, [***]% of the proceeds obtained in the related Permitted Convertible Debt issuance;

(j) Indebtedness assumed pursuant to any Acquisition; provided that (i) the aggregate outstanding principal amount of Indebtedness permitted pursuant to this clause (i) (and any Permitted Refinancing thereof) shall not exceed $[***] (or the Equivalent Amount in other currencies) at any time outstanding and (ii) no such Indebtedness was created or incurred in connection with, or in contemplation of, such Acquisition;

(k) other Indebtedness in an aggregate outstanding principal amount not to exceed $[***] (or the Equivalent Amount in other currencies);

(l) Permitted Convertible Debt in an aggregate principal amount not to exceed $[***] in principal amount at any time outstanding;

(m) 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, casualty or liability insurance or self-insurance or other reimbursement-type obligations regarding workers compensation claims;

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

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

(p) Indebtedness in respect of netting services, overdraft protections, business credit cards, purchasing cards, payment processing, automatic clearinghouse arrangements, arrangements in respect of pooled deposit or sweep accounts, check endorsement guarantees, and otherwise in connection with deposit accounts or cash management services in each case in the Ordinary Course;

(q) purchase price adjustments, indemnity payments and other deferred purchase price obligations in connection with any Acquisition; and

(r) Permitted Warrant Transactions that constitute Indebtedness.

"Permitted Intercreditor Agreement" shall have the meaning set forth in Section 7.18.

"Permitted Licensing Agreement" shall mean (A) any outbound non-exclusive license for the use of the Intellectual Property of the Company or any of its Subsidiaries entered into in the Ordinary Course, (B) exclusive licenses limited (i) in territory solely with respect to a specific country or geographic region outside of the United States or (ii) to the promotion, manufacture or sale solely of products other than the Product, in each case (i) and (ii) for the use of the Intellectual Property of the Company or any of its Subsidiaries entered into in the Ordinary Course, (C) any promotion, manufacture or other collaborative arrangements with a third party in which the Company 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 the Product; provided, that with respect to each such license described in clauses (A) through (C), the license (w) is negotiated at arm's length for fair market value, (x) does not provide for a sale or assignment of any such Intellectual Property, (y) does not restrict the ability of the Company or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on any such Product Intellectual Property, and (z) is commercially reasonable (as determined by the Company in good faith) or (D) any license to which the Administrative Agent consents (such consent not to be unreasonably withheld).

"Permitted Liens" shall mean:

(a) Liens created in favor of the Purchasers on or after the Effective Date pursuant to the Security Agreement and any other Transaction Document;

(b) Liens securing Ordinary Course Capital Lease Obligations; provided that such Liens are restricted solely to the collateral described in subsection (g) of the definition of "Permitted Indebtedness;"

(c) Liens imposed by any 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 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;

(d) 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 the Company or any Subsidiary;

(e) 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;

(f) any Liens set forth on Schedule 3.04(a) 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 the Company or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the date hereof 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;

(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 the Company or its 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 the Company or its Subsidiaries;

(i) bankers' liens, rights of setoff and similar Liens incurred on deposits made in the Ordinary Course;

(j) any Lien to secure Indebtedness described in clause (i) of "Permitted Indebtedness"; provided that (i) such Lien is not created in contemplation of or in connection with such Acquisition, (ii) such Lien shall not apply to any other property or assets of the Company or any of its Subsidiaries other than the assets subject to such Liens immediately prior to the consummation of such Acquisition and (iii) such Lien shall secure only those obligations that it secured immediately prior to the consummation of such Acquisition and Permitted Refinancings thereof;

(k) Liens securing Indebtedness described in clauses (m), (n), (o), and (p) of the definition of "Permitted Indebtedness;"

(l) any judgment lien or lien arising from decrees or attachments not constituting a Put Option Event;

(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 which secure obligations in an aggregate amount not to exceed $[***] (or the Equivalent Amount in other currencies) at any time outstanding;

(o) Liens securing Indebtedness described in clause (e) of "Permitted Indebtedness" and subject to the Intercreditor Agreement or another Permitted Intercreditor Agreement;

(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) Liens on cash and Permitted Cash Equivalent Investments securing obligation under Permitted Hedging Agreements;

(r) (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 the Company or any Subsidiary in the Ordinary Course;

(s) Permitted Licensing Agreements and, solely with respect to assets owned by third parties and licensed or leased to the Company or any of its Subsidiaries, retained interests or title of licensors or lessors that do not conflict with the Company's or any such Subsidiaries' use thereof;

(t) Liens solely on any cash earnest money deposits made by the Company or any of the Subsidiaries in connection with any letter of intent, purchase agreement or other documentation in respect of an Acquisition or other investment; and

(u) Liens arising out of any sale-leaseback transaction, 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.

"Permitted Priority Debt" shall mean (a) the Oaktree Term Loan Facility and (b) Indebtedness in an aggregate principal amount outstanding not to exceed, together with any Indebtedness in respect of the Oaktree Term Loan Facility, the greater of (x) $[***] and (y) [***]% of the Market Capitalization of the Company measured as of the date of incurrence thereof or at the option of the Company, as of the date of the entry into a binding commitment for the incurrence or issuance thereof (including in the case of Indebtedness to be incurred in connection with any acquisition, the date of the definitive agreement relating to such acquisition); provided, that the Yield of such Indebtedness shall not exceed the Yield Cap (determined as of the date of the incurrence thereof).

"Permitted Refinancing" shall mean, with respect to any Indebtedness permitted to be modified, refinanced, replaced, refunded, replaced, renewed or extended hereunder, any modification, refinancing, refunding, replacement, renewal or extension of such Indebtedness;

provided that (i) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, replaced, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts paid, and fees and expenses incurred (including any original issue discount and commitment fees), in connection with such modification, refinancing, refunding, replacement, renewal or extension and by an amount equal to any existing revolving commitments unutilized thereunder, and (ii) the Indebtedness resulting from such modification, refinancing, replacement, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, replaced, renewed or extended (other than customary bridge loans that are exchangeable into loans, notes or securities).

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

"Person" shall mean an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, but not including a government or political subdivision or any agency or instrumentality of such government or political subdivision.

"Plan" shall mean 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 Company 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.

"Primary Obligor" shall have the meaning set forth in the definition of "Guarantee."

"Product" shall mean the pharmaceutical product referred to as BXCL 501, which is a proprietary, orally dissolving thin film formulation of dexmedetomidine, a selective alpha-2a receptor agonist, as further described on Schedule 2, including any and all dosage forms, presentations, dosages and formations, including all improvements and modifications on or to the foregoing, in each case in which dexmedetomidine is the sole therapeutically active pharmaceutical ingredient, across all marketed indications in the United States.

"Product Authorizations" shall mean any and all approvals of any Governmental Authority (including the NDA, investigational new drug applications, Product Standards, supplements, amendments, pre- and post-approvals, governmental price and reimbursement approvals and approvals of applications for regulatory exclusivity), in each case, necessary to be held or maintained by, or for the benefit of, the Company or any of its Subsidiaries or its Affiliates for the

ownership, use, Development and/or Commercialization of the Product or for any Product Commercialization and Development Activities with respect thereto in the United States.

"Product Commercialization and Development Activities" shall mean, with respect to the 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 milestone or similar payments), or any similar or other activities the purpose of which is to commercially exploit the Product in the United States.

"Product Intellectual Property" shall mean Intellectual Property issued, registered, or subject to a pending application for issuance or registration in, or otherwise arising under the laws of, the United States that (a) is Controlled by the Company or any of its Subsidiaries and (b) claims or covers the Product (or the manufacture or use thereof) or any Product Commercialization and Development Activities, including any non-published and proprietary information or data contained in any NDA for the Product.

"Product Patent" shall mean any Patent that constitutes Product Intellectual Property.

"Product Standards" shall mean all safety, quality and other specifications and standards applicable to the Product, including all pharmaceutical, biological and other standards promulgated by any of the organizations that create, sponsor or maintain safety, quality or other standards, including ISO, ANSI, CEN and SCC and the like.

"Prohibited Payment" shall mean 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" shall mean, with respect to any Purchaser, the percentage obtained by dividing (i) the sum of the Commitments then in effect and the outstanding Funded Amount of such Purchaser by (ii) the sum of the Commitments then in effect and the outstanding Funded Amount of all Purchasers.

"Purchase Price" shall mean, with respect to each tranche, the Tranche A Purchase Price, the Tranche B Purchase Price and the Tranche C Purchase Price, as applicable.

"Purchasers" shall have the meaning set forth in the first paragraph hereof, and shall also include any permitted successors or assigns thereof.

"Purchasers Indemnified Party" shall have the meaning set forth in Section 7.05(a).

"Put Option" shall have the meaning set forth in Section 5.05(a).

"Put Option Closing Date" shall have the meaning set forth in Section 5.05(a).

"Put Option Event" shall mean any one of the following events:

(a) any Bankruptcy Event; or

(b) a Change of Control shall have occurred; or

(c) any sale, out-licensing of all or substantially all of the rights in and to the Product in the United States or other form of divestment of all or substantially all of the rights in and to the Product in the United States, in each case other than any Permitted Licensing Agreement; or

(d) the Company shall fail (i) to pay, when and as required to be paid herein, any amount of any Revenue Interest Payment 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, or (ii) to pay or reimburse the Purchasers for any other Obligations not described in the preceding clause (i), and, in each case, such failure shall continue for a period of ten (10) Business Days following the due date therefor (or, if there is no due date therefor, within ten (10) Business Days following the Purchasers' demand for any such payment or reimbursement); or

(e) the Company or any Subsidiary shall fail or neglect to perform, keep or observe any other provision of this Agreement or of any of the other Transaction Documents (other than any provision embodied in or covered by any other clause of this definition) and such failure shall reasonably be expected to have a Material Adverse Effect, and, in the case of any failure that is capable of cure, the same shall remain unremedied for thirty (30) days or more following the earlier to occur of (a) notice thereof furnished to the Company by the Purchasers and (b) the date any officer of the Company has (or reasonably should have had) knowledge of the occurrence of the acts or omissions that constitute such failure.

"Put Option Trigger" shall have the meaning set forth in Section 5.05(a).

"Put/Call Price" shall mean, as of any date of determination, the greater of (X) the Tail Royalty Put/Call Price and (Y) an amount sufficient that, giving effect to the payment of the Put/Call Price and all other payments made by the Company to the Purchasers pursuant to this Agreement, (i) the MOIC equals 1.225x if such date is before the one-year anniversary of the Tranche A Funding Date, (ii) the MOIC equals 1.375x if such date is on or after the one-year anniversary of the Tranche A Funding Date and before the two-year anniversary of the Tranche A Funding Date, (iii) the MOIC equals 1.525x if such date is on or after the two-year anniversary of the Tranche A Funding Date and before the three-year anniversary of the Tranche A Funding Date, and (iv) the MOIC equals 1.750x if such date is on or after the three-year anniversary of the Tranche A Funding Date.

"QIA Purchaser" shall mean any Purchaser that is an Affiliate of Qatar Investment Authority.

"Qualified Equity Interest" shall mean, with respect to any Person, any Equity Interest of such Person that is not a Disqualified Equity Interest.

"Qualified Plan" shall mean 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 the Company or any ERISA Affiliate thereof or to which the Company 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.

"Quarterly Report" shall mean, with respect to the relevant Fiscal Quarter of the Company, a report showing the Revenue Interest Payment due to the Administrative Agent for such Fiscal Quarter, which report shall include a calculation of Net Sales, reconciled, to the extent applicable, with the Company's consolidated statements of operations; provided that, with respect to Net Sales by any Licensee, if the Company receives the applicable reporting from such Licensee necessary for the Company to determine such Licensee's Net Sales fewer than fifteen Business Days prior to the due date for a Quarterly Report, the Company may, at its option, include such Net Sales on the Quarterly Report for the subsequent Fiscal Quarter and pay any Revenue Interest Payments or Tail Royalty Payments on such Net Sales concurrently with delivery of such subsequent Quarterly Report in accordance with Section 2.02(d).

"Referral Source" shall have the meaning set forth in Section 3.07(b).

"Registered Product IP" shall mean all Product Intellectual Property that is issued by, registered with, renewed by or the subject of a pending application before any Governmental Authority or domain name registrar.

"Regulatory Agency" shall mean a Governmental Authority with responsibility for the approval of the manufacture, use, storage, import, export, transport, or Commercialization of the Product in the United States.

"Regulatory Approval" shall mean all approvals, product and/or establishment licenses, registrations, certificates, permits, authorizations and supplements thereto, as well as associated materials (including the product dossier) of any Regulatory Agency necessary for the manufacture, use, storage, import, export, transport, or Commercialization of the Product in the United States.

"Revenue Interest Payment(s)" shall have the meaning set forth in Section 2.02(a).

"Revenue Interest Period" shall mean the period from, and including, the Tranche A Funding Date through, and including, September 30, 2032, unless earlier terminated upon (i) the Purchasers' exercise of the Put Option or the Company's exercise of the Call Option, in each case upon payment of the Put/Call Price, (ii) the termination of this Agreement by the Company pursuant to Section 6.01 or (iii) the date on which the Company has made payments to the Purchasers in an amount equal to the Hard Cap; provided that the Revenue Interest Period shall be reinstated in the event that the Hard Cap is no longer met after giving effect to an increase in the Funded Amount.

"Sanction" shall mean any international economic or financial sanction or trade embargo imposed, administered or enforced from time to time by the United States Government (including,

without limitation, OFAC), the United Nations Security Council, the European Union or its Member States, Her Majesty's Treasury or other relevant sanctions authority where the Company is located or conducts business.

"Sanctioned Person" shall mean, 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, Her 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).

"Secured Parties" shall mean the Purchasers, the Administrative Agent and any of their respective permitted transferees or assigns.

"Security Agreement" shall mean the Security Agreement between the Company and the Administrative Agent providing for, among other things, the grant by the Company in favor of the Administrative Agent, for the benefit of the Secured Parties, of a valid continuing, perfected lien on and security interest in, the Collateral, which Security Agreement shall be substantially in the form of Exhibit A.

"Subsidiary" shall mean, with respect to any Person, any other Person controlled by such first Person, directly or indirectly, through one or more intermediaries. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Company.

"Tail Royalty Condition" shall mean the occurrence of the Tranche B Funding Condition.

"Tail Royalty Payment" shall have the meaning set forth in Section 2.02(b).

"Tail Royalty Percentage" shall mean 0.375%.

"Tail Royalty Period" shall mean the period on and commencing from the earlier of (i) the date on which the Purchasers have received payments from the Company pursuant to this Agreement in an amount equal to the Hard Cap (including after giving effect to the funding of Tranche C) and (ii) September 30, 2032, through and including March 31, 2036; provided that the Tail Royalty Period shall be suspended in the event that the Hard Cap is no longer met after giving effect to an increase in the Funded Amount and shall not recommence until the Hard Cap is reached again; provided further that the Tail Royalty Period shall not commence unless and until the Tail Royalty Condition has occurred.

"Tail Royalty Put/Call Price" shall mean, as of any date of determination, (A) prior to the third anniversary of the Effective Date, $0 and (B) on or after the third anniversary of the Effective Date, an amount sufficient that giving effect to the payment of the Put/Call Price and all other payments made by the Company to the Purchasers under this Agreement, the MOIC equals 2.25x.

"Tax" or "Taxes" shall mean any federal, state, local or foreign tax, levy, impost, duty, assessment, fee, deduction or withholding (including backup withholding) or other charge, including all excise, sales, use, value added, transfer, stamp, documentary, filing, recordation and

other fees imposed by any taxing authority (and interest, fines, penalties and additions related thereto).

"Tax Return" shall mean any report, return, form (including elections, declarations, statements, amendments, claims for refund, schedules, information returns or attachments thereto) or other information supplied or required to be supplied to a Governmental Authority with respect to Taxes.

"Term" shall have the meaning set forth in Section 6.01.

"Term Sheet" shall mean the Letter of Intent between the Company and Oaktree Capital Management, L.P., dated December 7, 2021, as amended on February 24, 2022.

"Third Party" shall mean any Person other than the Purchasers or the Company.

"Title IV Plan" shall mean 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 the Company or any ERISA Affiliate thereof or to which the Company 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" shall mean 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" shall mean 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 Company's common Equity Interests are traded on a Trading Market or, if the Company's common Equity Interests are not traded on a Trading Market, then on the principal securities exchange or securities market on which the Company's common Equity Interests are then traded.

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

"Tranche A" shall mean a funding in the amount of the Tranche A Purchase Price.

"Tranche A Funding Condition" shall mean the occurrence of each of (i) BXCL 501 FDA Approval, (ii) the funding date of the Tranche A Term Loans (as defined in the Oaktree Term Loan Facility), and (iii) June 30, 2022.

"Tranche A Funding Date" shall have the meaning set forth in Section 2.03(c).

"Tranche A Purchase Price" shall mean $30,000,000.

"Tranche B" shall mean a funding in the amount of the Tranche B Purchase Price.

"Tranche B Funding Condition" shall mean the occurrence of each of (i) [***], (ii) Net Sales exceeding $[***] during any consecutive twelve (12) month period, (iii) [***] and (iv) [***].

"Tranche B Funding Date" shall have the meaning set forth in Section 2.03(c).

"Tranche B Purchase Price" shall mean $45,000,000.

"Tranche C" shall mean a funding of the Tranche C Purchase Price.

"Tranche C Funding Condition" shall mean the occurrence of each of (i) [***], (ii) Net Sales exceeding $[***] during any consecutive twelve (12) month period, (iii) [***] and (iv) [***].

"Tranche C Funding Date" shall have the meaning set forth in Section 2.03(c).

"Tranche C Purchase Price" shall mean $45,000,000.

"Transaction Documents" shall mean, collectively, this Agreement, the Security Agreement, the Intercreditor Agreement and any related ancillary documents or agreements (provided, for the avoidance of doubt, that any documents related to the Oaktree Term Loan Facility other than the Intercreditor Agreement shall not be Transaction Documents).

"UCC" shall mean the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

"UCC Financing Statements" shall mean the UCC-1 financing statements, in form and substance reasonably satisfactory to the Administrative Agent and the Purchasers, that shall be filed by the Purchasers at or promptly following the Effective Date, as well as any additional UCC-1 financing statements or amendments thereto as reasonably requested from time to time, to perfect the Purchasers' security interest in the Collateral.

"United States" shall mean the United States of America (including the District of Columbia, its territories and Puerto Rico).

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (i) if the Company's common Equity Interests are then listed or quoted on a Trading Market, the daily volume weighted average price of the Company's common Equity Interests for

such date (or the nearest preceding date) on the Trading Market on which the Company's common Equity Interests are 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 Company's common Equity Interests are not then listed on a Trading Market or quoted for trading on the OTC Bulletin Board and if prices for the Company's common Equity Interests 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 Company's common Equity Interests so reported or (iii) in all other cases, the fair market value of a share of the Company's common Equity Interests as determined by an independent nationally recognized investment banking, accounting or valuation firm selected in good faith by the Company and reasonably acceptable to the Administrative Agent, the fees and expenses of which shall be paid by the Company.

"Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

"Withdrawal Liability" shall mean, 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.

"Yield" shall mean, with respect to any Permitted Priority Debt, the yield thereof, whether in the form of interest rate, margin, original issue discount, upfront fees, an interest rate benchmark floor, or otherwise, in each case, incurred or payable by the Company generally to all the lenders or holders of such Indebtedness (excluding for the avoidance of doubt any warrants or other equity interests issued in connection therewith and any prepayment premiums payable upon the prepayment thereof); provided that original issue discount and upfront fees shall be equated to interest rate assuming a four-year (4-year) life to maturity (or, if less, the stated life to maturity at the time of its incurrence of the applicable Indebtedness).

"Yield Cap" shall mean the Yield applicable to the Oaktree Term Loan Facility plus [***] basis points.

ARTICLE II

PURCHASE OF ASSIGNED INTERESTS

Section 2.01 Purchase**.**

Upon the terms and subject to the conditions set forth in this Agreement, including the satisfaction of the Tranche A Funding Condition, the Company agrees to sell, assign, transfer and convey to the Purchasers, and the Purchasers agree, severally and not jointly, to purchase from the Company, free and clear of all Liens (except Permitted Liens), all of the Company's rights and interests in and to the Assigned Interests and the Assigned Tail Royalty Interests on the Tranche

A Funding Date, in accordance with such Purchasers' Proportionate Share as set forth on Schedule 1. The Purchasers' ownership interest in the Assigned Interests and Assigned Tail Royalty Interests so acquired shall vest immediately and automatically upon the Company's receipt of payment of the Tranche A Purchase Price for such Assigned Interests and Assigned Tail Royalty Interests, pursuant to Section 2.03(b), subject to the termination provisions of Section 6.01.

Section 2.02 Payments by the Company**.**

(a) Payments in Respect of the Assigned Interests. In connection with the purchase of the Assigned Interests, and subject to the terms and conditions of this Agreement, the Purchasers shall be entitled to receive an amount equal to the product of the Applicable Percentage multiplied by the applicable Net Sales during the Revenue Interest Period (such payments, the "Revenue Interest Payments"), as provided in this Section 2.02.

(b) Payments in Respect of the Assigned Tail Royalty Interests. In connection with the purchase of the Assigned Tail Royalty Interests, and subject to the terms and conditions of this Agreement, the Purchasers shall be entitled to receive an amount equal to the product of the Tail Royalty Percentage multiplied by the applicable Net Sales during the Tail Royalty Period, if any (such payments, the "Tail Royalty Payments"), as provided in this Section 2.02.

(c) Additional Payments; Hard Cap; Tail Royalty Payment Condition.

(i) If the Purchasers have not received payments from the Company pursuant to this Agreement in an aggregate amount such that its MOIC is at least [***]x by [***], the Company shall make a payment to the Purchasers promptly (and in any event, no later than 45 days thereafter) in an amount equal to such deficit, which payment shall be deemed a Revenue Interest Payment.

(ii) If [***] and the Purchasers have not received payments from the Company pursuant to this Agreement in an aggregate amount such that its MOIC (measured only on the Funded Amount with respect to Tranche A) is at least [***]x by [***], then the Company shall make a payment to the Purchasers promptly (and in any event, no later than 45 days thereafter) in an amount equal to such deficit, which payment shall be deemed a Revenue Interest Payment.

(iii) If the Purchasers have not received payments from the Company pursuant to this Agreement in an aggregate amount such that its MOIC is at least [***]x by [***], the Company shall make a payment to the Purchasers promptly (and in any event, no later than 45 days thereafter) in an amount equal to such deficit, which payment shall be deemed a Revenue Interest Payment.

(iv) Notwithstanding anything else set forth herein to the contrary, in no event shall the aggregate amount of any Revenue Interest Payment made by Company to the Purchasers under this Agreement exceed the Hard Cap as calculated at such time. For the avoidance of doubt, Tail Royalty Payments, if owed, are in addition to Revenue Interest Payments.

(v) Notwithstanding anything else set forth herein to the contrary, in no event shall the Company be obligated to make any Tail Royalty Payment unless the Tail Royalty Condition is first satisfied.

(d) Quarterly Payments. On a quarterly basis for each Fiscal Quarter during the Revenue Interest Period (subject to the Hard Cap), or the Tail Royalty Period, concurrently with the delivery of the Quarterly Report to the Administrative Agent as set forth in Section 5.01(f) (but in no event later than sixty (60) days following the end of each Fiscal Quarter), the Company shall pay to the Administrative Agent, for the account of the Purchasers, an amount equal to the Revenue Interest Payment or the Tail Royalty Payment, as applicable, for such Fiscal Quarter to the Administrative Agent for the account of the Purchasers; provided that, with respect to Net Sales by any Licensee, if the Company receives the applicable reporting from such Licensee necessary for the Company to determine such Licensee's Net Sales fewer than fifteen Business Days prior to the due date for a Quarterly Report, the Company may, at its option, pay any Revenue Interest Payments or Tail Royalty Payments on such Net Sales concurrently with delivery of such subsequent Quarterly Report pursuant to this Section 2.02(d). Except as otherwise provided in this Agreement, each payment by the Company will be deemed to be made ratably in accordance with the Purchasers' Proportionate Shares.

(e) Payments into Deposit Accounts.

(i) The Company shall at all times maintain one or more Collection Accounts. The Company shall ensure that at all times all payments made to the Company or any Affiliate thereof in respect of the Product are promptly deposited into a Collection Account. The Company shall ensure that the portion of such payments equal to the Applicable Percentage or the Tail Royalty Percentage, as applicable, thereof shall be retained in a Collection Account pending payment thereof to the Purchasers in accordance with the terms hereof.

(ii) All payments required to be made by the Company under this Agreement shall be the Obligations of the Company. The Company shall pay all fees, expenses and charges of the applicable deposit bank with respect to each Collection Account. The Company shall cause each Collection Account to at all times be subject to an account control agreement between the Company, the Administrative Agent and the applicable depositary institution in favor of the Administrative Agent in form and substance reasonably acceptable to the Administrative Agent that (A) ensures, to the extent necessary under applicable law and subject to the Intercreditor Agreement, the perfection of a security interest in favor of the Administrative Agent on such Collection Account, (B) provides that, upon written notice from the Administrative Agent, such depositary institution shall comply with instructions originated by the Administrative Agent directing disposition of the funds in such Collection Account without further consent of the Company and (C) may not be terminated without prior written consent of the Administrative Agent.

(iii) Payment Procedure. Any payments to be made by the Company to the Purchasers hereunder or under any other Transaction Document shall be made by wire transfer of immediately available funds to the account designated by the Administrative Agent prior to the date thereof. In the event that any payment is due on a day that is not a Business Day, such payment shall be due on the next Business Day.

(f) Effectiveness. Notwithstanding the foregoing, the payment provisions set forth in Section 2.02 shall only become operative upon the occurrence of the Tranche A Funding Date.

Section 2.03 Effective Date; Effective Date Deliveries; Payment of Purchase Price; Payments by the Company**.**

(a) Effective Date. This Agreement shall become effective subject to the fulfillment, to the sole satisfaction of the Purchasers, of all of the following conditions precedent:

(i) This Agreement and the other Transaction Documents shall have been executed and delivered to the Purchasers by each party thereto, and the Company shall have delivered, or caused to be delivered, such other documents as the Administrative Agent reasonably requests, in each case, in form and substance satisfactory to the Administrative Agent.

(ii) The Company shall have delivered to the Administrative Agent (x) a copy of a good standing certificate of the Company, dated a date reasonably close to the Effective Date, and (y) a duly executed secretary's certificate, dated as of the Effective Date, as to: (a) resolutions of the Board then in full force and effect authorizing the execution, delivery and performance of each Transaction Document to be executed by the Company; (b) the incumbency and signatures of officers authorized to execute and deliver each Transaction Document to be executed by the Company; and the full force and validity of the articles or certificate of incorporation or bylaws (or other organizational or constitutional documents) of the Company and copies thereof; which certificate shall be in form and substance reasonably satisfactory to the Administrative Agent.

(iii) The Purchasers shall have received executed counterparts of the Security Agreement, in form and substance reasonably acceptable to the Purchasers, dated as of the Effective Date, duly executed and delivered by the Company, together with all documents required to be delivered or filed under the Security Agreement and evidence satisfactory to it that arrangements have been made with respect to all registrations, notices or actions required under the Security Agreement to be effected (including the UCC Financing Statements), given or made in order to establish a valid and perfected first priority security interest in the Collateral in accordance with the terms of the Security Agreement and the Intercreditor Agreement.

(iv) The representations and warranties made by the Company in Article III hereof and in the other Transaction Documents shall be true and correct in all material respects as of the Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date (except that any representation or warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects).

(v) The Company shall have delivered to the Administrative Agent written evidence satisfactory to the Administrative Agent in all respects of the Company's submission of the NDA in respect of the Product to the FDA.

(vi) No event shall have occurred or be continuing that would constitute a Put Option Event hereunder.

(vii) The Purchasers shall have received satisfactory evidence that the Company has obtained all required consents and approvals of all Persons to the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereunder and thereunder.

(viii) There shall not exist any event or condition that constitutes a Material Adverse Change.

(ix) The Company shall have delivered to the Administrative Agent and the Purchasers an opinion of counsel to the Company reasonably acceptable to the Administrative Agent and the Purchasers, and their respective counsel as to matters relating to the Company and the Transaction Documents.

