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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 September 30, 2021

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: 001-12400

INCYTE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**94-3136539**
(State or other jurisdiction of incorporation or organization)	(IRS Employer Identification No.)
1801 Augustine Cut-Off Wilmington, DE 19803	**19803**
(Address of principal executive offices)	(Zip Code)

(302) 498-6700

(Registrant's telephone number, including area code)

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

Title of each class	**Trading Symbol(s)**	**Name of exchange on which registered**
Common Stock, $.001 par value per share	INCY	The Nasdaq Stock Market LLC

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 outstanding shares of the registrant's Common Stock, $.001 par value, was 220,890,618 as of October 26, 2021.

INCYTE CORPORATION

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PART I: FINANCIAL INFORMATION
Item 1. Financial Statements

INCYTE CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except number of shares and par value)

	September 30, 2021 (unaudited)	December 31, 2020*
ASSETS		
Current assets:		
Cash and cash equivalents	$ 1,999,021	$ 1,513,008
Marketable securities—available-for-sale (amortized cost $285,135 and $288,199 as of September 30, 2021 and December 31, 2020; allowance for credit losses $0 and $0 as of September 30, 2021 and December 31, 2020)	285,054	288,369
Accounts receivable	516,689	481,994
Inventory	21,303	16,425
Prepaid expenses and other current assets	101,730	60,098
Total current assets	2,923,797	2,359,894
Restricted cash and investments	1,682	1,757
Long term investments	192,096	222,301
Inventory	30,885	19,548
Property and equipment, net	686,718	559,625
Finance lease right-of-use assets, net	27,133	28,451
Other intangible assets, net	156,139	172,291
Goodwill	155,593	155,593
Other assets, net	24,788	41,458
Total assets	$ 4,198,831	$ 3,560,918
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 114,509	$ 98,767
Accrued compensation	105,705	113,340
Accrued and other current liabilities	481,879	378,404
Finance lease liabilities	2,400	2,284
Acquisition-related contingent consideration	38,219	38,400
Total current liabilities	742,712	631,195
Acquisition-related contingent consideration	213,781	227,600
Finance lease liabilities	31,376	32,573
Other liabilities	62,305	58,282
Total liabilities	1,050,174	949,650
Commitments and contingencies (Note 15)		
Stockholders' equity:		
Preferred stock, $0.001 par value; 5,000,000 shares authorized; none issued or outstanding as of September 30, 2021 and December 31, 2020	—	—
Common stock, $0.001 par value; 400,000,000 shares authorized; 220,885,119 and 219,489,329 shares issued and outstanding as of September 30, 2021 and December 31, 2020, respectively	221	219
Additional paid-in capital	4,508,807	4,352,864
Accumulated other comprehensive loss	(18,646)	(15,360)
Accumulated deficit	(1,341,725)	(1,726,455)
Total stockholders' equity	3,148,657	2,611,268
Total liabilities and stockholders' equity	$ 4,198,831	$ 3,560,918

* The condensed consolidated balance sheet at December 31, 2020 has been derived from the audited consolidated financial statements at that date.

See accompanying notes.

INCYTE CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited, in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Revenues:				
Product revenues, net	$ 594,013	$ 522,252	$ 1,673,974	$ 1,509,269
Product royalty revenues	183,974	98,391	404,440	272,924
Milestone and contract revenues	35,000	—	45,000	95,000
Total revenues	812,987	620,643	2,123,414	1,877,193
Costs and expenses:				
Cost of product revenues (including definite-lived intangible amortization)	39,869	34,322	107,117	95,005
Research and development	334,945	438,109	985,352	1,809,997
Selling, general and administrative	190,704	120,788	513,358	349,934
Change in fair value of acquisition-related contingent consideration	2,910	7,109	13,068	19,790
Collaboration loss sharing	9,149	14,989	29,476	30,372
Total costs and expenses	577,577	615,317	1,648,371	2,305,098
Income (loss) from operations	235,410	5,326	475,043	(427,905)
Other income (expense), net	1,948	4,917	4,931	18,396
Interest expense	(439)	(544)	(1,156)	(1,746)
Unrealized gain (loss) on long term investments	(27,450)	(13,207)	(28,394)	10,935
Income (loss) before provision for income taxes	209,469	(3,508)	450,424	(400,320)
Provision for income taxes	27,730	11,695	65,694	45,227
Net income (loss)	$ 181,739	$ (15,203)	$ 384,730	$ (445,547)
Net income (loss) per share:				
Basic	$ 0.82	$ (0.07)	$ 1.75	$ (2.05)
Diluted	$ 0.82	$ (0.07)	$ 1.73	$ (2.05)
Shares used in computing net income (loss) per share:				
Basic	220,845	218,784	220,243	217,684
Diluted	222,248	218,784	222,113	217,684

See accompanying notes.

INCYTE CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(unaudited, in thousands)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Net income (loss)	$ 181,739	$ (15,203)	$ 384,730	$ (445,547)
Other comprehensive income (loss):				
Foreign currency translation (loss) gain	(629)	2,532	(4,061)	5,085
Unrealized (loss) gain on marketable securities, net of tax	(86)	(77)	(251)	48
Defined benefit pension obligations, net of tax	342	220	1,026	661
Other comprehensive income (loss)	(373)	2,675	(3,286)	5,794
Comprehensive income (loss)	$ 181,366	$ (12,528)	$ 381,444	$ (439,753)

See accompanying notes.

INCYTE CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(unaudited, in thousands, except number of shares)

	For the Nine Months Ended September 30, 2021				
	Common Stock	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
Balances at January 1, 2021	$ 219	$ 4,352,864	$ (15,360)	$ (1,726,455)	$ 2,611,268
Issuance of 389,512 shares of Common Stock upon exercise of stock options and settlement of employee restricted stock units, net of shares withheld for taxes	1	20,027	—	—	20,028
Issuance of 1,357 shares of Common Stock for services rendered	—	108	—	—	108
Stock compensation	—	47,903	—	—	47,903
Other comprehensive loss	—	—	(4,998)	—	(4,998)
Net income	—	—	—	53,535	53,535
Balances at March 31, 2021	$ 220	$ 4,420,902	$ (20,358)	$ (1,672,920)	$ 2,727,844
Issuance of 390,001 shares of Common Stock upon exercise of stock options and settlement of employee restricted stock units, net of shares withheld for taxes and 153,082 shares of Common Stock under the ESPP	—	11,016	—	—	11,016
Issuance of 1,288 shares of Common Stock for services rendered	—	109	—	—	109
Stock compensation	—	45,351	—	—	45,351
Other comprehensive income	—	—	2,085	—	2,085
Net income	—	—	—	149,456	149,456
Balances at June 30, 2021	$ 220	$ 4,477,378	$ (18,273)	$ (1,523,464)	$ 2,935,861
Issuance of 459,084 shares of Common Stock upon exercise of stock options and settlement of employee restricted stock units and performance shares, net of shares withheld for taxes	1	(11,993)	—	—	(11,992)
Issuance of 1,466 shares of Common Stock for services rendered	—	108	—	—	108
Stock compensation	—	43,314	—	—	43,314
Other comprehensive loss	—	—	(373)	—	(373)
Net income	—	—	—	181,739	181,739
Balances at September 30, 2021	$ 221	$ 4,508,807	$ (18,646)	$ (1,341,725)	$ 3,148,657

INCYTE CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (CONTINUED)
(unaudited, in thousands, except number of shares)

	For the Nine Months Ended September 30, 2020				
	Common Stock	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
Balances at January 1, 2020	$ 216	$ 4,044,490	$ (15,542)	$ (1,430,758)	$ 2,598,406
Issuance of 772,538 shares of Common Stock upon exercise of stock options and settlement of employee restricted stock units, net of shares withheld for taxes	1	14,618	—	—	14,619
Issuance of 1,957 shares of Common Stock for services rendered	—	145	—	—	145
Stock compensation	—	42,758	—	—	42,758
Other comprehensive income	—	—	2,435	—	2,435
Net loss	—	—	—	(720,642)	(720,642)
Balances at March 31, 2020	$ 217	$ 4,102,011	$ (13,107)	$ (2,151,400)	$ 1,937,721
Issuance of 936,688 shares of Common Stock upon exercise of stock options and settlement of employee restricted stock units, net of shares withheld for taxes and 175,615 shares of Common Stock under the ESPP	1	69,193	—	—	69,194
Issuance of 1,403 shares of Common Stock for services rendered	—	139	—	—	139
Issuance of 3,187 shares of Common Stock upon conversion of Convertible Senior Notes due 2020	—	162	—	—	162
Stock compensation	—	46,406	—	—	46,406
Other comprehensive income	—	—	684	—	684
Net income	—	—	—	290,298	290,298
Balances at June 30, 2020	$ 218	$ 4,217,911	$ (12,423)	$ (1,861,102)	$ 2,344,604
Issuance of 698,032 shares of Common Stock upon exercise of stock options and settlement of employee restricted stock units and performance shares, net of shares withheld for taxes	1	7,782	—	—	7,783
Issuance of 1,434 shares of Common Stock for services rendered	—	131	—	—	131
Issuance of 134,413 shares of Common Stock upon conversion of Convertible Senior Notes due 2020	—	6,873	—	—	6,873
Stock compensation	—	43,970	—	—	43,970
Other comprehensive income	—	—	2,675	—	2,675
Net loss	—	—	—	(15,203)	(15,203)
Balances at September 30, 2020	$ 219	$ 4,276,667	$ (9,748)	$ (1,876,305)	$ 2,390,833

See accompanying notes.

INCYTE CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited, in thousands)

	Nine Months Ended September 30,	
	2021	2020
Cash flows from operating activities:		
Net income (loss)	$ 384,730	$ (445,547)
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	42,986	38,641
Stock-based compensation	134,784	132,616
Deferred income taxes	(178)	—
Other, net	5,268	8,698
Unrealized loss (gain) on long term investments	28,394	(10,935)
Change in fair value of acquisition-related contingent consideration	13,068	19,790
Changes in operating assets and liabilities:		
Accounts receivable	(34,695)	(55,656)
Prepaid expenses and other assets	(24,784)	(11,384)
Inventory	(16,215)	(9,204)
Accounts payable	15,742	38,865
Accrued and other liabilities	85,037	62,196
Net cash provided by (used in) operating activities	634,137	(231,920)
Cash flows from investing activities:		
Purchase of long term investments	(8,662)	(95,468)
Sale of long term investments	10,473	17,250
Capital expenditures	(146,543)	(135,946)
Purchases of marketable securities	(228,170)	(418,698)
Sale and maturities of marketable securities	231,250	466,591
Net cash used in investing activities	(141,652)	(166,271)
Cash flows from financing activities:		
Proceeds from issuance of common stock under stock plans net of tax withholding	19,052	91,596
Payment of finance lease liabilities	(1,788)	(619)
Payment of contingent consideration	(20,093)	(31,140)
Net cash (used in) provided by financing activities	(2,829)	59,837
Effect of exchange rates on cash, cash equivalents, restricted cash and investments	(3,718)	5,085
Net increase (decrease) in cash, cash equivalents, restricted cash and investments	485,938	(333,269)
Cash, cash equivalents, restricted cash and investments at beginning of period	1,514,765	1,833,707
Cash, cash equivalents, restricted cash and investments at end of period	$ 2,000,703	$ 1,500,438
Supplemental Schedule of Cash Flow Information		
Interest paid	$ —	$ 119
Income taxes paid	$ 45,872	$ 56,787
Reclassification to common stock and additional paid in capital in connection with conversions of 1.25% convertible senior notes due 2020	$ —	$ 6,992
Unpaid purchases of property and equipment	$ 23,892	$ 12,836
Leased assets obtained in exchange for new operating lease liabilities	$ 9,068	$ 13,020
Leased assets obtained in exchange for new finance lease liabilities	$ 455	$ 2,160

See accompanying notes.

INCYTE CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
September 30, 2021
(Unaudited)

1. Organization and business

Incyte Corporation (including its subsidiaries, "Incyte," "we," "us," or "our") is a biopharmaceutical company focused on developing and commercializing proprietary therapeutics. Our portfolio includes compounds in various stages, ranging from preclinical to late stage development, and commercialized products JAKAFI® (ruxolitinib), ICLUSIG® (ponatinib), PEMAZYRE® (pemigatinib), OPZELURA™ (ruxolitinib) cream, MINJUVI® (tafasitamab) and MONJUVI® (tafasitamab-cxix), which is co-commercialized. Our operations are treated as one operating segment.

2. Summary of significant accounting policies

Basis of presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. The condensed consolidated balance sheet as of September 30, 2021, the condensed consolidated statements of operations, comprehensive income (loss), and stockholders' equity for the three and nine months ended September 30, 2021 and 2020, and the condensed consolidated statements of cash flows for the nine months ended September 30, 2021 and 2020 are unaudited, but include all adjustments, consisting only of normal recurring adjustments, which we consider necessary for a fair presentation of the financial position, operating results and cash flows for the periods presented. The condensed consolidated balance sheet at December 31, 2020 has been derived from our audited consolidated financial statements.

Although we believe that the disclosures in these financial statements are adequate to make the information presented not misleading, certain information and footnote information normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States ("U.S. GAAP") have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission.

Results for any interim period are not necessarily indicative of results for any future interim period or for the entire year. The accompanying financial statements should be read in conjunction with the financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2020.

Principles of Consolidation. The condensed consolidated financial statements include the accounts of Incyte Corporation and our wholly owned subsidiaries. All inter-company accounts, transactions, and profits have been eliminated in consolidation.

Foreign Currency Translation. Operations in non-U.S. entities are recorded in the functional currency of each entity. For financial reporting purposes, the functional currency of an entity is determined by a review of the source of an entity's most predominant cash flows. The results of operations for any non-U.S. dollar functional currency entities are translated from functional currencies into U.S. dollars using the average currency rate during each month. Assets and liabilities are translated using currency rates at the end of the period. Adjustments resulting from translating the financial statements of our foreign entities that use their local currency as the functional currency into U.S. dollars are reflected as a component of other comprehensive income (loss). Transaction gains and losses are recorded in other income (expense), net, in the condensed consolidated statements of operations.

Use of Estimates. The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Concentrations of Credit Risk. Cash, cash equivalents, marketable securities, and trade receivables are financial instruments which potentially subject us to concentrations of credit risk. The estimated fair value of financial instruments

approximates the carrying value based on available market information. By policy, we invest our excess available funds primarily in U.S. government debt securities which are securities issued or guaranteed by the U.S. government and money market funds that meet certain guidelines, which limits exposure to potential credit losses. Our receivables mainly relate to our product sales and collaborative agreements with pharmaceutical companies. We have not experienced any significant credit losses on cash, cash equivalents, marketable securities, or trade receivables to date and do not require collateral on receivables.

Current Expected Credit Losses. Financial assets measured at amortized cost are assessed for future expected credit losses under guidance within ASC 326, *Financial Instruments – Credit Losses*, to determine if application of an expected credit losses reserve is necessary. On a quarterly basis, receivables that resulted from revenue transactions within the scope of ASC 606, *Revenue from Contracts with Customers*, and recognized on an amortized cost basis are reviewed on a customer-level basis to analyze expectations of future collections based upon past history of collections, payment, aging of receivables and viability of the customer to continue payment, as well as estimates of future economic conditions. Receivables generally consist of two types: receivables from collaborative agreements, including milestones, reimbursements for agreed-upon activities and sales royalties; and receivables from customer product sales. Collaborative agreement receivables are closely monitored relationships with select, reputable industry peers. Collection of receivables is assessed within each collaborative partnership on a quarterly basis, including evaluation of each entity's credit quality, financial health and past history of payment. Customer product sales receivables are independently evaluated on a monthly basis, on which unusual items or aged receivables are closely monitored for signs of credit deterioration, or indications of payment refusal. Customer product sales are with specialty pharmaceutical distributors, wholesalers, and certain public and private institutions, some of which whose financial obligations are funded by various government agencies.

Cash and Cash Equivalents. Cash and cash equivalents are held in banks or in custodial accounts with banks. Cash equivalents are defined as all liquid investments and money market funds with maturity from date of purchase of 90 days or less that are readily convertible into cash.

Marketable Securities—Available-for-Sale. Our marketable securities consist of investments in U.S. government debt securities that are classified as available-for-sale. Available-for-sale securities are carried at fair value, based on quoted market prices and observable inputs, with unrealized gains and losses, net of tax, reported as a separate component of stockholders' equity. We classify marketable securities that are available for use in current operations as current assets on the condensed consolidated balance sheets. Realized gains and losses and declines in value judged to be other than temporary for available-for-sale securities are included in other income (expense), net on the condensed consolidated statements of operations. The cost of securities sold is based on the specific identification method.

Accounts Receivable. As of September 30, 2021 and December 31, 2020, we had no allowance for doubtful accounts. We provide an allowance for doubtful accounts based on management's assessment of the collectability of specific customer accounts, which includes consideration of the credit worthiness and financial condition of those customers, aging of such receivables, history of collectability with the customer and the general economic environment. We record an allowance to reduce the receivables to the amount that is expected to be collected.

Inventory. Inventories are determined at the lower of cost and net realizable value with cost determined under the specific identification method and may consist of raw materials, work in process and finished goods. We capitalize inventory after FDA approval as the related costs are expected to be recoverable through the commercialization of the product. Costs incurred prior to FDA approval are recorded as research and development expense in our statements of operations.

Raw materials and work-in-process inventory are not subject to expiration and the shelf life of finished goods inventory is approximately 36 months from the start of manufacturing of the finished goods. We evaluate for potential excess inventory by analyzing current and future product demand relative to the remaining product shelf life. We build demand forecasts by considering factors such as, but not limited to, overall market potential, market share, market acceptance and patient usage. We classify inventory as current on the condensed consolidated balance sheets when we expect inventory to be consumed for commercial use within the next twelve months.

Variable Interest Entities. We perform an initial and ongoing evaluation of the entities with which we have variable interests, such as equity ownership, in order to identify entities (i) that do not have sufficient equity investment at risk to permit the entity to finance its activities without additional subordinated financial support or (ii) in which the equity investors lack an essential characteristic of a controlling financial interest as variable interest entities ("VIE" or "VIEs"). If an entity is identified as a VIE, we perform an assessment to determine whether we have both (i) the power to direct activities that most significantly impact the VIE's economic performance and (ii) have the obligation to absorb losses from or the right to receive benefits of the VIE that could potentially be significant to the VIE. If both of these criteria are satisfied, we are identified as the primary beneficiary of the VIE. As of September 30, 2021, there were no entities in which we held a variable interest which we determined to be VIEs.

Long Term Investments. Our long term investments consist of equity investments in common stock of publicly-held companies with whom we have entered into collaboration and license agreements. We classify all of our equity investments in common stock of publicly-held companies as long term investments on our condensed consolidated balance sheets. Our equity investments are accounted for at fair value using readily determinable pricing available on a securities exchange on our condensed consolidated balance sheets. All changes in fair value are reported in the condensed consolidated statements of operations as an unrealized gain (loss) on long term investments.

In assessing whether we exercise significant influence over any of the companies in which we hold equity investments, we consider the nature and magnitude of our investment, any voting and protective rights we hold, any participation in the governance of the other company, and other relevant factors such as the presence of a collaboration or other business relationship. Currently, none of our equity investments in publicly-held companies are considered relationships in which we are able to assert control.

Property and Equipment, net. Property and equipment, net is stated at cost, less accumulated depreciation and amortization. Depreciation is recorded using the straight-line method over the estimated useful lives of the respective assets. Leasehold improvements are amortized over the shorter of the estimated useful life of the assets or lease term.

Lease Accounting. All leases with a lease term greater than 12 months, regardless of lease type classification, are recorded as an obligation on the balance sheet with a corresponding right-of-use asset. Both finance and operating leases are reflected as liabilities on the commencement date of the lease based on the present value of the lease payments to be made over the lease term. Current operating lease liabilities are reflected in accrued and other current liabilities and noncurrent operating lease liabilities are reflected in other liabilities on the condensed consolidated balance sheet. Right-of-use assets are valued at the initial measurement of the lease liability, plus any initial direct costs or rent prepayments, minus lease incentives and any deferred lease payments. Operating lease right-of-use assets are recorded in property and equipment, net on the condensed consolidated balance sheet and lease cost is recognized on a straight-line basis. For finance leases, expense is recognized as separate amortization and interest expense, with higher interest expense in the earlier periods of a lease. Leases with an initial term of 12 months or less are not recorded on the balance sheet and we recognize lease expense for these leases on a straight-line basis over the term of the lease. In determining whether a contract contains a lease, asset and service agreements are assessed at onset and upon modification for criteria of specifically identified assets, control and economic benefit.

Other Intangible Assets, net. Other intangible assets, net consist of licensed intellectual property rights acquired in business combinations, which are reported at acquisition date fair value, less accumulated amortization. Intangible assets with finite lives are amortized over their estimated useful lives using the straight-line method.

Impairment of Long-Lived Assets. Long-lived assets with finite lives are tested for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. If indicators of impairment are present, the asset is tested for recoverability by comparing the carrying value of the asset to the related estimated undiscounted future cash flows expected to be derived from the asset. If the expected cash flows are less than the carrying value of the asset, then the asset is considered to be impaired and its carrying value is written down to fair value, based on the related estimated discounted future cash flows.

Goodwill. Goodwill is calculated as the difference between the acquisition date fair value of the consideration transferred and the values assigned to the assets acquired and liabilities assumed. Goodwill is not amortized but is tested

for impairment at the reporting unit level at least annually as of October 1 or when a triggering event occurs that could indicate a potential impairment by assessing qualitative factors or performing a quantitative analysis in determining whether it is more likely than not that the fair value of net assets are below their carrying amounts. A reporting unit is the same as, or one level below, an operating segment. Our operations are currently comprised of a single, entity wide reporting unit. We completed our most recent annual impairment assessment as of October 1, 2020 and determined that the carrying value of our goodwill was not impaired.

Income Taxes. We account for income taxes using the asset and liability approach which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amount of assets and liabilities for financial reporting purposes and amounts reportable for income tax purposes. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more-likely-than-not that some portion or all of the deferred tax assets will not be realized. The primary factors used to assess the likelihood of realization are our recent history of cumulative earnings or losses, expected reversals of taxable temporary timing differences, forecasts of future taxable income and available tax planning strategies that could be implemented to realize the deferred tax assets. Upon evaluating and weighting both positive and negative evidence, we concluded that we should continue to maintain the valuation allowance on the majority of our deferred tax assets as of September 30, 2021.

We recognize the tax benefit from an uncertain tax position only if it is more-likely-than-not that the position will be sustained upon examination by the taxing authorities, including resolutions of any related appeals or litigation processes, based on the technical merits of the position. The tax benefit that is recorded for these positions is measured at the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement. We adjust the level of the liability to reflect any subsequent changes in the relevant facts surrounding the uncertain positions. Any interest and penalties on uncertain tax positions are included within the tax provision.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law in March 2020 to provide an estimated $2.2 trillion designed to stimulate the U.S. economy during the COVID-19 pandemic. The Act includes tax relief, government loans, grants and investments for entities in affected industries, which has related accounting and financial reporting impacts. Disclosure for certain income tax accounting measures are required in the period of enactment and disclosure for government loans, investments, grants, and revenue recognition are required in future periods as federal agencies establish rules and procedures to implement the CARES Act. During 2020, we delayed the payment of certain employer payroll tax amounts to future periods as allowed under the Act. We do not expect the CARES Act to have a material impact on our overall financial results, our income tax provision or our liquidity. We have further described the impact and risks of the COVID-19 pandemic on our business in Item 1A. Risk Factors.

Net Income (Loss) Per Share. Our basic and diluted net income (loss) per share is calculated by dividing the net income (loss) by the weighted average number of shares of common stock outstanding during all periods presented. Options to purchase stock, restricted stock units and performance stock units are included in diluted earnings per share calculations, unless the effects are anti-dilutive.

Accumulated Other Comprehensive Income (Loss). Accumulated other comprehensive income (loss) consists of unrealized gains or losses on our marketable debt securities that are classified as available-for-sale, foreign currency translation gains or losses and defined benefit pension obligations.

Revenue Recognition. Revenue-generating contracts are assessed under ASC 606, *Revenue from contracts with customers*, to identify distinct performance obligations, determine the transaction price of the contract and allocate the transaction price to each of the distinct performance obligations. Revenue is recognized when we have satisfied a performance obligation through transferring control of the promised good or service to a customer. Control, in this instance, may mean the ability to prevent other entities from directing the use of, and receiving benefit from, a good or service. We apply the following five-step model in order to determine this amount: (i) identification of the promised goods or services in the contract; (ii) determination of whether the promised goods or services are performance obligations, including whether they are distinct in the context of the contract; (iii) measurement of the transaction price, including the constraint on variable consideration; (iv) allocation of the transaction price to the performance obligations; and (v) recognition of revenue when (or as) the Company satisfies each performance obligation, which for the Company is generally at a point

in time. We also assess collectability based primarily on the customer's payment history and on the creditworthiness of the customer.

Product Revenues

Our product revenues consist of sales of JAKAFI and PEMAZYRE in the U.S., sales of MINJUVI, PEMAZYRE and ICLUSIG in Europe, and sales of PEMAZYRE in Japan. Product revenues are recognized once we satisfy the performance obligation at a point in time under the revenue recognition criteria as described above. We sell JAKAFI and PEMAZYRE to our customers in the U.S., which include specialty pharmacies and wholesalers. We sell MINJUVI, PEMAZYRE and ICLUSIG to our customers in the European Union and certain other jurisdictions, which include retail pharmacies, hospital pharmacies and distributors. We sell PEMAZYRE in Japan to an exclusive wholesaler.

We recognize revenues for product received by our customers net of allowances for customer credits, including estimated rebates, chargebacks, discounts, returns, distribution service fees, patient assistance programs, and government rebates, such as Medicare Part D coverage gap reimbursements in the U.S. Product shipping and handling costs are included in cost of product revenues.

Customer Credits: Our customers are offered various forms of consideration, including allowances, service fees and prompt payment discounts. We expect our customers will earn prompt payment discounts and, therefore, we deduct the full amount of these discounts from total product sales when revenues are recognized. Service fees are also deducted from total product sales as they are earned.

Rebates and Discounts: Allowances for rebates include mandated discounts under the Medicaid Drug Rebate Program in the U.S. and mandated discounts in Europe in markets where government-sponsored healthcare systems are the primary payers for healthcare. Rebates are amounts owed after the final dispensing of the product to a benefit plan participant and are based upon contractual agreements or legal requirements with public sector benefit providers. The accrual for rebates is based on statutory discount rates and expected utilization as well as historical data we have accumulated since product launches. Our estimates for expected utilization of rebates are based on data received from our customers. Rebates are generally invoiced and paid in arrears so that the accrual balance consists of an estimate of the amount expected to be incurred for the current quarter's activity, plus an accrual balance for known prior quarters' unpaid rebates. If actual future rebates vary from estimates, we may need to adjust prior period accruals, which would affect revenue in the period of adjustment.

Chargebacks: Chargebacks are discounts that occur when certain contracted customers, which currently consist primarily of group purchasing organizations, Public Health Service institutions, non-profit clinics, and Federal government entities purchasing via the Federal Supply Schedule, purchase directly from our wholesalers. Contracted customers generally purchase the product at a discounted price. The wholesalers, in turn, charges back to us the difference between the price initially paid by the wholesalers and the discounted price paid by the contracted customers. In addition to actual chargebacks received we maintain an accrual for chargebacks based on the estimated contractual discounts on the inventory levels on hand in our distribution channel. If actual future chargebacks vary from these estimates, we may need to adjust prior period accruals, which would affect revenue in the period of adjustment.

Medicare Part D Coverage Gap: Medicare Part D prescription drug benefit mandates manufacturers to fund 70% of the Medicare Part D insurance coverage gap for prescription drugs sold to eligible patients. Our estimates for the expected Medicare Part D coverage gap are based on historical invoices received and in part from data received from our customers. Funding of the coverage gap is generally invoiced and paid in arrears so that the accrual balance consists of an estimate of the amount expected to be incurred for the current quarter's activity, plus an accrual balance for known prior quarters. If actual future funding varies from estimates, we may need to adjust prior period accruals, which would affect revenue in the period of adjustment. Additionally, beginning in January 2020, the amount of spending required by eligible patients in the Medicare Part D insurance coverage gap increased 30% due to the expiration of a provision in the Patient Protection and Affordable Care Act, which now results in a change in the True Out of Pocket (TrOOP) calculation methodology. The methodological change has resulted in an increase in required spending by patients and, in turn, an increase in manufacturers' contributions on behalf of patients in the Medicare Part D insurance coverage gap.

Co-payment Assistance: Patients who have commercial insurance and meet certain eligibility requirements may receive co-payment assistance. We accrue a liability for co-payment assistance based on actual program participation and estimates of program redemption using data provided by third-party administrators.

Product Royalty Revenues

Royalty revenues on commercial sales for ruxolitinib (marketed as JAKAVI® outside the United States) by Novartis Pharmaceutical International Ltd. ("Novartis") are based on net sales of licensed products in licensed territories as provided by Novartis. Royalty revenues on commercial sales for baricitinib (marketed as OLUMIANT) by Eli Lilly and Company ("Lilly") are based on net sales of licensed products in licensed territories as provided by Lilly. Royalty revenues on commercial sales for capmatinib (marketed as TABRECTA®) by Novartis are based on net sales of licensed products in the licensed territories as provided by Novartis. We recognize royalty revenues in the period the sales occur.

Milestone and Contract Revenues

For each collaborative research, development and/or commercialization agreement that results in revenue under the guidance of ASC 606 we identify all material performance obligations, which may include the license to intellectual property and know-how, research and development activities and/or other activities. In order to determine the transaction price, in addition to any upfront payment, we estimate the amount of variable consideration, including milestone payments, at the outset of the contract utilizing the most likely amount method. The most likely amount method is used since the milestone payments have a binary outcome (i.e., we receive all or none of the milestone payment). We constrain the estimate of variable consideration such that it is probable that a significant reversal of previously recognized revenue will not occur. When determining if variable consideration should be constrained, management considers whether there are factors outside the Company's control that could result in a significant reversal of revenue. In making these assessments, management considers the likelihood and magnitude of a potential reversal of revenue. These estimates are re-assessed each reporting period as required. Once the estimated transaction price is established, amounts are allocated to the performance obligations that have been identified. The transaction price is generally allocated to each separate performance obligation on a relative standalone selling price basis.

Out-licensing arrangements contain the right to use functional intellectual property, which is the underlying performance obligation of these collaborative arrangements. If the license of our intellectual property is determined to be distinct from other performance obligations in the arrangement, the functional intellectual property that is transferred to the collaborative partner at the onset of the arrangement is concluded to have significant standalone functionality and value at the point in time at which the intellectual property is made available to the collaborative partner. For licenses that are not distinct from other obligations identified in the arrangement, we utilize judgment to assess the nature of the combined performance obligation to determine whether the combined performance obligation is satisfied over time or at a point in time. If the combined performance obligation is satisfied over time, we apply an appropriate method of measuring progress for purposes of recognizing revenue from nonrefundable, upfront license fees. We evaluate the measure of progress each reporting period and, if necessary, adjust the measure of performance and related revenue recognition. For the three and nine months ended September 30, 2021 and 2020, we had no revenues from intellectual property licenses recognized over time.

For milestone revenues related to sales-based achievements, we recognize the milestone revenues in the corresponding period of the product sale, in accordance with the guidance of ASC 606-10-55-65 for contracts that include a license to intellectual property and the license is the predominant item to which the product sale relates.

Subsequent to the transfer of the intellectual property, we may earn milestones through achievement of pre-specified developmental or regulatory events and, as such, milestones are accounted for as variable consideration. We include developmental or regulatory milestones in the transaction price only to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the milestone is subsequently resolved. Under the agreements currently in place, we do not consider these events to be within our control, but rather dependent upon the development activities of our collaborative partners and the decisions made by regulatory agencies. Accordingly, these milestones are not included in the transaction price until the counterparty, or third-party in the event of a regulatory submission, confirms the satisfaction or completion of the milestone triggering

event. Given the high level of uncertainty of achievement, variable consideration associated with milestones are fully constrained until confirmation of the satisfaction or completion of the milestone by the third-party.

Generally, the milestone events contained in our collaboration agreements coincide with the progression of our drugs from development, to regulatory approval and then to commercialization. The value of these milestones is dictated within the contract and is fixed upon achievement and reflects the amount of consideration which we expect to be entitled to in exchange for the satisfaction of that milestone. The process of successfully discovering a new development candidate, having it approved and successfully commercialized is highly uncertain. As such, the milestone payments we may earn from our partners involve a significant degree of risk to achieve and therefore, subsequent milestone payments due to Incyte are recognized as revenue at the point in time when such milestones are achieved.

Our collaboration agreements may also include an option for the collaborative partner to elect to participate in research and development activities, such as shared participation in additional clinical trials using the compound. The presence of additional options for future participatory activities are assessed to determine if they represent material rights offered by us to the collaborative partner. We also determine whether the reimbursement of research and development expenses should be accounted for as collaborative revenues or an offset to research and development expenses in accordance with the provisions of gross or net revenue presentation and recognize the corresponding revenues or records the corresponding offset to research and development expenses as incurred.

Our collaborative agreements may also include provisions for additional future collaborative efforts, such as options for shared commercialization staffing or licensing of additional molecules, involvement in joint committees, or options for inclusion in negotiations of future supply rights, which at the time of each collaborative agreement's inception, are assessed to determine if these meet the definition of a performance obligation under ASC 606.

Cost of Product Revenues

Cost of product revenues includes all product related costs. In addition, cost of product revenues include low single-digit royalties under our collaboration and license agreement to Novartis on all future sales of JAKAFI in the United States and the amortization of our licensed intellectual property for ICLUSIG using the straight-line method over the estimated useful life of 12.5 years from the date of acquisition on June 1, 2016 of all of the outstanding shares of ARIAD Pharmaceuticals (Luxembourg) S.à.r.l. (since renamed Incyte Biosciences Luxembourg S.à.r.l.) from ARIAD Pharmaceuticals, Inc. ("ARIAD"). Cost of product revenues also includes employee personnel costs, including stock compensation, for those employees dedicated to the production of our commercial products.

Research and Development Costs. Our policy is to expense research and development costs as incurred, including amounts funded by research and development collaborations. Research and development expenses are comprised of costs we incur in performing research and development activities, including salary and benefits; stock-based compensation expense; outsourced services and other direct expenses, including clinical trial and pharmaceutical development costs; collaboration payments; expenses associated with drug supplies that are not being capitalized; and infrastructure costs, including facilities costs and depreciation expense. If a collaboration is a cost-sharing arrangement in which both we and our collaborator perform development work and share costs, we also recognize, as research and development expense in the period when our collaborator incurs development expenses, our portion of the co-development expenses that we are obligated to reimburse.

We often contract with contract research organizations ("CROs") to facilitate, coordinate and perform agreed upon research and development of a new drug. To ensure that research and development costs are expensed as incurred, we record monthly accruals for clinical trials and preclinical testing costs based on the work performed under the contract. These CRO contracts typically call for the payment of fees for services at the initiation of the contract and/or upon the achievement of certain clinical trial milestones. In the event that we prepay CRO fees, we record the prepayment as a prepaid asset and amortize the asset into research and development expense over the period of time the contracted research and development services are performed. Most professional fees, including project and clinical management, data management, monitoring, and medical writing fees are incurred throughout the contract period. These professional fees are expensed based on their percentage of completion at a particular date. Our CRO contracts generally include pass through fees. Pass through fees include, but are not limited to, regulatory expenses, investigator fees, travel costs, and other

miscellaneous costs, including shipping and printing fees. We expense the costs of pass through fees under our CRO contracts as they are incurred, based on the best information available to us at the time. The estimates of the pass through fees incurred are based on the amount of work completed for the clinical trial and are monitored through correspondence with the CROs, internal reviews and a review of contractual terms. The factors utilized to derive the estimates include the number of patients enrolled, duration of the clinical trial, estimated patient attrition, screening rate and length of the dosing regimen. CRO fees incurred to set up the clinical trial are expensed during the setup period. Under our clinical trial collaboration agreements we may be reimbursed for certain development costs incurred. Such costs are recorded as a reduction of research and development expense in the period in which the related expense is incurred.

Stock Compensation. Share-based payment transactions with employees, which include stock options, restricted stock units ("RSUs") and performance shares ("PSUs"), are recognized as compensation expense over the requisite service period based on their estimated fair values as well as expected forfeiture rates. The stock compensation process requires significant judgment and the use of estimates, particularly surrounding Black-Scholes assumptions such as stock price volatility over the option term and expected option lives, as well as expected forfeiture rates and the probability of PSUs vesting. The fair value of stock options, which are subject to graded vesting, are recognized as compensation expense over the requisite service period using the accelerated attribution method. The fair value of RSUs that are subject to cliff vesting are recognized as compensation expense over the requisite service period using the straight-line attribution method, and the fair value of RSUs that are subject to graded vesting are recognized as compensation expense over the requisite service period using the accelerated attribution method. The fair value of PSUs are recognized as compensation expense beginning at the time in which the performance conditions are deemed probable of achievement, which we assess as of the end of each reporting period. Once a performance condition is considered probable, we record compensation expense based on the portion of the service period elapsed to date with respect to that award, with a cumulative catch-up, net of estimated forfeitures, and recognize any remaining compensation expense, if any, over the remaining requisite service period using the straight-line attribution method for PSUs that are subject to cliff vesting and using the accelerated attribution method for PSUs that are subject to graded vesting.

Advertising Expenses. Advertising expenses, comprised primarily of television, radio, print media and Internet advertising, are expensed as incurred and are included in selling, general, and administrative expenses. For the three and nine months ended September 30, 2021, advertising expenses were approximately $13.7 million and $32.0 million, respectively. For the three and nine months ended September 30, 2020, advertising expenses were approximately $6.4 million and $16.5 million, respectively.

Long Term Incentive Plans. We have long term incentive plans which provide eligible employees with the opportunity to receive performance and service-based incentive compensation, which may be comprised of cash, stock options, restricted stock units and/or performance shares. The payment of cash and the grant or vesting of equity may be contingent upon the achievement of pre-determined regulatory, sales and internal performance milestones.

Acquisition-Related Contingent Consideration. Acquisition-related contingent consideration consists of our future royalty obligations on future net sales of ICLUSIG to Takeda Pharmaceutical Company Limited, which acquired ARIAD ("Takeda"). Acquisition-related contingent consideration was recorded on the acquisition date of June 1, 2016 at the estimated fair value of the obligation, in accordance with the acquisition method of accounting. The fair value measurement is based on significant inputs that are unobservable in the market and thus represents a Level 3 measurement. The fair value of the acquisition-related contingent consideration is remeasured each reporting period, with changes in fair value recorded in the condensed consolidated statements of operations.

Collaboration loss sharing. Under collaboration and license agreements with shared commercialization efforts, we record our share of the losses from the co-commercialization efforts in collaboration loss sharing on the condensed consolidated statement of operations. For the three and nine months ended September 30, 2021 and 2020, collaboration

loss sharing represents our 50% share of the United States loss for commercialization of MONJUVI (tafasitamab-cxix) under our agreement with MorphoSys.

Recent Accounting Pronouncements

In December 2019, the FASB issued ASU No. 2019-12, “Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes.” This guidance applies to all entities and aims to reduce the complexity of tax accounting standards while enhancing reporting disclosures. This guidance is effective for fiscal years beginning after December 15, 2020 and interim periods therein. We adopted this guidance for the period beginning January 1, 2021. Upon adoption, ASU No. 2019-12 had an immaterial impact on the condensed consolidated financial statements.

3. Revenues

As discussed in Note 2, revenues are recognized under guidance within ASC 606. The following table presents our disaggregated revenue for the periods presented (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
JAKAFI revenues, net	$ 547,373	$ 487,783	$ 1,542,138	$ 1,420,968
ICLUSIG revenues, net	28,522	26,380	82,356	76,426
PEMAZYRE revenues, net	17,562	8,089	48,924	11,875
MINJUVI revenues, net	556	—	556	—
Total product revenues, net	594,013	522,252	1,673,974	1,509,269
JAKAVI product royalty revenues	94,655	68,306	242,295	190,856
OLUMIANT product royalty revenues	86,572	28,647	154,875	79,924
TABRECTA product royalty revenues	2,747	1,438	7,270	2,144
Total product royalty revenues	183,974	98,391	404,440	272,924
Milestone and contract revenues	35,000	—	45,000	95,000
Total revenues	$ 812,987	$ 620,643	$ 2,123,414	$ 1,877,193

For further information on our revenue-generating contracts, refer to Note 9.

4. Fair value of financial instruments

FASB accounting guidance defines fair value as the price that would be received to sell an asset or paid to transfer a liability (“the exit price”) in an orderly transaction between market participants at the measurement date. The standard outlines a valuation framework and creates a fair value hierarchy in order to increase the consistency and comparability of fair value measurements and the related disclosures. In determining fair value we use quoted prices and observable inputs. Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from sources independent of us. The fair value hierarchy is broken down into three levels based on the source of inputs as follows:

Level 1—Valuations based on unadjusted quoted prices in active markets for identical assets or liabilities.

Level 2—Valuations based on observable inputs and quoted prices in active markets for similar assets and liabilities.

Level 3—Valuations based on inputs that are unobservable and models that are significant to the overall fair value measurement.

Recurring Fair Value Measurements

Our marketable securities consist of investments in U.S. government debt securities that are classified as available-for-sale.

At September 30, 2021 and December 31, 2020, our Level 2 U.S. government debt securities were valued using readily available pricing sources which utilize market observable inputs, including the current interest rate and other characteristics for similar types of investments. Our long term investments classified as Level 1 were valued using their respective closing stock prices on The Nasdaq Stock Market. We did not experience any transfers of financial instruments between the fair value hierarchy levels during the nine months ended September 30, 2021.

The following fair value hierarchy table presents information about each major category of our financial assets measured at fair value on a recurring basis (in thousands):

	Fair Value Measurement at Reporting Date Using:			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Balance as of September 30, 2021
Cash and cash equivalents	$ 1,999,021	$ —	$ —	$ 1,999,021
Debt securities (government)	—	285,054	—	285,054
Long term investments (Note 9)	192,096	—	—	192,096
Total assets	$ 2,191,117	$ 285,054	$ —	$ 2,476,171

	Fair Value Measurement at Reporting Date Using:			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Balance as of December 31, 2020
Cash and cash equivalents	$ 1,513,008	$ —	$ —	$ 1,513,008
Debt securities (government)	—	288,369	—	288,369
Long term investments (Note 9)	222,301	—	—	222,301
Total assets	$ 1,735,309	$ 288,369	$ —	$ 2,023,678

The following fair value hierarchy table presents information about each major category of our financial liabilities measured at fair value on a recurring basis as (in thousands):

	Fair Value Measurement at Reporting Date Using:			
	Quoted Prices in Active Markets for Identical Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Balance as of September 30, 2021
Acquisition-related contingent consideration	$ —	$ —	$ 252,000	$ 252,000
Total liabilities	$ —	$ —	$ 252,000	$ 252,000

	Fair Value Measurement at Reporting Date Using:			
	Quoted Prices in Active Markets for Identical Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Balance as of December 31, 2020
Acquisition-related contingent consideration	$ —	$ —	$ 266,000	$ 266,000
Total liabilities	$ —	$ —	$ 266,000	$ 266,000

The following is a rollforward of our Level 3 liabilities (in thousands):

	2021
Balance at January 1,	$ 266,000
Contingent consideration earned during the period but not yet paid	(9,910)
Payments made during the period	(17,158)
Change in fair value of contingent consideration	13,068
Balance at September 30,	$ 252,000

The fair value of the contingent consideration was determined on the date of acquisition, June 1, 2016, using an income approach based on estimated ICLUSIG revenues in the European Union and other countries for the approved third line treatment over 18 years, and discounted to present value at a rate of 10%. The fair value of the contingent consideration is remeasured each reporting period, with changes in fair value recorded in the condensed consolidated statements of operations. The valuation inputs utilized to estimate the fair value of the contingent consideration as of September 30, 2021 included a weighted average cost of capital of 10% and updated projections of future ICLUSIG revenues in the European Union and other countries for the approved third line treatment. The change in fair value of the contingent consideration during the three and nine months ended September 30, 2021 was due primarily to the passage of time and the impact of updated projections of future ICLUSIG revenues in the European Union.

We make payments to Takeda quarterly based on the royalties or any additional milestone payments earned in the previous quarter. At September 30, 2021 and December 31, 2020, contingent consideration earned but not yet paid was $9.9 million and $9.6 million, respectively, and was included in accrued and other current liabilities.

The following is a summary of our marketable security portfolio for the periods presented (in thousands):

	Amortized Cost	Net Unrealized Gains	Net Unrealized Losses	Estimated Fair Value
September 30, 2021				
Debt securities (government)	$ 285,135	$ —	$ (81)	$ 285,054
December 31, 2020				
Debt securities (government)	$ 288,199	$ 170	$ —	$ 288,369

Our available-for-sale debt securities generally have contractual maturity dates of between 12 to 18 months. Debt security assets were assessed for risk of expected credit losses per our accounting policy as described in Note 2. As of September 30, 2021 and December 31, 2020, the available-for-sale debt securities were held in US-government backed funds and Treasury assets and were assessed on an individual security basis to have a de minimis risk of credit loss.

5. Concentration of credit risk and current expected credit losses

In November 2009, we entered into a collaboration and license agreement with Novartis. In December 2009, we entered into a license, development and commercialization agreement with Lilly. In December 2018, we entered into a research collaboration and licensing agreement with Innovent Biologics, Inc. (“Innovent”). In July 2019, we entered into a collaboration and license agreement with Zai Lab (Shanghai) Co., Ltd., a subsidiary of Zai Lab Limited (collectively, “Zai Lab”). The above collaboration partners comprised, in aggregate, 37% and 42% of the accounts receivable balance as of September 30, 2021 and December 31, 2020, respectively. For further information relating to these collaboration and license agreements, refer to Note 9.

In November 2011, we began commercialization and distribution of JAKAFI, and in April 2020, we began commercialization and distribution of PEMAZYRE to a number of customers. Our product revenues are concentrated in a

number of these customers. The concentration of credit risk related to our JAKAFI and PEMAZYRE product revenues is as follows:

	Percentage of Total Net Product Revenues for the Three Months Ended September 30,		Percentage of Total Net Product Revenues for the Nine Months Ended September 30,	
	2021	2020	2021	2020
Customer A	19 %	20 %	19 %	20 %
Customer B	11 %	13 %	12 %	13 %
Customer C	17 %	17 %	18 %	17 %
Customer D	9 %	10 %	10 %	11 %
Customer E	11 %	8 %	11 %	8 %

We are exposed to risks associated with extending credit to customers related to the sale of products. Customers A, B, C, D and E comprised, in aggregate, 32% and 33% of the accounts receivable balance as of September 30, 2021 and December 31, 2020, respectively. The concentration of credit risk relating to ICLUSIG and MINJUVI product revenues or accounts receivable is not significant.

We assessed our collaborative and customer receivable assets as of September 30, 2021 according to our accounting policy for applying reserves for expected credit losses, noting minimal history of uncollectible receivables and the continued perceived creditworthiness of our third party sales relationships, upon which the expected credit losses were considered de minimis.

6. Inventory

Our inventory balance consists of the following (in thousands):

	September 30, 2021	December 31, 2020
Raw materials	$ 1,275	$ 1,275
Work-in-process	35,988	21,242
Finished goods	14,925	13,456
	52,188	35,973
Inventories-current	21,303	16,425
Inventories-noncurrent	$ 30,885	$ 19,548

Inventories, stated at the lower of cost and net realizable value, consist of raw materials, work in process and finished goods. At September 30, 2021, $21.3 million of inventory was classified as current on the condensed consolidated balance sheet as we expect this inventory to be consumed for commercial use within the next twelve months. At September 30, 2021, $30.9 million of inventory was classified as noncurrent on the condensed consolidated balance sheets as we did not expect this inventory to be consumed for commercial use within the next twelve months. We obtain some inventory components from a limited number of suppliers due to technology, availability, price, quality or other considerations. The loss of a supplier, the deterioration of our relationship with a supplier, or any unilateral violation of the contractual terms under which we are supplied components by a supplier could adversely affect our total revenues and gross margins.

We capitalize inventory after FDA approval as the related costs are expected to be recoverable through the commercialization of the product. Costs incurred prior to FDA approval are recorded as research and development expense in our statements of operations. At September 30, 2021, inventory with approximately $72.1 million of product costs incurred prior to FDA approval had not yet been sold. We expect to sell the pre commercialization inventory over the next 3 to 36 months and as a result, cost of product revenues for will reflect a lower average per unit cost of materials.

7. Property and equipment, net

Property and equipment, net consists of the following (in thousands):

	September 30, 2021	December 31, 2020
Office equipment	$ 18,395	$ 17,880
Manufacturing and laboratory equipment	103,502	86,021
Computer equipment	75,105	66,640
Land	10,379	10,671
Building and leasehold improvements	277,901	238,042
Operating lease right-of-use assets	25,544	26,816
Construction in progress	343,686	257,929
	854,512	703,999
Less accumulated depreciation and amortization	(167,794)	(144,374)
Property and equipment, net	$ 686,718	$ 559,625

In March 2017, we acquired additional adjacent buildings to our global headquarters in Wilmington, Delaware and in 2019, began demolition of these buildings and construction of a new laboratory and office building totaling approximately 200,000 square feet. As of September 30, 2021, we have capitalized approximately $140.7 million in on site preparation, design and construction costs and currently expect the building to be completed in the first half of 2022.

In February 2018, we signed an agreement to rent a building in Morges, Switzerland for an initial term of 15 years plus one year of free rent, with multiple options to extend for an additional 20 years. The building serves as our European headquarters and consists of approximately 100,000 square feet of office space. This building allowed for consolidation of our European operations that were located in Geneva and Lausanne, Switzerland. In June 2019, we obtained control of the Morges building to begin our construction activity, which was completed in 2020. At that time, we determined the lease to be a finance lease and recorded a lease liability of $31.1 million and a finance lease right-of-use asset of $29.1 million, net of a lease incentive from our landlord of $2.0 million. We have capitalized approximately $19.1 million in leasehold improvements as of September 30, 2021 relating to Morges.

In July 2018, we signed an agreement to purchase land located in Yverdon, Switzerland. The land was purchased, in cash, for approximately $4.8 million. Upon this parcel, we are constructing a large molecule production facility. Construction activity commenced in July 2018 and as of September 30, 2021, we have capitalized approximately $186.7 million in construction in progress for costs for construction, ground preparation and architectural and engineering studies. We currently expect the facility will be operational in the first half of 2022.

We are the lessee of several contracts, including those to secure fleet vehicles, buildings and equipment. Our lease agreements do not contain any material residual value guarantees or restrictive covenants. Some of our building leases include options to renew and the exercise of these options is at our discretion. Our current operating lease liabilities are reflected in accrued and other current liabilities and our noncurrent operating lease liabilities are reflected in other liabilities on the condensed consolidated balance sheets and are as follows (in thousands):

	September 30, 2021	December 31, 2020
Current		
Operating lease liabilities	$ 9,849	$ 12,674
Finance lease liabilities	2,400	2,284
Noncurrent		
Operating lease liabilities	14,951	14,188
Finance lease liabilities	31,376	32,573
Total lease liabilities	$ 58,576	$ 61,719

The cash paid for amounts included in the measurement of our operating lease liabilities for the nine months ended September 30, 2021 and 2020 was $11.4 million and $8.7 million, respectively, in operating cash flows. The cash paid for amounts included in the measurement of our finance lease liabilities for the nine months ended September 30, 2021 and 2020 was $1.8 million and $0.6 million, respectively, in financing cash flows.

As of September 30, 2021, our finance and operating leases had a weighted average lease term of approximately 13.6 and 4.7 years, respectively. The discount rate of our leases is an approximation of an estimated incremental borrowing rate and is dependent upon the term and economics of each agreement. The weighted average discount rate of our finance and operating leases is approximately 4.1% and 8.8%, respectively.

For the three and nine months ended September 30, 2021, we incurred approximately $3.5 million and $10.7 million, respectively, of expense related to our operating leases, approximately $0.7 million and $2.0 million, respectively, of amortization on our finance lease right-of-use assets and approximately $0.4 million and $1.0 million, respectively, of interest expense on our finance lease liabilities. For the three and nine months ended September 30, 2020, we incurred approximately $2.9 million and $9.0 million, respectively, of expense related to our operating leases, approximately $0.7 million and $1.9 million, respectively, of amortization on our finance lease right-of-use assets and approximately $0.3 million and $0.9 million, respectively, of interest expense on our finance lease liabilities. For the three and nine months ended September 30, 2021 and 2020, the cost of our short term leases with a term less than 12 months was de minimis.

8. Intangible assets and goodwill

Intangible Assets, Net

The components of intangible assets were as follows (in thousands, except for useful life):

		Balance at September 30, 2021			Balance at December 31, 2020		
	Weighted-Average Useful Lives (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Finite-lived intangible assets:							
Licensed IP	12.5	$ 271,000	$ 114,861	$ 156,139	$ 271,000	$ 98,709	$ 172,291

Estimated aggregate amortization expense based on the current carrying value of amortizable intangible assets is as follows (in thousands):

	Remainder of 2021	2022	2023	2024	2025	Thereafter
Amortization expense	$ 5,385	$ 21,536	$ 21,536	$ 21,536	$ 21,536	$ 64,610

Goodwill

There were no changes to the carrying amount of goodwill for the nine months ended September 30, 2021.

9. License agreements

Novartis

In November 2009, we entered into a Collaboration and License Agreement with Novartis. Under the terms of the agreement, Novartis received exclusive development and commercialization rights outside of the United States to our JAK inhibitor ruxolitinib and certain back-up compounds for hematologic and oncology indications, including all hematological malignancies, solid tumors and myeloproliferative diseases. We retained exclusive development and commercialization rights to JAKAFI (ruxolitinib) in the United States and in certain other indications. Novartis also received worldwide exclusive development and commercialization rights to our MET inhibitor compound capmatinib and certain back-up compounds in all indications.

Under this agreement, we received an upfront payment and immediate milestone payment totaling $210.0 million and were initially eligible to receive up to $1.2 billion in milestone payments across multiple indications upon the achievement of pre-specified events, including up to $174.0 million for the achievement of development milestones, up to $495.0 million for the achievement of regulatory milestones and up to $500.0 million for the achievement of sales milestones. In April 2016, we amended this agreement to provide that Novartis has exclusive research, development and commercialization rights outside of the United States to ruxolitinib (excluding topical formulations) in the graft-versus-host-disease (“GVHD”) field. We became eligible to receive up to $75.0 million of additional potential development and regulatory milestones relating to GVHD.

Exclusive of the upfront payment of $150.0 million received in 2009 and the immediate milestone of $60.0 million earned in 2010, we have recognized and received, in the aggregate, $157.0 million for the achievement of development milestones, $280.0 million for the achievement of regulatory milestones and $200.0 million for the achievement of sales milestones through September 30, 2021.

We recognize development and regulatory milestones upon confirmation of achievement of the event, as development and regulatory approvals are events not controllable by us but rather development activities of Novartis and decisions made by regulatory agencies. We recognize sales milestones in the corresponding period of the product sale upon confirmation of net sales milestone threshold achievement by Novartis.

In May 2020, we recognized a $25.0 million development milestone and a $45.0 million regulatory milestone for the FDA approval of capmatinib as TABRECTA for the treatment of adult patients with metastatic non-small cell lung cancer (NSCLC) whose tumors have a mutation that leads to MET exon 14 skipping (METex14) as detected by an FDA-approved test. In June 2020, we recognized a $20.0 million regulatory milestone for the Japanese Ministry of Health, Labour and Welfare approval of TABRECTA for METex14 mutation-positive advanced and/or recurrent unresectable non-small cell lung cancer.

We also are eligible to receive tiered, double-digit royalties ranging from the upper-teens to the mid-twenties on future JAKAVI net sales outside of the United States, and tiered, worldwide royalties on TABRECTA net sales that range from 12% to 14%. Since the achievement of the $60.0 million regulatory milestone related to reimbursement of JAKAVI in Europe in September 2014, we are obligated to pay to Novartis tiered royalties in the low single-digits on future JAKAFI net sales within the United States. During the three and nine months ended September 30, 2021, such royalties payable to Novartis on net sales within the United States totaled $26.9 million and $70.6 million, respectively, and were reflected in cost of product revenues on the condensed consolidated statements of operations. During the three and nine months ended September 30, 2020, such royalties payable to Novartis on net sales within the United States totaled $23.9 million and $64.6 million, respectively, and were reflected in cost of product revenues on the condensed consolidated statements of operations. At September 30, 2021 and December 31, 2020, $132.4 million and $96.4 million, respectively, of accrued royalties payable to Novartis were included in accrued and other current liabilities on the condensed consolidated balance

sheets. Each company is responsible for costs relating to the development and commercialization of ruxolitinib in its respective territories, with costs of collaborative studies shared equally. Novartis is also responsible for all costs relating to the development and commercialization of capmatinib.

The Novartis agreement will continue on a program-by-program basis until Novartis has no royalty payment obligations with respect to such program or, if earlier, the termination of the agreement or any program in accordance with the terms of the agreement. Royalties are payable by Novartis on a product-by-product and country-by-country basis until the latest to occur of (i) the expiration of the last valid claim of the licensed patent rights covering the licensed product in the relevant country, (ii) the expiration of regulatory exclusivity for the licensed product in such country and (iii) a specified period from first commercial sale in such country of the licensed product by Novartis or its affiliates or sublicensees. The agreement may be terminated in its entirety or on a program-by-program basis by Novartis for convenience. The agreement may also be terminated by either party under certain other circumstances, including material breach.

Reimbursable costs incurred after the effective date of the agreement with Novartis are recorded net against the related research and development expenses. Research and development expenses for the three and nine months ended September 30, 2021 were net of $0.0 million and $0.1 million, respectively, of costs reimbursed by Novartis. Research and development expenses for the three and nine months ended September 30, 2020 were net of $0.0 million and $0.3 million, respectively, of costs reimbursed by Novartis. At September 30, 2021 and December 31, 2020, $0.2 million and $0.2 million, respectively, of reimbursable costs were included in accounts receivable on the condensed consolidated balance sheets.