(x) The Administrative Agent shall have received the Financial Statements, or such information shall be publicly available on "EDGAR".

(xi) The Administrative Agent shall have received a certificate in form and substance reasonably satisfactory to the Purchasers, dated as of the Effective Date, duly executed and delivered by an officer of the Company, certifying that the conditions set forth in clauses (iv), (vi), (vii) and (viii) of this Section 2.03(a) have been satisfied.

(xii) The Administrative Agent shall be satisfied with Lien searches regarding the Company made as of a date reasonably close to the Effective Date.

(xiii) A Collection Account shall have been established.

(b) Purchase Procedures. The obligation of the Company to sell each Applicable Tranche, and of each Purchaser to make pay the applicable Purchase Price with respect to each such Applicable Tranche, is subject to satisfaction of the Tranche A Funding Condition and, with respect to each of Tranche B and Tranche C, (i) satisfaction of the Tranche B Funding Condition or Tranche C Funding Condition, as applicable and (ii) a request by the Company for the applicable funding, made by the Company at least five (5) Business Days prior to the requested funding date by delivering to the Administrative Agent an irrevocable Funding Notice in the form of Exhibit B signed by a duly authorized representative of the Company (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 Funding Notice shall be for the full amount of the Applicable Tranche and no Funding Notice for less than such full amount shall be permitted. For the avoidance of doubt, any funding of Tranche B and Tranche C shall be at the Company's option, and the Company has no obligation to request or accept the Tranche B funding or Tranche C funding.

(c) Payment of Purchase Price. Promptly (and in any event within five (5) Business Days) following satisfaction of the Tranche A Funding Condition with respect to Tranche A, and promptly following receipt of any Funding Notice from the Company with respect to Tranche B or Tranche C, the Administrative Agent shall advise each Purchaser of the details of the applicable

funding or Funding Notice, as applicable, including the amount of each Purchaser's Commitment to be funded. Each Purchaser shall pay its Proportionate Share of the Tranche A Purchase Price, Tranche B Purchase Price, or Tranche C Purchase Price, as applicable, solely by wire transfer in immediately available funds, by 2:00 p.m. New York City Time on the funding date specified in the Funding Notice (respectively, the "Tranche A Funding Date", "Tranche B Funding Date", and "Tranche C Funding Date") to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Purchasers. The requirement of the Purchasers to pay its Proportionate Share of the Applicable Tranche shall be subject to the representations and warranties being made by the Company in Sections 3.01 through 3.05 hereof being true and correct in all material respects as of the Applicable Funding Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date (except that any representation or warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects). The Applicable Funding Condition may be waived by mutual agreement by the Purchasers and the Company each in their sole discretion.

(d) Payment of the Purchase Price by the Purchasers shall have no contingencies other than as set forth in Section 2.03(b) above.

(e) Notwithstanding anything to the contrary in this Agreement, in no event shall the Tranche B Funding Date or the Tranche C Funding Date occur after the Long Stop Date.

Section 2.04 No Assumed Obligations**.**

Notwithstanding any provision in this Agreement or any other writing to the contrary, the Purchasers are acquiring only the Assigned Interests and the Assigned Tail Royalty Interests and are not assuming any liability or obligation of the Company or any of its Affiliates of whatever nature, whether presently in existence or arising or asserted hereafter, whether under any Transaction Document or otherwise (the "Excluded Liabilities and Obligations"). The Purchasers expressly do not assume or agree to be responsible for any Excluded Liabilities and Obligations and all such liabilities and obligations shall be retained by and remain solely obligations and liabilities of the Company or its Affiliates.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF COMPANY

The Company hereby represents and warrants to the Administrative Agent and the Purchasers, as of the Effective Date and as of each Applicable Funding Date with respect to Section 3.01 through Section 3.05 only, the following:

Section 3.01 Organization**.**

Each of the Company and its Subsidiaries is a corporation duly incorporated, validly existing and in good standing under the laws of its respective jurisdiction of formation and has all corporate powers and all licenses, authorizations, consents and approvals required to carry on its respective business as now conducted and as proposed to be conducted in connection with the transactions contemplated by the Transaction Documents. Each of the Company and its

Subsidiaries is duly qualified to do business as a foreign corporation and is in good standing in every jurisdiction in which the failure to do so would be reasonably expected to have a Material Adverse Effect. The Company has no direct or indirect Subsidiaries, other than those disclosed to the Purchaser in writing on or prior to the date hereof (including as disclosed in its public filings with the Securities and Exchange Commission).

Section 3.02 Authorization**.**

The Company has all necessary power and authority to enter into, execute and deliver the Transaction Documents and to perform all of the obligations to be performed by it hereunder and thereunder and to consummate the transactions contemplated hereunder and thereunder. The Transaction Documents have been duly authorized, executed and delivered by the Company and each Transaction Document constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with their respective 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).

Section 3.03 Governmental Authorization**.**

None of the execution, delivery and performance by the Company of the Transaction Documents, or the consummation by the Company of the transactions thereunder, (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 Agreement, (ii) will violate (1) any Law, (2) any Organic Document of the Company 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, or (iii) will result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of the Company or any of its Subsidiaries.

Section 3.04 Ownership**.**

(a) The Company Controls all of the Intellectual Property and Regulatory Approvals that it purports to Control that cover or are material to, or are necessary for the Product (including any Product Commercialization and Development Activities) free and clear of all Liens (other than Permitted Liens). Neither the Company nor any of its Subsidiaries have entered into any Contract granting any license or covenant not to sue under any Product Intellectual Property, except for Permitted Licensing Agreements or as set forth on Schedule 3.04(a).

(b) The Company owns, and is the sole holder of, and/or has and holds a valid, written, enforceable and subsisting license to, all of those other assets of which it is aware that are material to, or otherwise necessary for the conduct of its business related to the Product (including any Product Commercialization and Development Activities), in each case free and clear of any and all Liens (other than Permitted Liens). Except as set forth on Schedule 3.04(b), the Company has

not transferred, sold, or otherwise disposed of, or agreed to transfer, sell, or otherwise dispose of any portion of the Net Sales other than as contemplated by this Agreement.

Section 3.05 Financial Statements; Material Adverse Change**.**

(a) As of the Effective Date, the Company has heretofore furnished to the Purchasers the Financial Statements. The Company has heretofore furnished to the Purchasers consolidated financial statements required to be delivered pursuant to this Agreement. Such financial statements or Financial Statements, as applicable, present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Company and its Subsidiaries as of such dates and for such periods in all material respects in accordance with GAAP.

(b) Since December 31, 2021, there has been no Material Adverse Change; provided, that for purposes of this Section 3.05(b), the impacts of the COVID-19 pandemic on the business, operations or financial condition of the Company and its Subsidiaries that (x) occurred prior to the Effective Date and (y) were disclosed in public filings made with the SEC or in writing to the Purchasers, in each case prior to the Effective Date, shall be disregarded.

Section 3.06 No Undisclosed Liabilities**.**

Except for those liabilities (a) identified in the Financial Statements (including the notes thereto), (b) incurred by the Company in the Ordinary Course since December 31, 2021, or (c) in connection with the Obligations under the Transaction Documents, there are no material liabilities of the Company or its Subsidiaries related to the Product, of any kind whatsoever, whether accrued, contingent, absolute, determined or determinable.

Section 3.07 Solvency**.**

Assuming consummation of the transactions contemplated by the Transaction Documents, (a) the present fair saleable value of the Company's and its Subsidiaries' assets on a consolidated basis is greater than the total amount of liabilities of the Company and its Subsidiaries as such liabilities mature, (b) the Company and its Subsidiaries, taken as a whole, do not have unreasonably small capital with which to engage in its business, and (c) the Company and its Subsidiaries, taken as a whole, have not incurred, nor do they have present plans to or intend to incur, debts or liabilities beyond their ability to pay such debts or liabilities as they become absolute and matured.

Section 3.08 Litigation**.**

Other than as disclosed on Schedule 3.08: (a) there is no action, suit, arbitration proceeding, claim, investigation or other proceeding pending or, to the knowledge of the Company, threatened in writing against the Company or its Subsidiaries or any governmental inquiry pending or, to the knowledge of the Company, threatened in writing against the Company or its Subsidiaries, in each case which would question the validity of, or would adversely affect the transactions contemplated by any of the Transaction Documents in any material respect; and (b) there is no action, suit, arbitration proceeding, claim, investigation or other proceeding pending or, to the knowledge of the Company, threatened in writing against the Company, its Subsidiaries or, to the knowledge of

the Company, any other Person relating to the Product, the Product Intellectual Property, the Regulatory Approvals, the Net Sales, the Assigned Interests or the Assigned Tail Royalty Interests.

Section 3.09 Compliance with Laws**.**

(a) Neither the Company nor any of its Subsidiaries (a) is in material violation of, has violated, or to the knowledge of the Company, is under investigation with respect to, or, (b) has been threatened to be charged with or been given notice of any material violation of any law, rule, ordinance or regulation of, or any judgment, order, writ, decree, permit or license entered by any Governmental Authority applicable to the Company, the Assigned Interests or Assigned Tail Royalty Interests or the Net Sales.

(b) The Company and its Subsidiaries are, and all Product Commercialization and Development Activities of such Persons are being conducted, in material compliance with all applicable Healthcare Laws.

(c) To the knowledge of the Company, any physician, other licensed healthcare professional, or any other Person who is in a position to refer patients or other business to the Company or any Subsidiaries (collectively, a "Referral Source") who has a direct ownership, investment, or financial interest in the Company 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. Neither the Company 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, without limitation, any loans related to financing the Referral Source's ownership, investment or financial interest in the Company or any such Subsidiary.

(d) Without limiting the generality of the foregoing:

(i) To the knowledge of the Company, on the one hand, and any Referral Source, on the other hand, any such arrangement (a) complies, in all material respects, with all applicable Healthcare Laws including, without limitation, 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) reflects fair market value, has commercially reasonable terms, and was negotiated at arm's length; and (c) does not obligate the Referral Source to purchase, use, recommend or arrange for the use of any products or services of the Company or any of its Subsidiaries; and

(ii) the Company and each of its Subsidiaries will, at all times required by applicable Law, 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.

Section 3.10 [Reserved]**.**

Section 3.11 Subordination**.**

Except pursuant to the Intercreditor Agreement or any Permitted Intercreditor Agreement as in effect from time to time, the claims and rights of Purchaser created by any Transaction Document in and to the Assigned Interests and Assigned Tail Royalty Interests are not and shall not be contractually subordinated in right of payment to any creditor of the Company or any other Person.

Section 3.12 Intellectual Property**.**

(a) The Company is the sole and exclusive legal and beneficial owner of all right, title and interest in and to all Product Intellectual Property that is owned or purported to be owned by the Company, free and clear of any Liens other than Permitted Liens. The Company owns or has sufficient and valid, written rights to use all Intellectual Property used in or material to any Product Commercialization and Development Activities. Without limiting the foregoing, and except as set forth in Schedule 3.12(a):

(i) other than customary restrictions in in-bound licenses of Intellectual Property and non-disclosure Contracts or pursuant to Permitted Licensing Agreements, there are no judgments, covenants not to sue, grants, Liens (other than Permitted Liens), or other claims or Contracts relating to any Product Intellectual Property, in each case, which materially restrict the Company or any of its Subsidiaries with respect to the enforcement or other exploitation of any Product Intellectual Property, including any Product Commercialization and Development Activities;

(ii) except as has not resulted in, and would not reasonably be expected to result in, any material liability or business disruption, the operation and conduct of Product Commercialization and Development Activities by or on behalf of the Company or any of its Subsidiaries, including their use of their respective Product Intellectual Property, does not violate, infringe or constitute a misappropriation of, and has not within the past [***] years violated, infringed or constituted a misappropriation of any other Person's rights in or with respect to Intellectual Property;

(iii) (1) there are no pending claims, or claims threatened in writing, against the Company or any of its Subsidiaries asserted by any other Person relating to Product Intellectual Property, including any material claims alleging ownership, invalidity or unenforceability of any Product Intellectual Property, or misappropriation, or violation of such Person's rights in or with respect to Product Intellectual Property; and (2) neither the Company nor any of its Subsidiaries has received any notice from, or claim by, any Person that the operation and conduct of the businesses of the Company or any of its Subsidiaries (including their use of Product 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 or business disruption to the Company or any of its Subsidiaries;

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

(v) all current and former employees and contractors that have developed or contributed to the development of any material Intellectual Property relating to the Product for or on behalf of the Company or any of its Subsidiaries has executed written confidentiality and invention assignment Contracts with the Company or such Subsidiary, as applicable, that irrevocably and presently assign to the Company or such Subsidiary, as applicable, all rights of such employees and contractors to any such material Intellectual Property; and

(vi) the Company and each of its Subsidiaries has taken reasonable precautions to protect the secrecy, confidentiality and value of its Product 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 the Company and its Subsidiaries, have not been breached in any material respect.

(b) Except as set forth in Schedule 3.12(b), and without limiting the representations and warranties in Section 3.12(a):

(i) each of the issued claims of each Product Patent is valid and enforceable;

(ii) subsequent to the issuance of each Product Patent, neither the Company 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 Product Patents;

(iii) to the knowledge of the Company, no allowable or allowed subject matter of any Product 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 the Company 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;

(iv) no Product 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 in the applicable patent office with respect to any such Patents, neither the Company nor any of its Subsidiaries has received any written notice asserting that such Patents are invalid, unpatentable or unenforceable; and

(v) all maintenance fees, annuities, and the like due or payable on or with respect to any Product Patents have been timely paid.

Section 3.13 Regulatory Approval**.**

(a) The Company 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 Company 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) Neither the Company nor 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 Company and its 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 the Product and Product Commercialization and Development Activities.

(c) Except as set forth on Schedule 3.13(c), and without limiting the generality of any other representation or warranty made by the Company hereunder or under any other Transaction Document: (i) neither the Company, nor any of its Subsidiaries nor, to the knowledge of the Company, 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 Agency within the last [***] years that asserts material lack of compliance with any applicable Healthcare Laws or Product Authorizations; (ii) neither the Company, nor any of its Subsidiaries nor, to the knowledge of the Company, any of their respective agents, suppliers, licensors or licensees have received any material notification from any Regulatory Agency within the last [***] 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 the Company, any of its Subsidiaries or, to the knowledge of the Company, 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 the Company, there is no basis in fact for any material adverse regulatory action against the Company or any of its Subsidiaries or, to the knowledge of the Company, 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 the Company or any of its Subsidiaries, whether voluntary, at the request, demand or order of any Regulatory Agency or otherwise, with respect to any Product, any Product Commercialization and Development Activities or any Product Authorization within the last [***] 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 Agency within the last [***] years, and, to the knowledge of the Company, 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 Agency within the last [***] 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 the Company, there is no basis in fact for the commencement of any criminal injunctive, seizure, detention or civil penalty action by any Regulatory Agency relating to any Product or any Product Commercialization and Development Activities or for the issuance of any consent decree. Neither the Company nor any of its Subsidiaries, nor, to the knowledge of the Company, 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.

Section 3.14 Material Contracts**.**

Except as set forth on Schedule 3.14, neither the Company nor its Subsidiaries is in material breach of or in material default under any Material Contract. To the knowledge of the Company, nothing has occurred and no condition exists that would permit any other party thereto to terminate any Material Contract. Neither the Company nor its Subsidiaries has received any notice or, to the knowledge of the Company, any threat of termination of any such Material Contract. To the knowledge of the Company, no other party to a Material Contract is in breach of or in default under such Material Contract. All Material Contracts are valid and binding on the Company or its Subsidiaries and, to the knowledge of the Company, on each other party thereto, and are in full force and effect.

Section 3.15 Broker's Fees**.**

The Company and its Subsidiaries have not taken any action that would entitle any Person to any commission or broker's fee in connection with this Agreement; provided that, for the avoidance of doubt, fees payable to the Company's bankers and financial advisers in their capacities as such do not constitute commission or broker's fees.

Section 3.16 Pension Matters.

Schedule 3.16 sets forth, as of the Effective 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 the Company 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 the Company or any Subsidiary thereof incurs or otherwise has or would have an obligation or any liability or claim and (z) no ERISA Event is reasonably expected to occur. The Company 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 the Company nor any of its ERISA Affiliates knows of any facts or circumstances that would 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 Effective 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.

Section 3.17 Indebtedness and Liens**.**

Set forth on Schedule 3.17(a) is a complete and correct list of all Indebtedness of the Company and each of its Subsidiaries (other than intercompany indebtedness) outstanding as of the Effective Date. Set forth on Schedule 3.17(b) is a complete and correct list of all Liens granted by the Company and each of its Subsidiaries with respect to their respective property and outstanding as of the Effective Date.

Section 3.18 [Reserved].

Section 3.19 Data Privacy**.**

The Company has not 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 3.20 Taxes**.**

The Company and each of 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 the Company 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 an Material Adverse Effect.

Section 3.21 Full Disclosure**.**

None of the reports, financial statements, certificates or other written information furnished by or on behalf of the Company or any of its Subsidiaries to the Purchaser in connection with the negotiation of this Agreement and the other Transaction Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) 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 Company 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.

Section 3.22 OFAC; Anti-Terrorism Laws.

(a) Neither the Company 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 Company nor any of its Subsidiaries, nor, to the knowledge of the Company, 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, at the time of the transaction, was the target of Sanctions or who is located, organized or residing in any Designated Jurisdiction, in violation of Sanctions. None of the proceeds received from Purchaser have been or will be used, directly or, to the knowledge of the Company, 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.

Section 3.23 Anti-Corruption.

Neither the Company nor any of its Subsidiaries, nor, to the knowledge of the Company, any of their respective directors, officers or employees, while acting on behalf of the Company, has directly or, to the knowledge of the Company, indirectly (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 Company, indirectly, any Prohibited Payment.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE PURCHASERS

Each Purchaser, severally and not jointly, represents and warrants to the Company, solely with respect to such Purchaser, the following:

Section 4.01 Organization**.**

Such Purchaser is a duly formed and validly existing (x) corporate entity under the laws of the United States or (y) limited liability company under the laws of the State of Qatar.

Section 4.02 Authorization**.**

Such Purchaser has all necessary power and authority to enter into, execute and deliver the Transaction Documents and to perform all of the obligations to be performed by it hereunder and

thereunder and to consummate the transactions contemplated hereunder and thereunder. The Transaction Documents have been duly authorized, executed and delivered by such Purchaser and each Transaction Document constitutes the valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with their respective terms, subject, as to enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or general equitable principles.

Section 4.03 Broker's Fees**.**

Such Purchaser has not taken any action that would entitle any Person to any commission or broker's fee in connection with the transactions contemplated by the Transaction Documents.

Section 4.04 Conflicts**.**

Neither the execution and delivery of this Agreement or any other Transaction Document to which such Purchaser is a party nor the performance or consummation of the transactions contemplated hereby or thereby will: (a) contravene, conflict with, result in a breach or violation of, constitute a default under, or accelerate the performance provided by, in any material respects any provisions of: (i) any law, rule, ordinance or regulation of any Governmental Authority, or any judgment, order, writ, decree, permit or license of any Governmental Authority, to which such Purchaser or any of its assets or properties may be subject or bound; or (ii) any contract, agreement, commitment or instrument to which such Purchaser is a party or by which such Purchaser or any of its assets or properties is bound or committed; (b) contravene, conflict with or result in a breach or violation of any provisions of the organizational or constitutional documents of such Purchaser; or (c) require any notification to, filing with, or consent of, any Person or Governmental Authority, except, in the case of the foregoing clauses (a) or (c), for any such breaches, defaults or other occurrences that would not, individually or in the aggregate, have a material adverse effect on the ability of such Purchaser to perform any of their obligations under the Transaction Documents.

Section 4.05 Sanctions**.**

Such Purchaser is not a Sanctioned Person.

ARTICLE V

COVENANTS

From the date hereof through and including the end of the Revenue Interest Period and the Tail Royalty Period, if any, the following covenants shall apply:

Section 5.01 Access; Information**.**

(a) License Notices. Subject to any applicable confidentiality restrictions, the Company shall promptly provide the Administrative Agent with copies of any written notices of material breach or default received or given by the Company under any Material Contract, and to the extent the Company is barred from providing the Administrative Agent with copies of such notices due to any applicable confidentiality restrictions, the Company shall inform the Administrative Agent of the existence of such notice. The Company shall promptly notify the

Administrative Agent of any breaches or alleged breaches under any Material Contracts and of any other events with respect to any Material Contract or the subject matter thereof which would reasonably be expected to have a Material Adverse Effect.

(b) Litigation or Investigations. The Company shall promptly notify the Administrative Agent of (i) any action, suit, claim, cause of action, proceeding or investigation pending or, to the knowledge of the Company, threatened in writing against the Company or its Subsidiaries, or (ii) proceeding or inquiry of any Governmental Authority pending or, to the knowledge of the Company, threatened in writing against the Company, in each case that is related to any Material Contract, the Product, the Product Intellectual Property or any Transaction Document, in each case, that would reasonably be expected to result in a Material Adverse Effect.

(c) Maintenance of Books and Records. The Company shall keep and maintain, or cause to be kept and maintained, at all times full and accurate books of account and records adequate to correctly reflect all payments paid and/or payable with respect to the Net Sales, Assigned Interests and Assigned Tail Royalty Interests for [***] years from the year of creation of such records.

(d) Inspection Rights. The Administrative Agent shall have the right to designate a Third Party independent public accounting firm (the "Purchasers Representative") to visit the Company and its Subsidiaries' offices and properties where the Company and its Subsidiaries keep and maintain their books and records relating or pertaining to the Net Sales, the Assigned Interests, the Assigned Tail Royalty Interests, the Revenue Interest Payments and the Tail Royalty Payments payable hereunder for purposes of conducting an audit of such books and records, and to inspect and audit such books and records. Any such audit or inspection must (i) be limited to the [***]-year period during which the Company is required to maintain such records pursuant to Section 5.01(c), (ii) not be exercised more than once in any calendar year, (iii) take place during normal business hours, and (iv) follow at least [***] Business Days' prior written notice given by the Administrative Agent to the Company. In connection with any such audit, the Company will provide the Purchasers Representative reasonable access to such books and records maintained by Company, and shall permit the Purchasers Representative to discuss the business, operations, properties and financial and other condition of the Company or any of its Subsidiaries including, but not limited to, matters relating or pertaining to the Net Sales, the Assigned Interests and Assigned Tail Royalty Interests, and the Revenue Interest Payments and Tail Royalty Payments payable hereunder with officers of the Company and with the Company's independent certified public accountants, in all cases solely to verify the accuracy of the Quarterly Reports provided under Section 5.01(f) and related payments due under this Agreement. Without limiting the foregoing, prior to any audit under this Section 5.01(d), the Purchasers Representative shall enter into a written confidentiality agreement with Company that (A) limits the use of the Company's records to the verification purpose described in this Section 5.01(d); (B) limits the information that the Purchasers Representative may disclose to the Administrative Agent to information required for the Administrative Agent to understand the payments due and paid and any discrepancies; and (C) prohibits the disclosure of any information contained in such records to any other Third Party for any purpose. The Parties agree that all information subject to review under Section 5.01(d) or provided by the Purchasers Representative to Company is Company's Confidential Information, and neither the Administrative Agent nor the Purchasers shall use any such information for any purpose that is not germane to this Section 5.01(d).

(e) Resolution; Audit Costs. Any audit under Section 5.01(d) shall be at the Purchasers' expense; provided, however, that in the event that any such audit reveals that the amounts paid to the Purchasers hereunder for the period of such audit have been understated by more than [***] percent ([***]%) of the amounts determined to be due for the period subject to such audit, then the Company shall reimburse the Audit Costs for such audit. In the event that any audit of the books and records of the Company and its Subsidiaries pursuant to Section 5.01(d) reveals any overpayment by the Company of amounts due hereunder, the amount of such overpayment shall be promptly refunded or fully creditable against amounts payable in subsequent payment periods, at the Company's election.

(f) Quarterly Reports. During the Term, the Company shall, promptly after the end of each Fiscal Quarter of the Company (but in no event later than sixty (60) days following the end of each Fiscal Quarter), produce and deliver to the Administrative Agent a Quarterly Report for such quarter, together with a certificate of the Company, certifying that to the knowledge of the Company (i) such Quarterly Report is a true and complete copy and (ii) any statements and any data and information therein prepared by the Company are true, correct and accurate in all material respects. The Company shall use, and shall use Commercially Reasonable Efforts to ensure that each of its Affiliates shall use, Commercially Reasonable Efforts to include in each contract of the Company for the Development or Commercialization of the Product entered into on or after the Effective Date, obligations reasonably appropriate to ensure that the counterparty to such contract shall furnish to the Company all information necessary for the Company to comply with this Section 5.01(f) and calculate the Net Sales as set forth in this Agreement.

(g) Monthly Reports. During the Term, the Company shall deliver to the Administrative Agent any reports provided to the Board and any formal reports prepared for and delivered to the executive-level management team of the Company disclosing (i) the Net Sales for such calendar month, including the calculations and adjustments from which such Net Sales are derived, (ii) Net Sales as a percentage of Gross Sales for such calendar month and/or (iii) Net Sales divided by the number of units of the Product sold in such calendar month, in each case within five (5) Business Days of the date of delivery to the Board or the management team, as applicable.

(h) Periodic Reports. The Company shall deliver to the Administrative Agent the following financial statements:

(i) Within forty-five (45) days (subject to any extensions permitted pursuant to Rule 12b-25 under the Securities Exchange Act of 1934, as amended) after the end of each Fiscal Quarter (other than the fourth Fiscal Quarter of any Fiscal Year), copies of the unaudited consolidated financial statements of the Company and its Subsidiaries for such Fiscal Quarter; and

(ii) Within ninety (90) days after the end of each Fiscal Year, copies of the audited consolidated financial statements of the Company and its Subsidiaries for such Fiscal Year.

It is understood and agreed that documents required to be delivered pursuant to this Section 5.01(g) shall be deemed delivered on the date that such documents are publicly available on "EDGAR."

Section 5.02 Material Contracts**.**

The Company shall, and shall cause its Subsidiaries to, comply with all material terms and conditions of and fulfill all of its obligations under all the Material Contracts, except for such noncompliance which would not reasonably be expected to give rise to a Material Adverse Effect.

Section 5.03 Public Announcement**.**

Except as required by law or any Governmental Authority (including the Securities and Exchange Commission) or except with the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed), no party shall issue any press release or make any other public disclosure with respect to the transactions contemplated by this Agreement or any other Transaction Document; provided, however, that the Company and the Administrative Agent may jointly prepare a press release for dissemination promptly following the Effective Date and each Applicable Funding Date and the Company may file a current report on Form 8-K (or any other public announcement using substantially the same text as the press release or Form 8-K) with respect to the transactions contemplated by this Agreement.

Section 5.04 Efforts; Further Assurance**.**

(a) Subject to the terms and conditions of this Agreement, the Purchasers and the Company agree to execute and deliver such other documents, certificates, agreements and other writings (including any financing statement filings requested by the Purchasers) and to take such other actions as may be reasonably necessary in order to consummate or implement expeditiously the transactions contemplated by this Agreement and any other Transaction Document and to vest in the Purchasers good, valid and marketable rights and interests in and to the Assigned Interests and Assigned Tail Royalty Interests free and clear of all Liens, except for Permitted Liens.

(b) The Purchasers and the Company shall cooperate and provide assistance as reasonably requested by the other party in connection with any Third Party litigation, arbitration or other Third Party proceeding (whether threatened, existing, initiated, or contemplated prior to, on or after the date hereof) to which any party hereto or any of its officers, directors, shareholders, agents or employees is or may become a party or is or may become otherwise directly or indirectly affected or as to which any such Persons have a direct or indirect interests, in each case relating to this Agreement, any other Transaction Document, the Assigned Interests, the Assigned Tail Royalty Interests or any other Collateral, or the transactions described herein or therein.

Section 5.05 Put Option; Call Option**.**

(a) Put Option.

(i) In the event that a Put Option Event shall occur at any time during the period from the Tranche A Funding Date to and including the end of the Term, the Administrative Agent, at the direction of the Purchasers, shall have the right, but not the obligation (the "Put Option"), exercisable within sixty (60) days after the earlier of the occurrence of a Put Option Event or the Administrative Agent's receipt of written notice from the Company of a Put Option Event (a "Put Option Trigger") to require the Company to repurchase from each Purchaser its Assigned Interests and Assigned Tail Royalty Interests at the Put/Call

Price; provided that during the occurrence and continuation of a Bankruptcy Event (an "Automatic Put Option Trigger"), each Purchaser shall be deemed to have automatically and simultaneously elected to have the Company repurchase from each Purchaser the Assigned Interests and the Assigned Tail Royalty Interests for the Put/Call Price in cash and the Put/Call Price shall be immediately due and payable without any further action or notice by any Party. In the event the Purchasers elect to exercise their Put Option (other than pursuant to an Automatic Put Option Trigger), the Administrative Agent shall deliver written notice to the Company specifying the closing date, which date shall be forty-five (45) days from the date of such notice (or such earlier date as such Purchaser and the Company may agree, the "Put Option Closing Date"), which notice must be given within sixty (60) days of the Put Option Trigger. On the Put Option Closing Date, the Company shall repurchase from each Purchaser its Assigned Interests and Assigned Tail Royalty Interests at the Put/Call Price in cash, the payment of which shall be made by wire transfer of immediately available funds to the Administrative Agent for the account of the Purchasers.

(ii) For the avoidance of doubt, the Put/Call Price shall automatically be due and payable upon an Automatic Put Option Trigger, as if such payments (each, an "Automatic Put Payment") were voluntarily prepaid and shall constitute part of the Obligations, whether due to acceleration pursuant to the terms of this agreement, by operation of law or otherwise (including, without limitation, on account of any bankruptcy filing), in view of the impracticability and extreme difficulty of ascertaining the actual amount of damages to the Purchasers or profits lost by the Purchasers 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 Purchasers as a result thereof. Any Automatic Put Payment under Section 5.05(a)(i) above shall be presumed to be the liquidated damages sustained by each Purchaser as the result of the early termination, acceleration or prepayment and the Company agrees that such Automatic Put Payments are reasonable under the circumstances currently existing. In the event an Automatic Put Payment is determined not to be due and payable by order of any court of competent jurisdiction, including, without limitation, by operation of the Bankruptcy Code, despite an Automatic Put Option Trigger having occurred, such Automatic Put Payment shall nonetheless constitute Obligations under this Agreement for all purposes hereunder. The Company 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 Company, the Administrative Agent and the Purchasers acknowledge and agree that any Automatic Put Payment 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. The Company 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. The Company expressly agrees that (i) the Automatic Put Payments are reasonable and is the product of an arm's-length transaction between sophisticated business people, ably represented by counsel, (ii) any Automatic Put Payment 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 Purchasers and the Company giving specific consideration in this transaction for such agreement to pay the Automatic Put

Payment, (iv) the Company shall be estopped hereafter from claiming differently than as agreed to in this Section 5.05(a), (v) the Company's agreement to pay any Automatic Put Payment is a material inducement to the Purchasers to fund the Purchase Price, and (vi) the Automatic Put Payments represent a good faith, reasonable estimate and calculation of the lost profits, losses or other damages of the Purchasers and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Purchasers or profits lost by the Purchasers as a result of such event.

(b) Call Option. At any time after the Tranche A Funding Date, the Company shall have the right, but not the obligation (the "Call Option"), exercisable upon ten (10) days' written notice to the Administrative Agent, to repurchase the Assigned Interests and the Assigned Tail Royalty Interests from the Purchasers at a repurchase price equal to the Put/Call Price. In order to exercise the Call Option, the Company shall deliver written notice to the Administrative Agent of its election to so repurchase the Assigned Interests and Assigned Tail Royalty Interests not less than ten (10) days prior to the proposed closing date (the "Call Option Closing Date"); provided, however, that such notice may state that it is conditioned upon the effectiveness of any financing transaction or one or more other events specified therein (including the occurrence of a Change of Control), in which case such notice may be revoked by the Company (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. On the Call Option Closing Date, the Company shall repurchase from each Purchaser its Assigned Interests and Assigned Tail Royalty Interests at the Put/Call Price in cash, the payment of which shall be made by wire transfer of immediately available funds to the Administrative Agent for the account of the Purchasers. Immediately upon exercise by the Company of the Call Option and the payment by the Company to the Purchasers of the Put/Call Price, the Purchasers shall be deemed to have automatically assigned to the Company all right, title, and interest in and to the Assigned Interests and the Assigned Tail Royalty Interests.

(c) Obligations of the Purchasers. In connection with the consummation of a repurchase of the Assigned Interests and the Assigned Tail Royalty Interests pursuant to the Call Option, the Purchasers agree that they will (i) promptly but no later than five (5) Business Days after any request therefor execute and deliver to the Company such releases, discharges, UCC termination statements and other documents as may be necessary to release and/or discharge the Purchasers' Lien on the Collateral and otherwise give effect to such repurchases and (ii) take such other actions or provide such other assistance as may be necessary or as reasonably requested by the Company to give effect to such repurchase.

Section 5.06 Intellectual Property.

(a) Without limiting the Company's obligations under Section 5.02, the Company shall, at its sole expense, take such actions to prepare, execute, deliver and file any and all agreements, documents or instruments which are necessary to diligently prosecute and maintain all Registered Product IP consistent with prudent business practice. The Company shall use reasonable efforts consistent with sound business judgment to seek and to apply for patent term extensions, pediatric data package exclusivity extension, supplementary protection certificates, any functional equivalents of any of the foregoing, or similar means of extending market exclusivity or patent protection for any Product Intellectual Property and the Product in each territory where such items are permissible, as the case may be. The Company shall not take any

action to prosecute and maintain the Product Intellectual Property or fail to take any action to prosecute and maintain the Product Intellectual Property, which would reasonably be expected to result in a Material Adverse Effect.

(b) In the event that the Company or the Purchasers becomes aware of any actual or suspected infringement or invalidity claims by a Third Party related to any activity by such Third Party that is competitive with the Commercialization of the Product or any claim of invalidity by any Third Party directed to any material Product Intellectual Property, including any Product Patents, then promptly following the Company or the Purchasers, respectively, becoming aware of such actual or suspected infringement or invalidity claim, the Company or the Purchasers, respectively, shall inform the other party hereto of such actual or suspected infringement or invalidity claim and shall, in addition to such notice, provide to the other party any material information within such party's possession pertaining thereto (which may be subject to agreement necessary to protect privilege, confidentiality and the like with respect to such information). The Company shall use Commercially Reasonable Efforts to defend or assert the Product Intellectual Property, including the Product Patents against such infringement or interference by any other Persons marketing or commercializing any product that is directly competitive with the Product, and against any claims of invalidity or unenforceability of any material Product Intellectual Property, including any Product Patents, in the United States (including, by bringing any legal action for infringement or defending any counterclaim of invalidity or action of a Third Party for declaratory judgment of non-infringement or non-interference). The Company will keep the Purchasers reasonably informed with respect to the status of any such enforcement and/or defense of the Product Intellectual Property as the Purchasers may, from time to time, reasonably request. The Company shall not, and shall use its Commercially Reasonable Efforts to cause any Licensee not to, disclaim or abandon, or fail to take any action necessary to prevent the disclaimer or abandonment of, any Product Intellectual Property, including any of the Product Patents, except in accordance with reasonable and prudent business practice in a manner that would not reasonably be expected to result in a Material Adverse Effect.

(c) In the event that the Company becomes aware that the Product (including any Product Commercialization and Development Activities) infringes or violates any Third Party Intellectual Property, the Company shall, in the exercise of its reasonable business discretion, use Commercially Reasonable Efforts to attempt to secure the right to use such Intellectual Property on behalf of itself and any affected Licensee, as applicable, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect and all reasonable costs and amounts associated with obtaining any such license would be without any reduction in the Assigned Interests or Assigned Tail Royalty Interests, if and as applicable.

(d) Without the prior written consent of the Administrative Agent, the Company shall not, and shall ensure that its Affiliates shall not, assign, sell, transfer, license (other than pursuant to a Permitted Licensing Agreement) or otherwise encumber any of the Product Intellectual Property, other than Permitted Liens, if such assignment, sale, transfer, other encumbrance or delegation would reasonably be expected to result in a Material Adverse Effect.

Section 5.07 Protective Covenants.

The Company shall not, without the prior written consent of the Purchasers:

(a) Forgive, release or compromise any amount owed to the Company or its Subsidiaries or its Affiliates and relating to the Assigned Interests or Assigned Tail Royalty Interests outside the Ordinary Course;

(b) Waive, amend, cancel or terminate (other than expiration in accordance with its terms), exercise or fail to exercise, any of its material rights constituting or relating to the Net Sales outside the Ordinary Course; or

(c) Incur or assume any Indebtedness, except for Permitted Indebtedness.

Section 5.08 Notice**.**

(a) The Company shall provide the Administrative Agent with written notice as promptly as practicable (and in any event within ten (10) Business Days) after becoming aware of any of the following:

(i) any material breach or default by the Company of any covenant, agreement or other provision of this Agreement, or any other Transaction Document;

(ii) any representation or warranty made by the Company in any of the Transaction Documents or in any certificate delivered to the Administrative Agent pursuant hereto shall prove to be untrue, inaccurate or incomplete in any material respect on the date as of which made;

(iii) the occurrence of a Put Option Event;

(iv) the occurrence of any material default or event of default under any Permitted Indebtedness;

(v) the termination of any Material Contract other than upon its scheduled termination date;

(vi) the occurrence of any event(s) or the existence of any circumstance(s) that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect;

(vii) the occurrence of any event or the existence of any circumstance that (with or without notice or lapse of time, or both) would result in or serve as a basis for any, action, suit or proceeding, or any investigation or claim, or the receipt of any written notice of the foregoing, that (a) claims that the manufacture, use, marketing, sale, offer for sale, importation or distribution of the Product as currently contemplated infringes on any Patent or other Intellectual Property of any other Person or constitutes misappropriation of any other Person's Trade Secrets or other Intellectual Property, (b) otherwise involves the Product, or (c) involves the transactions contemplated by the Transaction Documents, the Assigned Interests or the Assigned Tail Royalty Interests; or

(viii) (i) the intention of any ERISA Affiliate to file any notice of intent to terminate any Title IV Plan, and 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).

(b) The Company shall provide the Administrative Agent with written notice as promptly as practicable and in any event within ten (10) Business Days prior to the occurrence of a Change of Control.

Section 5.09 Use of Proceeds.

The Company shall use proceeds received from the Purchasers in support of the Development and Commercialization of the Product and for other general corporate purposes.

Section 5.10 Taxes**.**

(a) Company Filings. The Company and its Subsidiaries shall timely file (taking into account all extensions of due dates) all income and other Tax Returns required to be filed by it and will pay all Taxes required to be paid with such returns, except (i) Taxes that are being contested in good faith by appropriate proceedings and for which the Company has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (ii) to the extent that the failure to do so would not reasonably be expected to have an Material Adverse Effect.

(b) IRS Forms. Each Purchaser shall deliver to the Company a properly completed IRS Form W-9 or applicable IRS Form W-8, as appropriate, or any successor form, as the case may be, properly completed and duly executed by such Purchaser, and such other documentation required under the Code and reasonably requested by the Company to confirm or establish the extent to which the Purchasers are or are not subject to deduction, backup withholding or withholding of U.S. federal Tax with respect to payments under this Agreement and the Purchasers will notify the Company reasonably in advance of any action or proposed action that would make any such form inaccurate and will replace the inaccurate form with an accurate one. The Company shall provide the Purchasers any reasonable assistance it may seek in obtaining an exemption or reduced rate from, or refund of, any U.S. federal withholding tax, if applicable.

(c) 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 the Company or the Administrative Agent, then the Company or the Administrative Agent, as applicable, 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 the Company 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 5.10) the Purchasers receive an amount equal to the sum they would have received had no such deduction or withholding been made.

(d) Payment of Other Taxes by Company. The Company shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(e) Indemnification by the Company. The Company shall reimburse and indemnify each Purchaser, 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) payable or paid by such Purchaser or required to be withheld or deducted from a payment to such Purchaser 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 Company by a Purchaser shall be conclusive absent manifest error.

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

(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 5.10 (including by the payment of additional amounts pursuant to this Section 5.10), 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 5.10 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 5.10(g) (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 5.10(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 5.10(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 5.10(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) Register. The Company shall maintain at one of its offices in the United States a register for the recordation of the name and address of the Purchasers and amounts owing to the Purchasers pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Company and the Purchasers shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Purchaser hereunder for all purposes of this Agreement. The Register shall be available for inspection by the

Company and the Purchasers, at any reasonable time and from time to time upon reasonable prior written notice.

(i) Survival. Each party's obligations under this Section 5.10 shall survive any assignment of rights by, or the replacement of, a Purchaser, the termination of the Obligations and the repayment, satisfaction or discharge of all Obligations under this Agreement.

Section 5.11 Compliance with Laws and Other Obligations.

The Company will, and will cause each of its Subsidiaries to, (i) comply with all Laws (including Anti-Terrorism Laws and Sanctions) applicable to it and its business activities in all material respects and (ii) comply in all material respects with all Healthcare Laws and Governmental Licenses and Product Authorizations applicable to it and its business activities. Within 30 days after the Effective Date, the Company shall institute (if not already in effect) and thereafter maintain in effect and enforce policies and procedures reasonably designed to promote compliance by the Company, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Terrorism Laws and Sanctions.

Section 5.12 Maintenance of Properties, Etc.

The Company shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its assets and properties relating to the Product or Product Commercialization and Development Activities, or that are otherwise 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.

Section 5.13 Licenses.

The Company shall, and shall cause each of its Subsidiaries to, obtain and maintain all Governmental Licenses necessary for the execution, delivery and performance of the Transaction Documents, the consummation of the transactions thereunder 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.

Section 5.14 Maintenance of Regulatory Approvals, Contracts, Etc.

With respect to the Product and all Product Commercialization and Development Activities, the Company will (directly or indirectly), and will cause each of its Subsidiaries (to the extent applicable) to, (i) use Commercially Reasonable Efforts to maintain in full force and effect all Regulatory Approvals, Material Contracts 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 Contracts owned, used or controlled by the Company 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 and (iii) promptly after obtaining

knowledge thereof, notify the Purchasers of any claim by any Person that the conduct of the business of the Company or any of its Subsidiaries in connection with any Product Commercialization and Development Activities, has infringed, violated or misappropriated any Intellectual Property of such Person, where such claim could reasonably be expected to have a Material Adverse Effect.

Section 5.15 ERISA Compliance.

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

Section 5.16 Commercialization of the Product.

(a) The Company (itself or through one or more Subsidiaries or Licensees) shall use Commercially Reasonable Efforts to Develop and Commercialize the Product in the United States. Without limiting the foregoing, the Company will use Commercially Reasonable Efforts to prepare, execute, deliver and file any and all agreements, documents or instruments that are necessary or desirable to secure and maintain Marketing Authorization in the United States for the Product. The Company shall not withdraw or abandon, or fail to take any action necessary to prevent the withdrawal or abandonment of, Marketing Authorization in the United States for the Product once obtained, other than to the extent that such withdrawal is required for safety reasons or otherwise required under applicable Law.

(b) The Company shall not enter into any Material Contract related to the Product unless the Company shall have performed reasonable and customary diligence in selecting the applicable counterparty to such Material Contract and negotiating and agreeing to the terms of such Material Contract (or any amendment, modification, restatement, cancellation, supplement, termination or waiver of any of the material terms thereof). In addition, if any Material Contract related to the Product terminates for any reason whatsoever, the Company shall use Commercially Reasonable Efforts to enter into a replacement Material Contract to the extent the relevant rights under such terminated Material Contract are required for the ongoing Development and Commercialization of the Product by the Company in accordance with its express obligations set forth in Section 5.16(a).

(c) The Company shall, and shall cause its Subsidiaries to, comply with all material terms and conditions of and fulfill all material obligations under each Material Contract (including, without limitation, each License Agreement) related to the Product to which any of them is party. Upon the occurrence of a material breach of any such Material Contract by any other party thereto where such material breach has (or is reasonably likely to have) a material adverse effect on the Net Sales, the Company shall provide written notice of such breach to the Administrative Agent, describing in reasonable detail the relevant breach and use Commercially Reasonable Efforts to seek to enforce all of its (or its Subsidiary's) rights and remedies thereunder.

Section 5.17 Payment of Obligations.

Each of the Company and its Subsidiaries shall pay and discharge all its obligations and liabilities (a) prior to the date on which penalties attach thereto, with respect to all material federal, state and other material Taxes imposed upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Company or its Subsidiaries and (b) as the same shall become due and payable, all lawful claims which, if unpaid, would by Law become a Lien upon any Collateral (other than Permitted Liens).

Section 5.18 Cooperation Regarding Accounts.

To the extent that the Company or any Subsidiary of the Company receives any amount of proceeds from the Net Sales into an account other than a Collection Account, the Company shall promptly (and in any event within one (1) Business Day after identification thereof) deposit such proceeds, or shall promptly take all actions necessary to cause such proceeds to be deposited, into a Collection Account.

Section 5.19 Sanctions; Anti-Corruption Use of Proceeds.

(a) Neither the Company nor 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 Company will not, directly or, to the knowledge of the Company, indirectly, use proceeds received from the Purchasers, 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.

ARTICLE VI

TERMINATION

Section 6.01 Termination Date.

(a) Except as provided in this Section 6.01 and in Section 6.02, this Agreement shall terminate upon the later to occur of (i) the expiration of the Revenue Interest Period and (ii) if applicable, the expiration of the Tail Royalty Period (the "Term"). Subject to the Hard Cap, as applicable, if any payments are required to be made by one of the Parties hereunder after that date,

this Agreement shall remain in full force and effect until any and all such payments have been made in full, and (except as provided in Section 6.02) solely for that purpose.

(b) In addition, notwithstanding anything to the contrary herein, this Agreement shall terminate on (i) the Put Option Closing Date or (ii) the Call Option Closing Date.

(c) In addition, notwithstanding anything to the contrary herein, the Company may terminate this Agreement (x) immediately upon the Purchasers' failure to pay the Purchase Price on the date that it is due in accordance with Section 2.03(b) unless such failure is caused by an error or omission of an administrative or operational nature and such payment is made within two days of the original due date or (y) prior to the Tranche A Funding Date, if a Change of Control has occurred.

(d) Upon expiration or termination of this Agreement in accordance with its terms and upon payment of any amounts due to the Purchasers hereunder, all right, title, and interest in and to the Assigned Interest and Assigned Tail Royalty Interests, as applicable, shall automatically revert to Company, and the Purchasers will have no further rights in the Assigned Interests, the Assigned Tail Royalty Interests or the Collateral.

Section 6.02 Effect of Termination**.**

In the event of the termination of this Agreement pursuant to Section 6.01, (a) this Agreement shall forthwith become void and have no effect without any liability on the part of any party hereto or its Affiliates, directors, officers, stockholders, partners, managers or members other than the provisions of this Section 6.02, Section 5.03, Section 7.05 and Section 7.19 hereof, which shall survive any termination as set forth in Section 6.01, and (b) upon the payment and performance in full of all Obligations hereunder (other than contingent indemnification claims for which no claim has been made), the security interests in the Collateral created by any Transaction Document shall be automatically released. Nothing contained in this Section 6.02 shall relieve any party from liability for any breach of this Agreement. In connection with any such termination and release, the Administrative Agent and the Purchasers shall execute and deliver to the Company all documents the Company shall reasonably request to evidence such termination and release.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Survival**.**

All representations and warranties made herein and in any other Transaction Document, any certificates or in any other writing delivered pursuant hereto or thereto shall survive the execution and delivery of this Agreement and shall continue to survive until the termination of this Agreement in accordance with Article VI.

Section 7.02 Limitations on Damages**.**

Notwithstanding anything to the contrary in this Agreement, in no event shall either party be liable for special, indirect, incidental, punitive or consequential damages of the other party,

whether or not caused by or resulting from the actions of such party or the breach of its covenants, agreements, representations or warranties hereunder, even if such party has been advised of the possibility of such damages.

Section 7.03 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 Transaction Documents shall be given or made in writing (including by telecopy or email) delivered, if to the Company, the Administrative Agent or any Purchaser, to its address specified on the signature pages hereto, 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). Notwithstanding anything in this Section 7.03 to the contrary, any notice, request, instruction, direction or other communication made provided for herein.

(b) Notwithstanding anything in this **Section 7.03** to the contrary, any notice, request, instruction, direction or other communication provided for herein and addressed to a QIA Purchaser (a "QIA Purchaser Notice") shall be effective only if such QIA Purchaser 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 Purchaser set forth in this Agreement under the signature pages hereto and, in each case (b) confirmed by email to such QIA Purchaser'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 Purchaser'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.

Section 7.04 Successors and Assigns**.**

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company shall not be entitled to assign any of its obligations and rights under the Transaction Documents without the prior written consent of each Purchaser, and any such assignment in violation of this Section 7.04 shall be null and void; provided that the foregoing shall not apply to any assignment by merger or operation of law provided that the successor or surviving entity, if not the Company, shall agree in writing to be bound by all the provisions of this Agreement. Solely upon the consent of the Company (which consent may not be unreasonably withheld, delayed or conditioned), each Purchaser may assign any of its obligations or rights under the Transaction Documents without restriction; provided that the Purchasers may assign any of its rights and obligations to (i) an Affiliate or (ii) Oaktree Capital Management, L.P. or any of its managed funds or accounts, or any Affiliate of the foregoing, without the consent of the Company.

Section 7.05 Indemnification**.**

(a) The Company hereby indemnifies and holds the Administrative Agent, the Purchasers and their respective Affiliates and any of their respective partners, directors, managers, members, officers, employees and agents (each, a "Purchasers Indemnified Party") harmless from and against any and all Losses (including all Losses in connection with any product liability claims or claims of infringement, violation or misappropriation of any Intellectual Property rights of any Third Parties) incurred or suffered by any Purchasers Indemnified Party arising out of any breach of any representation, warranty or certification made by the Company in any of the Transaction Documents or any breach of or default under any covenant or agreement by the Company pursuant to any Transaction Document, including any failure by the Company to satisfy any of the Excluded Liabilities and Obligations; provided, however, that the foregoing shall exclude any indemnification to any Purchasers Indemnified Party (i) that results from the gross negligence, bad faith or willful misconduct of such the Purchasers Indemnified Party, or (ii) to the extent resulting from acts or omissions of the Company based upon and in compliance with the written instructions from any Purchasers Indemnified Party. This Section 7.05(a) shall not apply to Taxes other than Taxes relating to a non-Tax claim or Loss governed by this Section 7.05(a).

(b) The Purchasers, severally but not jointly, hereby indemnify and hold the Company, its Affiliates and any of their respective partners, directors, managers, officers, employees and agents (each, a "Company Indemnified Party") harmless from and against any and all Losses incurred or suffered by a Company Indemnified Party arising out of any breach of any representation, warranty or certification made by the Purchasers in any of the Transaction Documents or any breach of or default under any covenant or agreement by the Purchasers pursuant to any Transaction Document; provided, however, that the foregoing shall exclude any indemnification to any Company Indemnified Party (i) that results from the gross negligence, bad faith or willful misconduct of such Company Indemnified Party, (ii) to the extent resulting from acts or omissions of the Purchasers based upon and in compliance with the written instructions from any Company Indemnified Party or (iii) for any matter in respect of which any Purchasers Indemnified Party would be entitled to indemnification under Section 7.05(a).

(c) If any claim, demand, action or proceeding (including any investigation by any Governmental Authority) shall be brought or alleged against an indemnified party in respect of which indemnity is to be sought against an indemnifying party pursuant to the preceding paragraphs, the indemnified party shall, promptly after receipt of notice of the commencement of any such claim, demand, action or proceeding, notify the indemnifying party in writing of the commencement of such claim, demand, action or proceeding, enclosing a copy of all papers served, if any; provided, that the omission to so notify such indemnifying party will not relieve the indemnifying party from any liability that it may have to any indemnified party under the foregoing provisions of this Section 7.05 unless, and only to the extent that, such omission results in the forfeiture of, or has a material adverse effect on the exercise or prosecution of, substantive rights or defenses by the indemnifying party. In case any such action is brought against an indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such

indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section 7.05 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. In any such proceeding, an indemnified party shall have the right to retain its own counsel, but the reasonable fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (ii) the indemnifying party has assumed the defense of such proceeding and has failed within a reasonable time to retain counsel reasonably satisfactory to such indemnified party or (iii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential conflicts of interests between them based on the advice of such counsel. It is agreed that the indemnifying party shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than two separate law firms in each relevant jurisdiction for all such indemnified parties, one for each of (A) the Oaktree Purchasers and (B) the QIA Purchasers. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) The indemnification afforded by this Section 7.05 shall be the sole and exclusive remedy for any and all Losses awarded against or incurred or suffered by the Purchasers Indemnified Parties against the Company in connection with the Company's indemnification obligations hereunder and the Company Indemnified Parties against the Purchasers in connection with the Purchasers' indemnification obligations hereunder, in each case other than any indemnification obligations resulting from (A) the gross negligence, the bad faith or willful misconduct of the other Party or (B) acts or omissions based upon and in compliance with the written instructions from the other Party; provided that nothing in this Section 7.05 shall alter or affect the rights of the Purchasers to exercise remedies under the Transaction Documents in accordance with their terms or other rights of creditors under the UCC or any other applicable Law.

(e) Notwithstanding anything in this Agreement to the contrary, the Company shall not have any liability under this Section 7.05 on any day on which such indemnity claim under this Section 7.05 is paid by Company, in excess of the Cap Amount for such day. "Cap Amount" means, for any day on which an indemnity claim under this Section 7.05 is paid by the Company, the excess of (x) the Hard Cap over (y) the sum of (A) the aggregate amount of Revenue Interest Payments received by the Purchasers on or prior to such day and (B) the aggregate amount of payments made under this Section 7.05 by Company on or prior to such day. Notwithstanding anything in this Agreement to the contrary, the Purchasers shall not have any liability under this Section 7.05 in excess of the Purchase Price, in the aggregate.

Section 7.06 No Implied Representations and Warranties**.**

Each party acknowledges and agrees that, other than the representations and warranties specifically contained in any of the Transaction Documents, there are no representations or warranties of either party or any other Person either expressed or implied with respect to the Assigned Interests, Assigned Tail Royalty Interests or the transactions contemplated hereby. Without limiting the foregoing, each of the Purchasers acknowledges and agrees that (a) such Purchaser and its Affiliates, together with its and its Affiliates' representatives, have made their own investigation of the Product (including the Product Intellectual Property) and are not relying on any implied warranties or upon any representation or warranty whatsoever as to the future amount or potential amount of the Assigned Interests or Assigned Tail Royalty Interests or as to the creditworthiness of Company and (b) except as expressly set forth in any representation or warranty in a Transaction Document, such Purchaser shall have no claim or right to indemnification pursuant to Section 7.05 (or otherwise) with respect to any information, documents or materials furnished to such Purchaser, any of its Affiliates, or any of its or its Affiliates' representatives, including any information, documents or material made available to such Purchaser and its Affiliates and its Affiliates' representatives in any data room, presentation, interview or any other form relating to the transactions contemplated hereby.

Section 7.07 Independent Nature of Relationship**.**

(a) The relationship between the Company and its Subsidiaries, on the one hand, and the Purchasers, on the other, is solely that of seller and purchaser, and neither the Purchasers, on the one hand, nor the Company and its Subsidiaries, on the other, has any fiduciary or other special relationship with the other or any of their respective Affiliates. Nothing contained herein or in any other Transaction Document shall be deemed to constitute the Company and its Subsidiaries and the Purchasers as a partnership, an association, a joint venture or other kind of entity or legal form for any purposes, including any Tax purposes. The Parties agree that they shall not take any inconsistent position with respect to such treatment in a filing with any Governmental Authority.

(b) The Company and/or any of its Affiliates shall not at any time obligate the Purchasers, or impose on the Purchasers any obligation, in any manner or with respect to any Person not a party hereto.