Milestone and contract revenue under the Novartis agreement for the three and nine months ended September 30, 2020 was $0.0 million and $90.0 million, respectively. Product royalty revenue related to Novartis net sales of JAKAVI outside of the United States for the three and nine months ended September 30, 2021 was $94.7 million and $242.3 million, respectively. Product royalty revenue related to Novartis net sales of JAKAVI outside of the United States for the three and nine months ended September 30, 2020 was $68.3 million and $190.9 million, respectively. Product royalty revenue related to Novartis net sales of TABRECTA worldwide for the three and nine months ended September 30, 2021 was $2.7 million and $7.3 million, respectively. Product royalty revenue related to Novartis net sales of TABRECTA worldwide for the three and nine months ended September 30, 2020 was $1.4 million and $2.1 million, respectively.

Lilly – Baricitinib

In December 2009, we entered into a License, Development and Commercialization Agreement with Lilly. Under the terms of the agreement, Lilly received exclusive worldwide development and commercialization rights to our JAK inhibitor baricitinib, and certain back-up compounds for inflammatory and autoimmune diseases. We received an upfront payment of $90.0 million, and were initially eligible to receive up to $665.0 million in substantive milestone payments across multiple indications upon the achievement of pre-specified events, including up to $150.0 million for the achievement of development milestones, up to $365.0 million for the achievement of regulatory milestones and up to $150.0 million for the achievement of sales milestones. Exclusive of the upfront payment of $90.0 million received in 2009, we have recognized and received, in aggregate, $149.0 million for the achievement of development milestones and $265.0 million for the achievement of regulatory milestones through September 30, 2021.

We recognize development and regulatory milestones upon confirmation of achievement of the event, as development and regulatory approvals are events not controllable by us but rather development activities of Lilly and decisions made by regulatory agencies. We recognize sales milestones in the corresponding period of the product sale upon confirmation of net sales milestone threshold achievement by Lilly.

In January 2016, Lilly submitted an NDA to the FDA and a Marketing Authorization Application (MAA) to the European Medicines Agency for baricitinib as treatment for rheumatoid arthritis. In February 2017, we and Lilly announced that the European Commission approved baricitinib as OLUMIANT for the treatment of moderate-to-severe rheumatoid arthritis in adult patients who have responded inadequately to, or who are intolerant to, one or more disease-modifying antirheumatic drugs. In July 2017, Japan's Ministry of Health, Labor and Welfare granted marketing approval for OLUMIANT for the treatment of rheumatoid arthritis in patients with inadequate response to standard-of-care therapies.

In June 2018, the FDA approved the 2mg dose of OLUMIANT for the treatment of adults with moderately-to-severely active rheumatoid arthritis who have had an inadequate response to one or more tumor necrosis factor inhibitor therapies. In October 2020, Lilly announced that the European Commission approved baricitinib as OLUMIANT for the treatment of moderate-to-severe atopic dermatitis in adult patients who are candidates for systemic therapy.

We retained options to co-develop our JAK1/JAK2 inhibitors with Lilly on a compound-by-compound and indication-by-indication basis. Lilly is responsible for all costs relating to the development and commercialization of the compounds unless we elect to co-develop any compounds or indications. If we elect to co-develop any compounds and/or indications, we would be responsible for funding 30% of the associated future global development costs from the initiation of a Phase IIb trial through regulatory approval, including post-launch studies required by a regulatory authority. We would receive an incremental royalty rate increase across all tiers resulting in effective royalty rates ranging up to the high twenties on potential future global net sales for compounds and/or indications that we elect to co-develop. For indications that we elect not to co-develop, we would receive tiered, double-digit royalty payments on future global net sales with rates ranging up to 20% if the product is successfully commercialized. If we have started co-development funding for any indication, we can at any time opt out and stop future co-development cost sharing. If we elect to do this we would still be eligible for our base royalties plus an incremental pro-rated royalty commensurate with our contribution to the total co-development cost for those indications for which we co-funded. We previously had retained an option to co-promote products in the United States but, in March 2016, we waived our co-promotion option as part of an amendment to the agreement.

In July 2010, we elected to co-develop baricitinib with Lilly in rheumatoid arthritis and became responsible for funding 30% of the associated future global development costs for this indication from the initiation of the Phase IIb trial through regulatory approval, including post-launch studies required by a regulatory authority. We subsequently elected to co-develop baricitinib with Lilly in psoriatic arthritis, atopic dermatitis, alopecia areata, systemic lupus erythematosus and axial spondyloarthritis and were responsible for funding 30% of future global development costs for those indications through regulatory approval, including post-launch studies required by a regulatory authority. In April 2019, we elected to end additional co-funding of the development of baricitinib effective as of January 1, 2019. We will continue to receive royalties on global net sales of OLUMIANT, pursuant to the terms in the Lilly agreement, as described above.

In May 2020, we amended our agreement with Lilly to enable Lilly to develop and commercialize baricitinib for the treatment of COVID-19. As part of the amended agreement, in addition to the royalties described above, we will be entitled to receive additional royalty payments with rates in the low teens on global net sales of baricitinib for the treatment of COVID-19 that exceed a specified aggregate global net sales threshold.

The Lilly agreement will continue until Lilly no longer has any royalty payment obligations or, if earlier, the termination of the agreement in accordance with its terms. Royalties are payable by Lilly on a product-by-product and country-by-country basis until the latest to occur of (i) the expiration of the last valid claim of the licensed patent rights covering the licensed product in the relevant country, (ii) the expiration of regulatory exclusivity for the licensed product in such country and (iii) a specified period from first commercial sale in such country of the licensed product by Lilly or its affiliates or sublicensees. The agreement may be terminated by Lilly for convenience, and may also be terminated under certain other circumstances, including material breach.

Product royalty revenue related to Lilly global net sales of OLUMIANT for the three and nine months ended September 30, 2021 was $86.6 million and $154.9 million, respectively. Product royalty revenue related to Lilly global net sales of OLUMIANT for the three and nine months ended September 30, 2020 was $28.6 million and $79.9 million, respectively.

Lilly - Ruxolitinib

In March 2016, we entered into an amendment to the agreement with Lilly that amended the non-compete provision of the agreement to allow us to engage in the development and commercialization of ruxolitinib in the GVHD field. Upon execution of the amendment, we paid Lilly an upfront payment of $35.0 million and Lilly is eligible to receive up to $40.0 million in regulatory milestone payments relating to ruxolitinib in the GVHD field. In May 2019, the approval of JAKAFI in steroid-refractory acute GVHD triggered a $20.0 million milestone payment to Lilly.

Agenus

In January 2015, we entered into a License, Development and Commercialization Agreement with Agenus Inc. and its wholly-owned subsidiary, 4-Antibody AG (now known as Agenus Switzerland Inc.), which we collectively refer to as Agenus. Under this agreement, the parties have agreed to collaborate on the discovery of novel immuno-therapeutics using Agenus' antibody discovery platforms. The agreement became effective on February 18, 2015, upon the expiration of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. Upon closing of the agreement, we paid Agenus total consideration of $60.0 million.

In February 2017, we and Agenus amended this agreement (the "Amended Agreement"). Under the terms of the Amended Agreement, we received exclusive worldwide development and commercialization rights to four checkpoint modulators directed against GITR, OX40, LAG-3 and TIM-3. In addition to the initial four program targets, we and Agenus have the option to jointly nominate and pursue additional targets within the framework of the collaboration, and in November 2015, three more targets were added. Targets may be designated profit-share programs, where all costs and profits are shared equally by us and Agenus, or royalty-bearing programs, where we are responsible for all costs associated with discovery, preclinical, clinical development and commercialization activities. The programs relating to GITR and OX40 and two of the undisclosed targets were profit-share programs until February 2017, while the other targets currently under collaboration are royalty-bearing programs. The Amended Agreement converted the programs relating to GITR and OX40 to royalty-bearing programs and removed from the collaboration the profit-share programs relating to the two undisclosed targets, with one reverting to us and one reverting to Agenus. Should any of those removed programs be successfully developed by a party, the other party will be eligible to receive the same milestone payments as the royalty-bearing programs and royalties at a 15% rate on global net sales. There are currently no profit-share programs. For each royalty-bearing product other than GITR and OX40, Agenus will be eligible to receive tiered royalties on global net sales ranging from 6% to 12%. For GITR and OX40, Agenus will be eligible to receive 15% royalties on global net sales.

In 2017 under the Amended Agreement, we paid Agenus $20.0 million in accelerated milestones relating to the clinical development of the GITR and OX40 programs. As of March 31, 2021, we have paid Agenus additional milestones totaling $10.0 million and Agenus is eligible to receive up to an additional $500.0 million in future contingent development, regulatory and commercialization milestones across all programs in the collaboration. The agreement may be terminated by us for convenience upon 12 months' notice and may also be terminated under certain other circumstances, including material breach.

In connection with the Amended Agreement, we also agreed to purchase 10.0 million shares of Agenus Inc. common stock for an aggregate purchase price of $60.0 million in cash, or $6.00 per share. We completed the purchase of the shares on February 14, 2017, when the closing price on The Nasdaq Stock Market for Agenus Inc. shares was $4.40 per share. The shares we acquired were not registered under the Securities Act of 1933 on the purchase date and were subject to certain security specific restrictions for a period of time, and accordingly, we estimated a discount for lack of marketability on the shares on the issuance date of $4.5 million, which resulted in a net fair value of the shares on the issuance date of $39.5 million. Therefore, of the total consideration paid of $60.0 million, $39.5 million was allocated to our stock purchase in Agenus Inc. and was recorded within long term investments and $20.5 million was allocated to research and development expense.

We concluded Agenus Inc. is not a VIE because it has sufficient equity to finance its activities without additional subordinated financial support and its at-risk equity holders have the characteristics of a controlling financial interest. After completion of our stock purchases from Agenus Inc., we held an approximate ownership interest of 18% and, under circumstances present at that time, concluded that we had the ability to exercise significant influence, but not control, over Agenus Inc., primarily due to the level of intra-entity transactions between us and Agenus related to development expenses, as well as other qualitative factors. In the second quarter of 2020, we sold an aggregate of approximately 1.2 million shares of Agenus Inc. common stock. The sales transactions were priced at market, with per share pricing ranging from $3.57 to $4.21, resulting in gross proceeds of approximately $4.5 million. In the third quarter of 2020, we sold an aggregate of approximately 2.5 million shares of Agenus Inc. common stock. The sales transactions were priced at market, with per share pricing ranging from $4.28 to $5.25, resulting in gross proceeds of approximately $12.7 million. In the first quarter of 2021, we sold approximately 0.2 million shares of Agenus Inc. common stock priced at market at $5.45, resulting in gross proceeds of approximately $1.1 million. In the second quarter of 2021, we sold approximately 1.6 million shares of

Agenus Inc. common stock priced at market, with per share pricing ranging from $4.59 to $5.41, resulting in gross proceeds of approximately $8.2 million. In the third quarter of 2021, we sold approximately 0.2 million shares of Agenus Inc. common stock priced at market, with per share pricing ranging from $5.74 to $6.75, resulting in gross proceeds of approximately $1.1 million. As of September 30, 2021, we owned approximately 5% of the outstanding shares of Agenus Inc. common stock. As a result of having a less than 10% ownership interest and the recent diversification of Agenus Inc.'s development pipeline with other collaboration partners, we concluded that we no longer have significant influence over Agenus Inc. As such, we no longer account for our equity investment in Agenus Inc. as an equity method investment previously accounted for under the fair value option. We account for our investment in Agenus Inc. at fair value, whereby the investment is marked to market through earnings in each reporting period. For the three and nine months ended September 30, 2021, we recorded an unrealized loss of $2.8 million and an unrealized gain of $29.1 million, respectively, based on the change in fair value of Agenus Inc.'s common stock during these periods. For the three and nine months ended September 30, 2020, we recorded an unrealized gain of $3.9 million and $1.2 million, respectively, based on the change in fair value of Agenus Inc.'s common stock during these periods. The fair market value of our long term investment in Agenus Inc. at September 30, 2021 and December 31, 2020 was $63.4 million and $44.7 million, respectively.

Research and development expenses for the three and nine months ended September 30, 2021 also included $0.2 million and $0.9 million, respectively, of development costs incurred pursuant to the Agenus arrangement. Research and development expenses for the three and nine months ended September 30, 2020 also included $0.1 million and $0.4 million, respectively, of development costs incurred pursuant to the Agenus arrangement. At September 30, 2021 and December 31, 2020, a total of $0.8 million and $0.5 million, respectively, of such costs were included in accrued and other liabilities on the condensed consolidated balance sheets.

Merus

In December 2016, we entered into a Collaboration and License Agreement with Merus N.V. ("Merus"). Under this agreement, which became effective in January 2017, the parties have agreed to collaborate with respect to the research, discovery and development of bispecific antibodies utilizing Merus' technology platform. The collaboration encompasses up to eleven independent programs.

The most advanced collaboration program is MCLA-145, a bispecific antibody targeting PD-L1 and CD137, for which we received exclusive development and commercialization rights outside of the United States. Merus retained exclusive development and commercialization rights in the United States to MCLA-145. Each party will share equally the costs of mutually agreed global development activities for MCLA-145, and fund itself any independent development activities in its territory. Merus will be responsible for commercializing MCLA-145 in the United States and we will be responsible for commercializing it outside of the United States.

In addition to receiving rights to MCLA-145 outside of the United States, we received worldwide exclusive development and commercialization rights to up to ten additional programs. Of these ten additional programs, Merus retained the option, subject to certain conditions, to co-fund development of up to two such programs. If Merus exercises its co-funding option for a program, Merus would be responsible for funding 35% of the associated future global development costs and, for certain of such programs, would be responsible for reimbursing us for certain development costs incurred prior to the option exercise. Merus will also have the right to participate in a specified proportion of detailing activities in the United States for one of those co-developed programs. All costs related to the co-funded collaboration programs are subject to joint research and development plans and overseen by a joint development committee, but we will have final determination as to such plans in cases of dispute. We will be responsible for all research, development and commercialization costs relating to all other programs.

In 2017, we paid Merus an upfront non-refundable payment of $120.0 million. For each program as to which Merus does not have commercialization or development co-funding rights, Merus will be eligible to receive up to $100.0 million in future contingent development and regulatory milestones, and up to $250.0 million in commercialization milestones as well as tiered royalties ranging from 6% to 10% of global net sales. For each program as to which Merus exercises its option to co-fund development, Merus will be eligible to receive a 50% share of profits (or sustain 50% of any losses) in the United States and be eligible to receive tiered royalties ranging from 6% to 10% of net sales of products outside of the United States. If Merus opts to cease co-funding a program as to which it exercised its co-development

option, then Merus will no longer receive a share of profits in the United States but will be eligible to receive the same milestones from the co-funding termination date and the same tiered royalties described above with respect to programs where Merus does not have a right to co-fund development and, depending on the stage at which Merus chose to cease co-funding development costs, Merus will be eligible to receive additional royalties ranging up to 4% of net sales in the United States. For MCLA-145, we and Merus will each be eligible to receive tiered royalties on net sales in the other party's territory at rates ranging from 6% to 10%.

The Merus agreement will continue on a program-by-program basis until we have no royalty payment obligations with respect to such program or, if earlier, the termination of the agreement or any program in accordance with the terms of the agreement. The agreement may be terminated in its entirety or on a program-by-program basis by us for convenience. The agreement may also be terminated by either party under certain other circumstances, including material breach, as set forth in the agreement. If the agreement is terminated with respect to one or more programs, all rights in the terminated programs revert to Merus, subject to payment to us of a reverse royalty of up to 4% on sales of future products, if Merus elects to pursue development and commercialization of products arising from the terminated programs.

In addition, in December 2016, we entered into a Share Subscription Agreement with Merus, pursuant to which we agreed to purchase 3.2 million common shares of Merus for an aggregate purchase price of $80.0 million in cash, or $25.00 per share. We completed the purchase of the shares on January 23, 2017 when the closing price on The Nasdaq Stock Market for Merus shares was $24.50 per share. The shares we acquired were not registered under the Securities Act of 1933 on the purchase date and were subject to certain security specific restrictions for a period of time, and accordingly, we estimated a discount for lack of marketability on the shares on the issuance date of $5.6 million, which resulted in a net fair value of the shares on the issuance date of $72.8 million. Of the total consideration paid of $80.0 million, $72.8 million was allocated to our stock purchase in Merus and was recorded as a long term investment and $7.2 million was allocated to research and development expense. In January 2021, we purchased 350,000 common shares in Merus' underwritten public offering of 4,848,485 common shares at the public offering price of $24.75 per share, or an aggregate purchase price of $8.7 million. The fair market value of our total long term investment in Merus at September 30, 2021 and December 31, 2020 was $78.1 million and $56.1 million, respectively.

We concluded Merus is not a VIE because it has sufficient equity to finance its activities without additional subordinated financial support and its at-risk equity holders have the characteristics of a controlling financial interest. As of September 30, 2021, we owned approximately 9% of the outstanding common shares of Merus and conclude that we have the ability to exercise significant influence, but not control, over Merus based primarily on our ownership interest, the level of intra-entity transactions between us and Merus related to development expenses, as well as other qualitative factors. We have elected the fair value option to account for our long term investment in Merus whereby the investment is marked to market through earnings in each reporting period. We believe the fair value option to be the most appropriate accounting method to account for securities in publicly held collaborators for which we have significant influence. For the three and nine months ended September 30, 2021, we recorded an unrealized gain of $3.3 million and $13.3 million, respectively, based on the change in fair value of Merus' common shares during these periods. For the three and nine months ended September 30, 2020, we recorded an unrealized loss of $13.1 million and $6.7 million, respectively, based on the change in fair value of Merus' common shares during these periods.

Research and development expenses for the three and nine months ended September 30, 2021 included $3.1 million and $10.9 million, respectively, of additional development costs incurred pursuant to the Merus agreement. Research and development expenses for the three and nine months ended September 30, 2020 included $1.8 million and $6.0 million, respectively, of additional development costs incurred pursuant to the Merus agreement. At September 30, 2021 and December 31, 2020, a total of $1.6 million and $1.6 million, respectively, of such costs were included in accrued and other liabilities on the condensed consolidated balance sheets.

Calithera

In January 2017, we entered into a Collaboration and License Agreement with Calithera Biosciences, Inc. ("Calithera"). Under this agreement, we received an exclusive, worldwide license to develop and commercialize small molecule arginase inhibitors, including INCB01158. We have agreed to co-fund 70% of the global development costs for the development of the licensed products for hematology and oncology indications. Calithera will have the right to conduct

certain clinical development under the collaboration, including combination studies of a licensed product with a proprietary compound of Calithera. We will be entitled to 60% of the profits and losses from net sales of licensed product in the United States, and Calithera will have the right to co-detail licensed products in the United States, and we have agreed to pay Calithera tiered royalties ranging from the low to mid-double digits on net sales of licensed products outside the United States.

As of September 30, 2021, we have paid Calithera an upfront license fee of $45.0 million and an additional $12.0 million milestone payment. In August 2020, Calithera delivered notice of its decision to opt out of its co-funding obligation, effective on September 30, 2020. As a result, the U.S. profit sharing will no longer be in effect, we will be responsible for funding all of the development costs of INCB01158 and any other licensed products, and the agreement provides that we will pay Calithera tiered royalties ranging from the low to mid-double digits on net sales of licensed products both in the United States and outside the United States and additional royalties to reimburse Calithera for previously incurred development costs. Calithera is eligible to receive $720.0 million in potential future development, regulatory and sales milestone payments and will have no further rights to research, develop or co-detail INCB001158. We will have the right to take over the conduct of all activities related to the research, development and commercialization of INCB001158 for all indications in the hematology/oncology field.

The Calithera agreement will continue on a product-by-product and country-by-country basis for so long as we are developing or commercializing products in the United States (if the parties are sharing profits in the United States) and until we have no further royalty payment obligations, unless earlier terminated according to the terms of the agreement. The agreement may be terminated in its entirety or on a product-by-product and/or a country-by-country basis by us for convenience. The agreement may also be terminated by us for Calithera's uncured material breach, by Calithera for our uncured material breach and by either party for bankruptcy or patent challenge. If the agreement is terminated early with respect to one or more products or countries, all rights in the terminated products and countries revert to Calithera.

In addition, in January 2017, we entered into a Stock Purchase Agreement with Calithera for the purchase of 1.7 million shares of common stock of Calithera for an aggregate purchase price of $8.0 million in cash, or $4.65 per share. We completed the purchase of the shares on January 30, 2017 when the closing price on The Nasdaq Stock Market was $6.75 per share. The shares we acquired were registered under the Securities Act of 1933 on the purchase date and there were no security specific restrictions for these shares, and therefore the value of the 1.7 million shares acquired by us was $11.6 million. We paid total consideration of $53.0 million to Calithera, composed of the $45.0 million upfront license fee and the $8.0 million stock purchase price. Of the $53.0 million, $11.6 million was allocated to our stock purchase in Calithera and was recorded within long term investments and $41.4 million was allocated to research and development expense. The fair market value of our long term investment in Calithera at September 30, 2021 and December 31, 2020 was $3.8 million and $8.4 million, respectively.

We concluded Calithera is not a VIE because it has sufficient equity to finance its activities without additional subordinated financial support and its at-risk equity holders have the characteristics of a controlling financial interest. As of September 30, 2021, we owned approximately 2% of the outstanding shares of Calithera common stock and there are several other stockholders who hold larger positions of Calithera. As we do not hold a significant position of the voting shares of Calithera and lack the qualitative characteristics associated with the ability to exercise significant influence, our ownership interest does not meet the criteria to be accounted for as an equity method investment. We intend to hold the investment in Calithera for the foreseeable future and therefore, are accounting for our shares held in Calithera at fair value, and the investment is marked to market through earnings in each reporting period. Given our intent to hold the investment for the foreseeable future, we have classified the investment within long term investments on the accompanying condensed consolidated balance sheets. For the three and nine months ended September 30, 2021 we recorded an unrealized gain of $0.2 million and an unrealized loss of $4.6 million, respectively, based on the change in fair value of Calithera's common stock during these periods. For the three and nine months ended September 30, 2020 we recorded an unrealized loss of $3.2 million and $3.9 million, respectively, based on the change in fair value of Calithera's common stock during these periods.

Research and development expenses for the three and nine months ended September 30, 2021 also included $0.3 million and $4.8 million, respectively, of additional development costs incurred pursuant to the Calithera agreement. Research and development expenses for the three and nine months ended September 30, 2020 also included $2.0 million

and $6.4 million, respectively, of additional development costs incurred pursuant to the Calithera agreement. At September 30, 2021 and December 31, 2020, a total of $0.0 million and $0.6 million, respectively, of such costs were included in accrued and other liabilities on the condensed consolidated balance sheets.

MacroGenics

In October 2017, we entered into a Global Collaboration and License Agreement with MacroGenics, Inc. ("MacroGenics"). Under this agreement, we received exclusive development and commercialization rights worldwide to MacroGenics' INCMGA0012 (formerly MGA012), an investigational monoclonal antibody that inhibits PD-1. Except as set forth in the succeeding sentence, we will have sole authority over and bear all costs and expenses in connection with the development and commercialization of INCMGA0012 in all indications, whether as a monotherapy or as part of a combination regimen. MacroGenics has retained the right to develop and commercialize, at its cost and expense, its pipeline assets in combination with INCMGA0012. In addition, MacroGenics has the right to manufacture a portion of both companies' global clinical and commercial supply needs of INCMGA0012.

As of September 30, 2021, we have paid MacroGenics an upfront payment of $150.0 million and developmental milestones totaling $70.0 million. MacroGenics is eligible to receive up to an additional $350.0 million in future contingent development and regulatory milestones, and up to $330.0 million in commercial milestones as well as tiered royalties ranging from 15% to 24% of global net sales.

The MacroGenics agreement will continue until we are no longer commercializing, developing or manufacturing INCMGA0012 or, if earlier, the termination of the agreement in accordance with its terms. The agreement may be terminated in its entirety or on a licensed product by licensed product basis by us for convenience. The agreement may also be terminated by either party under certain other circumstances, including material breach, as set forth in the agreement.

Research and development expenses for the three and nine months ended September 30, 2021 also included $17.8 million and $49.0 million, respectively, of additional development costs incurred pursuant to the MacroGenics agreement. Research and development expenses for the three and nine months ended September 30, 2020 also included $10.6 million and $43.3 million, respectively, of additional development costs incurred pursuant to the MacroGenics agreement. At September 30, 2021 and December 31, 2020, a total of $0.0 million and $0.1 million of such costs were included in accrued and other liabilities on the condensed consolidated balance sheets.

Syros

In January 2018, we entered into a Target Discovery, Research Collaboration and Option Agreement with Syros Pharmaceuticals, Inc. ("Syros"). Under this agreement, Syros will use its proprietary gene control platform to identify novel therapeutic targets with a focus in myeloproliferative neoplasms and we have received options to obtain exclusive worldwide rights to intellectual property resulting from the collaboration for up to seven validated targets. We will have exclusive worldwide rights to develop and commercialize any therapies under the collaboration that modulate those validated targets. We have agreed to pay Syros up to $54.0 million in target selection and option exercise fees should we decide to exercise all of our options under the agreement. For products resulting from the collaboration against each of the seven selected and validated targets, we have agreed to pay up to $50.0 million in potential development and regulatory milestones and up to $65.0 million in potential sales milestones. Syros is also eligible to receive low single-digit royalties on net sales of products resulting from the collaboration.

In addition, in January 2018, we entered into a Stock Purchase Agreement with Syros for the purchase of 0.8 million shares of common stock of Syros for an aggregate purchase price of $10.0 million in cash, or $12.61 per share. We agreed to not sell or otherwise transfer any of our Syros shares for a period, referred to as the Lock-Up Period, of 12 months after the closing date of the sale. We completed the purchase of the shares on January 8, 2018 when the closing price on The Nasdaq Stock Market was $9.77 per share. The shares we acquired were not registered on the purchase date, and accordingly, we estimated a discount for lack of marketability on the shares of $0.1 million, which resulted in a net fair value of the shares on the issuance date of $7.6 million. Of the $10.0 million aggregate purchase price paid, $7.6

million was allocated to our stock purchase in Syros and was recorded within long term investments and $2.4 million, representing premium paid on the purchase, was allocated to research and development expense. Also in January 2018, we entered into an Amended Stock Purchase Agreement with Syros for the purchase of an additional 0.1 million common shares of Syros for an aggregate purchase price of $1.4 million in cash, or $9.55 per share. The shares were acquired in February 2018 and the $1.4 million aggregate purchase price was recorded within long term investments on the condensed consolidated balance sheets. All acquired shares were subsequently registered under the Securities Act of 1933 in February 2018. The fair market value of our long term investment in Syros as of September 30, 2021 and December 31, 2020 was $4.2 million and $10.2 million, respectively.

We concluded Syros is not a VIE because it has sufficient equity to finance its activities without additional subordinated financial support and its at-risk equity holders have the characteristics of a controlling financial interest. As of September 30, 2021, we owned approximately 2% of the outstanding shares of Syros common stock and there are several other stockholders who hold larger positions of Syros. As we do not hold a significant position of the voting shares of Syros and lack the qualitative characteristics associated with the ability to exercise significant influence, our ownership interest does not meet the criteria to be accounted for as an equity method investment. We intend to hold the investment in Syros for the foreseeable future and therefore, are accounting for our shares held in Syros at fair value, and the investment is marked to market through earnings in each reporting period. Given our intent to hold the investment for the foreseeable future, we have classified the investment within long term investments on the accompanying condensed consolidated balance sheets. For the three and nine months ended September 30, 2021, we recorded an unrealized loss of $0.9 million and $6.0 million, respectively, based on the change in fair value of Syros' common stock during these periods. For the three and nine months ended September 30, 2020, we recorded an unrealized loss of $1.7 million and an unrealized gain of $1.8 million, respectively, based on the change in fair value of Syros' common stock during these periods.

Innovent

In December 2018, we entered into a Research Collaboration and Licensing Agreement with Innovent. Under the terms of this agreement, Innovent received exclusive development and commercialization rights to our clinical-stage product candidates pemigatinib, itacitinib and parsaclisib in hematology and oncology in mainland China, Hong Kong, Macau and Taiwan. In January 2019, we recognized an upfront payment under this agreement of $40.0 million upon our transfer of the functional intellectual property related to the clinical-stage product candidates to Innovent, which was recorded in milestone and contract revenues on the condensed consolidated statement of operations. The upfront milestone was recognized as revenue at a point in time upon our transfer of the licenses to Innovent for the right to use the functional intellectual property. In addition, we are eligible to receive up to an additional $94.0 million in potential development and regulatory milestones.

We recognize development and regulatory milestones upon confirmation of achievement of the event, as development and regulatory approvals are events not controllable by us but rather development activities of Innovent and decisions made by regulatory agencies.

In June 2021, we recognized a $10.0 million milestone for approval of PEMAZYRE in Taiwan, which was recorded in milestone and contract revenues. In April 2020, we recognized a $5.0 million milestone for the FDA approval of pemigatinib as PEMAZYRE, which was recorded in milestone and contract revenues.