Section 7.08 Tax Treatment**.**

The Purchasers and the Company acknowledge and agree that, for U.S. federal and applicable state and local income tax purposes, (i) the Purchasers' payment of the Purchase Price to the Company under Tranche A, Tranche B, and Tranche C and the associated rights and obligations under this Agreement shall collectively be treated as the issuance of three debt instruments (each, a "Tax Debt Instrument"), with each Tax Debt Instrument issued on the date that the Purchasers fund the applicable portion of the Purchase Price pursuant to this Agreement, (ii) each Tax Debt Instrument shall be treated as a contingent payment debt instrument that is subject to the rules set forth in Treasury Regulations Section 1.1275-4, (iii) the Purchasers shall not be treated as the owner of the Assigned Interests and the Assigned Tail Royalty Interests or any portion thereof, and (iv) except for any payments with respect to the Assigned Tail Royalty Interests, none of the payments that the Company makes to the Purchasers hereunder shall be treated as a payment of contingent interest under Section 871(h)(4) of the Internal Revenue Code. The Company shall provide the projected payment schedule for each Tax Debt Instrument to the

Administrative Agent as required under Treasury Regulations Section 1.1275-2(e) and Treasury Regulations Section 1.1275-4(b)(4)(iv); provided however that the Company shall consult with, and consider in good faith any reasonable comments or proposals timely made by, the Administrative Agent regarding the projected payment schedule for each Tax Debt Instrument. The parties hereto agree not to take any position that is inconsistent with the provisions of this Section 7.08 on any Tax Return or in any audit or other administrative or judicial proceeding unless the party that contemplates taking such an inconsistent position has been advised by nationally recognized counsel or accounting firm in writing that, as a result of a change in law, it is more likely than not that the inconsistent position is required by applicable law.

Section 7.09 Entire Agreement**.**

This Agreement, together with the Exhibits and Schedules hereto (which are incorporated herein by reference), and the other Transaction Documents constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements (including the Term Sheet), understandings and negotiations, both written and oral, between the parties with respect to the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth herein (or in the Exhibits, Schedules or other Transaction Documents) has been made or relied upon by either party hereto. None of this Agreement, nor any provision hereof, is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

Section 7.10 Amendments; No Waivers**.**

(a) This Agreement or any term or provision hereof may not be amended, changed or modified except with the written consent of the parties hereto. No waiver of any right hereunder shall be effective unless such waiver is signed in writing by the party against whom such waiver is sought to be enforced.

(b) No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 7.11 Interpretation**.**

When a reference is made in this Agreement to Articles, Sections, Schedules or Exhibits, such reference shall be to an Article, Section, Schedule or Exhibit to this Agreement unless otherwise indicated. The words “include”, “includes” and “including” when used herein shall be deemed in each case to be followed by the words “without limitation”. Neither party hereto shall be or be deemed to be the drafter of this Agreement for the purposes of construing this Agreement against one party or the other.

Section 7.12 Headings and Captions**.**

The headings and captions in this Agreement are for convenience and reference purposes only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

Section 7.13 Counterparts; Effectiveness**.**

This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other parties hereto. Any counterpart may be executed by facsimile or pdf signature and such facsimile or pdf signature shall be deemed an original.

Section 7.14 Severability**.**

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall nevertheless be given full force and effect.

Section 7.15 Expenses**.**

The Company agrees to pay or reimburse the Purchasers and the Administrative Agent for all of its reasonable and documented out-of-pocket costs and expenses (including the reasonable and documented out of pocket fees, expenses, charges and disbursements of counsel to the Purchasers and the Administrative Agent) in connection with the negotiation, preparation, execution and delivery of this Agreement and the other Transaction Documents or any amendments thereto; provided, that the amount of such costs and expenses obligated to be paid by the Company for activities prior to the Effective Date, together with all costs and expenses payable by the Company and its Subsidiaries related to the Oaktree Term Loan Facility and any related transactions with the Administrative Agent, the Purchasers and/or their Affiliates prior to the Effective Date, shall not exceed $[***], plus the actual cost of any collateral filing and recordation fees and searches.

Section 7.16 Governing Law; Jurisdiction**.**

(a) This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the state of New York, without giving effect to the principles of conflicts of law thereof.

(b) Any legal action or proceeding with respect to this Agreement or any other Transaction Document may be brought in any state or federal court of competent jurisdiction in the State of New York, County of New York. By execution and delivery of this Agreement, each party hereto hereby irrevocably consents to and accepts, for itself and in respect of its property, generally and unconditionally the exclusive jurisdiction of such courts. Each party hereto hereby further irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of any Transaction Document.

(c) Each party hereto hereby irrevocably consents to the service of process out of any of the courts referred to in subsection (b) of this Section 7.16 in any such suit, action or proceeding

by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address set forth in this Agreement. Each party hereto hereby irrevocably waives any objection to such service of process and further irrevocably waives and agrees not to plead or claim in any suit, action or proceeding commenced hereunder or under any other Transaction Document that service of process was in any way invalid or ineffective. Nothing herein shall affect the right of a party to serve process on the other party in any other manner permitted by law.

Section 7.17 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 action, proceeding, claim or counterclaim arising out of or relating to any Transaction Document or the transactions contemplated under any Transaction Document. This waiver shall apply to any subsequent amendments, renewals, supplements or modifications to any Transaction Document.

Section 7.18 Release of Liens upon Certain Permitted Financings; Non-Disturbance; Permitted Intercreditor Agreement**.**

(a) In connection with the incurrence by the Company or any of its Subsidiaries of any Permitted Priority Debt, the Administrative Agent and the Purchasers (upon request of the Company) shall enter into an intercreditor agreement with the lenders (or the agent to such lenders), which intercreditor agreement shall contain substantially similar terms as those in the Intercreditor Agreement (any such intercreditor agreement, a "Permitted Intercreditor Agreement").

(b) Upon the request of any Licensee party (or prospective Licensee to be a party) to a Permitted Licensing Agreement, the Administrative Agent and the Purchasers shall, at the reasonable request of the Company, enter into non-disturbance and similar agreements in connection with the licensing of any Product Intellectual Property and other general intangibles covering the Product permitted under this Agreement to the extent reasonably requested by Licensee thereof and on terms reasonably satisfactory to the Administrative Agent. In connection with any licensing or sub-licensing transactions permitted pursuant to this Agreement, each of the Administrative Agent and the Purchasers agree, at the request of the Company, to execute and deliver such documents as the Company may reasonably request to evidence such non-disturbance or similar agreement which shall be on terms reasonably satisfactory to the Administrative Agent, provided that the security interests of the Purchasers in the Intellectual Property shall not be affected.

(c) Any Lien held by the Purchasers or by the Administrative Agent for the benefit of the Purchasers against (i) any Collateral that is disposed of by the Company or its Subsidiaries (including pursuant to a valid waiver or consent) in any transaction not prohibited by this Agreement or (ii) any property subject to a Lien described in clause (b) of the definition of "Permitted Liens" shall, in each case, be automatically released without further action by the Administrative Agent, any Purchaser or the Company or any Subsidiary, and each Purchaser hereby directs the Administrative Agent to, and the Administrative Agent hereby agrees, upon receipt of reasonable advance notice from the Company, 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 pursuant to this Section 7.18 and deliver to the Company, at the expense of the Company, any portion of such Collateral so released pursuant to this Section 7.18 that is in possession of the Administrative Agent.

Section 7.19 Confidentiality**.**

The Administrative Agent and the Purchasers agree to keep confidential all non-public information provided to it by the Company pursuant to this Agreement; provided that nothing herein shall prevent the Administrative Agent or the Purchasers from disclosing any such information (i) to the Purchasers, any Affiliate of the Purchasers or any other assignee permitted under Section 7.04, (ii) to their employees, officers, directors, agents, attorneys, accountants, trustees and other professional advisors or those of any of its Affiliates (collectively, its "Affiliated Parties"), (iii) upon the request or demand of any Governmental Authority purporting to have jurisdiction over such Person or its Affiliates (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iv) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Law, (v) if required to do so in connection with any litigation or similar proceeding, (vi) that has been publicly disclosed (other than as a result of a disclosure in violation of this Section 7.19) or (vii) to the extent necessary in connection with the exercise of any remedy hereunder or under any other Transaction Document; provided that, in the case of disclosure pursuant to clause (iii), (iv) and (v) above, the Purchasers shall promptly provide notice to the Company to the extent reasonable and not prohibited by Law or any applicable Governmental Authority. Notwithstanding any provision of this Agreement otherwise requiring any QIA Purchaser to provide any information or documents to any party to this Agreement or any third party, such QIA Purchaser 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 Purchaser shall have no liability whatsoever and shall be free and harmless from any claims whatsoever for exercising its rights pursuant to this clause.

ARTICLE VIII

THE ADMINISTRATIVE AGENT

Section 8.01 Appointments and Duties.

(a) **Appointment of the Administrative Agent**. Each of the Purchasers hereby irrevocably appoints Oaktree Fund Administration, LLC (together with any successor Administrative Agent) as the Administrative Agent hereunder and authorizes the Administrative Agent to (i) execute and deliver the Transaction Documents and accept delivery thereof on its behalf from the Company 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 Transaction Documents and (iii) exercise such powers as are reasonably incidental thereto. Except as expressly set forth herein, the provisions of this Article VIII are solely for the benefit of the Administrative Agent and the Purchasers, and neither the Company nor its Affiliates shall have rights as a third-party beneficiary of any such provisions.

(b) **Duties as Agent**. Without limiting the generality of Section 8.01(a), the Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Purchasers), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Purchasers with respect to all payments and collections arising in connection with the Transaction Documents, and each Person making any payment in connection with any Transaction 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 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 Transaction 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 Transaction Documents, (vi) except as may be otherwise specified in any Transaction Document, exercise all remedies given to the Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Transaction Documents, applicable Laws or otherwise and (vii) execute any amendment, consent or waiver under the Transaction Documents on behalf of any Purchaser that has consented in writing to such amendment, consent or waiver; provided that the Administrative Agent hereby appoints, authorizes and directs each Purchaser to act as collateral sub-agent for the Administrative Agent and the Purchasers for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by the Company, and cash and cash equivalents held by, such Purchaser, and may further authorize and direct the Purchasers 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 Purchaser hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) **Limited Duties**. The Purchasers and the Company 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 contemplated hereby, (ii) is receiving no compensation for undertaking such role and (iii) subject only to the notice provisions set forth in Section 8.09, 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 Transaction Documents, the Administrative Agent (i) is acting solely on behalf of the Purchasers (except to the limited extent provided in Section 8.11) 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 Transaction 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 Transaction Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Purchaser or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Transaction Document (fiduciary or otherwise), in each case, regardless of whether a default, breach or Put Option Events under this Agreement has occurred and is continuing, and each Purchaser 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 Transaction Documents, have any

duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company 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.

Section 8.02 Binding Effect.

Each Purchaser agrees that (i) any action taken by the Administrative Agent in accordance with the provisions of the Transaction Documents, (ii) any action taken by the Administrative Agent in reliance upon the instructions of the Purchasers and (iii) the exercise by the Administrative Agent 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.

Section 8.03 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 Transaction Document or (ii) pursuant to written instructions from the Majority Purchasers (or, where expressly required by the terms of this Agreement, a greater proportion of the Purchasers).

(b) **Right Not to Follow Certain Instructions**. Notwithstanding Section 8.03(a) or any other term or provision of this Article VIII, 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 Purchasers (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 Affiliate thereof or (ii) that is, in the opinion of the Administrative Agent, in its sole and absolute discretion, contrary to any Transaction Document, Law or the best interests of the Administrative Agent or any of its Affiliates, including, for the avoidance of doubt, any action that may be in violation of the automatic stay in connection with any insolvency or similar proceeding.

Section 8.04 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 Transaction 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 Affiliates. Any such Person and its Affiliates shall benefit from this Article VIII to the extent provided by the Administrative Agent; provided, however, that the exculpatory provisions of this Article VIII shall apply to any such sub-agent and to the Affiliates 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.

Section 8.05 Liability**.**

(a) The Administrative Agent may, without incurring any liability hereunder, (i) consult with any of its Affiliates and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, the Company) 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 Purchase Price payment that by its terms must be fulfilled to the satisfaction of a Purchaser, the Administrative Agent may presume that such condition is satisfactory to such Purchaser unless the Administrative Agent shall have received written notice to the contrary from such Purchaser prior to the making of such purchase.

(b) Neither the Administrative Agent nor any of its Affiliates shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Transaction Document, and the Purchasers and the Company hereby waive and shall not 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 Affiliate (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 Purchasers or for the actions or omissions of any of its Affiliates 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 Transaction 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 Transaction 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 Affiliate, in or in connection with any Transaction 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 Transaction Documents (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 Transaction Document or whether any condition set forth in any Transaction Document is satisfied or waived, including, without limiting the generality of the foregoing, as to the financial condition of the Company or as to the existence or continuation or possible occurrence or continuation of any Put Option Event and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Company or any Purchaser describing such Put Option Event clearly labeled "put option event" (in which case the Administrative Agent shall promptly give notice of such receipt to all Purchasers);

and, for each of the items set forth in clauses (i) through (iv) above, each Purchaser and the Company hereby waives and agrees not to assert any right, claim or cause of action it might have against the Administrative Agent based thereon.

Section 8.06 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, the Company or its Subsidiaries 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 becomes a Purchaser 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 Purchaser and the term "Purchaser" and any similar terms shall, except where otherwise expressly provided in any Transaction Document, include, without limitation, the Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Purchaser.

Section 8.07 Purchaser Credit Decision.

Each Purchaser acknowledges that it has, independently and without reliance upon the Administrative Agent, any Purchaser or any of their Affiliates or upon any document solely or in part because such document was transmitted by the Administrative Agent or any of its Affiliates, conducted its own independent investigation of the financial condition and affairs of the Company 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 Transaction Document or with respect to any transaction contemplated in any Transaction Document, in each case based on such documents and information as it shall deem appropriate.

Section 8.08 Expenses; Indemnities.

(a) Each Purchaser agrees to reimburse the Administrative Agent and each of its Affiliates (to the extent not reimbursed by the Company) promptly upon demand for such Purchaser's Proportionate Share of any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, the Company or any of its Subsidiaries or Affiliates) that may be incurred by the Administrative Agent or any of its Affiliates 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 Transaction Document.

(b) Each Purchaser agrees to indemnify the Administrative Agent (or any sub-agent thereof) and any Affiliates of the Administrative Agent (or any such sub-agent) (to the extent not indefeasibly paid by the Company), from and against such Purchaser'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 Purchaser) that may be imposed on, incurred by or asserted against the Administrative Agent (or any sub-agent thereof) or any Affiliates 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 Transaction 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 Affiliates of the Administrative Agent (or any such sub-agent) under or with respect to any of the foregoing; provided that no Purchaser shall be liable to the Administrative Agent (or any sub-agent thereof) or any Affiliates 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 Affiliate 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.

Section 8.09 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 Purchasers shall have the right, in consultation with the Company, to appoint a successor, which shall be (i) a Purchaser holding at least thirty percent (30%) of the outstanding Commitments or any Affiliate thereof or (ii) any other financial institution consented to by the Company (provided that the consent of the Company shall not be required to the extent a Put Option Event 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 Purchasers) (the "Resignation Effective Date"), then the resigning Administrative Agent may (but shall not be obligated to), on behalf of the Purchasers, appoint any Person reasonably chosen by it as the successor Administrative Agent, notwithstanding whether the Majority Purchasers have appointed a successor or the Company 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 Transaction Documents to the extent set forth in the applicable resignation notice, (ii) the Purchasers 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 Affiliates shall no longer have the benefit of any provision of any Transaction 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 Transaction Documents or (y) any continuing duties such resigning Administrative Agent will continue to perform, and (iv) subject to its rights under Section 8.04, 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 Transaction 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 Transaction Documents.

Section 8.10 [Reserved].

Section 8.11 Additional Secured Parties. The benefit of the provisions of the Transaction 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 Purchaser 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 Article VIII and the decisions and actions of the Administrative Agent and the Purchasers to the same extent a Purchaser is bound; provided that, notwithstanding the foregoing, (i) such Secured Party shall be bound by Section 8.08 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 Purchaser 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 Transaction Document.

Section 8.12 Agent May File Proofs of Claim. In case of the pendency of any insolvency or similar proceeding or any other judicial proceeding relating to the Company, the Administrative Agent (irrespective of whether any payments under this Agreement 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 Company) 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 all Obligations that are owing and unpaid under this Agreement and to file such other documents as may be necessary or advisable in order to have the claims of the Purchasers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Purchasers and the Administrative Agent and their respective agents and counsel); 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 Purchaser 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 Purchasers, 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.

Section 8.13 [Reserved].

Section 8.14 Acknowledgements of Purchasers.

(a) If the Administrative Agent notifies a Purchaser, or any Person who has received funds on behalf of a Purchaser (any such Purchaser 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 Purchaser 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 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 (i) 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 (i) 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 Purchaser, or any Person who has received funds on behalf of a Purchaser, 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 Purchaser 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 Purchaser 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 8.14(b)(ii).

(c) Each Purchaser hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Purchaser under any Transaction Document, or otherwise payable or distributable by the Administrative Agent to such Purchaser 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 Purchaser 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 Purchaser at any time, (i) such Purchaser shall be deemed to have assigned its Assigned Interests and Assigned Tail Royalty Interests (but not its Commitments) with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Assigned Interests and Assigned Tail Royalty Interests") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Assigned Interests and Assigned Tail Royalty Interests (but not Commitments) of the Erroneous Payment Impacted Assigned Interests and Assigned Tail Royalty Interests, the "Erroneous Payment Deficiency Assignment") (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Company) deemed to execute and deliver an assignment and assumption agreement with respect to such Erroneous Payment Deficiency Assignment, and such Purchaser shall deliver any notes or other instruments evidencing such Assigned Interests and Assigned Tail Royalty Interests to the Company or the Administrative Agent, (ii) the Administrative Agent as the assignee Purchaser shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Purchaser shall become a Purchaser, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Purchaser shall cease to be a Purchaser 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 applicable Commitments which shall survive as to such assigning Purchaser and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Assigned Interests and Assigned Tail Royalty Interests subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Assigned Interests and Assigned Tail

Royalty Interests 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 Purchaser shall be reduced by the net proceeds of the sale of such Assigned Interests and Assigned Tail Royalty Interests (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Purchaser (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 Purchaser 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 an Assigned Interests and Assigned Tail Royalty Interests (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 Purchaser under the Transaction 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 Company, 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 Company 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 without limitation waiver of any defense based on “discharge for value” or any similar doctrine.

(g) Each party’s obligations, agreements and waivers under this Section 8.14 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Purchaser, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Transaction Document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

COMPANY:

BIOXCEL THERAPEUTICS, INC.

/s/ Vimal Mehta

Name: Vimal Mehta
Title: Chief Executive Officer

[Signature Page to Revenue Interest Financing Agreement]

ADMINISTRATIVE AGENT:

OAKTREE FUND ADMINISTRATION, LLC

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

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Kendall Bass
Name: Kendall Bass
Title: Vice President

[Signature Page to Revenue Interest Financing Agreement]

PURCHASER:

OAKTREE-TCDRS STRATEGIC CREDIT, LLC

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

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Kendall Bass
Name: Kendall Bass
Title: Vice President

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 Blaut
Email: blauta@sullcrom.com

PURCHASER:

OAKTREE-FORREST MULTI-STRATEGY, LLC

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

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Kendall Bass
Name: Kendall Bass
Title: Vice President

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

PURCHASER:

OAKTREE-TBMR STRATEGIC CREDIT FUND C, LLC

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

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Kendall Bass
Name: Kendall Bass
Title: Vice President

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

PURCHASER:

OAKTREE-TBMR STRATEGIC CREDIT FUND F, LLC

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

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Kendall Bass
Name: Kendall Bass
Title: Vice President

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

PURCHASER:

OAKTREE-TBMR STRATEGIC CREDIT FUND G, LLC

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

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Kendall Bass
Name: Kendall Bass
Title: Vice President

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

PURCHASER:

OAKTREE-TSE 16 STRATEGIC CREDIT, LLC

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

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Kendall Bass
Name: Kendall Bass
Title: Vice President

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

PURCHASER:

INPRS STRATEGIC CREDIT HOLDINGS, LLC

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

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Kendall Bass
Name: Kendall Bass
Title: Vice President

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

PURCHASER:

OAKTREE STRATEGIC INCOME II, INC.

By: Oaktree Fund Advisors, LLC

Oaktree Fund Advisors, LLC

Its: Investment Advisor

By: /s/ Jessica Dombroff

Name: Jessica Dombroff

Title: Vice President

By: /s/ Kendall Bass

Name: Kendall Bass

Title: Vice President

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

PURCHASER:

OAKTREE SPECIALTY LENDING CORPORATION

By: Oaktree Fund Advisors, LLC

Oaktree Fund Advisors, LLC

Its: Investment Advisor

By: /s/ Jessica Dombroff

Name: Jessica Dombroff

Title: Vice President

By: /s/ Kendall Bass

Name: Kendall Bass

Title: Vice President

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

PURCHASER:

OAKTREE STRATEGIC CREDIT FUND

By: Oaktree Fund Advisors, LLC

Oaktree Fund Advisors, LLC

Its: Investment Advisor

By: /s/ Jessica Dombroff

Name: Jessica Dombroff

Title: Vice President

By: /s/ Kendall Bass

Name: Kendall Bass

Title: Vice President

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

PURCHASER:

OAKTREE GCP FUND DELAWARE HOLDINGS, L.P.

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

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

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

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Kendall Bass
Name: Kendall Bass
Title: Vice President

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

PURCHASER:

OAKTREE DIVERSIFIED INCOME FUND INC.

By: Oaktree Fund Advisors, LLC
Its: Investment Advisor

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Kendall Bass
Name: Kendall Bass
Title: Vice President

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

PURCHASER:

OAKTREE AZ STRATEGIC LENDING FUND, L.P.

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

Oaktree Fund Advisors, LLC

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

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

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Authorized Signatory

By: /s/ Kendall Bass
Name: Kendall Bass
Title: Authorized Signatory

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

PURCHASER:

OAKTREE LOAN ACQUISITION FUND, L.P.

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

Oaktree Fund Advisors, LLC

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

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Authorized Signatory

By: /s/ Kendall Bass
Name: Kendall Bass
Title: Authorized Signatory

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

PURCHASER:

OAKTREE LSL FUND DELAWARE HOLDINGS EURRC, L.P.

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

By: Oaktree Fund Advisors, LLC
Its: Director

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Authorized Signatory

By: /s/ Kendall Bass
Name: Kendall Bass
Title: Authorized Signatory

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

PURCHASER:
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

Schedule 1
to RIFA

Purchase Schedule

Tranche A

Purchasers and their respective Applicable Commitments:

Purchaser	**Applicable Commitment**
Oaktree-TCDRS Strategic Credit, LLC	$309,482
Oaktree-Forrest Multi-Strategy, LLC	$249,697
Oaktree-TBMR Strategic Credit Fund C, LLC	$150,530
Oaktree-TBMR Strategic Credit Fund F, LLC	$235,902
Oaktree-TBMR Strategic Credit Fund G, LLC	$385,180
Oaktree-TSE 16 Strategic Credit, LLC	$386,864
INPRS Strategic Credit Holdings, LLC	$118,064
Oaktree Strategic Income II, Inc.	$533,613
Oaktree Specialty Lending Corporation	$2,281,003
Oaktree Strategic Credit Fund	$1,341,376
Oaktree GCP Fund Delaware Holdings, L.P.	$171,607
Oaktree Diversified Income Fund Inc.	$375,585
Oaktree AZ Strategic Lending Fund, L.P.	$2,201,340
Oaktree Loan Acquisition Fund, L.P.	$4,471,255
Oaktree LSL Fund Delaware Holdings EURRC, L.P.	$1,788,502
Q Boost Holding LLC	$15,000,000
Tranche A Commitment	**$30,000,000**

Tranche B

Purchasers and their respective Applicable Commitments:

Purchaser	**Applicable Commitment**
Oaktree-TCDRS Strategic Credit, LLC	$464,223
Oaktree-Forrest Multi-Strategy, LLC	$374,545
Oaktree-TBMR Strategic Credit Fund C, LLC	$225,796
Oaktree-TBMR Strategic Credit Fund F, LLC	$353,854
Oaktree-TBMR Strategic Credit Fund G, LLC	$577,769
Oaktree-TSE 16 Strategic Credit, LLC	$580,296
INPRS Strategic Credit Holdings, LLC	$177,096
Oaktree Strategic Income II, Inc.	$800,420
Oaktree Specialty Lending Corporation	$3,421,504
Oaktree Strategic Credit Fund	$2,012,064
Oaktree GCP Fund Delaware Holdings, L.P.	$257,410
Oaktree Diversified Income Fund Inc.	$563,378
Oaktree AZ Strategic Lending Fund, L.P.	$3,302,010
Oaktree Loan Acquisition Fund, L.P.	$6,706,882
Oaktree LSL Fund Delaware Holdings EURRC, L.P.	$2,682,753
Q Boost Holding LLC	$22,500,000
Tranche B Commitment	**$45,000,000**

Tranche C

Purchasers and their respective Applicable Commitments:

Purchaser	**Applicable Commitment**
Oaktree-TCDRS Strategic Credit, LLC	$464,223
Oaktree-Forrest Multi-Strategy, LLC	$374,545
Oaktree-TBMR Strategic Credit Fund C, LLC	$225,796
Oaktree-TBMR Strategic Credit Fund F, LLC	$353,854
Oaktree-TBMR Strategic Credit Fund G, LLC	$577,769
Oaktree-TSE 16 Strategic Credit, LLC	$580,296
INPRS Strategic Credit Holdings, LLC	$177,096
Oaktree Strategic Income II, Inc.	$800,420
Oaktree Specialty Lending Corporation	$3,421,504
Oaktree Strategic Credit Fund	$2,012,064
Oaktree GCP Fund Delaware Holdings, L.P.	$257,410
Oaktree Diversified Income Fund Inc.	$563,378
Oaktree AZ Strategic Lending Fund, L.P.	$3,302,010
Oaktree Loan Acquisition Fund, L.P.	$6,706,882
Oaktree LSL Fund Delaware Holdings EURRC, L.P.	$2,682,753
Q Boost Holding LLC	$22,500,000
Tranche C Commitment	**$45,000,000**

Schedule 2
to RIFA

Product

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 3.04(a)
to RIFA

Ownership of IP

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 3.04(b)
to RIFA

Ownership of Included Product Revenues

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 3.08
to RIFA

Litigation

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 3.12(a)
to RIFA

Intellectual Property

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 3.12(b)
to RIFA

Product Patents

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 3.13(c)
to RIFA

Regulatory Approvals

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 3.14
to RIFA

Material Contracts

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 3.16
to RIFA

Pension Matters

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 3.17(a)
to RIFA

Existing Indebtedness

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 3.17(b)
to RIFA

Existing Liens

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT A

Form of Security Agreement

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

EXHIBIT B

Form of Funding Notice

[Omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Certain information marked as [***] has been excluded from this exhibit because it is both (i) not material and (ii) of the type that the registrant customarily and actually treats as confidential.

COMMERCIAL SUPPLY AGREEMENT

By and Between

ARx, LLC

and

BioXcel Therapeutics, Inc.

Dated as of April 1, 2022

COMMERCIAL SUPPLY AGREEMENT

This Commercial Supply Agreement (this "**Agreement**"), dated as of April 1, 2022 (the "**Effective Date**") is entered into by and between, BioXcel Therapeutics, Inc., a Delaware corporation, with an address at 555 Long Wharf Drive, 5th Floor, New Haven, CT 06511 USA ("**BioXcel**"), and ARx, LLC, a Pennsylvania limited liability company, with an address at 400 Seaks Run Road, Glen Rock, PA 17327 ("**ARx**" and together with BioXcel, each a "**Party**" and collectively, the "**Parties**").

RECITALS:

WHEREAS, the Parties are parties to that certain Work Plan, dated as of July 21, 2017 and attached hereto as Attachment A (as the same may have been amended, the "**Work Plan**"), as well as the accompanying Development Quality Agreement, dated as of June 20, 2019 (as the same may have been amended, the "**DQA**", and together with the Work Plan, the "**Prior Agreements**"), and the Work Plan is hereby terminated in its entirety as of the Effective Date subject to any continuing obligations contained herein;

WHEREAS, BioXcel desires ARx to Manufacture and supply Products in accordance with the terms and conditions set forth in this Agreement;

WHEREAS, in connection with the Manufacture and supply of Products by ARx, BioXcel will provide (or have provided) certain starting materials to ARx for use in the Manufacture of Product, in accordance with the terms and conditions set forth in this Agreement;

WHEREAS, ARx is willing to Manufacture and supply Products in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the Parties intend for this Agreement and the Quality Agreement (as defined below) to supersede the Prior Agreements, which will each be terminated as of the Effective Date, subject to any continuing obligations contained herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. Definitions. For the purpose of this Agreement, the following capitalized terms have the following respective meanings:

1.1 [***]

1.2 "**Affiliate**" means any Person which, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a Party, for so long as such Person controls, is controlled by or is under common control with a Party, and regardless of whether such Affiliate is or becomes an Affiliate on or after the Effective Date. For purposes of this definition, the term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as used with respect to a Person means: (i) direct or indirect ownership of fifty percent (50%) or more of the voting securities or other voting

interest of any Person (including attribution from related parties); or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract, as a general partner, as a manager, or otherwise.

1.3 "**Agreement**" has the meaning set forth in the Preamble.

1.4 "**Applicable Law**" means applicable laws, rules, regulations, guidelines or other requirements of a Governmental Authority that may be in effect from time to time.

1.5 "**ARx**" has the meaning set forth in the Preamble.

1.6 "**ARx Background IP**" has the meaning set forth in Section 14.2.

1.7 "**ARx-Caused Materials Loss**" has the meaning set forth in Section 3.5.8(i).

1.8 "**ARx Developed IP**" has the meaning set forth in Section 14.4.1.

1.9 "**ARx Indemnitees**" has the meaning set forth in Section 11.2.

1.10 "**ARx Manufacturing Technology**" has the meaning set forth in Section 12.3.4.

1.11 "**ARx Representatives**" has the meaning set forth in Section 10.4.1.

1.12 "**ARx Work Plan IP**" has the meaning set forth in Section 14.3.2.

1.13 "**Audit**" has the meaning set forth in Section 5.6.1.

1.14 "**Background IP**" has the meaning set forth in Section 14.2.

1.15 "**Binding Portion**" has the meaning set forth in Section 4.1.

1.16 "**BioXcel**" has the meaning set forth in the Preamble.

1.17 "**BioXcel Background IP**" has the meaning set forth in Section 14.2.

1.18 "**BioXcel Developed IP**" has the meaning set forth in Section 14.4.2.

1.19 "**BioXcel Indemnitees**" has the meaning set forth in Section 11.1.

1.20 "**BioXcel Representatives**" has the meaning set forth in Section 10.4.2.

1.21 "**BioXcel Supplied Materials**" has the meaning set forth in Section 3.5.1.

1.22 "**BioXcel Supplied Materials Costs**" has the meaning set forth in Section 3.5.8(i).

1.23 "**BioXcel Technical Requirements**" means, with respect to Product, those analytical testing specifications per Section 1.64 and other batch record and cGMP requirements as specified in Schedule 1.23 related to the Product (and/or the Manufacture thereof) identified in Schedule 1.23, as the same may be modified from time to time by BioXcel (provided that BioXcel shall seek approval from ARx in connection with such modification, such approval not to be unreasonably withheld, delayed or conditioned).

1.24 "**BioXcel Work Plan IP**" has the meaning set forth in Section 14.3.1.

1.25 "**Business Day**" means any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York, are authorized or required by law to remain closed.

1.26 "**Calendar Year**" means each period during the Term commencing on January 1 and ending on December 31 of such calendar year; provided, however, that: (i) the first Calendar Year of this Agreement shall commence on the Effective Date and end on December 31 of the same calendar year; and (ii) the last Calendar Year of this Agreement shall commence on January 1 of the calendar year in which this Agreement terminates or expires and end on the date of expiration or termination of this Agreement.

1.27 "**Confirmed Order**" has the meaning set forth in Section 4.2.2.

1.28 "**cGMPs**" means [***].

1.29 "**Commercially Reasonable Efforts**" means [***].

1.30 "**Confidential Information**" means all confidential information and data relating to a Party (including information regarding such Party's and its Affiliates' business, employees, development plans, programs, documentation, techniques, trade secrets, systems, facilities, equipment, processes, formulations, and know-how) disclosed or provided by or on behalf of such Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") pursuant to, or in connection with, this Agreement, the Confidentiality Agreement, Work Plan, the DQA, the Quality Agreement or any agreement entered into in connection with this Agreement. For clarity, the (i) ARx Background IP, ARx Work Plan IP, and ARx Developed IP shall be the Confidential Information of ARx and (ii) the BioXcel Background IP, BioXcel Work Plan IP, BioXcel Developed IP, BioXcel Technical Requirements and Specifications shall be the Confidential Information of BioXcel, irrespective of whether such information or technology is first disclosed by ARx to BioXcel hereunder. "Confidential Information" does not include any information or data: (i) rightfully previously known by a Party hereto, or acquired from a Third Party without a continuing restriction on use; (ii) which is or becomes publicly known without breach of this Agreement; or (iii) which is independently developed without violating any obligations under this Agreement and without reference to the Confidential Information of the other Party. Any combination of features or disclosures shall not be deemed to fall within the foregoing exclusions merely because individual features are published or available to the general public or in the rightful possession of the Receiving Party unless the combination itself and principle of operation are published or available to the general public or in the rightful possession

of the Receiving Party. For clarity, the terms and conditions of this Agreement shall be deemed Confidential Information of both Parties.

1.31 "**Confidentiality Agreement**" means that certain Confidentiality Agreement between the Parties, dated as of July 19, 2016.

1.32 "**Deficiency**" has the meaning set forth in Section 7.3.1.

1.33 "**Deliverable**" shall have the meaning given to such term as described in the Considerations, Assumptions, and Deliverables column of the chart in the Work Plan.

1.34 "**Delivery Terms**" has the meaning set forth in Section 6.2.

1.35 **"Developed Intellectual Property"** means all Intellectual Property made, invented, developed, created, conceived, or reduced to practice after the Effective Date (a) in connection with the performance of any Work Plan Activities (including any improvements to BioXcel Work Plan IP and ARx Work Plan IP), (b) as a result of work conducted pursuant to this Commercial Supply Agreement (including in connection with a Party's evaluation, use, or implementation of the other Party's Background Intellectual Property), or (c) by a Receiving Party resulting from and/or necessarily using or derived from or based on the other Party's Confidential Information, in each case, including all rights in any patents or patent applications, copyrights, trade secrets, and other Intellectual Property rights relating thereto.

1.36 "**Direct Competitor**" means any Third Party that is engaged [***].

1.37 "**Effective Date**" has the meaning set forth in the Preamble.

1.38 "**Facility**" means (i) ARx's (or its Affiliate's or Subcontractor's, as applicable) facility where Product will be Manufactured; as well as (ii) such other facility where Product may be Manufactured, as approved by BioXcel from time to time pursuant to Section 8.3.

1.39 "**Forecast**" has the meaning set forth in Section 4.1.

1.40 "**Force Majeure Event**" has the meaning set forth in Section 16.3.

1.41 "**Governmental Approval"** means any approval, waiver, exemption, variance, permit, authorization, license, registrations or similar approval of any Governmental Authority necessary for the Manufacture of the Product.

1.42 "**Governmental Authority**" means any United States (federal, state or local), or any other foreign, government or political subdivision thereof, or any multinational governmental organization or authority, or any authority, agency or commission, in each case, entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof), or any governmental arbitrator or arbitral body.

1.43 "**Initial Term**" has the meaning set forth in Section 12.1.

1.44 "**Invoice**" means ARx's invoice in Dollars for a given quantity of Product or Work Plan Activities which are delivered or otherwise provided hereunder. A complete Invoice shall contain the following (and any other relevant information specifically requested by BioXcel, acting reasonably): (i) name of ARx and "Remit to" address; (ii) BioXcel's purchase order number; (iii) invoice number; (iv) invoice date; (v) description and quantity of Product; (vi) total invoice amount with miscellaneous charges listed separately; (vii) payment terms (which payment terms shall be consistent with the payment terms set forth in this Agreement); and (viii) a valid tax invoice meeting applicable invoicing requirements from a tax perspective.

1.45 "**Intellectual Property**" means any (i) invention (whether or not patentable), ideas, know-how, works of authorship, modifications, technology, materials, software, formulations, techniques, developments, ideas, concepts, discoveries, designs, algorithms, models, formulations, improvements, protocols, data and proprietary information; and (ii) patents, copyrights, trademarks, service marks, trade secrets, or other intellectual property rights in and/or to the foregoing.

1.46 "**Latent Defect**" has the meaning set forth in Section 7.3.1.

1.47 "**Manufacture**" or "**Manufacturing**" or "**Manufactured**" means all operations for the manufacture of Product hereunder utilizing the BioXcel Supplied Materials and other Materials, including, to the extent applicable for Product, the receipt and storage of materials, production, formulation, warehousing, quality control testing (including in-process, release and stability testing), packaging (both primary and secondary), serialization, release, as applicable, and placement on shipping carrier of such Product, and also including such activities as may be specified in the master batch records.

1.48 "**Manufacturing Process**" means ARx's proprietary process for Manufacturing the Product in accordance with the then-current batch records, Specifications and the Technical Requirements.

1.49 "**Materials**" means all raw materials, excipients, intermediates, reagents, components, and other potential product-contacting items necessary for, or otherwise used in, the Manufacture of Product hereunder, as applicable, other than BioXcel Supplied Materials.

1.50 "**Order**" has the meaning set forth in Section 4.2.1.

1.51 "**Order Period**" has the meaning set forth in Section 4.2.1.

1.52 "**Party**" or "**Parties**" has the meaning set forth in the Preamble.

1.53 "**Permitted Field**" means [***].

1.54 "**Person**" means any individual, partnership, joint venture, limited liability company, corporation, firm, trust, association, unincorporated organization, governmental authority or agency, or any other entity not specifically listed herein.

1.55 "**Pre-Approved Suppliers**" has the meaning set forth in Section 3.7.

1.56 "**Prior Agreements**" has the meaning set forth in the Recitals.

1.57 "**Product**" means an oral film product for administering dexmedetomidine or a salt thereof, whether as a standalone product or as a combination product, to be developed or supplied hereunder. Subject to Section 6.4, Product shall be supplied as finished, packaged (both primary and secondary) product. Additionally, solely with respect to BioXcel's right to make or have made Product under this Agreement (including under any license right provided under Section 14.5.1) and the exclusivity provisions under Section 3.1, and 3.3.2 and termination provisions under Section 12.2.1, "Product" includes any additional dosage form of such Product. For the avoidance of doubt, ARx shall have no liability or responsibility under this Agreement for any Product that it does not manufacture for BioXcel.

1.58 "**Quality Agreement**" means that certain quality agreement entered into between the Parties (or their respective Affiliates), attached hereto as Attachment B, that addresses technical and quality matters with respect to the Manufacture of the Product.

1.59 "**Recall"** has the meaning set forth in Section 8.11.

1.60 "**Records**" has the meaning set forth in Section 9.1.1.

1.61 "**Representatives**" has the meaning set forth in Section 16.4.1.

1.62 "**Safety Stock**" has the meaning set forth in Section 4.4.1.

1.63 "**Shortage**" means a failure to deliver to BioXcel within [***] of the relevant delivery date set forth in a given Confirmed Order, the Minimum Percentage (as defined in Section 3.3.4) of Product under such Confirmed Order, including [***].

1.64 "**Specifications**" means the specifications for Product as set forth on Schedule 1.64, as such specifications may be updated from time to time in accordance with this Agreement.

1.65 [***]

1.66 "**Subcontractor**" means any Person (other than a Party or an Affiliate of a Party) engaged by a Party (or its Affiliate) to perform Manufacturing obligations of such Party hereunder.

1.67 "**Supply Failure**" has the meaning set forth in Section 3.3.4.

1.68 "**Supply Price**" has the meaning set forth in Section 5.1.

1.69 "**Term**" has the meaning set forth in Section 12.1.

1.70 "**Termination Assistance**" means ARx's (i) continued Manufacturing and supply of Product in accordance with its obligations under this Agreement and (ii) assistance in the transfer of its Manufacturing and supply of Product obligations under, and in accordance with, this Agreement to a successor supplier designated by BioXcel including answering reasonable

questions from BioXcel regarding the Manufacturing and supply of Product on an "as needed" basis.

1.71 "**Termination Assistance Period**" means a reasonable period of time, not to exceed [***], designated by BioXcel, from and after the effective date of the termination of this Agreement by either Party.

1.72 "**Third Party**" means any Person other than BioXcel, ARx and their respective Affiliates.

1.73 "**Third Party Claim**" means any and all suits, claims, actions, proceedings or demands brought by a Third Party against a Party (or the ARx Indemnitees or BioXcel Indemnitees, as applicable).

1.74 "**Third Party Damages**" means all losses, costs, claims, damages, judgments, liabilities and expenses payable to a Third Party by a Party (or the ARx Indemnitees or BioXcel Indemnitees, as applicable) under a Third Party Claim (including reasonable attorneys' fees and other reasonable out-of-pocket costs of litigation in connection therewith).

1.75 "**Dollars**" or "**$**" means the currency of the United States of America.

1.76 "**VAT**" has the meaning set forth in Section 5.3.1.

1.77 "**Violation**" means that either: (i) ARx (or any its Affiliates), or any of its (or their) officers, or directors, or any of its (or their) employees, agents or personnel performing (or having performed) activities under this Agreement or the Work Plan; or (ii) BioXcel (or any of its Affiliates), or any of its (or their) officers or directors, or any of its (or their) employees, agents or personnel performing (or having performed) activities under this Agreement or the Work Plan, as applicable, has been: (a) convicted of any of the felonies identified among the exclusion authorities listed on the U.S. Department of Health and Human Services, Office of Inspector General website, including 42 U.S.C. 1320a-7(a) (http://oig.hhs.gov/fraud/exclusions/authorities.asp); (b) identified in the List of Excluded Individuals/Entities (LEIE) database (http://oig.hhs.gov/fraud/exclusions/exclusions_list.asp) on said website or the U.S. General Services Administration's list of Parties Excluded from Federal Programs (https://www.epls.gov); or (c) listed by any US Federal agency as being suspended, debarred, excluded, or otherwise ineligible to participate in Federal procurement or non-procurement programs.

1.78 "**Waste**" means any waste material, pollutant, contaminant, toxin, carcinogen, biohazard, radioactive or hazardous gaseous, liquid or solid material of any kind or any other waste that may or could pose a hazard to the environment or human health or safety, including any routine process waste or any by-product, arising from Manufacture of Product, including petroleum, petroleum hydrocarbons, petroleum products or petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, mold, lead or lead-containing materials, polychlorinated biphenyls and any other chemicals, materials, substances or wastes in any amount or concentration which are now or hereafter become defined as or included in the definition of "hazardous substances", "hazardous materials", "hazardous wastes", "extremely hazardous wastes", "restricted hazardous

wastes", "toxic substances", "toxic pollutants", "pollutants", "regulated substances", "solid wastes", or "contaminants" or words of similar import under Applicable Laws.

1.79 "**Work Plan**" has the meaning set forth in the Recitals.

1.80 "**Work Plan Activities**" has the meaning set forth in Section 2.1.1.

1.81 [***]

2. Termination of Work Plan; Project Team.

2.1 Surviving Obligations.

2.1.1 The Parties acknowledge and agree that, notwithstanding the termination of the Work Plan, certain ongoing activities or new Work Plan activities regarding development and testing of Product (e.g., stability testing) ("**Work Plan Activities**") set forth in the Work Plan will continue to be performed by ARx on and after the Effective Date. The Parties hereby agree that, as of the Effective Date, such continuing obligations will be performed under this Agreement rather than the Work Plan; provided that, the indemnification rights and obligations of the Parties, as set forth in Section 10 of the Work Plan, shall control with respect to the performance of such Work Plan Activities.

2.1.2 Notwithstanding anything to the contrary in the Work Plan (including Section 18 thereof), only the following provisions of the Work Plan shall survive its termination: Sections 2 (Definitions, as amended, below); 9(a) (as amended, below) and 9(b) (as amended below); 10 (Indemnity); and any provisions of the Chart that are necessary to effectuate the intent of the foregoing or otherwise relevant to the performance of Work Plan Activities.

2.1.3 Section 9(a) of the Work Plan is hereby amended by adding the following to the end of such section: The Parties acknowledge and agree that the Clinical Trial Formulations shall include any and all formulations of any product that contains dexmedetomidine for use in the Permitted Field that [***].

2.1.4 Section 9(b) of the Work Plan is hereby amended as follows: (a) by adding the following as subsection (vi) to the list of "ARx Intellectual Property": [***]. For the avoidance of doubt, ARx's use of the [***] described above shall be subject to the exclusivity provisions in Section 3.2.4 of this Agreement.

2.2 Project Team. Both Parties will provide personnel necessary to perform and support its activities under this Agreement (including any Work Plan Activities), in a manner consistent with all Applicable Law, and in accordance with the terms of this Agreement. Such personnel shall have the appropriate training, skills, and experience needed to perform the activities hereunder. On the Effective Date, ARx will provide a list of assigned personnel, which will include: R&D Formulator, Analytical Development Associate, Quality Control Associate, Process Engineer, Quality Assurance Associate, Project/Program Management Associate, and BD / Purchasing/Scheduling Associate. Immediately after the Effective Date, ARx will assign the project manager and arrange a formal project kick-off meeting between the Parties. The Parties

will determine the formal communication channels and frequency of communication at the kick-off meeting. On the Effective Date, BioXcel will provide a list of its assigned personnel.

3. Supply.

3.1 Manufacture and Supply of Product. During the Term and subject to the terms and conditions of this Agreement, ARx shall Manufacture and supply (or have Manufactured and supplied by a Subcontractor approved in advance by BioXcel pursuant to Section 3.7) to BioXcel or its designee, and BioXcel or its designee shall purchase exclusively from ARx (or have purchased) (subject to the Alternative Supply provisions under 3.3), its worldwide demand for Product which is ordered by BioXcel pursuant to Confirmed Orders submitted in accordance with this Agreement. Product shall be Manufactured and supplied by ARx, or on its behalf by an approved Subcontractor, in accordance with this Agreement, the Specifications and the relevant Confirmed Order. Subject to the terms and conditions of this Agreement, each Order shall be considered a separate Order and shall be valid and binding upon its submission by BioXcel (and/or its Affiliate, as applicable) and acceptance by ARx in writing as a Confirmed Order in accordance with this Agreement.

3.2 Exclusivity.

Exclusivity for the Product. During the Term, ARx (and its Affiliates) shall Manufacture and supply Product exclusively for BioXcel and its Affiliates and not for any Third Party.

Exclusivity in the Permitted Field. During the Term, ARx shall not, directly or indirectly, develop or Manufacture any product that contains dexmedetomidine for any Person (whether as an agent, creditor, partner, joint venture, investor, consultant or otherwise) for use in the Permitted Field, without the prior written consent of BioXcel, except that ARx may engage in any of the foregoing activities with respect to a Product, at BioXcel's written request, with or for BioXcel or any Affiliate, sublicensee or other Third Party commercial partner of BioXcel (including with respect to an authorized generic of the Product).

Exclusivity Outside the Permitted Field. During the Term, [***] ARx shall not, directly or indirectly, develop or Manufacture any Competing Product for any Person (whether as an agent, creditor, partner, joint venture, investor, consultant or otherwise) for use outside the Permitted Field, without the prior written consent of BioXcel, except that ARx may engage in any of the foregoing activities with respect to a Product, at BioXcel's written request, with or for BioXcel or any Affiliate, sublicensee or other Third Party commercial partner of BioXcel (including with respect to an authorized generic of the Product). For the purposes of this Agreement, "Competing Product" means any product that contains [***].

ARx Rights in the Permitted Field. For the avoidance of doubt, ARx may develop or manufacture an oral thin film product not containing [***], for use in the Permitted Field; provided, that during the Term, [***], ARx shall not, directly or indirectly, develop or Manufacture any oral thin film product that utilizes or incorporates either [***] for any Person (whether as an agent, creditor, partner, joint venture, investor, consultant or otherwise) for [***], without the prior written consent of BioXcel.

3.3 Alternative Supply.

Without limiting the obligations of either ARx or BioXcel hereunder, BioXcel shall have the right to qualify and utilize a single alternative source of supply of Product at any time during the Term. In the event BioXcel desires to engage an alternative source for supply of Product, BioXcel shall notify ARx. Within [***] of receipt of such notice of BioXcel's desire to engage an alternative source, [***]. ARx shall [***]. BioXcel shall then [***]. Additionally, the Parties shall discuss and agree upon [***]. [***]. Upon request and after the execution of a reasonably acceptable confidentiality agreement between ARx and the alternative supplier, ARx shall use Commercially Reasonable Efforts to support the qualification of such alternative source, through technical transfer, at BioXcel's sole cost, to such alternative source, to include technical transfer of the drug product manufacturing process and analytical methods, including of all data, documents, information or other know-how Controlled by ARx that is reasonably necessary to Manufacture Product, in accordance with the provisions of Section 12.3.4, *mutatis mutandis*.

Except as set forth in Section 3.3.3, BioXcel may not purchase more than [***] of its worldwide demand for Product in a Calendar Year from an alternative source. Subject to Section 3.3.3, [***].

In the event of any Supply Failure, BioXcel shall have the right to purchase from an alternative source the amount of Product that ARx is unable to supply pursuant to the most recent Order (which, for clarity, shall be in addition to the amount of Product that constitutes [***] of BioXcel's demand for Product in the given Calendar Year), and BioXcel shall not [***]. By way of example, [***]. Additionally, in the event of a breach of Section 3.2 by ARx, BioXcel shall give written notice to ARx, specifying the nature of the breach and, if such breach is not remedied within [***] of receipt of such notice, BioXcel shall have the right to have ARx initiate a technology transfer in accordance with Section 12.3.4 (without the requirement to terminate the Agreement) such that the exclusive supply right of ARx shall terminate and BioXcel may purchase from an alternative source any amount of Product, and BioXcel shall not [***].

3.3.1 A "**Supply Failure**" shall be deemed to have taken place if ARx fails to supply at least the "**Minimum Percentage**" of the quantity of Product set forth in any Confirmed Order, [***]. For clarity, the Minimum Percentage set forth in this Section 3.3.4 accounts [***]. Such Minimum Percentage shall be defined in Schedule 5.1, Supply Price. In the event of a Supply Failure, without limiting BioXcel's rights and remedies hereunder, BioXcel may purchase its remaining requirement of Product for such Order from an alternative source. For, clarity, such purchase from an alternative source will be limited to the amounts for which ARx failed to supply and will not impact any future orders to ARx.

3.4 ARx Supplied Materials. Except with respect to the BioXcel Supplied Materials for Product as set forth in Section 3.5, ARx shall obtain sufficient quantities of Materials as are necessary to Manufacture the Product in accordance with the Specifications and the BioXcel Technical Requirements, in order to timely fill Confirmed Orders based on the Binding Portion of the applicable Forecast.

3.5 BioXcel Supplied Materials.

With respect to the Product Manufactured under this Agreement, BioXcel shall be responsible for providing (or having provided) to ARx certain Materials as identified in Schedule 3.5 for the Product (if any) for use by ARx in the Manufacture of such Product hereunder, on a consignment basis (the "**BioXcel Supplied Materials**").

BioXcel shall be responsible for supplying (or having supplied) to ARx those quantities of the BioXcel Supplied Materials that are calculated by BioXcel and confirmed in writing by ARx to be required to Manufacture the quantities of the Product necessary to meet the Binding Portion of each Forecast (it being understood that ARx shall give BioXcel at least [***] lead time for delivery of any BioXcel Supplied Materials). The quantity of BioXcel Supplied Materials required per batch of Product is specified in Schedule 3.5, Technical Requirements. Such BioXcel Supplied Materials shall be delivered by or on behalf of BioXcel [***] to the Facility. Notwithstanding the delivery of the BioXcel Supplied Materials to ARx, as between the Parties, such BioXcel Supplied Materials shall at all times remain the property of BioXcel. Within [***] upon receipt of the BioXcel Supplied Materials, ARx shall sample to initiate testing for which any tests and specifications are to be agreed between the Parties, to confirm that such BioXcel Supplied Materials are not defective, and ARx shall promptly [***] notify BioXcel in writing of any defects in the BioXcel Supplied Materials. BioXcel shall replace any defective BioXcel Supplied Materials or provide additional BioXcel Supplied Material to ARx, and ARx shall provide assistance in the investigation of any defective BioXcel Supplied Material, at BioXcel's reasonable cost. ARx shall place any defective BioXcel Supplied Material under quarantine at BioXcel's expense until the BioXcel Supplied Material is returned to BioXcel or its designee.

3.5.1 All BioXcel Supplied Materials supplied to ARx shall be handled, stored and maintained by ARx in accordance with Applicable Law (including cGMPs) and clearly marked and identified by ARx as the property of BioXcel. ARx shall not allow any pledge, lien, restriction, claim, charge, security interest and/or other encumbrance to be placed on the BioXcel Supplied Materials while at the Facility. Unless otherwise consented to by BioXcel in writing, ARx shall not obtain any BioXcel Supplied Materials from any other source.

3.5.2 BioXcel represents, warrants and covenants that all BioXcel Supplied Materials shall, at the time of delivery to ARx at the Facility: (i) be manufactured in accordance with the specifications for such BioXcel Supplied Materials, Applicable Laws (including cGMPs) in effect on the day of delivery; and (ii) not be adulterated within the meaning of the Federal Food, Drug and Cosmetic Act to the extent applicable to a given BioXcel Supplied Material.

3.5.3 Unless otherwise consented to by BioXcel in writing, ARx shall use the BioXcel Supplied Materials solely and exclusively to Manufacture the Product for BioXcel in accordance with this Agreement, and for no other purpose. ARx shall withdraw the BioXcel Supplied Materials from storage for the performance of the Manufacturing activities under this Agreement and respecting the procedure of first expiry/first out. At the request and direction of BioXcel from time to time, and in any event upon expiration or termination of this Agreement, ARx shall return to BioXcel (or at BioXcel's request, destroy) all or any portion (as requested by BioXcel) of unused inventory of BioXcel Supplied Materials at BioXcel's reasonable cost.

3.5.4 At the end of each month, ARx shall notify BioXcel, in a form reasonably acceptable to both Parties, of the quantity of BioXcel Supplied Materials in its possession, batch number, and expiry date of such BioXcel Supplied Materials. Additionally, ARx shall promptly notify BioXcel in writing whenever the inventories of BioXcel Supplied Materials supplied by or on behalf of BioXcel become insufficient to Manufacture the Product to meet the delivery dates specified in the applicable Orders placed by BioXcel under this Agreement, in accordance with Section 3.5.2. In addition to BioXcel's right to audit the Facility under Section 5.6, ARx shall afford BioXcel, at reasonable times, reasonable access (at least [***] per Calendar Year) at the Facility for inspection and audit of the BioXcel Supplied Materials upon ARx approval of date and timing.

3.5.5 Notwithstanding anything to the contrary contained herein, in the event that BioXcel fails to timely supply sufficient quantities of BioXcel Supplied Materials for its Orders (in accordance with Section 3.5.2), including any replacement BioXcel Supplied Material pursuant to Section 3.5.2 [***], then [***].

3.5.6 BioXcel (or its Affiliate, as appropriate) shall continue to be responsible for the risk of loss of BioXcel Supplied Materials following delivery of such BioXcel Supplied Materials to ARx (and in connection therewith, BioXcel (or its Affiliate, as appropriate) shall maintain its customary property insurance (which may be in the form of a self-insurance program) with respect to such BioXcel Supplied Materials). Notwithstanding the foregoing:

[***]

[***]

3.5.7 BioXcel shall provide to ARx material safety data sheets relating to the BioXcel Supplied Materials, and other similar information known to BioXcel relating to handling, safety and environmental precautions with respect to the BioXcel Supplied Materials. It is the sole responsibility of ARx to communicate such information to its employees, agents, and representatives engaged in Manufacturing of Product.

3.6 Shortage.

If, after BioXcel has submitted an Order, that becomes a Confirmed Order, based on the Binding Portion of the applicable Forecast, a Shortage arises or ARx becomes aware of an anticipated Shortage, ARx shall notify BioXcel in writing within [***] thereof, and, shall include in such notice the relevant circumstances, including the underlying reasons for such Shortage (*e.g.*, available quantities of Materials, Manufacturing capacity or other resources needed in the Manufacture of Product), proposed remedial measures, and the date such Shortage is expected to end. The Parties shall meet immediately and discuss in good faith all appropriate actions to remedy and cure the Shortage. In any event ARx shall use best efforts to cure the Shortage as soon as possible by providing the undelivered quantity of Product as soon as reasonably practicable, but in no more than [***] and ARx shall notify BioXcel of the expected date of delivery of such Product. [***] Promptly following the event of a Shortage, ARx shall prepare a plan to address any deficiencies or cause(s) of such Shortage, provide a draft of the plan to BioXcel for review and agreement, and shall implement all reasonable comments from BioXcel as soon as possible.