In the event of commercialization of the licensed molecule, we are eligible to receive up to $202.5 million in potential sales milestones from Innovent. We will recognize sales milestones in the corresponding period of the product sale upon confirmation of net sales milestone threshold achievement by Innovent. We are also eligible to receive tiered royalties from the high-teens to the low-twenties on future sales of products resulting from the collaboration. We retain an option to assist in the promotion of the three product candidates in the Innovent territories.

Research and development expenses for the three and nine months ended September 30, 2021 were net of $0.0 million and $2.3 million of costs reimbursed by Innovent. Research and development expenses for the three and nine months ended September 30, 2020 were net of $1.7 million and $4.3 million, respectively, of costs reimbursed by Innovent. At September 30, 2021 and December 31, 2020, $2.4 million and $1.2 million, respectively, of reimbursable costs were included in accounts receivable on the condensed consolidated balance sheets.

Zai Lab

In July 2019, we entered into a Collaboration and License Agreement with Zai Lab. Under the terms of this agreement, Zai Lab received development and exclusive commercialization rights to INCMGA0012 in hematology and oncology in mainland China, Hong Kong, Macau and Taiwan. In August 2019, we recognized an upfront payment under this agreement of $17.5 million.

The agreement allows for Zai Lab to continue development of the licensed molecule and to submit the licensed molecule to authorities for regulatory approval within the agreement territory, upon which we are eligible for up to $22.5 million in potential development and regulatory milestones. We recognize development and regulatory milestones upon confirmation of achievement of the event, as development and regulatory approvals are events not controllable by us but rather development activities of Zai Lab and decisions made by regulatory agencies.

In the event of commercialization of the licensed molecule, we are eligible to receive up to $37.5 million in potential sales milestones from Zai Lab. We will recognize sales milestones in the corresponding period of the product sale upon confirmation of net sales milestone threshold achievement by Zai Lab. We are also eligible to receive tiered royalties from the low to mid-twenties on future product sales resulting from the collaboration. We also retain an option to assist in the promotion of INCMGA0012 in Zai Lab's licensed territories.

Research and development expenses for the three and nine months ended September 30, 2021 were net of $3.2 million of costs reimbursed by Zai Lab. Research and development expenses for the three and nine months ended September 30, 2020 were net of $0.0 million and $0.2 million, respectively, of costs reimbursed by Zai Lab. At September 30, 2021 and December 31, 2020, $0.8 million and $0.6 million, respectively, of reimbursable costs were included in accounts receivable on the condensed consolidated balance sheets.

MorphoSys

In January 2020, we entered into a Collaboration and License Agreement with MorphoSys AG and MorphoSys US Inc., a wholly-owned subsidiary of MorphoSys AG (together with MorphoSys AG, "MorphoSys"), covering the worldwide development and commercialization of MOR208 (tafasitamab), an investigational Fc engineered monoclonal antibody directed against the target molecule CD19 that is currently in clinical development by MorphoSys. MorphoSys has exclusive worldwide development and commercialization rights to tafasitamab under a June 2010 collaboration and license agreement with Xencor, Inc. In December 2019, MorphoSys submitted a Biologics License Application to the FDA for tafasitamab for the treatment of relapsed or refractory diffuse large B cell lymphoma. The agreement became effective in March 2020 after clearance by the German and Austrian antitrust authorities and expiration of the waiting period under the Hart-Scott Rodino Antitrust Improvements Act of 1976.

Under the terms of the agreement, we received exclusive commercialization rights outside of the United States, and MorphoSys and we have co-commercialization rights in the United States, with respect to tafasitamab. MorphoSys is responsible for leading the commercialization strategy and booking all revenue from sales of tafasitamab in the United States, and we and MorphoSys are both responsible for commercialization efforts in the United States and will share equally the profits and losses from the co-commercialization efforts. We will lead the commercialization strategy outside of the United States, and will be responsible for commercialization efforts and book all revenue from sales of tafasitamab outside of the United States, subject to our royalty payment obligations set forth below. We and MorphoSys have agreed to co-develop tafasitamab and to share development costs associated with global and U.S.-specific clinical trials, with Incyte responsible for 55% of such costs and MorphoSys responsible for 45% of such costs. Each company is responsible for funding any independent development activities, and we are responsible for funding development activities specific to territories outside of the United States. All development costs related to the collaboration are subject to a joint development plan.

In March 2020, we paid MorphoSys an upfront non-refundable payment of $750.0 million which was recorded in research and development expense on the condensed consolidated statement of operations for the three months ended March 31, 2020. MorphoSys is eligible to receive up to $740.0 million in future contingent development and regulatory milestones and up to $315.0 million in commercialization milestones as well as tiered royalties ranging from the mid-teens

to mid-twenties of net sales outside of the United States. MorphoSys' right to receive royalties in any particular country will expire upon the last to occur of (a) the expiration of patent rights in that particular country, (b) a specified period of time after the first post-marketing authorization sale of a licensed product comprising tafasitamab in that country, and (c) the expiration of any regulatory exclusivity for that licensed product in that country.

In July 2020, we and MorphoSys announced that the FDA approved MONJUVI® (tafasitamab-cxix) in combination with lenalidomide for the treatment of adult patients with relapsed or refractory diffuse large B-cell lymphoma (DLBCL) not otherwise specified, including DLBCL arising from low grade lymphoma, and who are not eligible for autologous stem cell transplant. MONJUVI was approved under accelerated approval based on overall response rate. In August 2021, we and MorphoSys announced that the European Commission granted conditional marketing authorization for MINJUVI (tafasitamab) in combination with lenalidomide, followed by MINJUVI monotherapy, for the treatment of adult patients with relapsed or refractory DLBCL who are not eligible for ASCT.

In addition, under the collaboration agreement and pursuant to a related purchase agreement, we agreed to purchase American Depositary Shares ("ADSs"), each representing 0.25 of an ordinary share of MorphoSys AG, for an aggregate purchase price of $150.0 million or $41.33 per ADS (such ADSs to be purchased, the "New ADSs"). We agreed, subject to limited exceptions, not to sell or otherwise transfer any of the New ADSs for an 18-month period after the closing date of the sale. We completed the purchase of the ADSs on March 3, 2020 when the closing price on The Nasdaq Stock Market was $27.65 per ADS. The New ADSs were not registered under the Securities Act of 1933 on the purchase date, and accordingly, we estimated a discount for lack of marketability on the shares of $4.9 million, which resulted in a net fair value of the shares on the issuance date of $95.5 million. Of the $150.0 million aggregate purchase price paid, $95.5 million was allocated to our stock purchase in MorphoSys and was recorded within long term investments and $54.5 million, representing the premium paid on the purchase, was allocated to research and development expense. The fair market value of our long term investment in MorphoSys as of September 30, 2021 and December 31, 2020 was $42.7 million and $102.9 million, respectively.

We concluded MorphoSys is not a VIE because it has sufficient equity to finance its activities without additional subordinated financial support and its at-risk equity holders have the characteristics of a controlling financial interest. As of September 30, 2021, we owned approximately 3% of the outstanding shares of MorphoSys common stock and there are several other stockholders who hold larger positions of MorphoSys. As we do not hold a significant position of the voting shares of MorphoSys and lack the qualitative characteristics associated with the ability to exercise significant influence, our ownership interest does not meet the criteria to be accounted for as an equity method investment. We intend to hold the investment in MorphoSys for the foreseeable future and therefore, are accounting for our shares held in MorphoSys at fair value, and the investment is marked to market through earnings in each reporting period. Given our intent to hold the investment for the foreseeable future, we have classified the investment within long term investments on the accompanying condensed consolidated balance sheets. For the three and nine months ended September 30, 2021, we recorded an unrealized loss of $27.3 million and $60.2 million, respectively, based on the change in fair value of MorphoSys' common stock during these periods. For the three and nine months ended September 30, 2020, we recorded an unrealized gain of $0.9 million and $18.5 million, respectively, based on the change in fair value of MorphoSys' common stock during these periods.

Our 50% share of the United States loss for the commercialization of tafasitamab for the three and nine months ended September 30, 2021 was $9.1 million and $29.5 million, respectively, and is recorded as collaboration loss sharing on the condensed consolidated statement of operations. Our 50% share of the United States loss for the commercialization of tafasitamab for the three and nine months ended September 30, 2020 was $15.0 million and $30.4 million, respectively, and is recorded as collaboration loss sharing on the condensed consolidated statement of operations. Research and development expenses for the three and nine months ended September 30, 2021, includes $21.5 million and $55.8 million, respectively, related to our 55% share of the co-development costs for tafasitamab. Research and development expenses for the three and nine months ended September 30, 2020, includes $23.8 million and $51.1 million, respectively, related to our 55% share of the co-development costs for tafasitamab. At September 30, 2021 and December 31, 2020, $52.3 million and $54.2 million, respectively, was included in accrued and other liabilities on the condensed consolidated balance sheets for amounts due to MorphoSys under the agreement.

Nimble

In September 2020, we entered into a Collaboration and License Agreement with Nimble Therapeutics, Inc. ("Nimble"). Under the terms of this agreement, Nimble will utilize their peptide synthesis, screening and optimization platform for discovery and validation of peptides against specified targets. Under the agreement, Nimble is eligible to receive up to $8.0 million in future contingent discovery milestones and up to $127.0 million in future contingent development and regulatory milestones. Additionally, in the event of successful commercialization, Nimble is eligible to receive up to $130.0 million in future contingent sales milestones and tiered royalties on net sales in the low single digits.

InnoCare

In August 2021, we entered into a Collaboration and License Agreement with Sunny Investments Limited, a wholly-owned subsidiary of InnoCare Pharma Limited ("InnoCare"). InnoCare received development and exclusive commercialization rights to tafasitamab in hematology and oncology in mainland China, Hong Kong, Macau and Taiwan. In September 2021, we recognized an upfront payment under this agreement of $35.0 million upon our transfer of technology related to the licensed product candidate to InnoCare, which was recorded in milestone and contract revenues on the condensed consolidated statement of operations. Under the terms of this agreement, we are eligible to receive up to an additional $45.0 million in potential development and regulatory milestones. We recognize development and regulatory milestones upon confirmation of achievement of the event, as development and regulatory approvals are events not controllable by us but rather development activities of InnoCare and decisions made by regulatory agencies. In the event of commercialization, we are eligible to receive up to $37.5 million in potential sales milestones from InnoCare. We will recognize sales milestones in the corresponding period of the product sale upon confirmation of net sales milestone threshold achievement by InnoCare. We are also eligible to receive tiered royalties from the low to mid-twenties on future product sales resulting from the collaboration.

Syndax

In September 2021, we entered into a Collaboration and License Agreement with Syndax Pharmaceuticals, Inc. ("Syndax"), covering the worldwide development and commercialization of SNDX-6352 ("axatilimab"). Axatilimab, currently in clinical development by Syndax, is a monoclonal antibody that blocks the colony stimulating factor-1 (CSF-1) receptor. Syndax has exclusive worldwide development and commercialization rights to axatilimab under a June 2016 license agreement with UCB Biopharma Sprl.

Under the terms of the agreement, we will receive exclusive commercialization rights outside of the United States, and Syndax and we will have co-commercialization rights in the United States, with respect to axatilimab in GVHD and potentially other indications. We will be responsible for leading the global commercialization strategy and Syndax has the option to participate in commercialization efforts in the United States. We and Syndax will share equally the profits and losses from the co-commercialization efforts in the United States. We and Syndax have agreed to co-develop axatilimab and to share development costs associated with global clinical trials, with Incyte responsible for 55% of such costs and Syndax responsible for 45% of such costs and we will be responsible for funding development activities specific to territories outside of the United States. Each company will be responsible for funding any independent development activities. All development costs related to the collaboration will be subject to a joint development plan.

The effectiveness of the agreement is conditioned upon expiration of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which we expect to take place in the fourth quarter of 2021. We have agreed to pay Syndax, upon the effectiveness of the agreement, an upfront non-refundable payment of $117.0 million. Syndax will be eligible to receive up to $220.0 million in future contingent development and regulatory milestones and $230.0 million in commercialization milestones, as well as tiered royalties in the mid-teens on net sales in Europe in Japan and low double digits on net sales in the rest of the world outside of the United States. Syndax's right to receive royalties in any particular country will expire upon the last to occur of (a) the expiration of the licensed patent rights covering the licensed product in that particular country, (b) a specified period of time after the first post-marketing authorization sale of a licensed product in that country, and (c) the expiration of any regulatory exclusivity for that licensed product in that country.

In addition, under the collaboration agreement and pursuant to a related stock purchase agreement, we agreed to purchase 1,421,523 shares of common stock of Syndax for an aggregate purchase price of $35.0 million, or $24.62 per share. We agreed, subject to limited exceptions, not to sell or otherwise transfer any of the shares for a six month period after the closing date of the sale. Closing of the purchase of the shares is expected to occur concurrently with the effectiveness of the collaboration agreement, and is subject to customary conditions.

10. Stock compensation

We recorded $42.7 million and $134.8 million of stock compensation expense on our condensed consolidated statements of operations for the three and nine months ended September 30, 2021, respectively. We recorded $43.8 million and $132.6 million of stock compensation expense on our condensed consolidated statements of operations for the three and nine months ended September 30, 2020, respectively. Stock compensation expense included within our condensed consolidated statements of operations included research and development expense of $26.3 million, $84.2 million, $29.0 million and $90.2 million for the three and nine months ended September 30, 2021 and 2020, respectively. Stock compensation expense included within our condensed consolidated statements of operations also included selling, general and administrative expense of $15.9 million, $49.5 million, $14.6 million and $41.7 million for the three and nine months ended September 30, 2021 and 2020, respectively. Stock compensation expense included within our condensed consolidated statements of operations also included cost of product revenues of $0.5 million, $1.1 million, $0.2 million and $0.7 million, respectively, for the three and nine months ended September 30, 2021 and 2020. For the three and nine months ended September 30, 2021 and 2020, we capitalized $0.6 million, $1.8 million, $0.2 million and $0.5 million, respectively, of stock compensation expense as part of the cost of assets.

We utilized the Black-Scholes valuation model for estimating the fair value of the stock compensation granted, with the following weighted-average assumptions:

	Employee Stock Options				Employee Stock Purchase Plan			
	For the Three Months Ended September 30,		For the Nine Months Ended September 30,		For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2021	2020	2021	2020	2021	2020	2021	2020
Average risk-free interest rates	0.76 %	0.28 %	0.60 %	0.85 %	0.28 %	0.13 %	0.22 %	0.17 %
Average expected life (in years)	5.16	5.15	5.00	4.96	0.50	0.50	0.50	0.50
Volatility	38 %	39 %	39 %	40 %	25 %	38 %	31 %	46 %
Weighted-average fair value (in dollars)	28.84	36.73	29.32	32.79	18.20	22.83	18.82	19.07

The risk-free interest rate is derived from the U.S. Federal Reserve rate in effect at the time of grant. The expected life calculation is based on the observed and expected time to the exercise of options by our employees based on historical exercise patterns for similar type options. Expected volatility is based on the historical volatility of our common stock over the period commensurate with the expected life of the options. A dividend yield of zero is assumed based on the fact that we have never paid cash dividends and have no present intention to pay cash dividends. Nonemployee awards are measured on the grant date by estimating the fair value of the equity instruments to be issued using the expected term, similar to our employee awards.

Option activity under our 2010 Amended and Restated Stock Incentive Plan (the "2010 Stock Plan") was as follows:

	Shares Subject to Outstanding Options	
	Shares	Weighted Average Exercise Price
Balance at December 31, 2020	12,115,288	$ 88.31
Options granted	2,419,885	$ 85.80
Options exercised	(555,102)	$ 67.63
Options cancelled	(855,329)	$ 91.81
Balance at September 30, 2021	13,124,742	$ 88.49

In July 2016, we revised the terms of our annual stock option grants to provide that new option grants would generally have a 10-year term and vest over four years, with 25% vesting after one year and the remainder vesting in 36 equal monthly installments. Previously, our option grants generally had 7-year terms and vested over three years, with 33% vesting after one year and the remainder vesting in 24 equal monthly installments.

Restricted stock unit ("RSU") and performance share ("PSU") award activity under the 2010 Stock Plan was as follows:

	Shares Subject to Outstanding Awards	
	Shares	Grant Date Value
Balance at December 31, 2020	3,284,583	$ 87.42
RSUs granted	1,764,067	$ 85.12
PSUs granted	107,088	$ 83.58
RSUs released	(830,436)	$ 87.89
PSUs released	(200,353)	$ 68.08
RSUs cancelled	(324,075)	$ 90.23
PSUs cancelled	(166,727)	$ 72.60
Balance at September 30, 2021	3,634,147	$ 87.07

In January 2014, we began granting RSUs and PSUs to our employees at the share price on the date of grant. Each RSU represents the right to acquire one share of our common stock. Each RSU granted prior to July 2016 was subject to cliff vesting after three years. In July 2016, we revised the terms of our RSU grants to provide that the awards will vest 25% annually over four years.

In June 2018, we granted 190,000 RSUs and 446,500 PSUs under long term incentive plans with performance and/or service-based milestones with graded and/or cliff vesting over three to four years. In April 2019, we granted an additional 100,000 PSUs under one of the existing long term incentive plans with performance based milestones and cliff vesting. For one of the existing long term incentive plans, under which 106,500 PSUs were granted, the actual number of shares of our common stock into which each PSU may convert was subject to a multiplier of up to 267% based on the level at which the performance conditions were achieved. The actual number of shares of our common stock into which each PSU will convert is at a multiplier of 142% based on the performance conditions being achieved as of March 31, 2019 and will continue to vest through June 2022. For an existing long term incentive plan, under which 150,000 PSUs were granted, the actual number of shares of our common stock into which each PSU may convert was subject to a multiplier of up to 100% if all performance conditions were achieved or 0% if no performance conditions were achieved. The actual number of shares of our common stock into which each PSU will convert is at a multiplier of 100% based on the performance conditions being achieved as of December 31, 2019 and will cliff vest in June 2021. For the remaining long term incentive plan, under which 290,000 PSUs were granted, the actual number of shares of our common stock into which each PSU may convert was subject to a multiplier of up to 100% based on the level at which the performance conditions were achieved. The actual number of shares of our common stock into which each PSU will convert is at a multiplier of 50% based on the performance conditions achieved as of the June 30, 2021 end of the performance period and will cliff vest in June 2022.

In July 2018, we granted 77,243 PSUs to executives with performance milestones and graded vesting over four years. The shares of our common stock into which each PSU may convert is subject to a multiplier up to 150% based on the level at which the performance condition is achieved. The actual number of shares of our common stock into which each PSU converted was at a multiplier of 83% based on the performance condition being achieved as of December 31, 2018. These PSUs will continue to vest through July 2022.

In July 2019, we granted 86,975 PSUs to executives with a performance milestone and graded vesting over four years. The shares of our common stock into which each PSU may convert is subject to a multiplier up to 125% based on the level at which the performance condition is achieved. The actual number of shares of our common stock into which each PSU will convert is at a multiplier of 101.8% based on the performance condition being achieved as of December 31, 2019. These PSUs will continue to vest through July 2023.

In July 2020, we granted 92,347 PSUs to executives with performance milestones and cliff vesting on the third anniversary from date of grant. The shares of our common stock into which each PSU may convert is subject to a multiplier up to 200% based on the level at which the financial and developmental performance conditions are achieved over the service period which ends December 31, 2022.

In July 2021, we granted 107,088 PSUs to executives with performance milestones and cliff vesting on the third anniversary from date of grant. The shares of our common stock into which each PSU may convert is subject to a multiplier up to 150% based on the level at which the financial and developmental performance conditions are achieved over the service period which ends December 31, 2023.

Compensation expense for the above performance-based awards is recorded over the estimated service period for each milestone when the performance conditions are deemed probable of achievement. For PSUs containing performance conditions which were not deemed probable of achievement, no stock compensation expense is recorded. For the three and nine months ended September 30, 2021 we recorded $1.7 million and $5.0 million of stock compensation expense for PSUs on our condensed consolidated statements of operations. For the three and nine months ended September 30, 2020 we recorded $2.7 million and $11.4 million of stock compensation expense for PSUs on our condensed consolidated statements of operations.

The following table summarizes our shares available for grant under the 2010 Stock Plan:

	Shares Available for Grant
Balance at December 31, 2020	5,515,182
Additional authorization	9,500,000
Options, RSUs and PSUs granted	(6,162,583)
Options, RSUs and PSUs cancelled	1,567,041
Balance at September 30, 2021	10,419,640

Based on our historical experience of employee turnover, we have assumed an annualized forfeiture rate of 5% for our options, RSUs and PSUs. Under the true-up provisions of the stock compensation guidance, we will record additional expense if the actual forfeiture rate is lower than we estimated, and will record a recovery of prior expense if the actual forfeiture is higher than we estimated.

Total compensation cost of options granted but not yet vested, as of September 30, 2021, was $77.3 million, which is expected to be recognized over the weighted average period of approximately 1.3 years. Total compensation cost of RSUs granted but not yet vested, as of September 30, 2021, was $172.3 million, which is expected to be recognized over the weighted average period of approximately 2.0 years. Total compensation cost of PSUs granted but not yet vested, as of September 30, 2021, was $19.2 million, which is expected to be recognized over the weighted average period of 1.6 years, should the underlying performance conditions be deemed probable of achievement.

11. Accrued and other current liabilities

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

	September 30, 2021	December 31, 2020
Royalties	$ 142,446	$ 106,011
Clinical related costs	125,290	115,897
Sales allowances	105,749	73,204
Construction in progress	23,892	22,807
Operating lease liabilities	9,849	12,674
Other current liabilities	74,653	47,811
Total accrued and other current liabilities	$ 481,879	$ 378,404

12. Employee benefit plans

Defined Contribution Plans

We have a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code covering all U.S. employees and defined contribution plans for other Incyte employees in Europe and Japan. Employees may contribute a portion of their compensation, which is then matched by us, subject to certain limitations. Defined contribution expense for the three and nine months ended September 30, 2021 was $4.4 million and $12.8 million, respectively. Defined contribution expense for the three and nine months ended September 30, 2020 was $3.5 million and $10.1 million, respectively.

Defined Benefit Pension Plans

We have defined benefit pension plans for our employees in Europe which provide benefits to employees upon retirement, death or disability. The assets of the pension plans are held in collective investment accounts represented by the cash surrender value of an insurance policy and are classified as Level 2 within the fair value hierarchy.

The net periodic benefit cost was as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Service cost	$ 1,975	$ 1,523	$ 5,927	$ 4,457
Interest cost	23	49	68	142
Expected return on plan assets	(15)	(32)	(45)	(93)
Amortization of prior service cost	54	54	162	161
Amortization of actuarial losses	288	166	864	500
Net periodic benefit cost	$ 2,325	$ 1,760	$ 6,976	$ 5,167

The components of net periodic benefit cost other than the service cost component are included in other income (expense), net on the condensed consolidated statements of operations. We expect to contribute a total of $5.3 million to the pension plans in 2021 inclusive of the amounts contributed to the plan during the current period.

13. Income taxes

For the three and nine months ended September 30, 2021, we recorded income tax expense of approximately $27.7 million and $65.7 million, respectively. For the three and nine months ended September 30, 2020, we recorded income tax expense of approximately $11.7 million and $45.2 million, respectively. The tax expense for the three and nine months ended September 30, 2021 and 2020 represents primarily federal and state tax liabilities that are not fully sheltered by net operating losses or research and development tax credit carryforwards.

As of September 30, 2021, a full valuation allowance continues to be recorded against our U.S. and Swiss net deferred tax assets. Based upon our analysis of our historical operating results, as well as projections of our future taxable income (losses) during the periods in which the temporary differences will be recoverable, we believe the uncertainty regarding the realization of our U.S. and Swiss net deferred tax assets requires a full valuation allowance against such net assets as of September 30, 2021. When performing our assessment on projections of future taxable income (losses), we consider factors such as the likelihood of regulatory approval and commercial success of products currently under development, among other factors.

The balance of our unrecognized tax benefits (including penalties and interest) increased by approximately $7.3 million during the nine months ended September 30, 2021. The overall net increase is primarily driven by positions taken on prior year returns in addition to tax benefits related to current year operations and research and development tax credits. After considering valuation allowance impacts, the change in unrecognized tax benefits resulted in a $5.4 million increase to noncurrent other liabilities on the condensed consolidated balance sheet.

14. Net income (loss) per share

Net income (loss) per share was calculated as follows for the periods indicated below:

	Three Months Ended September 30,		Nine Months Ended September 30,	
(in thousands, except per share data)	2021	2020	2021	2020
Basic Net Income (Loss) Per Share				
Basic net income (loss)	$ 181,739	$ (15,203)	$ 384,730	$ (445,547)
Weighted average common shares outstanding	220,845	218,784	220,243	217,684
Basic net income (loss) per share	$ 0.82	$ (0.07)	$ 1.75	$ (2.05)
Diluted Net Income (Loss) Per Share				
Diluted net income (loss)	$ 181,739	$ (15,203)	$ 384,730	$ (445,547)
Weighted average common shares outstanding	220,845	218,784	220,243	217,684
Dilutive stock options and awards	1,403	—	1,870	—
Weighted average shares used to compute diluted net income (loss) per share	222,248	218,784	222,113	217,684
Diluted net income (loss) per share	$ 0.82	$ (0.07)	$ 1.73	$ (2.05)

The potential common shares that were excluded from the diluted net income (loss) per share computation are as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Outstanding stock options and awards	11,841,440	15,447,389	9,917,824	15,447,389
Common shares issuable upon conversion of the 1.25% Convertible Senior Notes due 2020	—	231,339	—	231,339
Total potential common shares excluded from diluted net income (loss) per share computation	11,841,440	15,678,728	9,917,824	15,678,728

15. Commitments and contingencies

Commitments

In August 2021, we entered into a revolving credit and guaranty agreement (the "Credit Agreement") among the Incyte Corporation, as borrower, subsidiary Incyte Holdings Corporation, as a guarantor, the lenders from time to time party thereto (the "Lenders"), J.P. Morgan Chase Bank, N.A. as administrative agent, and the other financial institutions party thereto. Under the Credit Agreement, the Lenders have committed to provide an unsecured three-year revolving credit facility in an aggregate principal amount of up to $500.0 million. We may increase the maximum revolving commitments or add one or more incremental term loan facilities to the Credit Agreement, subject to obtaining commitments from any participating lenders and certain other conditions, in an amount not to exceed (1) $250.0 million plus (2) an additional amount, so long as after giving effect to the incurrence of such additional amount, the Company's pro forma consolidated leverage ratio would not exceed 0.25 above its consolidated leverage ratio in effect immediately prior to giving effect to such increase.

Loans under the Credit Agreement will bear interest, at our option, at a per annum rate equal to either (a) a base rate plus an applicable rate per annum varying from 0.125% to 0.875% depending on our consolidated leverage ratio or (b) a Eurodollar rate plus an applicable rate per annum varying from 1.125% to 1.875% depending on our consolidated leverage ratio. Commitment fees payable on the undrawn amount range from 0.150% per annum to 0.225% per annum, based on our consolidated leverage ratio.

As of September 30, 2021, we are in compliance with all financial and operational covenants under the terms of the Credit Agreement and there were no outstanding borrowings or letters of credit outstanding. We capitalized approximately $1.3 million in debt issuance costs related to the execution of the Credit Agreement. The debt issuance costs are being amortized over the term of the facility.

Contingencies

In December 2018, we received a civil investigative demand from the U.S. Department of Justice ("DOJ") for documents and information relating to our speaker programs and patient assistance programs, including our support of non-profit organizations that provide financial assistance to eligible patients. In November 2019, the qui tam complaint underlying the DOJ inquiry was unsealed ("Complaint"), at which time we learned that a former employee whom we had terminated had made certain allegations relating to the programs described above. We filed an Answer to the Complaint on January 22, 2020 and on November 12, 2020 we filed a Motion for Summary Judgment ("Motion"). All briefing on the Motion was completed on December 22, 2020. While we deny that any improper claims were submitted to government payers, we agreed on May 4, 2021 to settle the matter with the DOJ Civil Division for $12.6 million, plus certain statutory fees, which was recorded in selling, general and administrative expense during the nine months ended September 30, 2021.

In the ordinary course of our business, we may become involved in lawsuits, proceedings, and other disputes, including commercial, intellectual property, regulatory, employment, and other matters. We record a reserve for these matters when it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated.

We have entered into the collaboration agreements described in Note 9, as well as various other collaboration agreements that are not individually, or in the aggregate, significant to our operating results or financial condition at this time. We may in the future seek to license additional rights relating to technologies or drug development candidates in connection with our drug discovery and development programs. Under these agreements, we may be required to pay upfront fees, milestone payments, and royalties on sales of future products.

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

The following discussion of our financial condition and results of operations as of and for the three and nine months ended September 30, 2021 should be read in conjunction with the unaudited condensed consolidated financial statements and notes to those statements included elsewhere in this Quarterly Report on Form 10-Q and our audited consolidated financial statements as of and for the year ended December 31, 2020 included in our Annual Report on Form 10-K for the year ended December 31, 2020 previously filed with the SEC.

Forward-Looking Statements

This report contains forward-looking statements that involve risks and uncertainties. These statements relate to future periods, future events or our future operating or financial plans or performance. Often, these statements include the words "believe," "expect," "target," "anticipate," "intend," "plan," "seek," "estimate," "potential," or words of similar meaning, or future or conditional verbs such as "will," "would," "should," "could," "might," or "may," or the negative of these terms, and other similar expressions. These forward-looking statements include statements as to:

- *the discovery, development, formulation, manufacturing and commercialization of our compounds, our drug candidates and JAKAFI®/JAKAVI® (ruxolitinib), PEMAZYRE® (pemigatinib), ICLUSIG® (ponatinib), MONJUVI®(tafasitamab-cxix) /MINJUVI® (tafasitamab), and OPZELURA™ (ruxolitinib) cream;*
- *our plans to further develop our operations outside of the United States;*
- *conducting clinical trials internally, with collaborators, or with clinical research organizations;*
- *our collaboration and strategic relationship strategy, and anticipated benefits and disadvantages of entering into collaboration agreements;*
- *our licensing, investment and commercialization strategies, including our plans to commercialize our drug products and drug candidates;*
- *the regulatory approval process, including obtaining U.S. Food and Drug Administration and other international health authorities' approval for our products in the United States and abroad;*
- *the safety, effectiveness and potential benefits and indications of our drug candidates and other compounds under development;*
- *the timing and size of our clinical trials; the compounds expected to enter clinical trials; timing of clinical trial results;*
- *our ability to manage expansion of our drug discovery and development operations;*
- *future required expertise relating to clinical trials, manufacturing, sales and marketing;*
- *obtaining and terminating licenses to products, drug candidates or technology, or other intellectual property rights;*
- *the receipt from or payments pursuant to collaboration or license agreements resulting from milestones or royalties;*
- *plans to develop and commercialize products on our own;*
- *plans to use third-party manufacturers;*
- *plans for our manufacturing operations;*
- *expected expenses and expenditure levels; expected uses of cash; expected revenues and sources of revenues, including milestone payments; expectations with respect to inventory;*
- *expectations with respect to reimbursement for our products;*
- *the expected impact of recent accounting pronouncements and changes in tax laws;*
- *expected losses; fluctuation of losses; currency translation impact associated with collaboration royalties;*

- *our profitability; the adequacy of our capital resources to continue operations;*
- *the need to raise additional capital;*
- *the costs associated with resolving matters in litigation and governmental proceedings;*
- *our expectations regarding competition;*
- *expectations relating to the anticipated completion dates for our Delaware headquarters expansion project and our large molecule production facility;*
- *our investments, including anticipated expenditures, losses and expenses;*
- *our patent prosecution and maintenance efforts; and*
- *the potential effects of the COVID-19 pandemic and efforts undertaken or to be undertaken by us or applicable governmental authorities on local and global economic conditions, and on our business, results of operations and financial condition.*

These forward-looking statements reflect our current views with respect to future events, are based on assumptions and are subject to risks and uncertainties. These risks and uncertainties could cause actual results to differ materially from those projected and include, but are not limited to:

- *our ability to successfully commercialize our drug products and drug candidates;*
- *our ability to maintain at anticipated levels reimbursement for our products from government health administration authorities, private health insurers and other organizations;*
- *our ability to establish and maintain effective sales, marketing and distribution capabilities;*
- *the risk of reliance on other parties to manufacture our products, which could result in a short supply of our products, increased costs, and withdrawal of regulatory approval;*
- *our ability to maintain regulatory approvals to market our products;*
- *our ability to achieve a significant market share in order to achieve or maintain profitability;*
- *the risk of civil or criminal penalties if we market our products in a manner that violates health care fraud and abuse and other applicable laws, rules and regulations;*
- *our ability to discover, develop, formulate, manufacture and commercialize our drug candidates;*
- *the risk of unanticipated delays in, or discontinuations of, research and development efforts;*
- *the risk that previous preclinical testing or clinical trial results are not necessarily indicative of future clinical trial results;*
- *risks relating to the conduct of our clinical trials;*
- *changing regulatory requirements;*
- *the risk of adverse safety findings;*
- *the risk that results of our clinical trials do not support submission of a marketing approval application for our drug candidates;*
- *the risk of significant delays or costs in obtaining regulatory approvals;*
- *risks relating to our reliance on third-party manufacturers, collaborators, and clinical research organizations;*
- *risks relating to the development of new products and their use by us and our current and potential collaborators;*
- *risks relating to our inability to control the development of out-licensed compounds or drug candidates;*

- *risks relating to our collaborators' ability to develop and commercialize JAKAVI, OLUMIANT, TABRECTA and the drug candidates licensed from us;*
- *costs associated with prosecuting, maintaining, defending and enforcing patent claims and other intellectual property rights;*
- *our ability to maintain or obtain adequate product liability and other insurance coverage;*
- *the risk that our drug candidates may not obtain or maintain regulatory approval;*
- *the impact of technological advances and competition, including potential generic competition;*
- *our ability to compete against third parties with greater resources than ours;*
- *risks relating to changes in pricing and reimbursement in the markets in which we may compete;*
- *risks relating to governmental healthcare reform efforts, including efforts to control, set or cap pricing for our commercial drugs in the U.S and abroad;*
- *competition to develop and commercialize similar drug products;*
- *our ability to obtain and maintain patent protection and freedom to operate for our discoveries and to continue to be effective in expanding our patent coverage;*
- *the impact of changing laws on our patent portfolio;*
- *developments in and expenses relating to litigation;*
- *our ability to in-license drug candidates or other technology;*
- *unanticipated construction, other delays or changes in plans relating to our Delaware headquarters expansion project and our large molecule production facility;*
- *our ability to integrate successfully acquired businesses, development programs or technology;*
- *our ability to obtain additional capital when needed;*
- *fluctuations in net cash provided and used by operating, financing and investing activities;*
- *our ability to analyze the effects of new accounting pronouncements and apply new accounting rules;*
- *risks relating to our ability to sustain profitability;*
- *risks related to public health pandemics such as the COVID-19 pandemic; and*
- *the risks set forth under "Risk Factors."*

Given these risks and uncertainties, you should not place undue reliance on these forward-looking statements. Except as required by federal securities laws, we undertake no obligation to update any forward-looking statements for any reason, even if new information becomes available or other events occur in the future.

In this report all references to "Incyte," "we," "us," "our" or the "Company" mean Incyte Corporation and our subsidiaries, except where it is made clear that the term means only the parent company.

Incyte, JAKAFI and PEMAZYRE are our registered trademarks and OPZELURA is our trademark. We also refer to trademarks of other corporations and organizations in this Quarterly Report on Form 10-Q.

Summary Risk Factors

Our business is subject to numerous risks and uncertainties that could affect our ability to successfully implement our business strategy and affect our financial results. You should carefully consider all of the information in this report and, in particular, the following principal risks and all of the other specific factors described in Item 1A. of this report, "Risk Factors," before deciding whether to invest in our company.

- We depend heavily on JAKAFI/JAKAVI (ruxolitinib), and if we are not able to maintain revenues from JAKAFI/JAKAVI or those revenues decrease, our business may be materially harmed.
- If we or our collaborators are unable to obtain, or maintain at anticipated levels, reimbursement for JAKAFI/JAKAVI or our other products from government and other third-party payors, our results of operations and financial condition could be harmed.
- A limited number of specialty pharmacies and wholesalers represent a significant portion of revenues from JAKAFI, and the loss of, or significant reduction in sales to, any one of these specialty pharmacies or wholesalers could harm our operations and financial condition.
- If we are unable to establish and maintain effective sales, marketing and distribution capabilities, or to enter into agreements with third parties to do so, we will not be able to successfully commercialize our products.
- If we fail to comply with applicable laws and regulations, we could lose our approval to market our products or be subject to other governmental enforcement activity.
- If the use of our products harms or is perceived to harm patients, our regulatory approvals could be revoked or otherwise negatively impacted or we could be subject to costly product liability claims.
- If we market our products in a manner that violates various laws and regulations, we may be subject to civil or criminal penalties.
- Competition for our products, in particular JAKAFI/JAKAVI, could harm our business and result in a decrease in our revenue.
- The COVID-19 pandemic and measures to address the pandemic have adversely affected and can in the future adversely affect our business and results of operations.
- We or our collaborators may be unsuccessful in discovering and developing drug candidates, and we may spend significant time and money attempting to do so, in particular with our later stage drug candidates.
- If we or our collaborators are unable to obtain regulatory approval in and outside of the United States for drug candidates, we and our collaborators will be unable to commercialize those drug candidates.
- Health care reform measures could impact the pricing and profitability of pharmaceuticals, and adversely affect the commercial viability of our or our collaborators' products and drug candidates.
- Conflicts between us and our collaborators or termination of our collaboration agreements could limit future development and commercialization of our drug candidates and harm our business.
- If we are unable to establish collaborations to fully exploit our drug discovery and development capabilities or if future collaborations are unsuccessful, our future revenue prospects could be diminished.
- If we fail to enter into additional in-licensing agreements or if these arrangements are unsuccessful, we may be unable to increase our number of successfully marketed products and our revenues.
- Even if one of our drug candidates receives regulatory approval, we may determine that commercialization would not be worth the investment.
- Any approved drug product that we bring to the market may not gain market acceptance by physicians, patients, healthcare payors and others in the medical community.

- We have limited capacity to conduct preclinical testing and clinical trials, and our resulting dependence on other parties could result in delays in and additional costs for our drug development efforts.
- We face significant competition for our drug discovery and development efforts, and if we do not compete effectively, our commercial opportunities will be reduced or eliminated.
- Our reliance on others to manufacture our drug products and drug candidates could result in drug supply constraints, delays in clinical trials, increased costs, and withdrawal or denial of regulatory approvals.
- If we fail to comply with the extensive legal and regulatory requirements affecting the health care industry, we could face increased costs, penalties and a loss of business.
- The illegal distribution and sale by third parties of counterfeit or unfit versions of our or our collaborators' products or stolen products could harm our business and reputation.
- As most of our drug discovery and development operations are conducted at our headquarters in Wilmington, Delaware, the loss of access to this facility would negatively impact our business.
- If we lose any of our key employees or are unable to attract and retain additional personnel, our business and ability to achieve our objectives could be harmed.
- If we fail to manage our growth effectively, our ability to develop and commercialize products could suffer.
- We may acquire businesses or assets, form joint ventures or make investments in other companies that may be unsuccessful, divert our management's attention and harm our operating results and prospects.
- Risks associated with our operations outside of the United States could adversely affect our business.
- If product liability lawsuits are brought against us, we could face substantial liabilities and may be required to limit commercialization of our products, and our results of operations could be harmed.
- Because our activities involve the use of hazardous materials, we may be subject to claims relating to improper handling, storage or disposal of these materials that could be time consuming and costly.
- We expect to continue to incur significant expenses to discover and develop drugs, which could result in future losses and impair our achievement of and ability to sustain profitability in the future.
- If we are unable to raise additional capital in the future when we require it, our efforts to broaden our product portfolio or commercialization efforts could be limited.
- Our marketable securities and long term investments are subject to risks that could adversely affect our overall financial position, and tax law changes could adversely affect our results of operations and financial condition.
- If we are unable to achieve milestones, develop product candidates to license or renew or enter into new collaborations, our royalty and milestone revenues and future prospects for those revenues may decrease.
- Any arbitration or litigation involving us and regarding intellectual property infringement claims could be costly and disrupt our drug discovery and development efforts.
- Our inability to adequately protect or enforce our proprietary information may result in loss of revenues or otherwise reduce our ability to compete.
- If the effective term of our patents is decreased or if we need to refile some of our patent applications, the value of our patent portfolio and the revenues we derive from it may be decreased.
- International patent protection is particularly uncertain and costly, and our involvement in opposition proceedings may result in the expenditure of substantial sums and management resources.
- Significant disruptions of information technology systems, breaches of data security, or unauthorized disclosures of sensitive data could harm our business and subject us to liability or reputational damage.
- Increasing use of social media could give rise to liability, breaches of data security, or reputational damage, which could harm our business and results of operations.

Overview

Incyte is a biopharmaceutical company focused on the discovery, development and commercialization of proprietary therapeutics. Our global headquarters is located in Wilmington, Delaware, where we conduct global clinical development and commercial operations. We also conduct commercial and clinical development operations from our European headquarters in Morges, Switzerland and our Japanese office in Tokyo.

As described in more detail below, we operate in two therapeutic areas that are defined by the indications of our approved medicines and the diseases for which our clinical candidates are being developed. One therapeutic area is Hematology/Oncology, which is comprised of Myeloproliferative Neoplasms (MPNs) and Graft-Versus-Host Disease (GVHD), as well as solid tumors and hematologic malignancies. The other therapeutic area is Inflammation and Autoimmunity (IAI), which includes our newly established Dermatology commercial franchise. We are also eligible to receive milestones and royalties on molecules discovered by us and licensed to third parties.

Hematology and Oncology

Our hematology and oncology franchise is comprised of four approved products, which are JAKAFI (ruxolitinib), MONJUVI (tafasitamab-cxix)/MINJUVI (tafasitamab), PEMAZYRE (pemigatinib) and ICLUSIG (ponatinib), as well as numerous clinical development programs.

JAKAFI (ruxolitinib)

JAKAFI (ruxolitinib) is our first product to be approved for sale in the United States. It was approved by the U.S. Food and Drug Administration (FDA) in November 2011 for the treatment of adults with intermediate or high-risk myelofibrosis (MF), in December 2014 for the treatment of adults with polycythemia vera (PV) who have had an inadequate response to or are intolerant of hydroxyurea, in May 2019 for the treatment of steroid-refractory acute graft-versus-host disease (GVHD) in adult and pediatric patients 12 years and older and in September 2021 for the treatment of chronic GVHD after failure of one or two lines of systemic therapy in adult and pediatric patients 12 years and older. Myelofibrosis and polycythemia vera are both myeloproliferative neoplasms (MPNs), a type of rare blood cancer, and GVHD is an adverse immune response to an allogeneic hematopoietic stem cell transplant (HSCT). Under our collaboration agreement with our collaboration partner Novartis Pharmaceutical International Ltd., Novartis received exclusive development and commercialization rights to ruxolitinib outside of the United States for all hematologic and oncologic indications and sells ruxolitinib outside of the United States under the name JAKAVI.

In 2003, we initiated a research and development program to explore the inhibition of enzymes called janus associated kinases (JAK). The JAK family is composed of four tyrosine kinases—JAK1, JAK2, JAK3 and Tyk2—that are involved in the signaling of a number of cytokines and growth factors. JAKs are central to a number of biologic processes, including the formation and development of blood cells and the regulation of immune functions. Dysregulation of the JAK-STAT signaling pathway has been associated with a number of diseases, including myeloproliferative neoplasms, other hematological malignancies, rheumatoid arthritis and other chronic inflammatory diseases.

We have discovered multiple potent, selective and orally bioavailable JAK inhibitors that are selective for JAK1 or JAK1 and JAK2. JAKAFI is the most advanced compound in our JAK program. It is an oral JAK1 and JAK2 inhibitor.

JAKAFI is marketed in the United States through our own specialty sales force and commercial team. JAKAFI was the first FDA-approved JAK inhibitor for any indication and was the first FDA-approved product in all three of its current indications. JAKAFI remains the first-line standard of care in MF and remains the only FDA-approved product for PV and steroid-refractory acute GVHD. The FDA has granted JAKAFI orphan drug status for MF, PV and GVHD.

JAKAFI is distributed primarily through a network of specialty pharmacy providers and wholesalers that allow for efficient delivery of the medication by mail directly to patients or direct delivery to the patient’s pharmacy. Our distribution process uses a model that is well-established and familiar to physicians who practice within the oncology field.

To further support appropriate use and future development of JAKAFI, our U.S. Medical Affairs department is responsible for providing appropriate scientific and medical education and information to physicians, preparing scientific presentations and publications, and overseeing the process for supporting investigator sponsored trials.

Myelofibrosis. MF is a rare, life-threatening condition. MF, considered the most serious of the myeloproliferative neoplasms, can occur either as primary MF, or as secondary MF that develops in some patients who previously had polycythemia vera or essential thrombocythemia. We estimate there are between 16,000 and 18,500 patients with MF in the United States. Based on the modern prognostic scoring systems referred to as International Prognostic Scoring System and Dynamic International Prognostic Scoring System, we believe intermediate and high-risk patients represent 80% to 90% of all patients with MF in the United States and encompass patients over the age of 65, or patients who have or have ever had any of the following: anemia, constitutional symptoms, elevated white blood cell or blast counts, or platelet counts less than 100,000 per microliter of blood.

Most MF patients have enlarged spleens and many suffer from debilitating symptoms, including abdominal discomfort, pruritus (itching), night sweats and cachexia (involuntary weight loss). There were no FDA approved therapies for MF until the approval of JAKAFI.

The FDA approval was based on results from two randomized Phase III trials (COMFORT-I and COMFORT-II), which demonstrated that patients treated with JAKAFI experienced significant reductions in splenomegaly (enlarged spleen). COMFORT-I also demonstrated improvements in symptoms. The most common hematologic adverse reactions in both trials were thrombocytopenia and anemia. These events rarely led to discontinuation of JAKAFI treatment. The most common non-hematologic adverse reactions were bruising, dizziness and headache.

In August 2014, the FDA approved supplemental labeling for JAKAFI to include Kaplan-Meier overall survival curves as well as additional safety and dosing information. The overall survival information is based on three-year data from COMFORT-I and II, and shows that at three years the probability of survival for patients treated with JAKAFI in COMFORT-I was 70% and for those patients originally randomized to placebo it was 61%. In COMFORT-II, at three years the probability of survival for patients treated with JAKAFI was 79% and for patients originally randomized to best available therapy it was 59%. In December 2016, we announced an exploratory pooled analysis of data from the five-year follow-up of the COMFORT-I and COMFORT-II trials of patients treated with JAKAFI, which further supported previously published overall survival findings.

In September 2016, we announced that JAKAFI had been included as a recommended treatment in the latest National Comprehensive Cancer Network (NCCN) Clinical Practice Guidelines in Oncology for myelofibrosis, underscoring the important and long-term clinical benefits seen in patients treated with JAKAFI.

In October 2017, the FDA approved updated labeling for JAKAFI to include the addition of new patient-reported outcome (PRO) data from the COMFORT-I study, as well as updating the warning related to progressive multifocal leukoencephalopathy. An exploratory analysis of PRO data of patients with myelofibrosis receiving JAKAFI showed improvement in fatigue-related symptoms at Week 24. Fatigue response (defined as a reduction of 4.5 points or more from baseline in the PROMIS® Fatigue total score) was reported in 35% of patients treated with JAKAFI versus 14% of the patients treated with placebo.

Polycythemia Vera. PV is a myeloproliferative neoplasm typically characterized by elevated hematocrit, the volume percentage of red blood cells in whole blood, which can lead to a thickening of the blood and an increased risk of blood clots, as well as an elevated white blood cell and platelet count. When phlebotomy can no longer control PV, chemotherapy such as hydroxyurea, or interferon, is utilized. Approximately 25,000 patients with PV in the United States are considered uncontrolled because they have an inadequate response to or are intolerant of hydroxyurea, the most commonly used chemotherapeutic agent for the treatment of PV.

In December 2014, the FDA approved JAKAFI for the treatment of patients with PV who have had an inadequate response to or are intolerant of hydroxyurea. The approval of JAKAFI for PV was based on data from the pivotal Phase III RESPONSE trial. In this trial, patients treated with JAKAFI demonstrated superior hematocrit control and reductions in spleen volume compared to best available therapy. In addition, a greater proportion of patients treated with JAKAFI

achieved complete hematologic remission—which was defined as achieving hematocrit control, and lowering platelet and white blood cell counts. In the RESPONSE trial, the most common hematologic adverse reactions (incidence > 20%) were thrombocytopenia and anemia. The most common non-hematologic adverse events (incidence >10%) were headache, abdominal pain, diarrhea, dizziness, fatigue, pruritus, dyspnea and muscle spasms.

In March 2016, the FDA approved supplemental labeling for JAKAFI to include additional safety data as well as efficacy analyses from the RESPONSE trial to assess the durability of response in JAKAFI treated patients after 80 weeks. At this time, 83% patients were still on treatment, and 76% of the responders at 32 weeks maintained their response through 80 weeks.

In June 2016, we announced data from the Phase III RESPONSE-2 study of JAKAFI in patients with inadequately controlled PV that was resistant to or intolerant of hydroxyurea who did not have an enlarged spleen. These data showed that JAKAFI was superior to best available therapy in maintaining hematocrit control (62.2% vs. 18.7%, respectively; P<0.0001) without the need for phlebotomy.

In August 2017, we announced that JAKAFI had been included as a recommended treatment in the latest NCCN Guidelines for patients with polycythemia vera who have had an inadequate response to first-line therapies, such as hydroxyurea.

Graft-versus-host disease. GVHD is a condition that can occur after an allogeneic HSCT (the transfer of genetically dissimilar stem cells or tissue). In GVHD, the donated bone marrow or peripheral blood stem cells view the recipient's body as foreign and attack various tissues. 12-month survival rates in patients with Grade III or IV steroid-refractory acute GVHD are 50% or less, and the incidence of steroid-refractory acute and chronic GVHD is approximately 3,000 per year in the United States.

In June 2016, we announced that the FDA granted Breakthrough Therapy designation for ruxolitinib in patients with acute GVHD. In May 2019, the FDA approved JAKAFI for the treatment of steroid-refractory acute GVHD in adult and pediatric patients 12 years and older. The approval was based on data from REACH1, an open-label, single-arm, multicenter study of JAKAFI in combination with corticosteroids in patients with steroid-refractory grade II-IV acute GVHD. The overall response rate (ORR) in patients refractory to steroids alone was 57% with a complete response (CR) rate of 31%. The most frequently reported adverse reactions among all study participants were infections (55%) and edema (51%), and the most common laboratory abnormalities were anemia (75%), thrombocytopenia (75%) and neutropenia (58%).

In September 2021, the FDA approved JAKAFI for the treatment of chronic GVHD after failure of one or two lines of systemic therapy in adult and pediatric patients 12 years and older. This approval was based on data from REACH3, a Phase III, randomized, open-label, multicenter study of JAKAFI in comparison to best available therapy for treatment of steroid-refractory chronic GVHD after allogeneic stem cell transplantation. The overall response rate through Cycle 7 Day 1 was 70% for Jakafi compared to 57% for best available therapy. The most common hematologic adverse reactions (incidence > 35%) were anemia and thrombocytopenia. The most common nonhematologic adverse reactions (incidence ≥ 20%) were infections (pathogen not specified) and viral infection. In addition, the FDA updated labeling for JAKAFI to include warnings of increased risk of major adverse cardiovascular events, thrombosis, and secondary malignancies related to another JAK-inhibitor treating rheumatoid arthritis, a condition for which Jakafi is not indicated. In patients with MF and PV treated with Jakafi in clinical trials, the rates of thromboembolic events were similar in Jakafi and control treated patients.

We have retained all development and commercialization rights to JAKAFI in the United States and are eligible to receive development and sales milestones as well as royalties from product sales outside the United States. We hold patents that cover the composition of matter and use of ruxolitinib, which patents, including applicable extensions, expire in late 2027.

MONJUVI (tafasitamab-cxix) / MINJUVI (tafasitamab)

In January 2020, we and MorphoSys AG entered into a collaboration and license agreement to further develop and commercialize MorphoSys' proprietary anti-CD19 antibody tafasitamab (MOR208) globally. The agreement became effective March 2020. Tafasitamab is an Fc-engineered antibody against CD19 currently in clinical development for the treatment of B cell malignancies. We have rights to co-commercialize tafasitamab in the United States with MorphoSys, and we have exclusive development and commercialization rights outside of the United States.

In July 2020, we and MorphoSys announced that the FDA approved MONJUVI (tafasitamab-cxix), which is indicated in combination with lenalidomide for the treatment of adult patients with relapsed or refractory diffuse large B-cell lymphoma (DLBCL) not otherwise specified, including DLBCL arising from low grade lymphoma, and who are not eligible for autologous stem cell transplant (ASCT). MONJUVI was approved under accelerated approval based on overall response rate. The approval of MONJUVI was based on data from the MorphoSys-sponsored Phase II L-MIND study, an open label, multicenter, single arm trial of MONJUVI in combination with lenalidomide as a treatment for adult patients with r/r DLBCL. Results from the study showed an objective response rate (ORR) of 55% (39 out of 71 patients; primary endpoint) and a complete response (CR) rate of 37% (26 out of 71 patients). The median duration of response (mDOR) was 21.7 months. The most frequent serious adverse reactions were infections (26%), including pneumonia (7%) and febrile neutropenia (6%). Updated three-year data from L-MIND were presented at the American Society of Clinical Oncology (ASCO) 2021.

In August 2020, we and MorphoSys announced that MONJUVI in combination with lenalidomide had been included in the latest National Comprehensive Cancer Network (NCCN) Clinical Practice Guidelines in Oncology for B-cell Lymphomas.

In August 2021, we and MorphoSys announced that the European Commission (EC) granted conditional marketing authorization for MINJUVI (tafasitamab) in combination with lenalidomide, followed by MINJUVI monotherapy, for the treatment of adult patients with relapsed or refractory DLBCL who are not eligible for autologous stem cell transplant (ASCT). The conditional approval is based on the three-year results from the L-MIND study evaluating the safety and efficacy of MINJUVI in combination with lenalidomide as a treatment for patients with r/r DLBCL who are not eligible for ASCT. The results showed best objective response rate (ORR) of 56.8% (primary endpoint), including a complete response (CR) rate of 39.5% and a partial response rate (PR) of 17.3%, as assessed by an independent review committee. The median duration of response (mDOR) was 43.9 months after a minimum follow up of 35 months (secondary endpoint). MINJUVI together with lenalidomide was shown to provide a clinically meaningful response and the side effects were manageable. Warnings and precautions for MINJUVI include infusion-related reactions, myelosuppression, including neutropenia and thrombocytopenia, infections and tumour lysis syndrome.

DLBCL is the most common type of non-Hodgkin lymphoma in adults worldwide, comprising 40% of all cases. DLBCL is characterized by rapidly growing masses of malignant B-cells in the lymph nodes, spleen, liver, bone marrow or other organs. It is an aggressive disease with ~40% of patients not responding to initial therapy or relapsing thereafter. We estimate that there are ~10,000 patients diagnosed in the United States each year with r/r DLBCL who are not eligible for ASCT. In the EU, we estimate there are ~14,000 patients diagnosed each year with r/r DLBCL who are not eligible for ASCT.

PEMAZYRE (pemigatinib)

PEMAZYRE is the first internally discovered product to be internationally commercialized by us.

In April 2020, we announced that the FDA approved PEMAZYRE (pemigatinib), a selective fibroblast growth factor receptor (FGFR) kinase inhibitor, for the treatment of adults with previously treated, unresectable locally advanced or metastatic cholangiocarcinoma with an FGFR2 fusion or other rearrangement as detected by an FDA-approved test. PEMAZYRE is the first FDA-approved treatment for this indication, which was approved under accelerated approval based on overall response rate and duration of response (DOR).

In March 2021, PEMAZYRE was approved by the Japanese Ministry of Health, Labour and Welfare (MHLW) for the treatment of patients with unresectable biliary tract cancer (BTC) with an FGFR2 fusion gene, worsening after cancer chemotherapy. Also in March 2021, PEMAZYRE was approved by the European Commission (EC) for the treatment of adults with locally advanced or metastatic cholangiocarcinoma with an FGFR2 fusion or rearrangement that have progressed after at least one prior line of systemic therapy.

In July 2021, the UK's National Institute for Health and Care Excellence (NICE) recommended PEMAZYRE for patients with cholangiocarcinoma with a fibroblast growth factor receptor 2 (FGFR2) fusion or rearrangement that have progressed after at least one prior line of systemic therapy. NICE's guidance enables all eligible patients in England and Wales to have access to PEMAZYRE through the National Health Service (NHS).

Cholangiocarcinoma is a rare cancer that arises from the cells within the bile ducts. It is often diagnosed late (stages III and IV) and the prognosis is poor. The incidence of cholangiocarcinoma with FGFR2 fusions or rearrangements is increasing, and it is currently estimated that there are 2,000-3,000 patients in the United States, Europe and Japan.

The approval of PEMAZYRE was based on data from FIGHT-202, a multi-center, open-label, single-arm study evaluating PEMAZYRE as a treatment for adults with cholangiocarcinoma. In FIGHT-202, and in patients harboring FGFR2 fusions or rearrangements (Cohort A), PEMAZYRE monotherapy resulted in an overall response rate of 36% (primary endpoint), and median DOR of 9.1 months (secondary endpoint). FIGHT-302, a Phase III trial of pemigatinib for the first-line treatment of patients with cholangiocarcinoma and FGFR2 fusions or rearrangements, is ongoing.

We have retained all rights to PEMAZYRE globally, other than those granted to Innovent Biologics, Inc. to develop and commercialize pemigatinib in hematology and oncology in mainland China, Hong Kong, Macau and Taiwan.