ARx shall provide weekly written status updates on its progress towards remedy and cure of the Shortage.

If there is a Shortage, other than due to a shortage of BioXcel Supplied Materials [***], then, unless the Parties otherwise agree in writing, for so long as such Shortage endures, to the extent the Shortage is due to a shortage of Materials or Manufacturing capacity/resources, ARx shall [***].

For the avoidance of doubt, nothing in this Section 3.6 shall be deemed to modify ARx's obligations under Section 4.3, it being understood and agreed that the allocations pursuant to Section 3.6.2 shall be without limitation to any other remedies that BioXcel has hereunder, including pursuant to Article 11.

3.7 Subcontracting. ARx shall not subcontract any of its obligations hereunder to Manufacture Product to an Affiliate or a Third Party without the prior written consent of BioXcel, not to be unreasonably withheld. As of the Effective Date, BioXcel has consented to the use of the subcontractor(s) listed in the Quality Agreement ("**Pre-Approved Suppliers**"). With respect to any permitted subcontractor (including to an Affiliate or a Third Party), ARx shall remain fully responsible and liable for all obligations hereunder, and fully guarantees and warrants the performance (in accordance with this Agreement) of any responsibilities so subcontracted, and assumes full liability for such activities performed by any Subcontractor. Without limiting the foregoing, ARx shall cause any and all such Subcontractors to comply with the applicable terms and conditions of this Agreement and the Quality Agreement. Any subcontracting of any Manufacturing or other activities hereunder shall be subject to the other applicable terms and conditions of this Agreement, including Section 8.2 and Section 8.3, in each case, to the extent applicable. Notwithstanding the foregoing, but subject to compliance with change control provisions of the Quality Agreement: (i) any and all costs associated with engaging a Subcontractor (including any technology transfer to such Subcontractor) shall be borne solely by ARx; and (ii) the use of a Subcontractor shall not result in any increase in the Supply Price, unless justified through documented evidence of a price increase, in which case BioXcel expressly agrees to an increase in the Supply Price as a result thereof, not to be unreasonably withheld.

3.8 Capacity. At all times during the Term, ARx shall use commercially reasonable efforts to ensure that it has sufficient capacity at the Facility in order to Manufacture the quantities of Product set forth in the most recently submitted Forecast. Notwithstanding the foregoing, if BioXcel's requirements of Product exceed such capacity, ARx shall still use Commercially Reasonable Efforts to satisfy such demand, subject to ARx's then available capacity. If BioXcel and ARx determine that BioXcel's (and/or its Affiliates') demand (or anticipated demand, as applicable) exceeds ARx's then available capacity, then the Parties shall discuss in good faith how to address the potential shortage. [***]

4. Estimated Requirements and Orders.

4.1 Forecast. On or before the last day of each [***] during the Term, BioXcel shall provide ARx with a written [***] rolling forecast estimating BioXcel's requirements of Product for such [***] period (each, a "**Forecast**"). Each Forecast shall be prepared in good faith, but Forecasts shall not be binding on BioXcel except as set forth in Section 4.2. The first such

Forecast shall be for the period from the Effective Date through [***] and is attached hereto as Schedule 4.1. Schedule 4.1 shall also include BioXcel's long term forecast for planning purposes only. The first [***] of a Forecast for Product (the "**Binding Portion**") shall be binding on the Parties. During the first month of each Calendar Year, BioXcel shall provide ARx with a [***] Forecast for planning purposes only. BioXcel shall have the right to request monthly sales and operation planning meetings between BioXcel and ARx to coordinate the Forecast procedures.

4.2 Orders.

4.2.1 BioXcel shall place orders for Product through written purchase orders delivered by email to ARx from time to time during the Term (each, an "**Order**") in accordance with this Agreement. Each Order of Product shall be for the quantities of Product set forth in the Binding Portion of the applicable Forecast (subject to Section 4.2.3); provided, however, that BioXcel shall place its Orders for the requested quantities of Product with a lead time of at least [***] from the date of such Order (the "**Order Period**"). Each Order shall indicate the order number, Product code/number, Product strength, quantity ordered, required delivery date and, as appropriate, delivery address. In the event that the terms of any Order are not consistent or are in addition to the terms of this Agreement, the terms of this Agreement shall prevail.

4.2.2 ARx shall acknowledge and confirm each Order within [***] of receipt including confirmation of the delivery date and quantities by email (a "**Confirmed Order**"). If ARx does not confirm the Order within the timeframe set forth in the immediately preceding sentence, the Order shall be deemed to be confirmed by ARx, and such Order shall also be deemed a Confirmed Order. ARx shall supply the Products in accordance with each Order and the terms of this Agreement. Any change to a Confirmed Order shall require issuance of a revised Confirmed Order and a revised order acknowledgement. Notwithstanding anything to the contrary in this Agreement, ARx shall not reject any Order unless such Order fails to comply with this Section 4.2.2.

4.2.3 Should BioXcel place an Order to procure Product for delivery in excess of the volume set forth in the Binding Portion of the Forecast, subject to the applicable terms and conditions of this Agreement, ARx shall [***] and shall notify BioXcel within [***] after receipt of the applicable Order if it expects to be unable to do so.

4.2.4 BioXcel may defer any Order to a later time within the same Calendar Year in which the Product was originally scheduled for delivery without penalty, provided that such deferral notice is received by ARx prior to the Order Period for such Product and provided that such deferral shall not relieve BioXcel from its obligations to order the quantities of Product set forth in the Binding Portion of the Forecast. Subject to the other applicable provisions of this Agreement, if BioXcel desires to defer an Order within the Order Period or cancel an Order, BioXcel shall notify ARx thereof in writing; provided that BioXcel may only so cancel or defer an Order if consented to by ARx.

4.3 Completion of Orders by ARx. ARx shall Manufacture, or cause to be Manufactured, the applicable quantities of Product and deliver (in accordance with Section 6.2) such quantities of Product in order to complete each Confirmed Order on or before the date specified in such Confirmed Order placed in accordance with this Agreement; provided, however,

that the exact delivery date shall be communicated and agreed in writing and that no quantities of Product shall be delivered after the date specified in such Confirmed Order without BioXcel's prior written approval). ARx shall deliver Product in the quantities specified in each Order placed in accordance with Section 4.2 of this Agreement.

4.4 Safety Stock.

4.4.1 ARx shall maintain, at all times during the Term, such quantity of inventory of critical components (including Materials) needed to satisfy BioXcel's requirement of Product for the subsequent [***] period (or such other period mutually agreed upon by the Parties) on the basis of the most recent Forecast provided by BioXcel and accounting for Material lead times (the "**Safety Stock**"). Such Safety Stock shall be maintained with the balance of the inventory on a [***] and shall be stored, handled and maintained in accordance with all applicable cGMPs, the BioXcel Technical Requirements and Applicable Laws. Notwithstanding the foregoing, ARx may draw on such Safety Stock to Manufacture Product in the ordinary course under this Agreement; provided that such Safety Stock shall be replaced as soon as reasonably practicable. The Safety Stock shall be maintained by ARx for the sole benefit of BioXcel and shall not be subject to allocation to any other person or entity.

4.4.2 Upon the reasonable request of BioXcel (but at least on a [***] basis), ARx shall submit to BioXcel a report with respect to the Safety Stock (as well as BioXcel Supplied Materials) that shows the number of batches of Product that can be produced from Safety Stock inventory.

4.4.3 In case of termination of this Agreement by ARx due to BioXcel's material breach, or in the event of expiration of Materials due to changes requested by BioXcel to Confirmed Orders, BioXcel shall be responsible for cost of such Safety Stock.

5. Price and Payments.

5.1 Supply Price. The supply price for each unit of Product is set forth on Schedule 5.1 ("**Supply Price**"), as adjusted from time to time as set forth in accordance with Section 5.2. ARx shall be responsible for submitting all payments to third parties for any Materials purchased from, or other products or services provided by, such third parties in connection with the Manufacture and supply of Products hereunder.

5.2 Adjustment to Supply Price. Following the receipt of the [***], attached hereto as Schedule 4.1, in accordance with Section 4.1, the Parties shall act reasonably and in good faith to review any potential price adjustment in the Supply Price. In proceeding Calendar Years, the annual price adjustment, whether upward or downward shall be agreed upon no later than December 1st of such Calendar Year with such adjusted price to become effective on January 1st of the immediately following Calendar Year. [***]

5.3 Invoicing Currency and Payments. For each shipment of Product ordered by BioXcel and delivered to BioXcel hereunder, ARx shall provide BioXcel a written Invoice setting forth the aggregate Supply Price payable by BioXcel. BioXcel shall pay to ARx the undisputed Supply Price for the quantities of Product in such shipment that are accepted by BioXcel pursuant to Section 7.3, within [***] after receipt of such shipment and receipt of a

complete Invoice for such shipment. All Invoices issued by a Party under this Agreement and all payments to be made by a Party under this Agreement shall be made in Dollars, by wire transfer to which ARx is not responsible for the wire fee, pursuant to the instructions of the Party receiving payment, as designated from time to time. Payment by BioXcel shall not be construed as acceptance of any improper, nonconforming or defective Product, nor shall it be construed as a waiver of any of BioXcel's rights or remedies under this Agreement.

5.3.1 Taxes. The Supply Price shall be exclusive of any value added tax, sales tax or any other similar type of turnover tax (collectively, "**VAT**") which may be due and payable by ARx to a Governmental Authority and BioXcel shall pay any such VAT in addition to the sums otherwise payable, at the rate in force at the due time for payment or such other time as is stipulated under the relevant VAT legislation; provided, however, that BioXcel shall not pay any such VAT unless and until ARx provides a correct invoice in accordance with the relevant VAT legislation. ARx shall be liable for other taxes such as rent, use, and personal property taxes and for taxes on any and all income or revenues received from BioXcel under this Agreement.

5.4 Other Rights. Payment of an Invoice or any other amounts hereunder shall not preclude BioXcel from exercising its audit rights under the terms of Section 5.5 of this Agreement, shall not be deemed a release of any potential claims against ARx, and shall not limit BioXcel from pursuing any other remedy available to BioXcel under this Agreement or under Applicable Laws.

5.5 Financial Audit Right.

5.5.1 The Records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by an independent accounting firm or other appropriate Third Party representative selected by BioXcel, and reasonably acceptable to ARx (including entering into a reasonably acceptable confidentiality agreement), for evaluation and verification that actual quantities shipped matches BioXcel invoices, or as required by Governmental Authorities; provided, however, that such right to conduct such audits and inspections and/or reproduction shall not occur more frequently than [***] unless BioXcel has reasonable cause to believe that ARx is not complying with this Agreement. The accounting firm or other Third Party representative shall have access to ARx's Facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this Section 5.5. BioXcel shall give ARx reasonable advanced notice of greater than [***] of intent to audit. The accounting firm or other Third Party representative shall have access to the Records, and ARx shall preserve the Records as required in its standard operating procedures or for such longer period as may be required by Applicable Laws.

5.5.2 If an audit inspection or examination conducted in accordance with this Section 5.5 discloses overpricing or overcharges (of any nature) by ARx to BioXcel or underpricing or undercharges (of any nature), any adjustments and/or payments to BioXcel shall be made by ARx or BioXcel to ARx, as applicable, within a reasonable amount of time not to exceed [***] from presentation of BioXcel's findings to ARx.

5.5.3 BioXcel shall bear all costs and expenses incurred by BioXcel in connection with any such audit or inspection; provided, however, that if any such audit or

inspection correctly identifies any overpricing or overcharges (of any nature) in excess of [***] of the amount actually payable by BioXcel, then, in addition reconciling the payments pursuant to Section 5.5.2, ARx shall reimburse BioXcel for all reasonable out-of-pocket costs incurred by BioXcel in connection with that audit or inspection.

5.6 Facility Audit Right.

5.6.1 ARx shall permit BioXcel and up to [***] of their designated representatives on an annual basis for at least [***] to (i) observe the Manufacturing of the Products and (ii) audit that portion of the Facility where the Product is Manufactured, as well as (iii) audit procedures and documentation relevant to manufacture of Product, to evaluate ARx's facilities, work practices, supporting systems, documents and Records associated with the Products to assess ARx's compliance with Applicable Law (including cGMP), the Specifications and this Agreement (each, an "**Audit**"). Such Audit shall be conducted only after reasonable advance notice, of at least [***] on a mutually agreed upon date and during ordinary business hours and shall not unduly interfere with the normal business operations of ARx with an agenda of applicable topics provided at least [***] ahead of the agreed audit date; provided that, the requirement to provide [***] advance notice and an agenda shall not apply to the conduct of any for-cause audit conducted by or on behalf of BioXcel (it being understood that any for-cause audit may be conducted immediately upon notice). Such Audit shall be permitted to take place during Manufacturing of the Products. BioXcel shall also have the right to conduct an Audit, promptly with no more than [***] notice, at any time during the Term of this Agreement if BioXcel has reasonable cause to be concerned that the Facility or the Manufacture of the Products or storage of BioXcel Supplied Materials is not in compliance with Applicable Law (including cGMP) or this Agreement. Additionally and notwithstanding the foregoing, ARx will not unreasonably withhold its consent to the conduct of up to [***] additional Audit per year by BioXcel or its designated representatives, which Audit shall be subject to the terms of this Section 5.6.1, *mutatis mutandis*, and shall be conducted at BioXcel's sole cost and expense.

5.6.2 ARx shall notify BioXcel within [***] of its receipt of a notification by a Governmental Authority of any inquiry, communication or inspection by a Governmental Authority that directly or indirectly relates to the Manufacture of a Product, including of any facility used to warehouse the Product, and shall provide to BioXcel all communications relating specifically to Product or general Good Manufacturing Practices. Non- Product or ARx Confidential Information related content shall be redacted from such communications. BioXcel shall have the option of attending any such inspection that relates specifically to the Products, upon reasonable approval by ARx. Duplicate samples of the Product given to a Governmental Authority will be provided to BioXcel to the extent practical. ARx shall furnish to BioXcel, not later than [***] prior to the time it provides the same to a Governmental Authority, one copy of the proposed response or explanation relating to any inquiry, communication or inspection, specifically related to Product, set forth above. If such proposed response is in relation to general Good Manufacturing Practices, ARx shall furnish a copy of such response to a Governmental Authority to BioXcel within [***] of its submission. ARx shall allow BioXcel to assist in any proposed response to a Governmental Authority that relates to the Products, including review of any written response made to such authority, [***]. After the filing of a response, ARx shall notify BioXcel, and promptly provide BioXcel with copies, of any further contact with such Governmental Authority relating to the Product.

6. Delivery of Goods and Risk of Loss.

6.1 Handling and Storage Prior to Delivery. Prior to delivery of Product to BioXcel, ARx shall handle and store all Product (including all Materials used in the Manufacture of such Product) in accordance with the BioXcel Technical Requirements and Applicable Laws (including cGMPs), as well as the applicable Specifications. If BioXcel is unable to collect the Product at the time of delivery, at BioXcel's written request, ARx will provide storage for the Product for up to an additional [***] period, without charge to BioXcel (it being understood that ARx shall be entitled to charge BioXcel, at ARx's then-prevailing storage rates, for any Product that is stored by ARx for longer than such [***] period). For the avoidance of doubt, if BioXcel requests ARx to store product for up to [***], ARx shall be entitled to invoice BioXcel for the Product upon finished goods release.

6.2 Delivery. ARx shall supply and deliver the Product [***] and at the Confirmed Order ship date as specified in the relevant Order (unless otherwise agreed upon by the Parties in writing) (collectively, the "**Delivery Terms**"). [***] ARx shall ensure that each shipping container or carton shall be marked as to the quantity, the contents, BioXcel item code, and any other information as reasonably required by the relevant Order, and ARx shall include the site of Manufacture among the documents accompanying each shipment of Product. ARx shall provide to BioXcel the content of all labels in the packaging specification for pre-approval. No Product may be shipped under quarantine, unless expressly agreed by BioXcel in writing.

6.3 Transfer of Title. Except with respect to the BioXcel Supplied Materials (which shall continue to be owned by BioXcel in accordance with Section 3.5), title to Product supplied hereunder shall pass to BioXcel contemporaneously with the transfer of risk of loss, as established by the Delivery Terms. [***]

6.4 Packaging. All Product supplied hereunder shall be packaged by ARx in accordance with the Quality Agreement, and ARx shall ensure that such packaging is otherwise in accordance with the BioXcel Technical Requirements and Applicable Laws (including cGMPs), as well as the applicable Specifications. [***]

7. Representations, Warranties and Covenants.

7.1 General Representations and Warranties. Each of BioXcel and ARx represents, warrants, covenants and agrees that, at all times during the Term:

7.1.1 it is duly organized and validly existing and in good standing under the laws of its jurisdiction of organization;

7.1.2 it is qualified or licensed to do business and in good standing in every jurisdiction where such qualification or licensing is required;

7.1.3 it has the corporate power and authority to execute, deliver and perform its obligations under this Agreement, and the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate action;

7.1.4 this Agreement has been duly executed and delivered by it;

7.1.5 this Agreement constitutes the valid and binding obligations of it, enforceable against it in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditor's rights generally, or general principles of equity;

7.1.6 the execution, delivery and performance of this Agreement by it does not and will not (a) conflict with the limited liability company agreements, articles, bylaws or other constitutive or governing documents of it, (b) violate any (1) Applicable Law or (2) order, award, injunction, judgment, decree, ruling or verdict or other decision issued, promulgated or entered by or with any Governmental Authority of competent jurisdiction, in each case of (1) and (2), applicable to it, or (c) result in any breach of, constitute a default under or give to any Person any rights of termination, acceleration or cancellation of, any contract to which it is a party; and

7.1.7 with respect to all filings to obtain marketing authorizations or Governmental Approvals, the data and information provided or submitted by ARx or BioXcel in connection therewith shall be free from fraud or material falsity, accurate and reliable for purposes of supporting approval of the submissions and the Governmental Approvals were and shall be obtained without illegal or unethical behavior of any kind.

7.2 Representations, Warranties and Covenants for Product. ARx represents, warrants and covenants to BioXcel that:

7.2.1 all Product shall, at the time of shipment: (i) be Manufactured in accordance with the Specifications, Quality Agreement, Applicable Laws (including cGMPs) in effect on the day of shipment, and the BioXcel Technical Requirements; (ii) have at least [***] of its maximum shelf-life, as evidenced by expiry dating, remaining (it being understood that any Product for which BioXcel requests additional storage pursuant to Section 6.1 shall satisfy the requirements of this Section 7.2.1(ii) at the time it is placed into storage); and (iii) not be adulterated within the meaning of the Federal Food, Drug and Cosmetic Act to the extent applicable to Product;

7.2.2 to the best of its knowledge, ARx is not aware that the use of the ARx Background IP and ARx Developed IP in the Manufacture of Product would infringe any Third Party Intellectual Property rights and ARx has not been notified by any Third Party that the Manufacture of Product would infringe any Intellectual Property rights;

7.2.3 it has received and is in current compliance with all Governmental Approvals, licenses, consents and permits required to lawfully Manufacture the Products pursuant to this Agreement, in the Facility, and as of the Effective Date it has not received any notice of adverse findings or similar letter from any Governmental Authority with respect to the Product or the Facility that prevent its ability to do so;

7.2.4 it and all of its employees and personnel that shall be performing any work in connection with this Agreement shall have the appropriate training and skill necessary to perform their job functions;

7.2.5 ARx shall not enter into any agreement or arrangement with any other entity that would prevent or materially interfere with ARx's ability to perform its obligations hereunder;

7.2.6 (i) the Manufacturing Process and test methods for Product (including all future process changes or test method changes prepared in connection with the Manufacture of Product) shall be validated prior to the filling of any Confirmed Orders; provided, however, that BioXcel may, in its sole discretion, accept Product from ARx prior to the completion of such validation; and (ii) the Manufacturing Process and test methods (and any change in the Manufacturing process or test methods) for Product shall, in each case, comply with Applicable Laws (including cGMPs), and any such changes thereto shall be made in accordance with Section 8.2 (to the extent applicable) and the Quality Agreement; and

7.2.7 except to the extent that BioXcel is responsible for supplying a given BioXcel Supplied Material, and save for security interests expressly given in favor of BioXcel or BioXcel Affiliates, all Product supplied to BioXcel shall be free and clear of all pledges, liens, restrictions, claims, charges, security interests and/or other encumbrances at the time of delivery.

7.2.8 Notwithstanding anything herein to the contrary, ARx makes no representations or warranties for any Product not manufactured by ARx pursuant to the Agreement.

7.3 Inspection.

7.3.1 ARx shall target to provide to BioXcel, no less than [***] prior to the date of delivery of Product, as set forth in the relevant Confirmed Order, the applicable batch records for such Product and no less than [***] prior, the applicable certificate of analysis. BioXcel (or its agent) shall have [***], respectively, to inspect and review such batch records and certificate of analysis, provided by ARx in accordance with this Agreement and the Quality Agreement) and to indicate, on the basis of such records, whether BioXcel accepts or rejects such batch(es) of Product. After physical receipt of the Product following shipment by ARx, BioXcel shall physically inspect such Product for variances and defects, or non-compliance with the warranties set forth in Section 7.2. If BioXcel claims that any shipment of Product did not, at the time of shipment, meet the representations, warranties or covenants set forth in Section 7.2 or the quality requirements set forth in Article 8 (other than as a result of BioXcel Supplied Materials that were defective as of the time of delivery to ARx's Facility) (a "**Deficiency**") based on the foregoing inspection, BioXcel shall give written and detailed notice thereof to ARx within [***] after receipt of such Product at BioXcel's (or its designated Affiliate's) site, which notice shall provide the quantities affected and the basis for the claim. Notwithstanding the foregoing, if BioXcel accepts delivery of a Product but later determines that such Product has a Deficiency and the nature of the defect could have not been discovered through the exercise of reasonable diligence within the [***] period (such Deficiency, a "**Latent Defect**"), BioXcel may revoke its acceptance by providing written notice within [***] after BioXcel's discovery of such Latent Defect.

7.3.2 If BioXcel and ARx are unable to agree as to whether such Product contains a Deficiency, the Parties shall cooperate to cause the Product in dispute to be analyzed by an independent testing laboratory of recognized repute selected by BioXcel and approved by ARx,

which approval shall not be unreasonably withheld, delayed or conditioned. Absent manifest error, the results of such laboratory testing shall be final and binding on the Parties on the issue of whether the subject Product contains a Deficiency. [***]

7.3.3 If the Parties agree, or if the laboratory has determined, that the Product contains a Deficiency, ARx shall: [***].

7.3.4 Any Product that is determined pursuant to this Section 7.3 to contain a Deficiency and that is in BioXcel's possession shall, at ARx's option, either be: [***].

7.4 DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY NOR ITS AFFILIATES MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, ALL OF WHICH ARE HEREBY SPECIFICALLY EXCLUDED AND DISCLAIMED.

8. Quality.

8.1 Quality Agreement. Concurrent with the execution of this Agreement, the Parties are entering into a Quality Agreement, attached hereto as Attachment B. In the event of a conflict between the terms of this Agreement and the Quality Agreement, the Quality Agreement shall control solely for matters related to quality matters, and the terms and conditions of this Agreement shall control with respect to all other matters.

8.2 Changes to Specifications.

8.2.1 Without the prior written consent of BioXcel, ARx shall not modify any aspect of the Specifications, Materials, supply sources, Facilities, production batch records or any aspect of the Manufacturing Process for the Product nor alter the batch size of Products, unless otherwise agreed upon in the Quality Agreement. All such changes set forth in the immediately preceding sentence shall be in accordance with the remainder of this Section 8.2 and the change control provisions of the Quality Agreement.

8.2.2 BioXcel may request changes to the Specifications in its discretion, provided that any amendment that proposes to change the Manufacturing Process of a Product shall not be effective until agreed upon by the Parties. If ARx proposes changes to the Specifications, it shall notify BioXcel as early as practicable and the Parties shall agree on whether and when to implement such modification. The final decision on modifications of the Specifications remains solely at BioXcel's discretion. To the extent that such modifications result in an increase or decrease in the cost of Manufacturing the Products, the Parties shall jointly examine and mutually agree upon the consequences thereof and shall make appropriate adjustments to the Supply Price. ARx shall promptly notify BioXcel of the date of implementation of any modification.

8.2.3 Each Party shall notify the other promptly of any request that it receives from a Governmental Authority to change, or which would have the effect of requiring a change to, the Specifications and/or Manufacturing Process. After written approval by BioXcel,

ARx shall promptly implement any such change in the Specifications and/or Manufacturing Process that may be requested by a Governmental Authority. Any additional costs incurred by ARx due to such change shall be borne by BioXcel; provided that, ARx shall provide BioXcel with the documentation required to evidence such changes and to support their approval by Governmental Authorities.

8.3 Manufacturing at Facility. ARx shall Manufacture, or cause to be Manufactured, all Product supplied hereunder at the Facility. Manufacturing of Product may not be relocated from the Facility without BioXcel's prior written consent, unless otherwise specified in the Quality Agreement. Any such relocation of the Manufacturing of Product shall comply with Applicable Laws (including cGMPs) and shall be made in accordance with the Quality Agreement, to the extent applicable.

8.4 Audits and Inspections. Provisions covering inspections and audits of Manufacturer, including with respect to the Facility, whether by BioXcel or a Governmental Authority, are set forth in the Quality Agreement and Section 5.6.

8.5 Quality Control.

8.5.1 ARx shall perform all quality control tests (chemical and/or microbial) on the Materials and on the finished Product to ensure the quality of the Products as required by the Specifications and the Quality Agreement. Any tests required to be performed by the Specifications or the Quality Agreement, including any in-process controls for such testing, shall be agreed upon in the batch release pricing provided in Schedule 5.1, Supply Price.

8.6 Each shipment of Product hereunder shall be accompanied by (a) a certificate of analysis and the certificate of compliance certifying that Products have been Manufactured in conformity with the Specifications, and cGMP's, (b) batch records for BioXcel review and approval; and (c) any other documents as may be required by the relevant Governmental Authority of the country in which the Product will be sold.

8.6.1 The Quality Agreement further details the quality assurance obligations and responsibilities of the Parties.

8.7 Reference Standards; Retention Samples. Provisions covering ARx's obligation to store and retain appropriate samples (identified by batch number) of Product that it supplies to BioXcel, as well as analytical reference standards relating to Product, and access by BioXcel to the same are set forth in the Quality Agreement.

8.8 Stability Testing. ARx shall perform stability testing in compliance with regulatory guidance standards and requirements if, and as, set forth in the Quality Agreement. Pricing for such activity is specified in Schedule 5.1 Supply Price.

8.9 Governmental Authority Action. ARx shall promptly notify BioXcel of any information ARx receives regarding any threatened or pending action by any Governmental Authority, including any Governmental Authority non-approval or regulatory action,that may materially impact the Manufacture of Product. Upon receipt of any such information, ARx shall consult with BioXcel in an effort to arrive at a mutually acceptable procedure for taking

appropriate action; provided, however, that nothing contained herein shall be construed as restricting the right of either Party to make a timely report of such matter to any Governmental Authority or take other action that it deems to be appropriate in order to protect the safety of patients or as may be required by Applicable Laws.

8.10 Safety or Efficacy Claims. Each Party shall promptly notify the other of any information related to the Manufacture of Product hereunder of which it is aware concerning Product supplied to BioXcel hereunder that may materially affect the safety or efficacy claims or the continued marketing of the Product. Any such notification will include all related information in detail. Subject to Section 8.11, upon receipt of any such information, ARx shall consult with BioXcel in an effort to arrive at a mutually acceptable procedure for taking appropriate action; provided, however, that nothing contained herein shall be construed as restricting the right of either Party to make a timely report of such matter to any Governmental Authority or take other action that it deems to be appropriate in order to protect the safety of patients or as may be required by Applicable Laws. Each Party will notify the other immediately of any health hazards of which it becomes aware with respect to Product or Product that may adversely impact employees involved in the Manufacture of Product.