ICLUSIG (ponatinib)

In June 2016, we acquired the European operations of ARIAD Pharmaceuticals, Inc. and obtained an exclusive license to develop and commercialize ICLUSIG (ponatinib) in Europe and other select countries. ICLUSIG is a kinase inhibitor. The primary target for ICLUSIG is BCR-ABL, an abnormal tyrosine kinase that is expressed in chronic myeloid leukemia (CML) and Philadelphia-chromosome positive acute lymphoblastic leukemia (Ph+ ALL).

In the European Union, ICLUSIG is approved for the treatment of adult patients with chronic phase, accelerated phase or blast phase CML who are resistant to dasatinib or nilotinib; who are intolerant to dasatinib or nilotinib and for whom subsequent treatment with imatinib is not clinically appropriate; or who have the T315I mutation, or the treatment of adult patients with Ph+ ALL who are resistant to dasatinib; who are intolerant to dasatinib and for whom subsequent treatment with imatinib is not clinically appropriate; or who have the T315I mutation.

Clinical Programs in Hematology and Oncology

Ruxolitinib and itacitinib

As part of our ongoing LIMBER (Leadership In MPNs BEyond Ruxolitinib) clinical development initiative, which is designed to improve and expand therapeutic options for patients with myeloproliferative neoplasms, we are evaluating combinations of ruxolitinib with other therapeutic modalities, as well as developing a once-a-day formulation of ruxolitinib for potential use as monotherapy and combination therapy. Bioavailability and bioequivalence data were published for ruxolitinib's once-daily (QD) extended release (XR) formulation at the European Hematology Association (EHA) 2021 Virtual Congress in June 2021.

Based on positive Phase II data, we opened two pivotal trials of ruxolitinib in combination with parsaclisib (PI3Kδ) in first-line MF (LIMBER-313) and in MF patients with a suboptimal response to ruxolitinib monotherapy (LIMBER-304), and both trials are ongoing. Additional Phase II trials combining ruxolitinib with investigational agents from our portfolio such as INCB57643 (BET) and INCB00928 (ALK2) in patients with MF are in preparation, and additional discovery and development initiatives are also ongoing within the LIMBER program, which are evaluating both internally-discovered compounds, including itacitinib (JAK1), and candidates from collaboration partners.

Itacitinib is a selective JAK1 inhibitor being evaluated in GRAVITAS-309, a pivotal Phase III trial of itacitinib in patients with steroid-naïve chronic GVHD. The FDA has granted itacitinib orphan drug status for GVHD.

In September 2021, we and Syndax Pharmaceuticals, Inc. announced an exclusive worldwide collaboration and license agreement to develop and commercialize axatilimab, Syndax's anti-CSF-1R monoclonal antibody, pending regulatory clearance. Together, we plan to develop axatilimab as a therapy for patients with chronic GVHD as well as in additional immune-mediated diseases where CSF-1R-dependent monocytes and macrophages are believed to contribute to organ fibrosis. The global pivotal Phase II AGAVE-201 trial of axatilimab monotherapy in patients with chronic GVHD in the third line setting is ongoing. Additional trials of axatilimab are planned in patients with chronic GVHD, including a Phase II trial in combination with a JAK inhibitor in patients with steroid-refractory cGVHD.

Tafasitamab

Tafasitamab is an anti-CD19 antibody and is being investigated as a therapeutic option in B cell malignancies in a number of ongoing and planned combination trials. An open-label Phase II combination trial (L-MIND) is investigating the safety and efficacy of tafasitamab in combination with lenalidomide in patients with relapsed or refractory diffuse large B-cell lymphoma (r/r DLBCL), and the ongoing Phase III B-MIND trial is assessing the combination of tafasitamab and bendamustine versus rituximab and bendamustine in r/r DLBCL. firstMIND is a Phase Ib safety trial of tafasitamab as a first-line therapy for patients with DLBCL, and frontMIND, a placebo-controlled Phase III trial evaluating tafasitamab in combination with lenalidomide added to rituximab plus chemotherapy (R-CHOP) as a first-line therapy for patients with DLBCL, is ongoing.

A placebo-controlled Phase III trial (inMIND) of tafasitamab added to lenalidomide plus rituximab (R^2) in patients with relapsed or refractory follicular or marginal zone lymphomas is ongoing, and we are preparing to initiate a proof-of-concept study (topMIND) of tafasitamab in combination with parsaclisib (PI3Kδ) in patients with relapsed or refractory B-cell malignancies, a proof-of-concept study (coreMIND) of tafasitamab in combination with parsaclisib in chronic lymphocytic leukemia (CLL) and a proof-of-concept study of tafasitamab, lenalidomide and plamotamab in patients with r/r DLBCL.

In January 2021, the FDA granted orphan drug designation to tafasitamab as a treatment for patients with follicular lymphoma.

Pemigatinib

Pemigatinib is a potent and selective inhibitor of the fibroblast growth factor receptor (FGFR) isoforms 1, 2 and 3 with demonstrated activity in preclinical studies. The FGFR family of receptor tyrosine kinases can act as oncogenic drivers in a number of liquid and solid tumor types.

We initiated the FIGHT clinical program to evaluate pemigatinib across a spectrum of cancers that are driven by FGF/FGFR alterations. The program initially included three Phase II trials – FIGHT-201 in patients with bladder cancer, FIGHT-202 in patients with cholangiocarcinoma, and FIGHT-203 in patients with myeloid/lymphoid neoplasms with FGFR1 rearrangement. Based on data generated from these ongoing trials, we have initiated additional trials. FIGHT-207, a solid tumor-agnostic trial evaluating pemigatinib in patients with driver-alterations of FGF/FGFR, is now closed to recruitment. Based on findings from this study, we have identified populations that may potentially benefit from treatment with pemigatinib and intend to initiate Phase II studies in glioblastoma and non-small cell lung cancer.

Pemigatinib has Breakthrough Therapy designation as a treatment for patients with myeloid/lymphoid neoplasms (MLN) with FGFR1 rearrangement who have relapsed or are refractory to initial chemotherapy.

Parsaclisib

The PI3Kδ pathway mediates oncogenic signaling in B cell malignancies. Parsaclisib is a PI3Kδ inhibitor that has demonstrated potency and selectivity in preclinical studies and has potential therapeutic utility in the treatment of patients with lymphoma. We initiated the CITADEL clinical program to evaluate parsaclisib in non-Hodgkin lymphomas, and we are currently running Phase II trials in follicular lymphoma, marginal zone lymphoma and mantle cell lymphoma and Phase III trials in those indications are in preparation. The FDA has granted orphan drug designation and Fast Track designation to parsaclisib as a treatment for patients with follicular lymphoma, marginal zone lymphoma and mantle cell lymphoma.

In December 2020, we announced preliminary results from the ongoing CITADEL monotherapy development program, which was designed to enable registration of parsaclisib. Results from four cohorts were presented at the American Society of Hematology (ASH), including in r/r follicular lymphoma (CITADEL-203), in BTK-naïve r/r marginal zone lymphoma (CITADEL-204) and in both BTK-naïve and BTK-experienced r/r mantle cell lymphoma (CITADEL-205).

In October 2021, we announced the FDA acceptance of a NDA seeking approval of parsaclisib for the treatment of patients with relapsed or refractory follicular lymphoma, marginal zone lymphoma and mantle cell lymphoma. The submission is based on data from several Phase 2 studies (CITADEL-203, -204 and -205) evaluating parsaclisib as a treatment for relapsed or refractory NHLs (follicular, marginal zone and mantle cell).

A Phase II trial of parsaclisib in patients with autoimmune hemolytic anemia (AIHA), a rare red blood cell disorder, is ongoing. In June 2021, Phase II data evaluating parsaclisib in AIHA were presented at EHA. The majority of patients achieved a response with parsaclisib over the initial 12-week treatment period. Treatment with parsaclisib was generally well tolerated. Based on these results, we expect to initiate a Phase III trial in warm AIHA. The FDA has granted orphan drug designation to parsaclisib as a treatment for patients with AIHA.

Retifanlimab

In October 2017, we and MacroGenics, Inc. announced an exclusive global collaboration and license agreement for MacroGenics' retifanlimab (formerly INCMGA0012), an investigational monoclonal antibody that inhibits PD-1. Under this collaboration, we obtained exclusive worldwide rights for the development and commercialization of retifanlimab in all indications. The molecule is currently being evaluated both as monotherapy and in combination therapy across various tumor types. Potentially registration-enabling trials in microsatellite instability-high (MSI-H) endometrial cancer and Merkel cell carcinoma are ongoing.

The Phase III POD1UM-303 trial of retifanlimab in combination with platinum-based chemotherapy as a first-line treatment for patients with SCAC is underway. In July 2021, we announced that the FDA issued a complete response letter (CRL) for the BLA of retifanlimab for the treatment of squamous cell carcinoma of the anal canal (SCAC). In October 2021, we announced that we withdrew the Marketing Authorization Application (MAA) seeking approval of retifanlimab in SCAC.

The Phase III POD1UM-304 trial is evaluating retifanlimab in combination with platinum-based chemotherapy as a first-line treatment for patients with non-small cell lung cancer (NSCLC), and in October 2020, our collaboration partner Zai Lab announced dosing of the first patient in China.

Retifanlimab has been granted Fast Track designation for the treatment of certain patients with advanced or metastatic MSI-H or DNA mismatch repair (dMMR) endometrial cancer, for the treatment of certain patients with locally advanced or metastatic SCAC and for the treatment of Merkel cell carcinoma (MCC). The FDA and EMA have granted orphan drug designation to retifanlimab as a treatment for patients with locally advanced or metastatic SCAC and the FDA has granted orphan drug designation to retifanlimab as a treatment for patients with MCC.

	Indication and status
Once-a-day ruxolitinib (JAK1/JAK2)	Myelofibrosis, polycythemia vera and GVHD: clinical pharmacology studies
ruxolitinib + parsaclisib (JAK1/JAK2 + PI3Kδ)	Myelofibrosis: Phase III (first-line therapy) (LIMBER-313) Myelofibrosis: Phase III (suboptimal responders to ruxolitinib) (LIMBER-304)
ruxolitinib + INCB57643 (JAK1/JAK2 + BET)	Myelofibrosis: Phase II in preparation
ruxolitinib + INCB00928 (JAK1/JAK2 + ALK2)	Myelofibrosis: Phase II in preparation
ruxolitinib + CK0804[1] (JAK1/JAK2 + CB-Tregs)	Myelofibrosis: PoC in preparation
itacitinib (JAK1)	Treatment-naïve chronic GVHD: Phase III (GRAVITAS-309)
axatilimab (anti-CSF-1R)[2]	Chronic GVHD: Phase II (third-line therapy) (AGAVE-201)
tafasitamab (CD19)[3]	r/r DLBCL: Phase II (L-MIND); Phase III (B-MIND) 1L DLBCL: Phase Ib (firstMIND); Phase III (frontMIND) r/r follicular & marginal zone lymphomas: Phase III (inMIND) r/r chronic lymphocytic leukemia: Phase II (coreMIND) in preparation r/r B-cell malignancies: PoC with parsaclisib (PI3Kδ) (topMIND) r/r B-cell malignancies: PoC with lenalidomide and plamotamab in preparation[4]
pemigatinib (FGFR1/2/3)	CCA: Phase III (FIGHT-302) Myeloid/lymphoid neoplasms (MLN): Phase II (FIGHT-203) Tumor agnostic: Phase II (FIGHT-207) Glioblastoma: Phase II in preparation NSCLC: Phase II in preparation
parsaclisib (PI3Kδ)	r/r follicular lymphoma: Phase II (CITADEL-203) r/r marginal zone lymphoma: Phase II (CITADEL-204) r/r mantle cell lymphoma: Phase II (CITADEL-205) r/r follicular and marginal zone lymphoma: Phase III (CITADEL-302) in preparation 1L mantle cell lymphoma: Phase III (CITADEL-310) in preparation Autoimmune hemolytic anemia: Phase II; Phase III in preparation
retifanlimab (PD-1)[5]	SCAC: Phase II (POD1UM-202); Phase III (PODIUM-303) MSI-high endometrial cancer: Phase II (POD1UM-101, POD1UM-204) Merkel cell carcinoma: Phase II (POD1UM-201) NSCLC: Phase III (POD1UM-304)

1. Development collaboration with Cellenkos, Inc.
2. axatilimab development in collaboration with Syndax, pending regulatory clearance.
3. tafasitamab development in collaboration with MorphoSys.
4. Clinical collaboration with MorphoSys and Xencor, Inc. to investigate the combination of tafasitamab plus lenalidomide in combination with Xencor's CD20xCD3 XmAb bispecific antibody, plamotamab.
5. retifanlimab licensed from MacroGenics.

Earlier-Stage Development Programs in Hematology and Oncology

We also have a number of other earlier-stage clinical programs in hematology and oncology, as detailed in the table below. We intend to describe these programs more fully if we obtain clinical proof-of-concept and establish that a program warrants further development in a specific indication or group of indications.

Modality	Candidates
Small molecules	INCB81776 (AXL/MER), epacadostat (IDO1), INCB86550 (PD-L1), INCB99280 (PD-L1), INCB99318 (PD-L1), INCB106385 ($A2A/A_{2B}$)
Monoclonal antibodies[1]	INCAGN1876 (GITR), INCAGN2385 (LAG-3), INCAGN1949 (OX40), INCAGN2390 (TIM-3), INCA00186 (CD73)
Bispecific antibodies	MCLA-145 (PD-L1xCD137)[2]

1. Discovery collaboration with Agenus Inc.
2. MCLA-145 development in collaboration with Merus N.V.

Inflammation and AutoImmunity (IAI)

We recently established Incyte Dermatology as a new commercial franchise, which launched its first approved product, OPZELURA (ruxolitinib) cream, in October 2021, following FDA approval in September 2021.

Incyte's IAI efforts also include numerous clinical development programs.

OPZELURA (ruxolitinib) cream

In September 2021, we announced that the FDA approved OPZELURA (ruxolitinib) cream, a novel cream formulation of Incyte's selective JAK1/JAK2 inhibitor ruxolitinib, for the topical short-term and non-continuous chronic treatment of mild to moderate atopic dermatitis (AD) in non-immunocompromised patients 12 years of age and older whose disease is not adequately controlled with topical prescription therapies, or when those therapies are not advisable.

AD is a skin disorder that causes long term inflammation of the skin resulting in itchy, red, swollen and cracked skin. Onset can occur at any age, but is more common in infants and children. In the United States, we estimate that there are approximately 10 million diagnosed adolescent and adult patients with AD.

The approval of OPZELURA was based on data from two randomized, double-blind, vehicle-controlled Phase III studies (TRuE-AD1 and TRuE-AD 2) evaluating the safety and efficacy of OPZELURA in adolescents and adults with mild to moderate AD. Significantly more patients treated with OPZELURA achieved Investigator's Global Assessment (IGA) Treatment Success at Week 8 (defined as an IGA score of 0 or 1 with at least a 2-point improvement from baseline, the primary endpoint: 53.8% in TRuE-AD1 and 51.3% in TRuE-AD2, compared to vehicle (15.1% in TRuE-AD1, 7.6% in TRuE-AD2; $P<0.0001$). Significantly more patients treated with OPZELURA experienced a clinically meaningful reduction in itch from baseline at Week 8, as measured by a ≥4-point reduction in the itch Numerical Rating Scale (itch NRS4): 52.2% in TRuE-AD1 and 50.7% in TRuE-AD2, compared to vehicle (15.4% in TRuE-AD1, 16.3% in TRuE-AD2; $P<0.0001$), among patients with an NRS score of at least 4 at baseline. The most common (≥1%) treatment-emergent adverse reactions in patients treated with OPZELURA were nasopharyngitis, diarrhea, bronchitis, ear infection, eosinophil count increased, urticaria, folliculitis, tonsillitis and rhinorrhea.

Clinical Programs in Dermatology

Ruxolitinib cream is a potent, selective inhibitor of JAK1 and JAK2 that provides the opportunity to directly target diverse pathogenic pathways that underlie certain dermatologic conditions, including atopic dermatitis and vitiligo.

We are currently evaluating ruxolitinib cream in a Phase III trial, TRuE-AD3, in pediatric atopic dermatitis patients ages ≥2 years to < 12 years.

In May 2021, we announced positive topline results from the Phase III TRuE-V program evaluating ruxolitinib cream as a treatment for adolescent and adult patients with vitiligo. Both TRuE-V1 and TRuE-V2 studies met the primary

and key secondary endpoints, including patient reported outcomes. The overall efficacy and safety profile of ruxolitinib cream was consistent with previously reported Phase II data, and no new safety signals were observed.

In October 2021, data from the Week 24 analysis of the Phase III TRuE-V program were presented at the European Academy of Dermatology and Venereology Congress (EADV). Treatment with 1.5% ruxolitinib cream twice daily (BID) resulted in greater improvement versus vehicle for the primary and all key secondary endpoints in both the TRuE-V1 and TRuE-V2 studies. Results, which were consistent across both studies, showed that 29.9% of patients applying ruxolitinib cream achieved ≥75% improvement from baseline in the facial Vitiligo Area Scoring Index (F-VASI75), the primary endpoint. The overall safety profile of ruxolitinib cream in vitiligo was consistent with previous study data. In the TRuE-V studies, patients using ruxolitinib cream did not report clinically significant application site reactions. Treatment-emergent adverse events were consistent with previous studies, with no serious treatment-related adverse events reported.

In October 2021, we announced the validation of the European Marketing Authorization Application (MAA) for ruxolitinib cream as a potential treatment for adolescents and adults (age >12 years) with non-segmental vitiligo with facial involvement.

Vitiligo is a long-term skin condition characterized by patches of the skin losing their pigment. It is estimated that vitiligo affects 0.5-2% of the US population and, therefore, there are at least 1.5 million patients in the United States with this disorder. There are no FDA approved treatments for repigmentation of vitiligo lesions.

We are also developing INCB54707, which is an oral small molecule selective JAK1 inhibitor. INCB54707 is undergoing evaluation in patients with hidradenitis suppurativa (HS), a chronic skin condition where lesions develop as a result of inflammation and infection of the sweat glands. In October 2020, initial results from the clinical program were presented and a randomized Phase IIb trial of INCB54707 is underway in patients with HS. In March 2021, we initiated a Phase II trial evaluating INCB54707 in patients with vitiligo. A Phase II trial evaluating INCB54707 in patients with prurigo nodularis is ongoing.

Clinical Programs in Other IAI

A Phase II trial of INCB00928 is in preparation for patients with fibrodysplasia ossificans progressiva (FOP), a disorder in which muscle tissue and connective tissue are gradually replaced by bone. The FDA has granted Fast Track designation and orphan drug designation to INCB00928 as a treatment for patients with FOP.

	Indication and status
ruxolitinib cream[1] (JAK1/JAK2)	Atopic dermatitis: Phase III pediatric study ongoing (TRuE-AD3) Vitiligo: Phase III (TRuE-V1, TRuE-V2; primary endpoint met in both studies); sNDA and MAA in progress
INCB54707 (JAK1)	Hidradenitis suppurativa: Phase II Vitiligo: Phase II Prurigo nodularis: Phase II
INCB00928 (ALK2)	Fibrodysplasia ossificans progressiva: Phase II in preparation

[1.] Novartis' rights for ruxolitinib outside of the United States under our Collaboration and License Agreement with Novartis do not include topical administration.

Collaborative Partnered Programs

As described below under "—License Agreements and Business Relationships," we are eligible for milestone payments and royalties on certain products that we licensed to third parties. These include OLUMIANT (baricitinib), which is licensed to our collaborative partner Eli Lilly and Company, and JAKAVI (ruxolitinib) and TABRECTA (capmatinib), which are licensed to Novartis.

Baricitinib

We have a second JAK1 and JAK2 inhibitor, baricitinib, which is subject to our collaboration agreement with Lilly, in which Lilly received exclusive worldwide development and commercialization rights to the compound for inflammatory and autoimmune diseases.

Rheumatoid Arthritis. Rheumatoid arthritis is an autoimmune disease characterized by aberrant or abnormal immune mechanisms that lead to joint inflammation and swelling and, in some patients, the progressive destruction of joints. Rheumatoid arthritis can also affect connective tissue in the skin and organs of the body.

Current rheumatoid arthritis treatments include the use of non-steroidal anti-inflammatory drugs, disease-modifying anti-rheumatic drugs, such as methotrexate, and the newer biological response modifiers that target pro-inflammatory cytokines, such as tumor necrosis factor, implicated in the pathogenesis of rheumatoid arthritis. None of these approaches to treatment is curative; therefore, there remains an unmet need for new safe and effective treatment options for these patients. Rheumatoid arthritis is estimated to affect about 1% of the world's population.

The Phase III program of baricitinib in patients with rheumatoid arthritis incorporated all three rheumatoid arthritis populations (methotrexate naïve, biologic naïve, and tumor necrosis factor (TNF) inhibitor inadequate responders); used event rates to fully power the baricitinib program for structural comparison and non-inferiority vs. adalimumab; and evaluated patient-reported outcomes. All four Phase III trials met their respective primary endpoints.

In January 2016, Lilly submitted an NDA to the FDA and an MAA to the EMA for baricitinib as treatment for rheumatoid arthritis. In February 2017, we and Lilly announced that the European Commission approved baricitinib as OLUMIANT for the treatment of moderate-to-severe rheumatoid arthritis in adult patients who have responded inadequately to, or who are intolerant to, one or more disease-modifying antirheumatic drugs (DMARDs). In July 2017, the Japanese Ministry of Health, Labour and Welfare (MHLW) granted marketing approval for OLUMIANT for the treatment of rheumatoid arthritis (including the prevention of structural injury of joints) in patients with inadequate response to standard-of-care therapies. In June 2018, the FDA approved the 2mg dose of OLUMIANT for the treatment of adults with moderately-to-severely active rheumatoid arthritis (RA) who have had an inadequate response to one or more tumor necrosis factor (TNF) inhibitor therapies.

Atopic Dermatitis. Lilly has conducted a Phase IIa trial and a Phase III program to evaluate the safety and efficacy of baricitinib in patients with moderate-to-severe atopic dermatitis. The JAK-STAT pathway has been shown to play an essential role in the dysregulation of immune responses in atopic dermatitis. Therefore, we believe that inhibiting cytokine pathways dependent on JAK1 and JAK2 may lead to positive clinical outcomes in AD.

In February 2019, we and Lilly announced that baricitinib met the primary endpoint in BREEZE-AD1 and BREEZE-AD2, two Phase III studies evaluating the efficacy and safety of baricitinib monotherapy for the treatment of adult patients with moderate-to-severe AD and, in August 2019, we and Lilly announced that baricitinib met the primary endpoint in BREEZE-AD7, a Phase III study evaluating the efficacy and safety of baricitinib in combination with standard-of-care topical corticosteroids in patients with moderate-to-severe AD. In January 2020, we and Lilly announced that baricitinib met the primary endpoint in both BREEZE-AD4 and BREEZE-AD5, the results of which completed the placebo-controlled data program intended to support global registrations. An sNDA for baricitinib has been submitted by Lilly for the treatment of patients with moderate to severe AD. In April 2021, we and Lilly announced the FDA extended the review period for the sNDA for baricitinib for the treatment of moderate to severe AD by three months to allow time for additional data analyses. In July 2021, we and Lilly announced that the FDA will not meet the PDUFA action date for

the sNDA for baricitinib for the treatment of adults with moderate to severe AD due to the FDA's ongoing assessment of JAK inhibitors.

In January 2020, Lilly announced that baricitinib had been submitted for regulatory review in Europe as a treatment for patients with moderate-to-severe AD. In October 2020, Lilly announced that the European Commission approved baricitinib as OLUMIANT for the treatment of moderate-to-severe AD in adult patients who are candidates for systemic therapy. In December 2020, baricitinib was approved by the MHLW for the treatment of patients with moderate-to-severe AD.

Systemic Lupus Erythematosus. Systemic lupus erythematosus (SLE) is a chronic disease that causes inflammation. In addition to affecting the skin and joints, it can affect other organs in the body such as the kidneys, the tissue lining the lungs and heart, and the brain. Lilly has conducted a Phase II trial to evaluate the safety and efficacy of baricitinib in patients with SLE. Baricitinib's activity profile suggests that it inhibits cytokines implicated in SLE such as type I interferon (IFN), type II IFN-γ, IL-6, and IL-23 as well as other cytokines that may have a role in SLE, including granulocyte macrophage colony stimulating factor (GM-CSF) and IL-12. The potential impact of baricitinib on the IFN pathway is highly relevant to SLE, as clinical and preclinical studies have established that this pathway is involved in the pathogenesis of SLE. Lilly is currently running two Phase III trials of baricitinib in patients with SLE, BRAVE I and BRAVE II.

Alopecia Areata. Alopecia areata is an autoimmune disorder in which the immune system attacks the hair follicles, causing hair loss in patches. In March 2020, Lilly announced that baricitinib received Breakthrough Therapy designation for the treatment of alopecia areata, based on the positive Phase II results of Lilly's adaptive Phase II/III study BRAVE-AA1. In March 2021, we and Lilly announced positive results from BRAVE-AA2, the Phase III trial evaluating the efficacy and safety of once-daily baricitinib in adults with severe alopecia areata. In April 2021, we and Lilly announced positive results from the Phase III portion of BRAVE-AA1. In September 2021, we and Lilly announced detailed results from BRAVE-AA1 and BRAVE-AA2 at the European Academy of Dermatology and Venereology Congress (EADV). The two studies showed statistically significant improvement in scalp hair regrowth across both baricitinib dosing groups when compared to placebo.

Capmatinib

Capmatinib is a potent and highly selective MET inhibitor. The investigational compound has demonstrated inhibitory activity in cell-based biochemical and functional assays that measure MET signaling and MET dependent cell proliferation, survival and migration. Under our agreement, Novartis received worldwide exclusive development and commercialization rights to capmatinib and certain back-up compounds in all indications. Capmatinib is being evaluated in patients with hepatocellular carcinoma, non-small cell lung cancer and other solid tumors, and may have potential utility as a combination agent.

MET is a clinically validated receptor kinase cancer target. Abnormal MET activation in cancer correlates with poor prognosis. Dysregulation of the MET pathway triggers tumor growth, formation of new blood vessels that supply the tumor with nutrients, and causes cancer to spread to other organs. Dysregulation of the MET pathway is seen in many types of cancers, including lung, kidney, liver, stomach, breast and brain.

In May 2020, we and Novartis announced the FDA approval of capmatinib as TABRECTA for the treatment of adult patients with metastatic NSCLC whose tumors have a mutation that leads to MET exon 14 skipping (METex14) as detected by an FDA-approved test. TABRECTA is the first and only treatment approved to specifically target NSCLC with this driver mutation and is approved for first-line and previously treated patients regardless of prior treatment type.

The FDA approval of TABRECTA was based on results from the pivotal GEOMETRY mono-1 study. In the METex14 population (n=97), the confirmed overall response rate was 68% and 41% among treatment-naive (n=28) and previously treated patients (n=69), respectively, based on the Blinded Independent Review Committee (BIRC) assessment per RECIST v1.1. In patients taking TABRECTA, the study also demonstrated a median duration of response of 12.6 months in treatment-naive patients (19 responders) and 9.7 months in previously treated patients (28 responders). The most common treatment-related adverse events (AEs) (incidence ≥20%) are peripheral edema, nausea, fatigue, vomiting,

dyspnea, and decreased appetite. In September 2020, we and Novartis announced that GEOMETRY mono-1 results were published in The New England Journal of Medicine.

In June 2020, we and Novartis announced that the MHLW approved TABRECTA for METex14 mutation-positive advanced and/or recurrent unresectable NSCLC.

NSCLC is the most common type of lung cancer, impacting more than 2 million people per year globally. Approximately 3-4 percent of all patients with NSCLC have tumors with a mutation that leads to MET exon 14 skipping. Though rare, this mutation is an indicator of especially poor prognosis and poor responses to standard therapies, including immunotherapy.

	Indication and status
baricitinib (JAK1/JAK2)[1]	Atopic dermatitis: Phase III (BREEZE-AD); approved in European Union and Japan; sNDA under review Severe alopecia areata: Phase III (BRAVE-AA1, BRAVE-AA2) Systemic lupus erythematosus: Phase III (BRAVE I, BRAVE II)
capmatinib (MET)[2]	NSCLC (with MET exon 14 skipping mutations): approved in United States and Japan

1. baricitinib licensed to Lilly.
2. capmatinib licensed to Novartis.

License Agreements and Business Relationships

We establish business relationships, including collaborative arrangements with other companies and medical research institutions to assist in the clinical development and/or commercialization of certain of our drugs and drug candidates and to provide support for our research programs. We also evaluate opportunities for acquiring products or rights to products and technologies that are complementary to our business from other companies and medical research institutions.

Below is a brief description of our significant business relationships and collaborations and related license agreements that expand our pipeline and provide us with certain rights to existing and potential new products and technologies. Additional information regarding our collaboration agreements, including their financial and accounting impact on our business and results of operations, can be found in Note 9 of notes to our condensed consolidated financial statements.

Out-License Agreements

Novartis

In November 2009, we entered into a Collaboration and License Agreement with Novartis. Under the terms of the agreement, Novartis received exclusive development and commercialization rights outside of the United States to ruxolitinib and certain back up compounds for hematologic and oncology indications, including all hematological malignancies, solid tumors and myeloproliferative diseases. We retained exclusive development and commercialization rights to JAKAFI (ruxolitinib) in the United States and in certain other indications. Novartis also received worldwide exclusive development and commercialization rights to our MET inhibitor compound capmatinib and certain back up compounds in all indications. We retained options to co-develop and to co-promote capmatinib in the United States. In April 2016, we amended this agreement to provide that Novartis has exclusive research, development and commercialization rights outside of the United States to ruxolitinib (excluding topical formulations) in the GVHD field.

Lilly

In December 2009, we entered into a License, Development and Commercialization Agreement with Lilly. Under the terms of the agreement, Lilly received exclusive worldwide development and commercialization rights to baricitinib

and certain back up compounds for inflammatory and autoimmune diseases. In March 2016, we entered into an amendment to the agreement with Lilly that allows us to engage in the development and commercialization of ruxolitinib in the GVHD field. In May 2020, we amended our agreement with Lilly to enable Lilly to commercialize baricitinib for the treatment of COVID-19.

Innovent

In December 2018, we entered into a Research Collaboration and Licensing Agreement with Innovent Biologics, Inc. Under the terms of this agreement, Innovent received exclusive development and commercialization rights to pemigatinib and our clinical-stage product candidates itacitinib and parsaclisib in hematology and oncology indications in mainland China, Hong Kong, Macau and Taiwan.

Zai Lab

In July 2019, we entered into a Collaboration and License Agreement with a subsidiary of Zai Lab Limited. Under the terms of this agreement, Zai Lab's subsidiary received development and exclusive commercialization rights to INCMGA0012 in hematology and oncology in mainland China, Hong Kong, Macau and Taiwan. We retained an option to assist in the promotion of INCMGA0012 in Zai Lab's licensed territories.

InnoCare

In August 2021, we entered into a Collaboration and License Agreement with a subsidiary of InnoCare Pharma Limited. Under the terms of this agreement, InnoCare's subsidiary received development and exclusive commercialization rights to tafasitamab in hematology and oncology in mainland China, Hong Kong, Macau and Taiwan.

In-License Agreements

Agenus

In January 2015, we entered into a License, Development and Commercialization Agreement with Agenus Inc. and its wholly-owned subsidiary, 4-Antibody AG (now known as Agenus Switzerland Inc.), which we collectively refer to as Agenus. Under this agreement, the parties have agreed to collaborate on the discovery of novel immuno-therapeutics using Agenus' antibody discovery platforms. Under the terms of this agreement, as amended in February 2017, we received exclusive worldwide development and commercialization rights to four checkpoint modulators directed against GITR, OX40, LAG-3 and TIM-3. In addition to the initial four program targets, we and Agenus have the option to jointly nominate and pursue additional targets within the framework of the collaboration, and in November 2015, three more targets were added, two of which were removed from the collaboration under the February 2017 amendments.

Takeda (ARIAD)

In June 2016, we acquired from ARIAD Pharmaceuticals, Inc. all of the outstanding shares of ARIAD Pharmaceuticals (Luxembourg) S.à.r.l., the parent company of ARIAD's European subsidiaries responsible for the development and commercialization of ICLUSIG in the European Union and other countries. We obtained an exclusive license to develop and commercialize ICLUSIG in Europe and other select countries. ARIAD was subsequently acquired by Takeda Pharmaceutical Company Limited in 2017.

Merus

In December 2016, we entered into a Collaboration and License Agreement with Merus N.V. Under this agreement, which became effective in January 2017, the parties have agreed to collaborate with respect to the research, discovery and development of bispecific antibodies utilizing Merus' technology platform. The collaboration encompasses up to eleven independent programs. The most advanced collaboration program is MCLA-145, a bispecific antibody targeting PD-L1 and CD137, for which we received exclusive development and commercialization rights outside of the United States. Merus retained exclusive development and commercialization rights in the United States to MCLA-145.

Calithera

In January 2017, we entered into a Collaboration and License Agreement with Calithera Biosciences, Inc. Under this agreement, we received an exclusive, worldwide license to develop and commercialize small molecule arginase inhibitors, including INCB01158 (CB-1158), which is currently in Phase II clinical trials, for multiple myeloma.

MacroGenics

In October 2017, we entered into a Global Collaboration and License Agreement with MacroGenics. Under this agreement, we received exclusive development and commercialization rights worldwide to MacroGenics' INCMGA0012, an investigational monoclonal antibody that inhibits PD-1. MacroGenics has retained the right to develop and commercialize, at its cost and expense, its pipeline assets in combination with INCMGA0012.

Syros

In January 2018, we entered into a Target Discovery, Research Collaboration and Option Agreement with Syros Pharmaceuticals, Inc. Under this agreement, Syros will use its proprietary gene control platform to identify novel therapeutic targets with a focus in myeloproliferative neoplasms and we have received options to obtain exclusive worldwide rights to intellectual property resulting from the collaboration for up to seven validated targets. We will have exclusive worldwide rights to develop and commercialize any therapies under the collaboration that modulate those validated targets.

MorphoSys

In January 2020, we entered into a Collaboration and License Agreement with MorphoSys AG and MorphoSys US Inc., a wholly-owned subsidiary of MorphoSys AG, covering the worldwide development and commercialization of MOR208 (tafasitamab), an investigational Fc engineered monoclonal antibody directed against the target molecule CD19. Under the terms of this agreement, we received exclusive commercialization rights outside of the United States, and MorphoSys and we have co-commercialization rights in the United States, with respect to tafasitamab.

Syndax

In September 2021, we entered into a Collaboration and License Agreement with Syndax covering the worldwide development and commercialization of SNDX-6352 (axatilimab), Syndax's anti-CSF-1R monoclonal antibody. Effectiveness of this agreement is subject to termination of the Hart-Scott-Rodino Antitrust Improvements Act waiting period. Under the terms of this agreement, we will receive exclusive commercialization rights outside of the United States, and Syndax will have co-commercialization rights in the United States with respect to axatilimab.

COVID-19

In December 2019, coronavirus disease of 2019, or COVID-19, was first reported in Wuhan, China. In March 2020, the World Health Organization declared COVID-19 a pandemic ("the COVID-19 Pandemic"). We and our collaboration partners Lilly and Novartis initiated a number of clinical trials to address COVID-19.

In April 2020, we announced the initiation of a Phase III clinical trial (RUXCOVID) to evaluate the efficacy and safety of ruxolitinib plus standard-of-care (SoC), compared to SoC therapy alone, in patients not on mechanical ventilation and who have COVID-19 associated cytokine storm. We sponsored this collaborative study in the United States and our collaboration partner Novartis International Pharmaceutical Ltd. sponsored the study outside of the United States.

In December 2020, we announced initial results from RUXCOVID, where treatment with ruxolitinib plus SoC did not prevent complications compared to SoC treatment alone in patients with COVID-19 associated cytokine storm. The RUXCOVID study has been completed and the data will be further analyzed to determine any potential impact on

other studies of ruxolitinib in patients with COVID-19, including our Expanded Access Program in the United States, which allows eligible patients with severe COVID-19 associated cytokine storm to receive ruxolitinib.

In March 2021, results from a second Phase III clinical trial to evaluate the efficacy and safety of ruxolitinib plus SoC, compared to SoC therapy alone, in COVID-19 patients on mechanical ventilation and who have acute respiratory distress syndrome (ARDS), a type of respiratory failure characterized by rapid onset of widespread inflammation in the lungs were announced. Ruxolitinib failed to reduce mortality due to any cause through Day 29 although in the U.S. study population (91% of total study patients), there was a clinically and statistically significant improvement in mortality in each of the 5mg and 15mg ruxolitinib arms.

In April 2020, Lilly announced that it has entered into an agreement with the National Institute of Allergy and Infectious Diseases (NIAID), part of the National Institutes of Health, to study baricitinib as an arm in NIAID's Adaptive COVID-19 Treatment Trial (ACTT-2). The study is investigating the efficacy and safety of baricitinib as a potential treatment for hospitalized patients diagnosed with COVID-19 in the United States, and Lilly is also planning an expansion to include Europe and Asia.

In September 2020, we and Lilly announced initial results from ACTT-2, where baricitinib in combination with remdesivir reduced the time to recovery in comparison with remdesivir alone. Additional data announced in October 2020 showed that baricitinib plus remdesivir resulted in a numerical decrease in mortality through Day 29 compared to remdesivir alone, with a more pronounced reduction seen in more severely ill patients.

In November 2020, we and Lilly announced that the FDA issued an Emergency Use Authorization (EUA) for the distribution and emergency use of baricitinib to be used in combination with remdesivir in hospitalized adult and pediatric patients two years of age or older with suspected or laboratory confirmed COVID-19 who require supplemental oxygen, invasive mechanical ventilation, or extracorporeal membrane oxygenation. In December 2020, we and Lilly announced that data from ACTT-2 supportive of the EUA were published in the New England Journal of Medicine. In July 2021, we and Lilly announced that the FDA broadened the EUA for baricitinib to allow for treatment with or without remdesivir. The EUA now provides for the use of baricitinib for treatment of COVID-19 in hospitalized adults and pediatric patients two years of age or older requiring supplemental oxygen, non-invasive or invasive mechanical ventilation or extracorporeal membrane oxygenation (ECMO).

In April 2021, we and Lilly announced that the primary endpoint was not met in COV-BARRIER, the Phase III randomized, double-blind, placebo–controlled study to evaluate the efficacy and safety of baricitinib in hospitalized adults not on mechanical ventilation and who have COVID-19. There was, however, a 38% reduction in mortality by Day 28 in patients treated with baricitinib in addition to SoC. In August 2021, we and Lilly announced new data from an additional cohort of 101 adult patients from the COV-BARRIER trial. In this sub-study, patients with COVID-19 on mechanical ventilation or extracorporeal membrane oxygenation (ECMO) who received baricitinib plus standard of care were 46% less likely to die by Day 28 compared to patients who received placebo plus standard of care.

Critical Accounting Policies and Significant Estimates

The preparation of financial statements requires us to make estimates, assumptions and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates. We base our estimates on historical experience and various other assumptions that we believe to be reasonable under the circumstances, the results of which form our basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from those estimates under different assumptions or conditions. We believe the following critical accounting policies reflect the more significant judgments and estimates used in the preparation of our condensed consolidated financial statements. See Note 2 of Notes to the Condensed Consolidated Financial Statements for a complete list of our significant accounting policies.

Revenue Recognition. We recognize revenue only when we have satisfied a performance obligation through transferring control of the promised good or service to a customer in an amount that reflects the consideration we expect to receive in exchange for those goods or services. We apply the following five-step model in order to determine this

amount: (i) identification of the promised goods or services in the contract; (ii) determination of whether the promised goods or services are performance obligations, including whether they are distinct in the context of the contract; (iii) measurement of the transaction price, including the constraint on variable consideration; (iv) allocation of the transaction price to the performance obligations; and (v) recognition of revenue when (or as) the Company satisfies each performance obligation, which for the Company is generally at a point in time. We also assess collectability based primarily on the customer's payment history and on the creditworthiness of the customer.

Product Revenues

Our product revenues consist of sales of JAKAFI, PEMAZYRE, ICLUSIG, and MINJUVI. Product revenues are recognized once we satisfy the performance obligation at a point in time under the revenue recognition criteria as described above. We recognize revenues for product received by our customers net of allowances for customer credits, including estimated rebates, chargebacks, discounts, returns, distribution service fees, patient assistance programs, and government rebates, such as Medicare Part D coverage gap reimbursements in the United States. These sales allowances and accruals are recorded based on estimates which are described in detail below. Estimates are assessed as of the end of each reporting period and are updated to reflect current information. We believe that our sales allowances and accruals are reasonable and appropriate based on current facts and circumstances.

Customer Credits: Our customers are offered various forms of consideration, including allowances, service fees and prompt payment discounts. We expect our customers will earn prompt payment discounts and, therefore, we deduct the full amount of these discounts from total product sales when revenues are recognized. Service fees are also deducted from total product sales as they are earned.

Rebates and Discounts: We accrue rebates for mandated discounts under the Medicaid Drug Rebate Program in the United States and mandated discounts in Europe in markets where government-sponsored healthcare systems are the primary payers for healthcare. These accruals are based on statutory discount rates and expected utilization as well as historical data we have accumulated since product launch. Our estimates for expected utilization of rebates are based on data received from our customers. Rebates are generally invoiced and paid in arrears so that the accrual balance consists of an estimate of the amount expected to be incurred for the current quarter's activity, plus an accrual balance for known prior quarters' unpaid rebates. If actual future rebates vary from estimates, we may need to adjust prior period accruals, which would affect revenue in the period of adjustment.

Chargebacks: Chargebacks are discounts that occur when certain contracted customers purchase directly from our wholesalers at a discounted price. The wholesalers, in turn, charges back to us the difference between the price initially paid by the wholesalers and the discounted price paid by the contracted customers. In addition to actual chargebacks received, we maintain an accrual for chargebacks based on the estimated contractual discounts on the inventory levels on hand in our distribution channel. If actual future chargebacks vary from these estimates, we may need to adjust prior period accruals, which would affect revenue in the period of adjustment.

Medicare Part D Coverage Gap: Medicare Part D prescription drug benefit mandates manufacturers to fund 70% of the Medicare Part D insurance coverage gap for prescription drugs sold to eligible patients. Our estimates for the expected Medicare Part D coverage gap are based on historical invoices received and in part from data received from our customers. Funding of the coverage gap is generally invoiced and paid in arrears so that the accrual balance consists of an estimate of the amount expected to be incurred for the current quarter's activity, plus an accrual balance for known prior quarters. If actual future funding varies from estimates, we may need to adjust prior period accruals, which would affect revenue in the period of adjustment. Additionally, beginning in January 2020, the amount of spending required by eligible patients in the Medicare Part D insurance coverage gap increased 30% due to the expiration of a provision in the Patient Protection and Affordable Care Act, which now results in a change in the True Out of Pocket (TrOOP) calculation methodology. The methodological change has resulted in an increase in required spending by patients and, in turn, an increase in manufacturers' contributions on behalf of patients in the Medicare Part D insurance coverage gap.

Co-payment Assistance: Patients who have commercial insurance and meet certain eligibility requirements may receive co-payment assistance. We accrue a liability for co-payment assistance based on actual program participation and estimates of program redemption using data provided by third-party administrators.

Product Royalty Revenues

Royalty revenues on commercial sales for JAKAVI and TABRECTA by Novartis are estimated based on information provided by Novartis. Royalty revenues on commercial sales for OLUMIANT by Lilly are estimated based on information provided by Lilly. We exercise judgment in determining whether the information provided is sufficiently reliable for us to base our royalty revenue recognition thereon. If actual royalties vary from estimates, we may need to adjust the prior period, which would affect royalty revenue and receivable in the period of adjustment.

Milestone and Contract Revenues

At the inception of a contract, we determine the transaction price, in addition to any upfront payment, by estimating the amount of variable consideration, including milestone payments, at the outset of the contract utilizing the most likely amount method. Our contractual milestones typically relate to the achievement of pre-specified development, regulatory and commercialization events outside of our control, such as regulatory approval of a compound, first patient dosing or achievement of sales-based thresholds. We include milestones in the transaction price only to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the milestone is subsequently resolved. Given the high level of uncertainty of achievement, variable consideration associated with milestones are fully constrained until confirmation of the satisfaction or completion of the milestone by the third-party. We review our estimate of the transaction price each period, and make revisions to such estimates as necessary.

Stock Compensation. Share-based payment transactions with employees, which include stock options, restricted stock units (RSUs) and performance shares (PSUs), are recognized as compensation expense over the requisite service period based on their estimated fair values at the date of grant as well as expected forfeiture rates based on actual experience. The stock compensation process requires significant judgment and the use of estimates, particularly surrounding Black-Scholes assumptions such as stock price volatility over the option term and expected option lives, as well as expected forfeiture rates and the probability of PSUs vesting. The fair value of stock options, which are subject to graded vesting, are recognized as compensation expense over the requisite service period using the accelerated attribution method. The fair value of RSUs that are subject to cliff vesting are recognized as compensation expense over the requisite service period using the straight-line attribution method, and the fair value of RSUs that are subject to graded vesting are recognized as compensation expense over the requisite service period using the accelerated attribution method. The fair value of PSUs are recognized as compensation expense beginning at the time in which the performance conditions are deemed probable of achievement. We assess the probability of achievement of performance conditions, including projected product revenues and clinical development milestones, as of the end of each reporting period. Once a performance condition is considered probable, we record compensation expense based on the portion of the service period elapsed to date with respect to that award, with a cumulative catch-up, net of estimated forfeitures, and recognize any remaining compensation expense, if any, over the remaining requisite service period using the straight-line attribution method for PSUs that are subject to cliff vesting and using the accelerated attribution method for PSUs that are subject to graded vesting.

Income Taxes. We account for income taxes using an asset and liability approach to financial accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement carrying amounts and tax bases of assets and liabilities using enacted tax rates in effect for years in which the basis differences are expected to reverse. We periodically assess the likelihood of the realization of deferred tax assets, and reduce the carrying amount of these deferred tax assets to an amount that is considered to be more-likely-than-not to be realizable. Our assessment considers recent cumulative earnings experience, projections of future taxable income (losses) and ongoing prudent and feasible tax planning strategies. When performing our assessment on projections of future taxable income (losses), we consider factors such as the likelihood of regulatory approval and commercial success of products currently under development, among other factors. Significant judgment is required in making this assessment and, to the extent that a reversal of any portion of our valuation allowance against our deferred tax assets is deemed appropriate, a tax benefit will be recognized against our income tax provision in the period of such reversal.

We recognize the tax benefit from an uncertain tax position only if it is more-likely-than-not that the position will be sustained upon examination by the taxing authorities, including resolutions of any related appeals or litigation processes,

based on the technical merits of the position. The tax benefit that is recorded for these positions is measured at the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement. We adjust the level of the liability to reflect any subsequent changes in the relevant facts surrounding the uncertain positions. Any interest and penalties on uncertain tax positions are included within the tax provision.

We record estimates and prepare and file tax returns in various jurisdictions across the United States, Canada, Europe, and Asia based upon our interpretation of local tax laws and regulations. While we exercise significant judgment when applying complex tax laws and regulations in these various taxing jurisdictions, many of our tax returns are open to audit, and may be subject to future tax, interest, and penalty assessments.

We believe our estimates for the valuation allowances against certain deferred tax assets and the amount of benefits associated with uncertain tax positions recognized in our financial statements are appropriate based upon our assessment of the factors mentioned above.

Acquisition-related contingent consideration. Acquisition-related contingent consideration, which consists of our future royalty obligations to ARIAD/Takeda, was recorded on the acquisition date at the estimated fair value of the obligation, in accordance with the acquisition method of accounting. The fair value of the contingent consideration was determined using an income approach based on estimated ICLUSIG revenues in the European Union and other countries. As the fair value measurement is based on significant inputs that are unobservable in the market, this represents a Level 3 measurement.

The fair value of the acquisition-related contingent consideration is remeasured each reporting period, with changes in fair value recorded in the consolidated statements of operations. The assumptions used to determine the fair value of the acquisition-related contingent consideration include projected ICLUSIG revenues and a discount rate which, require significant judgement and are analyzed on a quarterly basis. While we use the best available information to prepare our projected ICLUSIG revenues and discount rate assumptions, actual ICLUSIG revenues and/or market conditions could differ significantly. Changes to one or multiple inputs could have a material impact on the amount of acquisition-related contingent consideration expense recorded during the reporting period.

Results of Operations

We recorded net income of $181.7 million and basic and diluted net income per share of $0.82 for the three months ended September 30, 2021, as compared to net loss of $15.2 million and basic and diluted net loss per share of $0.07 in the corresponding period in 2020. We recorded net income of $384.7 million and basic net income per share of $1.75 and diluted net income per share of $1.73 for the nine months ended September 30, 2021, as compared to net loss of $445.5 million and basic and diluted net loss per share of $2.05 in the corresponding period in 2020.

Revenues.

	For the Three Months Ended, September 30,		For the Nine Months Ended, September 30,	
	2021	2020	2021	2020
	(in millions)		(in millions)	
JAKAFI revenues, net	$ 547.4	$ 487.8	$ 1,542.1	$ 1,421.0
ICLUSIG revenues, net	28.5	26.4	82.4	76.4
PEMAZYRE revenues, net	17.6	8.1	48.9	11.9
MINJUVI revenues, net	0.5	—	0.5	—
Total product revenues, net	594.0	522.3	1,673.9	1,509.3
JAKAVI product royalty revenues	94.7	68.3	242.3	190.9
OLUMIANT product royalty revenues	86.6	28.6	154.9	79.9
TABRECTA product royalty revenues	2.7	1.4	7.3	2.1
Total product royalty revenues	184.0	98.3	404.5	272.9
Milestone and contract revenues	35.0	—	45.0	95.0
Total revenues	$ 813.0	$ 620.6	$ 2,123.4	$ 1,877.2

The increase in JAKAFI product revenues for the three months ended September 30, 2021 as compared to the corresponding period in 2020 was comprised of a volume increase of $41.4 million and a price increase of $18.2 million. The increase in JAKAFI product revenues for the nine months ended September 30, 2021 as compared to the corresponding period in 2020 was comprised of a volume increase of $66.4 million and a price increase of $54.7 million. Additionally, our product revenues may fluctuate from quarter to quarter due to our customers' purchasing patterns over the course of the year, including as a result of increased inventory building by customers in advance of expected or announced price increases. Product revenues are recorded net of estimated product returns, pricing discounts including rebates offered pursuant to mandatory federal and state government programs and chargebacks, prompt pay discounts and distribution fees and co-pay assistance. Our revenue recognition policies require estimates of the aforementioned sales allowances each period.

The following table provides a summary of activity with respect to our sales allowances and accruals (in thousands):

Nine Months Ended September 30, 2021	Discounts and Distribution Fees	Government Rebates and Chargebacks	Co-Pay Assistance and Other Discounts	Product Returns	Total
Balance at January 1, 2021	$ 8,536	$ 66,991	$ 1,284	$ 1,568	$ 78,379
Allowances for current period sales	49,750	324,082	18,824	2,656	395,312
Allowances for prior period sales	91	(1,207)	—	—	(1,116)
Credits/payments for current period sales	(43,144)	(257,461)	(17,731)	—	(318,336)
Credits/payments for prior period sales	(6,387)	(35,173)	(407)	(1,404)	(43,371)
Balance at September 30, 2021	$ 8,846	$ 97,232	$ 1,970	$ 2,820	$ 110,868

Government rebates and chargebacks are the most significant component of our sales allowances. Increases in certain government reimbursement rates are limited to a measure of inflation, and when the price of a drug increases faster than this measure of inflation it will result in a penalty adjustment factor that causes a larger sales allowance to those government related entities. We expect government rebates and chargebacks as a percentage of our gross product sales will continue to increase in connection with any future product price increases greater than the rate of inflation, and any such increase in these government rebates and chargebacks will have a negative impact on our reported product revenues, net. We adjust our estimates for government rebates and chargebacks based on new information regarding actual rebates as it becomes available. Claims by third-party payors for rebates and chargebacks are frequently submitted after the period in which the related sales occurred, which may result in adjustments to prior period accrual balances in the period in which the new information becomes available. We also adjust our allowance for product returns based on new information regarding actual returns as it becomes available.

We expect our sales allowances to fluctuate from quarter to quarter as a result of the Medicare Part D Coverage Gap, the volume of purchases eligible for government mandated discounts and rebates as well as changes in discount percentages which are impacted by potential future price increases, rate of inflation, and other factors.

Product royalty revenues on commercial sales of JAKAVI and TABRECTA by Novartis are based on net sales of licensed products in licensed territories as provided by Novartis. Product royalty revenues on commercial sales of OLUMIANT by Lilly are based on net sales of licensed products in licensed territories as provided by Lilly.

Our milestone and contract revenues for the nine months ended September 30, 2021, were derived from a $10.0 million milestone under the Innovent research and collaboration and licensing agreement and a $35.0 million upfront payment under the InnoCare collaboration and license agreement. Our milestone and contract revenues for the nine months ended September 30, 2020, were derived from a $5.0 million milestone under the Innovent research collaboration and licensing agreement and $90.0 million in milestones under the Novartis collaboration and license agreement.

Cost of Product Revenues.

	For the Three Months Ended, September 30,		For the Nine Months Ended, September 30,	
	2021	2020	2021	2020
	(in millions)		(in millions)	
Product costs	$ 4.8	$ 3.9	$ 14.3	$ 10.8
Salary and benefits related	2.3	0.9	4.9	2.7
Stock compensation	0.5	0.2	1.1	0.7
Royalty expense	26.9	23.9	70.6	64.6
Amortization of definite-lived intangible assets	5.4	5.4	16.2	16.2
Total cost of product revenues	$ 39.9	$ 34.3	$ 107.1	$ 95.0

Cost of product revenues includes all product related costs, employee personnel costs, including stock compensation, for those employees dedicated to the production of our commercial products, low single-digit royalties to Novartis on all sales of JAKAFI in the United States and amortization of our licensed intellectual property rights for ICLUSIG using the straight-line method over the estimated useful life of 12.5 years.

Operating Expenses.

Research and development expenses

	For the Three Months Ended, September 30,		For the Nine Months Ended, September 30,	
	2021	2020	2021	2020
	(in millions)		(in millions)	
Salary and benefits related	$ 75.9	$ 73.2	$ 229.3	$ 206.2
Stock compensation	26.3	29.0	84.2	90.2
Clinical research and outside services	196.6	308.8	576.2	1,437.9
Occupancy and all other costs	36.1	27.1	95.7	75.7
Total research and development expenses	$ 334.9	$ 438.1	$ 985.4	$ 1,810.0

We account for research and development costs by natural expense line and not costs by project. The increase in salary and benefits related expense for the three and nine months ended September 30, 2021 as compared to the corresponding periods in 2020 was due primarily to increased development headcount to sustain our development pipeline. Stock compensation expense may fluctuate from period to period based on the number of awards granted, stock price volatility and expected award lives, as well as expected award forfeiture rates which are used to value equity-based compensation.

The decrease in clinical research and outside services expense for the three months ended September 30, 2021 as compared to the corresponding period in 2020 was primarily due to expense related to the purchase of an FDA priority

review voucher in the prior year that enabled OPZELURA to be the first JAK inhibitor approved in a topical formulation, and the decrease in such expense for the nine months ended September 30, 2021 as compared to the corresponding period in 2020 was also due to upfront consideration related to our collaborative agreements recorded in the 2020 period. Research and development expenses include upfront and milestone expenses related to our collaborative agreements of $4.3 million and $20.8 million, respectively, for the three and nine months ended September 30, 2021. Research and development expenses include upfront and milestone expenses related to our collaborative agreements and the cost of purchasing a priority review voucher of $141.5 million and $950.5 million, respectively, for the three and nine months ended September 30, 2020. Research and development expenses for the three and nine months ended September 30, 2021 and 2020 were net of $3.2 million, $15.7 million, $2.1 million and $7.0 million, respectively, of costs reimbursed by our collaborative partners.

In addition to one-time expenses resulting from upfront fees in connection with the entry into any new or amended collaboration agreements and payment of milestones under those agreements, research and development expenses may fluctuate from period to period depending upon the stage of certain projects and the level of pre-clinical and clinical trial related activities. Many factors can affect the cost and timing of our clinical trials, including requests by regulatory agencies for more information, inconclusive results requiring additional clinical trials, slow patient enrollment, adverse side effects among patients, insufficient supplies for our clinical trials, timing of drug supply, including API, and real or perceived lack of effectiveness or safety of our investigational drugs in our clinical trials. In addition, the development of all of our products will be subject to extensive governmental regulation. These factors make it difficult for us to predict the timing and costs of the further development and approval of our products.

Selling, general and administrative expenses

	For the Three Months Ended, September 30,		For the Nine Months Ended, September 30,	
	2021	2020	2021	2020
	(in millions)		(in millions)	
Salary and benefits related	$ 58.3	$ 42.1	$ 163.4	$ 113.1
Stock compensation	15.9	14.6	49.5	41.7
Other contract services and outside costs	116.5	64.1	300.5	195.1
Total selling, general and administrative expenses	$ 190.7	$ 120.8	$ 513.4	$ 349.9

The increase in salary and benefits related expense for the three and nine months ended September 30, 2021 as compared to the corresponding period in 2020 was due primarily to increased headcount. This increased headcount was due primarily to the ongoing commercialization efforts related to JAKAFI for intermediate or high-risk myelofibrosis, uncontrolled polycythemia vera and GVHD as well as increased headcount related to the establishment of our dermatology commercial organization. Stock compensation expense may fluctuate from period to period based on the number of awards granted, stock price volatility and expected award lives, as well as expected award forfeiture rates which are used to value equity-based compensation. The increase in other contract services and outside costs for the three and nine months ended September 30, 2021, as compared to the corresponding period in 2020, was due primarily to expenses related to the establishment of our dermatology commercial organization and expenses related to activities to support the potential launch of ruxolitinib cream for the treatment of atopic dermatitis. The nine months ended September 30, 2021 also included expense recognized in connection with a legal settlement, as discussed in Note 15 of notes to our condensed consolidated financial statements.