8.11 Recalls. Provisions covering voluntary and involuntary recalls, product withdrawals, field corrections, field alerts, or other related actions of the Product are set forth in the Quality Agreement and defined as a recall, removal, recovery of possession or control, withdraw or disposal of, or purposeful destruction of the Product because it is either defective or potentially harmful solely because the use or consumption thereof has resulted in bodily injury or property damage or because the use or consumption thereof posed actual or imminent danger of resulting in bodily injury or property damage or because of a Governmental Agency order ("**Recall**"). To the extent such Recall is [***].

8.12 Materials Suppliers and Subcontractors. ARx shall maintain an adequate supplier and Subcontractor management program to assess, on a risk-basis, quality of supply and assurance of supply from its suppliers of Materials that are components of, or may come in contact with, the Product. ARx management program shall include site based audits of suppliers and Subcontractors on a risk basis. Furthermore, to the extent that ARx has the rights to enforce compliance by suppliers of Materials and Subcontractors (provided that ARx shall use Commercially Reasonable Efforts to obtain such right from the suppliers of Materials and Subcontractors), BioXcel may, at its option, independently conduct audits or participate in ARx audits (including quality, safety, social responsibility and environmental) of ARx's suppliers of such Materials and Subcontractors, on a routine or for-cause basis, with ARx's reasonable approval. As a result of such audits, if necessary, BioXcel, acting reasonably, shall have the right to direct ARx to disqualify a supplier as a source of Materials or a Subcontractor, and ARx shall identify a new supplier of such Materials or a Subcontractor and replace the disqualified supplier or Subcontractor with such new supplier or Subcontractor, pursuant to the provisions set forth in Section 8.2. Regulatory strategy and cost for such replacement shall be agreed upon by the Parties in writing. Notwithstanding the foregoing, ARx shall be fully responsible for supplier selection, sourcing and testing of Materials, qualification and management of its supplier(s) of Materials and Subcontractors, and negotiating the pricing of such Materials.

9. Records; Documents for Regulatory Support.

9.1.1 Records. ARx shall prepare and maintain ARx's (or its Subcontractor's, as applicable) complete and accurate records related to the Manufacture of Product under this Agreement, which shall include Manufacturing documents, batch records, test results, reports, correspondence, memoranda, and any other similar non-financial (except for Product invoices) documentation related to the Manufacture of Product under this Agreement (collectively, the "**Records**"), in a safe place, reasonably secure from theft or destruction. ARx shall provide access to an electronic document storage system which houses all current documentation, including specifications, manufacturing, packaging, and labeling batch records, appropriate test results, certificates of analysis and conformance, stability reports, and other relevant manufacturing, testing, and batch documentation, and shall provide copies of the Records to BioXcel to review and approve prior to Product shipment. All Records shall be retained by ARx for the longer of: (i) the term specified in the Quality Agreement; or (ii) such longer period of time as required by Applicable Laws or ARx standard operating procedures. ARx shall provide BioXcel with complete and accurate copies of the appropriate documents for each Manufacturing batch, upon BioXcel's reasonable request.

9.2 Regulatory Support. ARx shall make available to BioXcel such documents and information in its possession related to the Manufacture of such Product supplied hereunder as are reasonably requested by BioXcel or any Governmental Authority and necessary for obtaining or maintaining regulatory approvals for the Product in any country in which the Products are imported, marketed, sold or offered for sale by or on behalf of BioXcel (or its Affiliate), including transfer of testing methods. In the event that any such information required to be provided by ARx pursuant to this Section 9.2 is highly confidential, ARx may provide such information directly to the requesting Governmental Authority. In the event that any documents or information referenced in this Section 9.2 are requested by a Governmental Authority in connection with obtaining or maintaining regulatory approval of the Product, ARx shall promptly provide such information, assistance and support to BioXcel as is reasonably necessary in order to satisfy such request within the timeframe designated by the relevant Governmental Authority. BioXcel shall pay for ARx's reasonable costs in providing such assistance, provided that such costs have been approved in writing by BioXcel prior to their occurrence.

9.3 Subcontractors. For clarity, ARx shall ensure that any Subcontractor performing any Manufacturing activities complies with the foregoing provisions of this Article 9.

10. Compliance With Applicable Law.

10.1 Compliance with Applicable Law. In addition to, and without limiting, compliance obligations set forth in the Quality Agreement, ARx and BioXcel shall observe and comply with, and give all notices required by, Applicable Laws in connection with its activities under this Agreement. Either party shall notify the other if it becomes aware of any noncompliance with Applicable Laws in connection with its activities under this Agreement (including debarment of ARx or BioXcel under any such Applicable Laws), and shall take all appropriate action necessary to ensure compliance with Applicable Laws in connection with its activities under this Agreement.

10.2 Export Licenses. BioXcel shall notify ARx in writing if the Product is identified on: (i) the Commodity Control List ("CCL"), maintained by the Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), as controlled by Export Administration Regulations ("EAR"); or (ii) the International Traffic of Arms Regulations ("ITAR"), maintained by the U.S. State Department. If the Product is identified on CCL, said notice shall include: (a) the applicable Export Classification Control Number ("ECCN"); (b) the license number, for export, granted to BioXcel by the BIS (if applicable); and (c) a listing of the forms, review or reporting requirements required of BioXcel for the export of the Product. If the Product is identified on ITAR, said notice shall include: (1) the category of the Product from the United States Munitions List (22 CFR Part 121); (2) the license number, for export, granted to BioXcel by the Directorate of Defense Trade Controls ("DDTC") (if applicable); and (3) a listing of the forms, applications, licenses and other similar documentation required of BioXcel for export of the subject Product. BioXcel shall be responsible for obtaining the appropriate export licenses for the Product.

10.3 Safety; Waste. In connection with the Manufacture of Product hereunder, ARx shall be solely responsible for maintaining safety procedures in connection with the Manufacture of Product and for the generation, treatment, storage and/or disposal of Waste relating thereto, all of which shall comply with all applicable environmental and occupational safety and health requirements in the jurisdiction of the Facility.

10.4 Excluded Entities.

ARx represents and warrants that, as of the date of this Agreement, neither: it, nor any of its Affiliates nor any of their respective officers, or directors, or any of its (or their) employees, agents or personnel performing (or having performed) activities under this Agreement or the Work Plan (collectively, "**ARx Representatives**"), has been the subject of on actual or threatened Violation. ARx shall notify BioXcel in writing immediately if any such Violation occurs or comes to its attention. If a Violation exists with respect to ARx or any of its Affiliates or any of their respective ARx Representatives, ARx shall promptly remove such individual(s) or entities from performing any service, function or capacity related to the Manufacture of Product.

BioXcel represents and warrants that, as of the date of this Agreement, neither it, nor any of its Affiliates, nor any of their respective officers, directors, or any of its (or their) employees, agents or personnel performing (or having performed) activities under this Agreement or the Work Plan (collectively, "**BioXcel Representatives**"), has been the subject of an actual or threatened Violation. BioXcel shall notify ARx in writing immediately if any such Violation occurs or comes to its attention. If a Violation exists with respect to BioXcel or any of its Affiliates, or any of their respective BioXcel Representatives, BioXcel shall promptly remove such individual(s) or entities from performing any service, function or capacity relating to this Agreement.

11. Indemnification; Damages.

11.1 ARx Indemnification. [***] ARx shall protect, defend, indemnify, and hold harmless BioXcel, its Affiliates and its and their respective officers, directors, employees, and agents, and their respective successors and permitted assigns ("**BioXcel Indemnitees**") from and against any and all Third Party Damages [***]; in each case, except to the extent such Third Party

Damages or Third Party Claims result from a circumstance for which BioXcel was also involved or is obligated to indemnify ARx pursuant to Section 11.2.

11.2 BioXcel Indemnification. BioXcel shall protect, defend, indemnify, and hold harmless ARx, its Affiliates and its and their respective officers, directors, employees, and agents, and their respective successors and permitted assigns ("**ARx Indemnitees**") from and against any and all Third Party Damages from Third Party Claims occurring, growing out of, incident to, or resulting from: [***] in each case, except to the extent such Third Party Damages or Third Party Claims result from a circumstance for which ARx is obligated to indemnify BioXcel pursuant to Section 11.1.

11.3 Indemnification Procedures. The indemnified Party will notify the indemnifying Party of any demand by the indemnified Party for indemnification from the indemnifying Party that is based on any Third Party Claim, but the indemnified Party's failure to provide or delay in providing that notice or those copies will not release the indemnifying Party from its obligations under Section 11.1 or 11.2, as applicable, except to the extent that the failure or delay materially prejudices the indemnifying Party. The indemnifying Party has the exclusive right to conduct the defense of any such Third Party Claim and any negotiations for its settlement, except that: (i) the indemnifying Party may not enter into any compromise or settlement unless the indemnified Party consents to such compromise or settlement, which consent shall not be unreasonably withheld or delayed, and which consent shall be deemed to be given with respect to any settlement that does not adversely affect the indemnified Party's rights hereunder or impose any obligations on the indemnified Party in addition to those set forth herein in order for it to exercise such rights; (ii) the indemnified Party may participate at its expense in the indemnifying Party's defense of or settlement negotiations for any Third Party Claim with counsel of the indemnified Party's own selection; and (iii) the indemnified Party may, at its option and the indemnifying Party's expense, and on prior written notice to the indemnifying Party, conduct the defense of and any settlement negotiations for any Third Party Claim in place of the indemnifying Party if the indemnifying Party fails to promptly defend the Third Party Claim as required in this Article 11.

11.4 Damages. [***] IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES OR ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES OR ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OR INDIRECT OR CONSEQUENTIAL LOSSES, OR FOR ANY LOSS OF REVENUES OR LOST PROFITS, IN EACH CASE OF ANY KIND, NATURE OR DESCRIPTION WHATSOEVER, SUFFERED OR INCURRED BY SUCH PARTY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE QUALITY AGREEMENT OR ANY AGREEMENT ENTERED INTO IN CONNECTION WITH EITHER OF THE FOREGOING, OR AS A RESULT OF ANY ACTIVITIES HEREUNDER, REGARDLESS OF WHETHER ARISING FROM BREACH OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE OR IF SUCH LOSS OR DAMAGE COULD HAVE BEEN REASONABLY FORESEEN.

11.5 Liability Cap. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE TOTAL AND AGGREGATE LIABILITY OF ARX (AND ITS AFFILIATES) ARISING OUT OF, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT (INCLUDING, FOR CLARITY, THE QUALITY AGREEMENT) (INCLUDING BREACH OF CONTRACT, TORT, OR OTHERWISE) SHALL NOT EXCEED [***]; PROVIDED, HOWEVER, THAT AS TO [***].

12. Agreement Term.

12.1 Term. This Agreement shall commence on the Effective Date and shall continue in full force and effect until the ten (10) year anniversary of the Effective Date, unless earlier terminated pursuant to Section 12.2 or mutually terminated by the Parties in writing (the "**Initial Term**"). After the Initial Term, the Agreement will automatically renew for successive (1) year periods, so long as Product is still being marketed or sold, or unless terminated earlier as provided for in this Agreement (such renewal term, together with the Initial Term, the "**Term**").

12.2 Termination.

At Will. BioXcel shall have the right to terminate this Agreement upon [***] written notice to ARx, if the Product is no longer being marketed or sold by or on behalf of BioXcel (including any Affiliate or their respective (sub)licensees) or assignee of this Agreement.

Breach. If either Party shall materially breach this Agreement the non-breaching Party may give written notice to the other Party, specifying the nature of the material breach and, if such material breach is not remedied within [***] or reasonably addressed, to the non-breaching Party's reasonable satisfaction, within an additional [***] period (with the breaching Party providing the non-breaching Party notice within the initial [***] period that includes an updated timeline and justification as to why the breach cannot be remedied within the initial [***]) of receipt of such notice, then the non-breaching Party shall have the right, in its sole discretion, to immediately terminate this Agreement upon written notice to the breaching Party. For clarity, a breach by ARx of Section 3.2 shall constitute a material breach of this Agreement.

Bankruptcy. This Agreement may be terminated by written notice given by a Party upon the occurrence of any of the following with respect the other Party: (i) such other Party becomes insolvent; or (ii) voluntary or involuntary proceedings by or against such other Party are instituted in bankruptcy or under any insolvency law, which proceedings, if involuntary, shall not have been dismissed within [***] after the date of filing; or (iii) a receiver or custodian is appointed for such other Party, or proceedings are instituted by or against such other Party for corporate reorganization or the dissolution of such other Party, which proceedings, if involuntary, shall not have been dismissed within [***] after the date of filing; or (iv) such other Party makes an assignment of substantially all of its assets for the benefit of its creditors, or substantially all of the assets of such other Party are seized or attached and not released within [***] thereafter. All licenses granted under or pursuant to this Agreement by a Party to the other are and will otherwise be deemed to be, for purposes of Section 365(n) of Title 11, United States Code, as amended, or analogous provisions of Applicable Law outside the United States (the "**Bankruptcy Code**"), licenses of right to "intellectual property" as defined under Section 101 of the Bankruptcy Code. The Parties agree that the Parties and their respective sublicensees, as sublicensees of such rights

under this Agreement, will retain and may fully exercise all of their rights and elections under the Bankruptcy Code and any foreign counterpart thereto. The Parties further agree that upon commencement of a bankruptcy proceeding by or against a Party (the "**Bankrupt Party**") under the Bankruptcy Code, the other Party (the "**Non-Bankrupt Party**") will be entitled to a complete duplicate of, or complete access to (as the Non-Bankrupt Party deems appropriate), all such intellectual property and all embodiments of such intellectual property. Such intellectual property and all embodiments of such intellectual property will be promptly delivered to the Non-Bankrupt Party (a) upon any such commencement of a bankruptcy proceeding and upon written request by the Non-Bankrupt Party, unless the Bankrupt Party elects to continue to perform all of its obligations under this Agreement, or (b) if not delivered under clause (a) above, upon the rejection of this Agreement by or on behalf of the Bankrupt Party and upon written request by the Non-Bankrupt Party. The Bankrupt Party (in any capacity, including debtor in possession) and its successors and assigns (including any trustee) agree not to interfere with the exercise by the Non-Bankrupt Party or its Affiliates of its rights and licenses to such intellectual property and such embodiments of intellectual property in accordance with this Agreement, and agrees to assist the Non-Bankrupt Party and its Affiliates in obtaining such intellectual property and such embodiments of intellectual property in the possession or Control of Third Parties as are reasonably necessary or desirable for the Non-Bankrupt Party to exercise such rights and licenses in accordance with this Agreement. The foregoing provisions are without prejudice to any rights the Non-Bankrupt Party may have arising under the Bankruptcy Code or other Applicable Laws.

12.3 Consequences of Expiration and Termination.

Outstanding Orders in the event of Termination. In the event that this Agreement is terminated, then ARx shall, upon BioXcel's request, fulfill, any or all Orders for Products submitted by BioXcel prior to the effective date of termination, in accordance with the terms of this Agreement, and BioXcel shall pay the Supply Price for the quantities of Product supplied thereunder (provided that such Product complies with this Agreement, including meeting the warranties set forth in this Agreement). If BioXcel elects not to receive any Confirmed Orders, then, other than in the event of termination by BioXcel pursuant to Section 12.2.2 or 12.2.3, ARx shall invoice BioXcel for the Supply Price for the quantities of Product set forth in Confirmed Orders placed prior to the effective date of termination.

Materials in Termination or Expiration.

With respect to Materials other than BioXcel Supplied Materials, the following shall apply: [***]

With respect to BioXcel Supplied Materials, upon the expiration or termination of this Agreement, at BioXcel's request and cost, ARx shall promptly return to BioXcel any remaining inventory of BioXcel Supplied Materials. BioXcel shall specify the location to which delivery is to be made.

For clarity, the foregoing provisions of this Section 12.3.2 shall not apply to the extent that Materials are needed to Manufacture Product as set forth in Section 12.3.1.

(i) The Parties shall enter into a supply agreement for the supply and manufacture by ARx of any Materials that are manufactured exclusively by ARx or any of its Affiliates, to the extent such Materials are (A) not commercially available and (B) are necessary to manufacture the Product. The Parties shall use commercially reasonable efforts to enter into such supply agreement within [***] after the effective date of termination of this Agreement.

12.3.2 Termination Assistance. ARx shall, upon BioXcel's request during the Termination Assistance Period provide the Termination Assistance for an agreed upon cost to BioXcel.

12.3.3 Technical Transfer. Upon BioXcel's request within [***] after termination for ARx's breach, ARx shall conduct a full technical transfer to BioXcel, or its designee, in order to allow BioXcel or its designee (as applicable) to Manufacture Product. Such technical transfer shall include the provision of copies of the physical embodiment of all processes, protocols, procedures, methods, tests and other know-how owned or controlled by ARx, in each case, necessary to Manufacture or have Manufactured Product (including, for clarity, all ARx Background IP, ARx Work Plan IP and ARx Developed IP relating to the then-current Manufacturing Process for the Product) (collectively, the "**ARx Manufacturing Technology**"). In addition, ARx shall make available to BioXcel (and/or its designees), on a mutually convenient timetable, reasonable technical assistance with respect to the use of such information to enable BioXcel to Manufacture Product for itself or through a third party manufacturer, which assistance may include in-person meetings. Notwithstanding the foregoing, any such data, know-how, technology, or information that is Confidential Information shall continue to be Confidential Information under this Agreement, but may be disclosed by BioXcel to bona fide third party manufacturers (and those employees, agents, consultants, and subcontractors of such third party manufacturers who "need to know" such Confidential Information for the sole purpose of manufacturing the Product) pursuant to a written agreement containing confidentiality and non-use provisions no less restrictive than those set forth herein, with written approval from ARx (not be unreasonably withheld) of such Confidential Information to be shared. In consideration for the technical transfer and assistance pursuant to this Section 12.3.4, and the right to Manufacture or have Manufactured Product using ARx Manufacturing Technology per Section 3.3.1, BioXcel shall pay ARx the amount specified in Schedule 5.1 on a per-unit basis for commercial sales of Product Manufactured using the ARx Manufacturing Technology.

12.4 Payment of Outstanding Amounts; Accrued Rights: No Further Liabilities. Upon expiration or termination of this Agreement, BioXcel and ARx shall immediately settle all outstanding invoices and other monies owed to the other pursuant to this Agreement. The termination or expiration of this Agreement shall not affect the rights and obligations of the Parties accruing prior to such termination or expiration. Subject to the foregoing, expiration or termination of this Agreement shall relieve and release all Parties from any liabilities and obligations under this Agreement, other than those specifically set forth in this Section 12.4, those that survive termination in accordance with Section 12.5, and any and all obligations of indemnification in accordance with Article 11.

12.5 Survival. The terms, provisions, representations and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by either Party or both Parties hereunder, including Articles 1, 9, 11, 13, 15, and 16 and Sections

2.1, 3.5.5, 5.3, 5.5, 7.4, 12.2.3, 12.3, 12.4, 14.2, 14.3, 14.4, 14.5 (except in the event of termination by ARx pursuant to Section 12.2 or by BioXcel pursuant to Section 12.2.1), 14.6 (except as to Licensed Patents in the event of termination by ARx pursuant to Section 12.2 or by BioXcel pursuant to Section 12.2.1), 14.7 and this 12.5 shall so survive the completion of performance, expiration or termination of this Agreement.

13. Insurance. [***]

14. Intellectual Property Matters.

14.1 **Invention Disclosure and Record-Keeping.**

14.1.1 Each Party shall disclose to the other Party all Developed Intellectual Property, including copies of all invention disclosures and other similar documents created in the ordinary course of its business that disclose any conception or reduction to practice of any Intellectual Property constituting Developed Intellectual Property. A party shall make all such disclosures to the other party at least thirty (30) Business Days before any public disclosure of such Intellectual Property or any required submission to government agencies in compliance with the requirements of government supported research.

14.1.2 Each Party shall maintain contemporaneous, complete, and accurate written records of its Representatives' activities concerning Developed Intellectual Property that provide proof of the conception date and reduction to practice date of any Developed Intellectual Property for which the party's Representative claims inventorship status.

14.2 **Background IP**. All Intellectual Property rights that are (a) owned or controlled by either Party as of the Effective Date, or (b) invented or developed independently by either Party outside the scope of this Agreement or the Work Plan, and without using any of the other Party's Confidential Information or Intellectual Property (with respect to each Party, such Intellectual Property in (a) and (b) shall be deemed its "**Background IP**") shall remain under the ownership or control of such Party throughout the Term and thereafter. For clarity, ARx's Background IP shall be deemed "**ARx Background IP**", and BioXcel's Background IP shall be deemed "**BioXcel Background IP**".

14.3 **Intellectual Property under Work Plan; Additional Product Formulation IP**.

14.3.1 All Intellectual Property owned by BioXcel pursuant to Section 9(a) of the Work Plan, as amended per Section 2.1.3, shall be deemed "**BioXcel Work Plan IP**".

14.3.2 All Intellectual Property owned by ARx pursuant to Section 9(b) of the Work Plan, as amended per Section 2.1.4, other than any Additional Product Formulation IP, shall be deemed "**ARx Work Plan IP**".

14.3.3 The Parties understand and agree that the Intellectual Property owned by ARx pursuant to the Work Plan may include formulations of the Product other than the Clinical Trial Formulation (as defined in the Work Plan, and as further amended by Section 2.1.3) and the Filed Product Formulation (as defined in the Work Plan) (such formulations, the

"**Additional Product Formulations**"; such intellectual property, the "**Additional Product Formulation IP**"). ARx shall own all Additional Product Formulation IP.

14.4 Ownership of Inventions.

14.4.1 ARx Developed IP. ARx shall own any Developed Intellectual Property that constitutes an improvement to any ARx Background IP, to the extent such Intellectual Property (i) is generally applicable to ARx's business and was not made exclusively for BioXcel, (ii) is not specific to the Deliverables or the Product (except to the extent related to the process development and Manufacturing Process for the Product) and (iii) was not made using, is not based on and does not incorporate, any BioXcel Background IP or BioXcel Confidential Information (collectively, "**ARx Developed IP**"); provided, that ARx shall own new formulations or compositions of film products, including any and all inactive backing layers, that are used to administer compounds, other than any new formulations or compositions comprising the Product). BioXcel hereby assigns, and shall cause its Affiliates, and its and their employees, contractors or personnel to assign, all right, title and interest in and to the ARx Developed IP to ARx. BioXcel agrees to assist ARx in securing for ARx any patents, if requested by ARx, copyrights or other proprietary rights in such ARx Developed IP, and to perform all acts that may be reasonably required to vest in ARx all right, title and interest in such ARx Developed IP, and BioXcel shall be compensated at its standard rates for such time of BioXcel employees spent on such assistance and reimbursed for its reasonable out-of-pocket expenses incurred to provide such assistance requested by ARx. For clarity, ARx Developed IP excludes ARx Work Plan IP.

14.4.2 BioXcel Developed IP. BioXcel shall own all Developed Intellectual Property other than ARx Developed IP (which BioXcel Developed IP, for clarity, shall include any Intellectual Property that is (a) related to the Products (including any new formulations or compositions of Products and all Intellectual Property Rights in and to the foregoing, but excluding any Intellectual Property related to aspects of the process development and Manufacturing Process for the Product) or (b) otherwise based on, uses or incorporates any BioXcel Confidential Information or BioXcel Background IP (collectively, "**BioXcel Developed IP**"). ARx hereby assigns, and shall cause its Affiliates, and its and their employees, contractors or personnel to assign, all right, title and interest in and to the BioXcel Developed IP to BioXcel. ARx agrees to assist BioXcel in securing for BioXcel any patents, copyrights or other proprietary rights in such BioXcel Developed IP, and to perform all acts that may be reasonably required to vest in BioXcel all right, title and interest in such BioXcel Developed IP, and ARx shall be compensated at its standard rates for such time of ARx employees spent on such assistance and reimbursed for its reasonable out-of-pocket expenses incurred to provide such assistance requested by BioXcel. For clarity, BioXcel Developed IP excludes BioXcel Work Plan IP.

14.5 **License of Intellectual Property.**

14.5.1 License to BioXcel.

(a) ARx hereby grants BioXcel an exclusive (even as to ARx (subject to ARx' continued right and obligation to manufacture Product as provided for under this Agreement)), royalty-bearing (in accordance with Sections 3.3.2 and 12.3.4), perpetual, transferable, worldwide license (with the right to grant and authorize sublicenses through multiple tiers) under the

Additional Product Formulation IP, ARx Developed IP, ARx Work Plan IP and ARx Background IP, to make or have made the Product solely in accordance with Section 3.3.2 and 12.3.4.

(b) ARx hereby grants BioXcel an exclusive (even as to ARx), royalty-bearing (in accordance with Sections 3.3.2 and 12.3.4), perpetual, transferable, worldwide license (with the right to grant and authorize sublicenses through multiple tiers) under the Additional Product Formulation IP, the ARx Background IP, ARx Work Plan IP and ARx Developed IP, to use (including to clinically develop the Product in the Permitted Field), import, offer for sale, sell, have sold, commercialize (including marketing), have commercialized and otherwise exploit (including, for clarity, for all regulatory (including filings) purposes related to the Product) the Deliverables or Product. For clarity, BioXcel acknowledges and agrees that ARx shall retain the right to use the Additional Product Formulation IP for the exploitation of products other than the Deliverables, or Product.

ARx will not knowingly incorporate any invention, improvement, development, concept, discovery, work of authorship or other proprietary information owned by any Third Party into any Product without BioXcel's prior written permission.

14.5.2 License to ARx. BioXcel hereby grants ARx a non-exclusive, royalty-free, non-transferable, non-sublicenseable, worldwide license under the BioXcel Background IP, BioXcel Work Plan IP and BioXcel Developed IP, to the extent required for ARx to Manufacture the Product during the Term in accordance with this Agreement.

14.5.3 No Implied License. Except as expressly set forth herein, nothing in this Agreement shall be construed to transfer to either Party any patent right, copyright, trademark right, or other proprietary right of the other Party. For avoidance of doubt, BioXcel shall retain all right, title, and interest in and to the Product and any intellectual property rights therein.

14.5.4 Developed Intellectual Property Ownership Disputes. The Parties shall use commercially reasonable efforts to address all issues concerning the inventorship or ownership of, or any rights to, Developed Intellectual Property in a fair and equitable manner and in accordance with the requirements of U.S. patent law to achieve the goals of this Agreement.

14.5.5. License and Ownership Summary. The Parties agree that Schedule 14 sets forth the ownership and license rights for the subject matter contained thereon.

14.6 ARx Licensed Patents.

14.6.1 For purposes of this Section 14.6, the following capitalized terms shall have the meanings set forth below:

"ARx Licensed Patents" means: (a) the patents and patent applications listed in Schedule 14.6.1(i); (b) any and all patents issuing or claiming priority from any of the patents and patent applications listed in Schedule 14.6.1(i), including any continuations, continuations-in-part, divisionals, renewals, reexaminations, reissues, extensions, substitutions, confirmations, registrations, revalidations, revisions and additions thereof; (c) foreign counterparts of the patents and patent applications described in clauses (a)-(b);

"Field of Use" means any and all uses;

"Joint Patents" means ARx's interest in: (a) the patents and patent applications listed in Schedule 14.6.1(iii); (b) any and all patents issuing or claiming priority from any of the patents and patent applications listed in Schedule 14.6.1(iii), including any continuations, continuations-in-part, divisionals, renewals, reexaminations, reissues, extensions, substitutions, confirmations, registrations, revalidations, revisions and additions thereof; (c) foreign counterparts of the patents and patent applications described in clauses (a)-(b);

"Licensed Patents" means, collectively, (A) the ARx Licensed Patents, and (B) the Joint Patents;

"Territory" means worldwide;

(i) "**Valid Claim**" means (a) a claim in an issued and unexpired patent included in a Licensed Patents that: (i) has not been held unenforceable, unpatentable or invalid by a decision of a court or other governmental agency of competent jurisdiction, and not subject to appeal, (i) has not been admitted to be invalid or unenforceable through reissue or disclaimer or otherwise, (iii) has not been lost through an interference, reexamination, or reissue proceeding; or (b) a pending claim of a pending patent application included in the Licensed Patents.

Prosecution of ARx Licensed Patents.

ARx will be responsible for the preparation, filing, prosecution, and maintenance (collectively, "**Prosecution**") of the ARx Licensed Patents during the Term, at ARx's sole cost and expense. ARx will use diligent efforts to conduct Prosecution of the ARx Licensed Patents and shall keep BioXcel reasonably informed of the status of the ARx Licensed Patents in the Territory.

Upon BioXcel's request from time to time, ARx shall provide BioXcel reasonable opportunity to review and comment on its Prosecution efforts regarding the ARx Licensed Patents, which shall include review of material communications and drafts of material filings or responses to be made to such patent authorities, in connection with the ARx Licensed Patents, provided that such disclosure does not impact attorney client privilege. ARx shall consider in good faith comments thereto provided by BioXcel in connection with the Prosecution of the ARx Licensed Patents. At BioXcel's reasonable request from time to time, ARx shall file and prosecute continuations and similar extensions of the ARx Licensed Patents with such claims and responses as prepared by BioXcel, at BioXcel's cost and expense. ARx shall not permit any of the ARx Licensed Patents to be lapsed or abandoned without first providing a written notice to BioXcel at least [***] prior to any pending lapse or abandonment thereof. BioXcel shall thereafter have the right (but not the obligation) to assume responsibility for the Prosecution of such ARx Licensed Patents, at BioXcel's cost and expense, by providing written notice to ARx.

As between the Parties, BioXcel will have the first right, but not the obligation for the Prosecution of the Joint Patents, at its sole cost and expense; provided that, BioXcel shall provide ARx on request with a reasonable opportunity to review and comment on its Prosecution efforts and shall consider in good faith comments thereto provided by ARx in connection therewith. BioXcel shall not permit any of the Joint Patents to be lapsed or abandoned without first providing a written

notice to ARx at least [***] prior to any pending lapse or abandonment thereof. ARx shall thereafter have the right (but not the obligation) to assume responsibility for the Prosecution of such Joint Patents, at ARx's cost and expense, by providing written notice to BioXcel.

Each Party shall provide the other Party with all reasonable assistance and cooperation, at the other Party's request and expense, in the patent Prosecution efforts provided above, including providing any necessary powers of attorney and executing any other required documents or instruments for such Prosecution.

Enforcement of ARx Licensed Patents and Joint Patents.

Each Party will promptly notify the other Party if it becomes aware of any known or suspected infringement of any Licensed Patent or Joint Patent or any related declaratory judgment, opposition or similar action alleging the invalidity, unenforceability or non-infringement of any of the ARx Licensed Patents or Joint Patents in the Territory (collectively, "**Infringement**"). Such notice will include the identity of the party or parties known or suspected to have infringed the Licensed Patent or Joint Patent and any available information that is relevant to such Infringement.

BioXcel will have the first right, but not the obligation, to bring and control the enforcement and defense of the ARx Licensed Patents and the Joint Patents with respect to any Infringement resulting from a third party's use, manufacture or sale of a Product or a product that competes with the Product in the Field of Use, or filing of an application for regulatory approval to perform those acts, in the Territory ("**Product Infringement**"), as BioXcel reasonably determines appropriate. If (i) BioXcel notifies ARx that it does not intend to commence or assert any claim (including counterclaims), suit, or action (an "**Action**") against such Product Infringement, or (ii) BioXcel does not institute any Action against such Product Infringement within [***] after having been made aware of such Product Infringement, then in each case of (i) and (ii), ARx shall have the right, but not the obligation, to commence such Action, at ARx's cost and expense; provided, that, with respect to the Joint Patents, if BioXcel has a good faith belief that the institution of any Action with respect to a Joint Patent would be reasonably likely to result in a material adverse impact on the commercialization of the Product by or on behalf of BioXcel, then, BioXcel shall inform ARx of such belief and the rationale for such belief and ARx shall refrain from instituting such an Action with respect to such Joint Patent.

Each Party shall provide to the Party bringing an Action under this Section 14.6.3 (the "**Enforcing Party**") with reasonable assistance in such enforcement, at such Enforcing Party's request and expense, including joining such action as a party plaintiff if required by applicable laws to pursue such action. The Enforcing Party shall keep the other Party regularly informed of the status and progress of such enforcement efforts, and shall reasonably consider the other Party's comments on any such efforts. The non-enforcing Party shall be entitled to separate representation in such matter by counsel of its own choice and at its own expense, but such Party shall at all times cooperate fully with the Enforcing Party.

The Enforcing Party shall be solely responsible for any expenses it incurs as a result of such enforcement action. If the Enforcing Party recovers monetary damages in such Action brought under this Section 14.6.3, such recovery shall be allocated first to the reimbursement of any

documented expenses incurred by the Parties in such enforcement action, and any remaining amounts shall be shared by the Parties as follows: [***].

ARx will have the sole right to enforce all ARx Licensed Patents in connection with any Infringement that is not a Product Infringement, at ARx's sole cost and expense, and shall retain all recoveries with respect thereto.

For clarity, if BioXcel is the Enforcing Party and brings an Action against a Third Party for Product Infringement, as well as Infringement of Joint Patents or any other Intellectual Property owned or controlled by BioXcel, such recoveries shall, to the extent not specifically apportioned in the award of damages in such Action, be reasonably apportioned by BioXcel amongst the ARx Licensed Patents, Joint Patents and any other applicable Intellectual Property owned or controlled by BioXcel.

14.7 Use Outside of Permitted Field. Notwithstanding anything contained in this Agreement to the contrary, BioXcel hereby agrees that it shall not, directly or indirectly, develop, have developed, use, import, offer for sale, sell, have sold, commercialize (including marketing), have commercialized and otherwise exploit (including, for clarity, for all regulatory (including filings) purposes related to the Product) the Deliverables or Product for use outside of the Permitted Field without the prior written consent of ARx.

15. Confidentiality and Publicity.

15.1 Disclosure of Confidential Information. The Receiving Party shall retain in strict confidence all Confidential Information of the Disclosing Party and will protect such information against unauthorized use and disclosure to Third Parties with at least the same degree of care as the Receiving Party uses for its own similar information, but in no event less than a reasonable degree of care. The Receiving Party shall not use the Confidential Information of the Disclosing Party for any purpose other than as expressly permitted under this Agreement in connection with the performance of its obligations or exercise of its rights hereunder.

15.2 Permitted Disclosures.

Notwithstanding Section 15.1, Receiving Party shall be permitted to disclose Confidential Information of the Disclosing Party, if such Confidential Information:

is disclosed by BioXcel (or its Affiliates) to a Governmental Authority in order to maintain or obtain approval to Manufacture and/or market Product or Product, but such disclosure may be only to the extent reasonably necessary to obtain such authorizations;

is disclosed by the Receiving Party (or its Affiliates) to its or their employees, agent(s), consultant(s), and/or other Third Parties (upon written approval of the Disclosing Party, not to be unreasonably withheld) who have a need to know such information in connection with the performance of obligations of the Receiving Party or the exercise of rights granted to the Receiving Party under this Agreement; provided that, such persons agree to be bound by confidentiality and non-use obligations that substantially are no less stringent than those confidentiality and non-use provisions contained in this Agreement;

is deemed necessary by counsel to the Receiving Party to be disclosed to such Party's attorneys, independent accountants or financial advisors for the sole purpose of enabling such attorneys, independent accountants or financial advisors to provide advice to the Receiving Party, on the condition that such attorneys, independent accountants and financial advisors agree to be bound by confidentiality and non-use obligations that substantially are no less stringent than those confidentiality and non-use provisions contained in this Agreement; or

is disclosed by the Receiving Party with notification to Disclosing Party, to its bona fide prospective or actual licensees, investors, acquirors, or other financial or commercial partners solely for the purpose of evaluating potential investment in such Party, provided that such Third Parties agrees to be bound by confidentiality and non-use obligations that substantially are no less stringent than those confidentiality and non-use provisions contained in this Agreement.

In addition, if Receiving Party is required by judicial or administrative process or Applicable Law to disclose Confidential Information that is subject to the non-disclosure provisions of Section 15.1, such Party shall promptly inform the Disclosing Party of the disclosure that is being sought in order to provide the Disclosing Party an opportunity to challenge or limit the disclosure obligations. Confidential Information that is disclosed by judicial or administrative process or as required by Applicable Law shall remain otherwise subject to the confidentiality and non-use provisions of Section 15.1, and the Party disclosing Confidential Information pursuant to law or court order or as required by Applicable Law shall take all steps reasonably necessary, including obtaining an order of confidentiality, to ensure the continued confidential treatment of such Confidential Information and take measures to minimize of the extent of Confidential Information disclosed.

15.3 Return of Confidential Information. Upon the written request of the Disclosing Party, the receiving Party shall immediately either return to the Disclosing Party, or destroy, all Confidential Information of the Disclosing Party, in accordance with the instructions of the disclosing Party, including all notes, summaries, and translations that have been made regarding such Confidential Information, and all copies of the foregoing. In the event destruction is requested by the Disclosing Party, the Receiving Party shall certify such destruction in writing. Notwithstanding the foregoing, the Receiving Party may retain a copy for purposes of exercising any licenses under this Agreement (including any licenses that survive the termination or expiration of this Agreement) and may archive one (1) copy of Confidential Information for purposes of demonstrating its compliance with this Agreement and for regulatory purposes, subject to confidentiality requirements of this Agreement. The Receiving Party shall not be obligated to erase Confidential Information maintained in an archived computer system back up in accordance with its security and/or disaster recovery procedures.

15.4 Publicity. Except as otherwise required by Applicable Laws or by judicial or administrative process (or as otherwise agreed to by the other Party in writing), each Party agrees not to: (i) advertise or otherwise make known to Third Parties any information regarding this Agreement (including, for clarity, the terms of this Agreement); or (ii) use or reference in any advertising, press release, interview, presentation to prospective clients, article, promotional material, or other communication, in connection with this Agreement, any company or representative name, endorsement, direct or indirect quote, code, drawing, logo, trademark, specification, or picture of the other Party without the prior written consent of such other Party,

which consent may be withheld at such other Party's discretion; provided, that in the event Applicable Laws or judicial or administrative process requires such disclosure, use or reference, such Party shall promptly notify the other Party and allow such other Party a reasonable time and opportunity to oppose such process before making such disclosure, use or reference. Notwithstanding the foregoing, BioXcel shall have the right to use ARx's name in order to identify ARx as the manufacturer of Product as may be required by Applicable Laws or as may otherwise be reasonably necessary in connection with obtaining and maintaining regulatory approvals for Product or as may otherwise be reasonably necessary in connection with marketing and sale of Product (*e.g.*, listing ARx as the manufacturer of Product on the packaging, if required); provided that, BioXcel shall follow all reasonable instructions and guidelines of ARx in connection with the use of its name (and any other of its trademarks or trade dress as applicable), and if ARx reasonably objects to the manner in which its name (or any other of its trademarks or trade dress as applicable) is being used, BioXcel shall cease the use thereof in such manner upon written notice from ARx thereof.

16. Miscellaneous Provisions.

16.1 Independent Contractor. It is expressly agreed that ARx and BioXcel are and shall remain independent contractors and that the relationship between the Parties shall not constitute a partnership, joint venture or agency. Neither ARx nor BioXcel shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior written consent of the other Party. Each Party shall bear its own costs incurred in the performance of its obligations hereunder without charge or expense to the other except as expressly provided in this Agreement.

16.2 Use of Affiliates. Each Party shall have the right to exercise its rights and perform its obligations under this Agreement either itself or through any of its Affiliates, provided that such Party shall remain solely responsible for the acts, omissions and performance of such Affiliate as if such acts, omissions and performance had been provided by such Party itself under this Agreement. In addition, in each case where a Party's Affiliate has an obligation pursuant to this Agreement or performs an obligation pursuant to this Agreement: (i) such Party shall cause and compel such Affiliate to perform such obligation and comply with the terms of this Agreement; and (ii) any breach of the terms or conditions of this Agreement by such Affiliate shall be deemed a breach by such Party of such terms or conditions.

16.3 Force Majeure. No Party shall be liable for a failure or delay in performing any of its obligations under this Agreement (except for the payment of money) if, but only to the extent that, such failure or delay is due to causes beyond the reasonable control of the affected Party, including: (i) acts of God; (ii) fire or explosion (except to the extent caused by the negligence or willful misconduct of the affected Party); (iii) unusually severe weather; (iv) war, invasion, riot or other civil unrest; (v) governmental laws, orders, restrictions, actions, embargoes, or blockages; (vi) national or regional emergency; (vii) injunctions, strikes, lockouts, labor trouble, or other industrial disturbances; (viii) pandemic or disease; and (ix) shortage of supply of non-commodity materials on a global basis (each, a "**Force Majeure Event**"); provided that the Party affected shall promptly notify the other of the Force Majeure Event and shall exert reasonable efforts to eliminate, cure, or overcome any such causes and to resume performance of its obligations as soon as practicable.

16.4 Dispute Resolution.

Disputes. The Parties hereby agree that the dispute between the Parties shall first be referred to a senior executive of each Party (the "**Representatives**"). If any such matter has not been resolved within [***] of such referral to the Representatives either Party may invoke the provisions of Section 16.4.2 for such dispute. No dispute resolution procedure set forth in this Agreement shall be construed as an agreement to arbitrate under any federal or state arbitration law, including but not limited to the Federal Arbitration Act, and shall not deprive a court of competent jurisdiction from resolving any dispute arising under, or related to, this Agreement.

Jurisdiction; Venue. Any legal action or other proceeding (including arbitration) to resolve any dispute, controversy or claim arising out of, in connection with or related to this Agreement or its subject matter or formation will take place in the state or federal court(s) sitting in and for the State of Delaware. Each Party expressly consents to the exclusive personal jurisdiction and venue of such courts for the purpose of any such legal action or other proceeding. The Parties further expressly waive any defenses of lack of personal jurisdiction, venue, or forum non conveniens.

Expenses. All expenses and fees of the arbitrators and expenses for hearing facilities and other expenses of the arbitration shall be borne equally by the Parties to the dispute unless the Parties agree otherwise in writing or unless the arbitrators in the award assess such expenses against one of the Parties or allocate such expenses other than equally between the Parties to the dispute Each of the Parties shall bear its own counsel fees and the expenses of its witnesses except (a) to the extent otherwise provided in this Agreement or by Applicable Law or (b) to the extent the arbitrators in their discretion determine for any reason to allocate such fees and expenses among the Parties in a different manner.

Injunctive Relief. Notwithstanding anything to the contrary in this Agreement, either Party will have the right to seek injunctive relief in the state or federal courts located in the State of New York as may be available to such Party under the laws and rules applicable in such jurisdiction with respect to any matters arising out of the other Party's performance of its obligations, or the observance of restrictions upon it, under this Agreement. For the avoidance of doubt, either Party may pursue such relief in the event of a breach of the other Party's obligations of confidentiality pursuant to Section 15.1, or, in the case of BioXcel, ARx's breach of Section 3.2.

16.5 Governing Law; Jurisdiction.

This Agreement shall be construed and governed under and in accordance with the laws of the State of Delaware, without giving effect to the principle of conflict of laws thereof.

16.6 No Waiver. Any Party's failure to enforce any of the terms or conditions herein or to exercise any right or privilege pursuant hereto, or any Party's waiver of any breach under this Agreement, shall not be construed to be a waiver of any other terms, conditions, or privileges, whether of a similar or different type.

16.7 Assignment.

ARx shall not assign this Agreement, in whole or in part, to any person or entity (including by operation of law, judicial process or otherwise) without the prior written consent of BioXcel, which consent may be withheld for any reason or without reason.

BioXcel shall be entitled to assign this Agreement, in whole or in part, to any of its Affiliates (including by operation of law, judicial process or otherwise) or to any entity with which or into which BioXcel may merge or consolidate or any entity acquiring all or substantially all of the assets of BioXcel or of BioXcel's business or operations to which this Agreement relates (whether by way of merger, sale of stock, sale of assets or otherwise), in each case, without the prior consent of ARx. Any other assignment of this Agreement by BioXcel may not be made without the prior written consent of ARx, which may not be unreasonably withheld, conditioned or delayed.

Any permitted assignee shall assume all obligations of its assignor under this Agreement; provided, however, that in the event of an assignment to an Affiliate, the assignor Party shall remain as principal obligor for all or any obligations and liabilities assigned to such Affiliate under the terms of this Agreement. No assignment shall relieve any Party of responsibility for the performance of any accrued obligation which such Party has hereunder as of the time of such assignment. Any other attempted assignment of this Agreement in violation of this Section 16.7 shall be null and void.

The terms and conditions of this Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

16.8 Severability. If any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect. The Parties shall negotiate in good faith to substitute a valid, legal, and enforceable provision that reflects the intent of such invalid or unenforceable provision

16.9 Notices.

The term "notice" as used throughout this Agreement, shall mean written notice, except where specifically provided herein to the contrary. Notice shall be delivered by: (i) certified mail, return receipt requested (or the equivalent); (ii) hand delivery with receipt acknowledged; or (iii) overnight courier service that provides a delivery receipt. Notices shall be delivered to the following addresses or to such other address or person as a Party may specify by notice given in accordance with this Section 16.9.1.

If to ARx:

ARx, LLC
400 Seaks Run Road
Glen Rock, PA 17327

Attention: ARx Legal Counsel

With a copy to:

ARx, LLC
400 Seaks Run Road
Glen Rock, PA 17327
Attention: General Manager, ARx, LLC

If to BioXcel:

BioXcel Therapeutics, Inc.
555 Long Wharf Drive,
New Haven,
CT 06511
Attn: [***]

and

BioXcel Therapeutics, Inc.
555 Long Wharf Drive,
New Haven,
CT 06511
Attn: [***]

With a copy to:

Cooley LLP
1299 Pennsylvania Avenue, NW, Suite 700
Washington, DC 20004-2400
Attention: [***]

Notice given in accordance with Section 16.9.1 shall be deemed delivered when received, or upon refusal of receipt.

16.10 Cumulative Remedies. Except as otherwise expressly set forth herein, no remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to any other remedy available under the terms of this Agreement or otherwise available at law or in equity.

16.10.1Entire Agreement/Amendments; Conflicts. This Agreement, together with all attachments hereto, and any Orders issued hereunder, as well as the Quality Agreement, constitutes the entire agreement between the Parties hereto and shall supersede and take the place of any and all agreements, documents, minutes of meetings, or letters concerning the subject matter hereof that may, prior to the Effective Date, be in existence, including the Confidentiality Agreement and the Work Plan. Furthermore, this Agreement shall supersede any and all pre-printed terms on any orders, invoices, and other related documents issued by ARx (or

any of its Affiliates) or BioXcel (or any of its Affiliates), as applicable. This Agreement may only be amended by a statement in writing to that effect signed by duly authorized representatives of BioXcel and ARx.

16.11 Headings. The headings assigned to the Articles and Sections of this Agreement are for convenience only and shall not limit the scope and applicability of the Articles and Sections.

16.12 Further Assurances. Each Party agrees to execute such further papers, agreements, documents, instruments and the like as may be necessary or desirable to effect the purpose of this Agreement and to carry out its provisions.

16.13 English Language. If there exist versions of this Agreement, or any Schedules or attachments, or any amendments hereto or thereto, in any language other than English, the binding version of all of the foregoing shall be the English version, except as otherwise required by Applicable Law. All notices and other written documentation provided by a Party to the other Party under this Agreement shall be in English, unless otherwise agreed to by the Parties.

16.14 Review By Legal Counsel. Each of the Parties agrees that it has read and had the opportunity to review this Agreement with its legal counsel. Accordingly, the rule of construction that any ambiguity contained in this Agreement shall be construed against the drafting Party shall not apply.

16.15 Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any Third Party, any rights, remedies, obligations or liabilities.

16.16 Interpretation. In this Agreement, unless otherwise specified: (i) "includes" and "including" and words of similar import shall mean includes and including without limitation; (ii) words denoting any gender shall include all genders; (iii) words denoting the singular shall include the plural and vice versa; (iv) the Exhibits, Schedules, and other attachments form part of the operative provision of this Agreement and references to this Agreement shall, unless the context otherwise requires, include references to the Exhibits, Schedules, and attachments; (v) the word "or" is disjunctive but not necessarily exclusive; (vi) references to "Articles", "Sections" "subsections" and "clauses" in this Agreement shall be to Articles, Sections, subsections and clauses, respectively, of this Agreement unless otherwise specifically provided; and (vii) references to any Articles or Sections include Sections and subsections that are part of the reference Article or Section (*e.g.*, a section numbered "Section 2.2(a)" would be part of "Section 2.2", and references to "Article 2" or "Section 2.2" would refer to material contained in the subsection described as "Section 2.2(a)"). Words and abbreviations that have known or technical trade meanings are used in this Agreement in accordance with such recognized meanings.

16.17 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall for all purposes be deemed an original and all of which together shall constitute one and the same instrument. In addition, this Agreement may be executed by facsimile or "PDF" and such facsimile or "PDF" signature shall be deemed to be an original.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be duly executed and delivered in its name and on its behalf, all as of the day and year first above written.

BioXcel Therapeutics, Inc.:

By: _____

Name: _____

Title: _____

ARx, LLC:

By: _____

Name: _____

Title: _____

[Signature Page to Commercial Supply Agreement]

Attachment A

Work Plan

(See Attached)

Attachment B

Form of Quality Agreement

[Omitted Pursuant to Item 6.01(a)(5) of Regulation S-K]

Schedule 1.23

BioXcel Technical Requirements

[Omitted Pursuant to Item 6.01(a)(5) of Regulation S-K]

Schedule 1.64
Specifications

[Omitted Pursuant to Item 6.01(a)(5) of Regulation S-K]

Schedule 3.3
[***]

Schedule 3.5

[***]

Schedule 4.1
Initial Forecast

[Omitted Pursuant to Item 601(a)(5) of Regulation S-K]

Schedule 5.1
Supply Price

[Omitted Pursuant to Item 601(a)(5) of Regulation S-K]

Schedule 14.6.1(i)

ARx Licensed Patents

[Omitted Pursuant to Item 601(a)(5) of Regulation S-K]

Schedule 14.6.1(iii)

JOINT PATENTS

[Omitted Pursuant to Item 601(a)(5) of Regulation S-K]

BIOXCEL THERAPEUTICS, INC.

NON-EMPLOYEE DIRECTOR COMPENSATION PROGRAM
(EFFECTIVE AS OF MAY 19, 2022)

Non-employee members of the board of directors (the "***Board***") of BioXcel Therapeutics, Inc. (the "***Company***") shall receive cash and equity compensation as set forth in this Non-Employee Director Compensation Program (this "***Program***"). The cash and equity compensation described in this Program shall be paid or be made, as applicable, automatically and without further action of the Board, to each member of the Board who is not an employee of the Company or any parent or subsidiary of the Company (each, a "***Non-Employee Director***") who is entitled to receive such cash or equity compensation, unless such Non-Employee Director declines the receipt of such cash or equity compensation by written notice to the Company and subject to any limits on non-employee director compensation set forth in the Equity Plan (as defined below). This Program shall remain in effect until it is revised or rescinded by further action of the Board. This Program may be amended, modified or terminated by the Board at any time in its sole discretion. As of its effectiveness, the terms and conditions of this Program shall supersede any prior cash and/or equity compensation arrangements for service as a member of the Board between the Company and any of its Non-Employee Directors, except for equity compensation previously granted to a Non-Employee Director.

CASH COMPENSATION

The schedule of annual retainers (the "***Annual Retainers***") for the Non-Employee Directors is as follows:

Position	**Amount**
Base Board Fee	$60,000
Chair of the Board or Lead Independent Director	$35,000
Chair of Audit Committee	$20,000
Chair of Compensation Committee	$15,000
Chair of Nominating and Corporate Governance Committee	$10,000
Member of Audit Committee (non-Chair)	$10,000
Member of Compensation Committee (non-Chair)	$7,500
Member of Nominating and Corporate Governance Committee (non-Chair)	$5,000

For the avoidance of doubt, the Annual Retainers in the table above are additive and a Non-Employee Director shall be eligible to earn an Annual Retainer for each position in which he or she serves. The Annual Retainers shall be earned on a quarterly basis based on a calendar quarter and shall be paid in cash by the Company in arrears not later than the fifteenth day following the end of each calendar quarter. In the event a Non-Employee Director does not serve as a Non-Employee Director, or in the applicable position, for an entire calendar quarter, the retainer paid to such Non-Employee Director shall be prorated for the portion of such calendar quarter actually served as a Non-Employee Director, or in such position, as applicable.

EQUITY COMPENSATION

Each Non-Employee Director shall be granted options to purchase shares of the Company's common stock (each, an "***Option***") as set forth in the following table. Each Option shall be granted under and subject to the terms and provisions of the Company's 2020 Incentive Award Plan or any other applicable Company equity incentive plan then-maintained by the Company (the "***Equity Plan***") and shall be subject to an award agreement, including attached exhibits, in substantially the form previously approved by the Board.

Option	Number of Shares
Initial Option	30,000
Subsequent Option	17,000

A. Initial Option. Each Non-Employee Director who is initially elected or appointed to the Board after the effectiveness of this Program shall receive the Initial Option on the date of such initial election or appointment. No Non-Employee Director shall be granted more than one Initial Option.

B. Subsequent Option. A Non-Employee Director who (i) has been serving as a Non-Employee Director on the Board for at least six months as of the date of any annual meeting of the Company's stockholders and (ii) will continue to serve as a Non-Employee Director immediately following such meeting, shall be automatically granted a Subsequent Option on the date of such annual meeting. For the avoidance of doubt, a Non-Employee Director elected for the first time to the Board at an annual meeting of the Company's stockholders shall only receive the Initial Option in connection with such election, and shall not receive a Subsequent Option on the date of such meeting as well.

C. Termination of Employment of Employee Directors. Members of the Board who are employees of the Company or any parent or subsidiary of the Company who subsequently terminate their employment with the Company and any parent or subsidiary of the Company and remain on the Board will not receive an Initial Option, but to the extent that they are otherwise entitled, will receive, after termination of employment with the Company and any parent or subsidiary of the Company, a Subsequent Option.

D. Terms of Options Granted to Non-Employee Directors.

1. *Exercise Price*. The per-share exercise price of each Option granted to a Non-Employee Director shall equal the Fair Market Value (as defined in the Equity Plan) of a share of the Company's common stock on the date the Option is granted.

2. *Vesting*.

a. *Initial Options*. Each Initial Option shall vest and become exercisable in three substantially equal annual installments following the date of grant, such that the Initial Option shall be fully vested on the third anniversary of the date of grant, subject to the Non-Employee Director continuing in service as a Non-Employee Director through each such vesting date.

b. *Subsequent Options*. Each Subsequent Option shall vest and become exercisable on the earlier of the first anniversary of the date of grant or the day immediately prior to the date of the next annual meeting of the Company's stockholders occurring after the date of grant, in either case, subject to the Non-Employee Director continuing in service as a Non-Employee Director through such vesting date.

c. *Forfeiture of Options*. Unless the Board otherwise determines, any portion of an Initial Option or Subsequent Option which is unvested or unexercisable at the time of a Non-Employee Director's termination of service on the Board as a Non-Employee Director shall be immediately forfeited upon such termination of service and shall not thereafter become vested and exercisable. All of a Non-Employee Director's Initial Options and Subsequent Options shall vest in full immediately prior to the occurrence of a Change in Control (as defined in the Equity Plan), to the extent outstanding at such time.

3. *Term*. The maximum term of each Option granted to a Non-Employee Director hereunder shall be ten (10) years from the date the Option is granted.

* * * * *

Exhibit 31.1

CERTIFICATIONS

I, Vimal Mehta, Ph.D., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2022 of BioXcel Therapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 11, 2022

By: /s/ Vimal Mehta
Vimal Mehta, Ph.D.
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS

I, Richard Steinhart, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2022 of BioXcel Therapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 11, 2022

By: /s/ Richard Steinhart
Richard Steinhart
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of BioXcel Therapeutics, Inc. (the "Company") for the quarterly period ended June 30, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

(1) the Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 11, 2022

By: /s/ Vimal Mehta
Vimal Mehta, Ph.D.
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of BioXcel Therapeutics, Inc. (the "Company") for the quarterly period ended June 30, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

(1) the Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 11, 2022

By: /s/ Richard Steinhart
Richard Steinhart
Chief Financial Officer
(Principal Financial Officer)