Change in fair value of acquisition-related contingent consideration

Acquisition-related contingent consideration, which consists of our future royalty obligations to Takeda, was recorded on the acquisition date, June 1, 2016, at the estimated fair value of the obligation, in accordance with the acquisition method of accounting. The fair value of the acquisition-related contingent consideration is remeasured quarterly. The change in fair value of the acquisition-related contingent consideration for the three and nine months ended September 30, 2021 was $2.9 million and $13.1 million, respectively, which is recorded in change in fair value of acquisition-related contingent consideration on the condensed consolidated statements of operations. The change in fair value of the acquisition-related contingent consideration for the three and nine months ended September 30, 2020 was $7.1 million and $19.8 million, respectively, which is recorded in change in fair value of acquisition-related contingent

consideration on the condensed consolidated statements of operations. The change in fair value for the three and nine months ended September 30, 2021 and 2020 was due primarily to the impact of updated projections of future ICLUSIG revenues in the European Union.

Collaboration loss sharing

Under the collaboration and license agreement with MorphoSys, which was executed in March 2020, we and MorphoSys are both responsible for the commercialization efforts of tafasitamab in the United States and will share equally the profits and losses from the co-commercialization efforts. For the three and nine months ended September 30, 2021, our 50% share of the losses for tafasitamab was $9.1 million and $29.5 million, respectively, as recorded in collaboration loss sharing on the condensed consolidated statement of operations. For the three and nine months ended September 30, 2020, our 50% share of the losses for tafasitamab was $15.0 million and $30.4 million, respectively, as recorded in collaboration loss sharing on the condensed consolidated statement of operations.

Other income (expense).

Other income (expense), net. Other income (expense), net for the three and nine months ended September 30, 2021 was $1.9 million and $4.9 million, respectively. Other income (expense), net for the three and nine months ended September 30, 2020 was $4.9 million and $18.4 million, respectively. The decrease in other income (expense), net for the nine months ended September 30, 2021 primarily relates to a decrease in interest income.

Interest expense. Interest expense for the three and nine months ended September 30, 2021 was $0.4 million and $1.2 million, respectively. Interest expense for the three and nine months ended September 30, 2020 was $0.5 million and $1.7 million, respectively. Included in interest expense for the three and nine months ended September 30, 2021 was approximately $0.4 million and $1.0 million, respectively, of interest expense on our finance lease liabilities. Included in interest expense for the three and nine months ended September 30, 2020 was $0.2 million and $0.6 million, respectively, of non-cash charges to amortize the discount on our convertible senior notes due November 2020 and approximately $0.3 million and $0.9 million, respectively, of interest expense on our finance lease liabilities.

Unrealized gain (loss) on long term investments. Unrealized gains and losses on long term investments will fluctuate from period to period, based on the change in fair value of the securities we hold in our publicly held collaboration partners. The following table provides a summary of those unrealized gains and (losses):

	For the Three Months Ended, September 30,		For the Nine Months Ended, September 30,	
	2021	2020	2021	2020
	(in millions)		(in millions)	
Agenus	$ (2.8)	$ 3.9	$ 29.1	$ 1.2
Calithera	0.2	(3.2)	(4.6)	(3.9)
Merus	3.3	(13.1)	13.3	(6.7)
MorphoSys	(27.3)	0.9	(60.2)	18.5
Syros	(0.9)	(1.7)	(6.0)	1.8
Total unrealized gain (loss) on long term investments	$ (27.5)	$ (13.2)	$ (28.4)	$ 10.9

Provision for income taxes. The provision for income taxes for the three and nine months ended September 30, 2021 was $27.7 million and $65.7 million, respectively. The provision for income taxes for the three and nine months ended September 30, 2020 and was $11.7 million and $45.2 million, respectively. The tax expense for the three and nine months ended September 30, 2021 and 2020 represents primarily federal and state tax liabilities that are not fully sheltered by net operating losses or research and development tax credit carryforwards.

Liquidity and Capital Resources

Due to historical net losses, we had an accumulated deficit of $1.3 billion as of September 30, 2021. We have funded our research and development operations through cash received from customers, sales of equity securities, the

issuance of convertible notes, and collaborative arrangements. At September 30, 2021, we had available cash, cash equivalents and marketable securities of $2.3 billion. Our cash and marketable securities balances are held in a variety of interest-bearing instruments, including money market accounts, and U.S. government debt securities. Available cash is invested in accordance with our investment policy's primary objectives of liquidity, safety of principal and diversity of investments.

Net cash provided by operating activities for the nine months ended September 30, 2021 was $634.1 million and net cash used in operating activities for the nine months ended September 30, 2020 was $231.9 million. The increase in cash provided by operating activities was due primarily to cash outflows in March 2020 related to our collaboration and license agreement with MorphoSys and changes in working capital.

Our investing activities, other than purchases, sales and maturities of marketable securities, have consisted predominantly of capital expenditures and purchases of long term investments. Net cash used by investing activities was $141.7 million for the nine months ended September 30, 2021, which represented purchases of marketable securities of $228.2 million, capital expenditures of $146.5 million and purchases of long term equity investments of $8.7 million, offset in part by the sale of long term investment of $10.5 million and the sale and maturities of marketable securities of $231.3 million. Net cash used in investing activities was $166.3 million for the nine months ended September 30, 2020, which represented purchases of marketable securities of $418.7 million, capital expenditures of $135.9 million, and purchases of long term equity investments of $95.5 million, offset in part by the sale of long term investment of $17.3 million and the sales and maturities of marketable securities of $466.6 million. In the future, net cash used by investing activities may fluctuate significantly from period to period due to the timing of strategic equity investments, acquisitions, and capital expenditures and maturities/sales and purchases of marketable securities.

Net cash used in financing activities was $2.8 million for the nine months ended September 30, 2021 and net cash provided by financing activities was $59.8 million for the nine months ended September 30, 2020, primarily representing proceeds from the issuance of common stock under our stock plans net of tax withholding, offset by cash paid to ARIAD/Takeda for contingent consideration.

Our capital expenditures for construction activities and our non-operating contractual operating and finance lease obligations are discussed in Note 7 of notes to our condensed consolidated financial statements. In addition, in October 2019, we entered into an agreement with Wilmington Friends School Inc., to purchase property for $50.0 million to expand our global headquarters. Under that agreement, closing of the purchase is subject to certain standard closing conditions, including an initial diligence period and a subsequent approval period.

In August 2021, we entered into a $500.0 million, three-year senior unsecured revolving credit facility. We may increase the maximum revolving commitments or add one or more incremental term loan facilities, subject to obtaining commitments from any participating lenders and certain other conditions, in an amount not to exceed $250.0 million plus a contingent additional amount that is dependent on our pro forma consolidated leverage ratio. As of September 30, 2021, we had no outstanding borrowings and were in compliance with all covenants under this facility. We believe that our cash flow from operations, together with our cash, cash equivalents and marketable securities and funds available under our revolving credit facility, will be adequate to satisfy our capital needs for the foreseeable future. Our cash requirements depend on numerous factors, including our expenditures in connection with our drug discovery and development programs and commercialization operations; expenditures in connection with litigation or other legal proceedings; costs for future facility requirements; and expenditures for future strategic equity investments or potential acquisitions. We have entered into and may in the future seek to license additional rights relating to technologies or drug development candidates in connection with our drug discovery and development programs. Under these licenses, we may be required to pay upfront fees, milestone payments, and royalties on sales of future products. These contingent future payments are discussed in detail in Note 9 of notes to our condensed consolidated financial statements.

To the extent we seek to augment our existing cash resources and cash flow from operations to satisfy our cash requirements for future acquisitions or other strategic purposes, we expect that additional funding can be obtained through equity or debt financings or from other sources. The sale of equity or convertible debt securities in the future may be dilutive to our stockholders, and may provide for rights, preferences or privileges senior to those of our holders of common

stock. Debt financing arrangements may require us to pledge certain assets or enter into covenants that could restrict our operations or our ability to incur further indebtedness.

Off Balance Sheet Arrangements

We have no off-balance sheet arrangements other than those that are discussed above.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Our investments in marketable securities, which are composed primarily of U.S. government debt securities, are subject to default, changes in credit rating and changes in market value. These investments are also subject to interest rate risk and will decrease in value if market interest rates increase. As of September 30, 2021, marketable securities were $285.1 million. Due to the nature of these investments, if market interest rates were to increase immediately and uniformly by 10% from levels as of September 30, 2021, the decline in fair value would not be material.

Item 4. Controls and Procedures

Evaluation of disclosure controls and procedures. We maintain "disclosure controls and procedures," as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act"), that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognized that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Our disclosure controls and procedures have been designed to meet reasonable assurance standards. Additionally, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure controls and procedures also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Based on their evaluation as of the end of the period covered by this Quarterly Report on Form 10-Q, 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) for the three months ended September 30, 2021, that materially affected or are reasonably likely to materially affect our internal control over financial reporting.

PART II: OTHER INFORMATION

Item 1A. Risk Factors

RISKS RELATING TO COMMERCIALIZATION OF OUR PRODUCTS

We depend heavily on our lead product, JAKAFI (ruxolitinib), which is marketed as JAKAVI outside the United States. If we are unable to maintain revenues from JAKAFI or those revenues decrease, our business may be materially harmed.

JAKAFI is our first product marketed by us that is approved for sale in the United States. JAKAFI was approved by the U.S. Food and Drug Administration, or FDA, in November 2011 for the treatment of patients with intermediate or high-risk myelofibrosis, in December 2014 for the treatment of patients with polycythemia vera who have had an

inadequate response to or are intolerant of hydroxyurea, which we refer to as uncontrolled polycythemia vera, in May 2019 for the treatment of steroid-refractory acute graft-versus-host disease in adult and pediatric patients 12 years and older and in September 2021 for the treatment of steroid-refractory chronic graft-versus-host disease in adult and pediatric patients 12 years and older. Although we have received regulatory approval for these indications, such approval does not guarantee future revenues. While we also sell ICLUSIG in the European Union, or EU, and other countries for the treatment of certain types of leukemia, PEMAZYRE in the United States, Europe and Japan for the treatment of certain metastatic cholangiocarcinoma indications, MONJUVI in the United States and MINJUVI in the European Union for the treatment of certain lymphoma indications, and OPZELURA in the Unites States for the treatment of certain indications of atopic dermatitis, and our exclusive licensees sell OLUMIANT (baricitinib) for the treatment of specified rheumatoid arthritis and atopic dermatitis indications and TABRECTA for the treatment of a certain type of non small-cell lung cancer, we anticipate that JAKAFI product sales will continue to contribute a significant percentage of our total revenues over the next several years.

The commercial success of JAKAFI and our ability to maintain and continue to increase revenues from the sale of JAKAFI will depend on a number of factors, including:

- the number of patients with intermediate or high-risk myelofibrosis, uncontrolled polycythemia vera or steroid-refractory acute graft-versus-host disease who are diagnosed with the diseases and the number of such patients that may be treated with JAKAFI;
- the acceptance of JAKAFI by patients and the healthcare community;
- whether physicians, patients and healthcare payors view JAKAFI as therapeutically effective and safe relative to cost and any alternative therapies;
- the ability to obtain and maintain sufficient coverage or reimbursement by third-party payors and pricing;
- the ability of our third-party manufacturers to manufacture JAKAFI in sufficient quantities that meet all applicable quality standards;
- the ability of our company and our third-party providers to provide marketing and distribution support for JAKAFI;
- the effects of the COVID-19 Pandemic, any associated quarantine, travel restriction, stay-at-home or shutdown orders, guidelines or practices, and any disruption in our supply chain for JAKAFI on our ability to provide marketing and distribution support for JAKAFI, our ability to produce sufficient quantities of JAKAFI that meet all applicable quality standards, patient demand (including new patient prescriptions) and other risks detailed further below under “—Other Risks Relating to our Business—Public health epidemics, such as the COVID-19 Pandemic, could adversely affect our business, results of operations, and financial condition”;
- the label and promotional claims allowed by the FDA;
- the maintenance of regulatory approval for the approved indications in the United States; and
- our ability to develop, obtain regulatory approval for and commercialize ruxolitinib in the United States for additional indications.

If we are not able to maintain revenues from JAKAFI in the United States, or our revenues from JAKAFI decrease, our business may be materially harmed and we may need to delay other drug discovery, development and commercialization initiatives or even significantly curtail operations, and our ability to license or acquire new products to diversify our revenue base could be limited.

In addition, our receipt of royalties under our collaboration agreements with Novartis for sales of JAKAVI outside the United States and TABRECTA globally and with Eli Lilly and Company for worldwide sales of OLUMIANT will depend on factors similar to those listed above, with similar regulatory, pricing and reimbursement issues driven by applicable regulatory authorities and governmental and third-party payors affecting jurisdictions outside the United States.

If we are unable to obtain, or maintain at anticipated levels, reimbursement for our products from government health administration authorities, private health insurers and other organizations, our pricing may be affected or our product sales, results of operations or financial condition could be harmed.

We may not be able to sell our products on a profitable basis or our profitability may be reduced if we are required to sell our products at lower than anticipated prices or reimbursement is unavailable or limited in scope or amount. The costs of JAKAFI, ICLUSIG, PEMAZYRE, MONJUVI/MINJUVI and OPZELURA are not insignificant and almost all patients will require some form of third-party coverage to afford their cost. Our future revenues and profitability will be adversely affected if we cannot depend on government and other third-party payors to defray the cost of our products to the patient. Reimbursement systems in international markets vary significantly by country and by region, and reimbursement approvals must be obtained on a country-by-country basis. Reimbursement in the EU must be negotiated on a country-by-country basis and in many countries the product cannot be commercially launched until reimbursement is approved. The timing to complete the negotiation process in each country is highly uncertain, and in some countries, we expect that it may exceed 12 months. Risks related to pricing and reimbursement are described below under "—Other Risks Relating to our Business—Health care reform measures could impact the pricing and profitability of pharmaceuticals, and adversely affect the commercial viability of our or our collaborators' products and drug candidates. Our ability to generate revenues will be diminished if we or our collaborators are unable to obtain an adequate level of reimbursement from private insurers, government insurance programs or other third party payors of health care costs, which could be affected by current and potential healthcare reform legislation, and diminished revenues will harm our operating results and financial condition and could adversely affect our ability to conduct our research and development operations." If government and other third-party payors refuse to provide coverage and reimbursement with respect to our products, determine to provide a lower level of coverage and reimbursement than anticipated, reduce previously approved levels of coverage and reimbursement, or delay reimbursement payments due to budgetary constraints relating to the COVID-19 Pandemic, then our pricing or reimbursement for our products may be affected and our product sales, results of operations or financial condition could be harmed.

We depend upon a limited number of specialty pharmacies and wholesalers for a significant portion of any revenues from JAKAFI and most of our other drug products, and the loss of, or significant reduction in sales to, any one of these specialty pharmacies or wholesalers could adversely affect our operations and financial condition.

We sell JAKAFI and our other drug products other than OPZELURA primarily to specialty pharmacies and wholesalers. Specialty pharmacies dispense JAKAFI and our other drug products to patients in fulfillment of prescriptions and wholesalers sell JAKAFI and our other drug products to hospitals and physician offices. We do not promote JAKAFI or our other drug products to specialty pharmacies or wholesalers, and they do not set or determine demand for JAKAFI or our other drug products. Our ability to successfully commercialize JAKAFI and our other drug products will depend, in part, on the extent to which we are able to provide adequate distribution of JAKAFI and our other drug products to patients. Although we have contracted with a number of specialty pharmacies and wholesalers, they are expected generally to carry a very limited inventory and may be reluctant to be part of our distribution network in the future if demand for the product does not increase. Further, it is possible that these specialty pharmacies and wholesalers could decide to change their policies or fees, or both, at some time in the future. This could result in their refusal to carry smaller volume products such as JAKAFI and our other drug products, or lower margins or the need to find alternative methods of distributing our product. Although we believe we can find alternative channels to distribute JAKAFI or our other drug products on relatively short notice, our revenue during that period of time may suffer and we may incur additional costs to replace any such specialty pharmacy or wholesaler. The loss of any large specialty pharmacy or wholesaler as part of our distribution network, a significant reduction in sales we make to specialty pharmacies or wholesalers, or any failure to pay for the products we have shipped to them could materially and adversely affect our results of operations and financial condition.

If we are unable to establish and maintain effective sales, marketing and distribution capabilities, or to enter into agreements with third parties to do so, we will not be able to successfully commercialize our products.

We have established commercial capabilities in the United States and outside of the United States, but cannot guarantee that we will be able to enter into and maintain any marketing, distribution or third-party logistics agreements with third-party providers on acceptable terms, if at all. We may not be able to correctly judge the size and experience of the sales and marketing force and the scale of distribution capabilities necessary to successfully market and sell any new products. Establishing and maintaining sales, marketing and distribution capabilities are expensive and time-consuming. Competition for personnel with experience in sales and marketing can be high. Our expenses associated with building and maintaining the sales force and distribution capabilities may be disproportional compared to the revenues we may be able to generate on sales of our products.

We are working to establish and maintain sales, marketing and distribution capabilities for OPZELURA that will generally be separate from our existing capabilities for oncology indications, and we have no prior experience in commercializing products for dermatology indications. Successful commercialization of our drug candidates for dermatology indications requires us to establish new physician and payor relationships, reimbursement strategies and governmental interactions. Our inability to commercialize successfully products in indications outside of oncology could harm our business and operating results.

If we fail to comply with applicable laws and regulations, we could lose our approval to market our products or be subject to other governmental enforcement activity.

We cannot guarantee that we will be able to maintain regulatory approval to market our products in the jurisdictions in which they are currently marketed. If we do not maintain our regulatory approval to market our products, in particular JAKAFI, our results of operations will be materially harmed. We and our collaborators, third-party manufacturers and suppliers are subject to rigorous and extensive regulation by the FDA and other federal and state agencies as well as foreign governmental agencies. These regulations continue to apply after product marketing approval, and cover, among other things, testing, manufacturing, quality control and assurance, labeling, advertising, promotion, risk mitigation, and adverse event reporting requirements.

The commercialization of our products is subject to post-regulatory approval product surveillance, and our products may have to be withdrawn from the market or subject to restrictions if previously unknown problems occur. Regulatory agencies may also require additional clinical trials or testing for our products, and our products may be recalled or may be subject to reformulation, additional studies, changes in labeling, warnings to the public and negative publicity. For example, from late 2013 through 2014, ICLUSIG was subject to review by the European Medicines Agency, or EMA, of the benefits and risks of ICLUSIG to better understand the nature, frequency and severity of events obstructing the arteries or veins, the potential mechanism that leads to these side effects and whether there needed to be a revision in the dosing recommendation, patient monitoring and a risk management plan for ICLUSIG. This review was completed in January 2015, with additional warnings in the product information but without any change in the approved indications. The EMA could take additional actions in the future that reduce the commercial potential of ICLUSIG. In addition, in September 2021, the FDA updated labeling for JAKAFI and other JAK-inhibitor drugs to include warnings of increased risk of major adverse cardiovascular events, thrombosis, and secondary malignancies related to another JAK-inhibitor treating rheumatoid arthritis, a condition for which JAKAFI is not indicated. We cannot predict the effects on sales of JAKAFI as a result of the labeling change, but it is possible that future sales of JAKAFI can be negatively affected by the updated labeling, which could have a material and adverse effect on our business, results of operations and prospects.

Failure to comply with the laws and regulations administered by the FDA or other agencies could result in:

- administrative and judicial sanctions, including warning letters;
- fines and other civil penalties;
- suspension or withdrawal of regulatory approval to market or manufacture our products;

- interruption of production;
- operating restrictions;
- product recall or seizure;
- injunctions; and
- criminal prosecution.

The occurrence of any such event may have a material adverse effect on our business.

If the use of our products harms patients, or is perceived to harm patients even when such harm is unrelated to our products, our regulatory approvals could be revoked or otherwise negatively impacted or we could be subject to costly and damaging product liability claims.

The testing of JAKAFI, ICLUSIG, PEMAZYRE, MONJUVI/MINJUVI and OPZELURA, the manufacturing, marketing and sale of JAKAFI, PEMAZYRE and OPZELURA and the marketing and sale of ICLUSIG and MONJUVI/MINJUVI expose us to product liability and other risks. Side effects and other problems experienced by patients from the use of our products could:

- lessen the frequency with which physicians decide to prescribe our products;
- encourage physicians to stop prescribing our products to their patients who previously had been prescribed our products;
- cause serious harm to patients that may give rise to product liability claims against us; and
- result in our need to withdraw or recall our products from the marketplace.

If our products are used by a wide patient population, new risks and side effects may be discovered, the rate of known risks or side effects may increase, and risks previously viewed as less significant could be determined to be significant.

Previously unknown risks and adverse effects of our products may also be discovered in connection with unapproved, or off-label, uses of our products. We are prohibited by law from promoting or in any way supporting or encouraging the promotion of our products for off-label uses, but physicians are permitted to use products for off-label purposes. In addition, we are studying and expect to continue to study JAKAFI in diseases for potential additional indications in controlled clinical settings, and independent investigators are doing so as well. In the event of any new risks or adverse effects discovered as new patients are treated for intermediate or high-risk myelofibrosis, uncontrolled polycythemia vera or acute graft-versus-host disease and as JAKAFI is studied in or used by patients for off-label indications, regulatory authorities may delay or revoke their approvals, we may be required to conduct additional clinical trials, make changes in labeling of JAKAFI, reformulate JAKAFI or make changes and obtain new approvals. We may also experience a significant drop in the sales of JAKAFI, experience harm to our reputation and the reputation of JAKAFI in the marketplace or become subject to lawsuits, including class actions. Any of these results could decrease or prevent sales of JAKAFI or substantially increase the costs and expenses of commercializing JAKAFI. Similar results could occur with respect to our commercialization of ICLUSIG, PEMAZYRE, MONJUVI/MINJUVI and OPZELURA.

Patients who have been enrolled in our clinical trials or who may use our products in the future often have severe and advanced stages of disease and known as well as unknown significant pre-existing and potentially life-threatening health risks. During the course of treatment, patients may suffer adverse events, including death, for reasons that may or may not be related to our products. Such events could subject us to costly litigation, require us to pay substantial amounts of money to injured patients, delay, negatively impact or end our opportunity to receive or maintain regulatory approval

to market our products, or require us to suspend or abandon our commercialization efforts. Even in a circumstance in which we do not believe that an adverse event is related to our products, the investigation into the circumstance may be time consuming or inconclusive. These investigations may interrupt our sales efforts, impact and limit the type of regulatory approvals our products receive or maintain, or delay the regulatory approval process in other countries.

Factors similar to those listed above also apply to our collaborator Novartis for jurisdictions in which it has development and commercialization rights, to ICLUSIG for jurisdictions outside the United States, to our collaborator Lilly for all jurisdictions and to our collaborator Innovent for PEMAZYRE in the jurisdictions in which it has development and commercialization rights.

If we market our products in a manner that violates various laws and regulations, we may be subject to civil or criminal penalties.

In addition to FDA and related regulatory requirements, we are subject to health care "fraud and abuse" laws, such as the federal False Claims Act, the anti-kickback provisions of the federal Social Security Act, and other state and federal laws and regulations. Federal and state anti-kickback laws prohibit, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration to induce, or in return for purchasing, leasing, ordering or arranging for the purchase, lease or order of any health care item or service reimbursable under Medicare, Medicaid, or other federally- or state-financed health care programs. Federal false claims laws prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government, or knowingly making, or causing to be made, a false statement to get a false claim paid. Pharmaceutical companies have been prosecuted under these laws for a variety of alleged promotional and marketing activities.

Although physicians are permitted, based on their medical judgment, to prescribe products for indications other than those approved by the FDA, manufacturers are prohibited from promoting their products for such off-label uses. We market JAKAFI for intermediate or high-risk myelofibrosis, uncontrolled polycythemia vera and acute graft-versus-host disease and provide promotional materials to physicians regarding the use of JAKAFI for these indications. Although we believe that our promotional materials for physicians do not constitute improper promotion of JAKAFI, the FDA or other agencies may disagree. If the FDA or another agency determines that our promotional materials or other activities constitute improper promotion of JAKAFI, it could request that we modify our promotional materials or other activities or subject us to regulatory enforcement actions, including the issuance of a warning letter, injunction, seizure, civil fine and criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action if they believe that the alleged improper promotion led to the submission and payment of claims for an unapproved use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement. Even if it is later determined we are not in violation of these laws, we may be faced with negative publicity, incur significant expenses defending our position and have to divert significant management resources from other matters. Similar risks exist for our marketing of PEMAZYRE and OPZELURA and our collaborator MorphoSys's marketing of MONJUVI.

The European Union and member countries, as well as governmental authorities in other countries, impose similar strict restrictions on the promotion and marketing of drug products. The off-label promotion of medicinal products is prohibited in the EU and in other territories, and the EU also maintains strict controls on advertising and promotional materials. The promotion of medicinal products that are not subject to a marketing authorization is also prohibited in the EU. Violations of the rules governing the promotion of medicinal products in the EU and in other territories could be penalized by administrative measures, fines and imprisonment.

The majority of states also have statutes or regulations similar to the federal anti-kickback law and false claims laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor. Numerous states and localities have enacted or are considering enacting legislation requiring pharmaceutical companies to establish marketing compliance programs, file periodic reports or make periodic public disclosures on sales, marketing, pricing, clinical trials, and other activities. Additionally, as part of the Patient Protection and Affordable Care Act, the federal government has enacted the Physician Payment Sunshine provisions. The Sunshine provisions and similar laws and regulations in other jurisdictions where we do business require manufacturers to publicly report certain payments or other transfers of value made to physicians and teaching hospitals. Many of these requirements

are new and uncertain, and the penalties for failure to comply with these requirements are unclear. Nonetheless, if we are found not to be in full compliance with these laws, we could face enforcement action and fines and other penalties, which could be significant in amount or result in exclusion from federal healthcare programs such as Medicare and Medicaid. Any action initiated against us for violation of these laws, even if we successfully defend against it, could require the expenditure of significant resources and generate negative publicity, which could harm our business and operating results. See also "—Other Risks Relating to our Business—If we fail to comply with the extensive legal and regulatory requirements affecting the health care industry, we could face increased costs, penalties and a loss of business" below.

Competition for our products could harm our business and result in a decrease in our revenue.

Present and potential competitors for JAKAFI could include major pharmaceutical and biotechnology companies, as well as specialty pharmaceutical firms. For example, in August 2019, Celgene Corporation, now a subsidiary of Bristol-Myers Squibb Company, announced that the FDA had approved INREBIC (fedratinib) for the treatment of myelofibrosis. See "—Other Risks Relating to our Business— We face significant competition for our drug discovery and development efforts, and if we do not compete effectively, our commercial opportunities will be reduced or eliminated" for a description of risks relating to this type of competition. In addition, JAKAFI could face competition from generic products. As a result of the Drug Price Competition and Patent Term Restoration Act of 1984, commonly known as the Hatch-Waxman Act, in the United States, generic manufacturers may seek approval of a generic version of an innovative pharmaceutical by filing with the FDA an Abbreviated New Drug Application, or ANDA. The Hatch-Waxman Act provides significant incentives to generic manufacturers to challenge U.S. patents on successful innovative pharmaceutical products. In February 2016, we received a notice letter regarding an ANDA that requested approval to market a generic version of JAKAFI and purported to challenge patents covering ruxolitinib phosphate and its use that expire in 2028. The notice letter does not challenge the ruxolitinib composition of matter patent, which expires in December 2027. To date, to our knowledge, the FDA has taken no action with respect to this ANDA. Separately, in January 2018 the Patent Trial and Appeal Board (PTAB) of United States Patent and Trademark Office denied a petition challenging our patent covering deuterated ruxolitinib analogs and the PTAB subsequently denied the petitioner's request for rehearing in May 2018. Nevertheless, the petitioner still has the right separately to challenge the validity of our patent in federal court. There can be no assurance that our patents will be upheld or that any litigation in which we might engage with any such generic manufacturer would be successful in protecting JAKAFI's exclusivity. The entry of a generic version of JAKAFI could result in a decrease in JAKAFI sales and materially harm our business, operating results and financial condition.

ICLUSIG currently competes with existing therapies that are approved for the treatment of patients with chronic myeloid leukemia, or CML, who are resistant or intolerant to prior tyrosine kinase inhibitor, or TKI, therapies, on the basis of, among other things, efficacy, cost, breadth of approved use and the safety and side-effect profile. In addition, generic versions of imatinib are available and, while we currently believe that generic versions of imatinib will not materially impact our commercialization of ICLUSIG, given ICLUSIG's various indication statements globally that are currently focused on resistant or intolerant CML, we cannot be certain how physicians, payors, patients, regulatory authorities and other market participants will respond to the availability of generic versions of imatinib.

MONJUVI/MINJUVI currently competes with existing therapies that are approved for the treatment of patients with diffuse large B-cell lymphoma on the basis of, among other things, efficacy, cost, breadth of approved use and the safety and side-effect profile. These existing therapies are offered by major pharmaceutical and biotechnology companies, as well as specialty pharmaceutical firms. Competitors and potential competitors for PEMAZYRE include major pharmaceutical and biotechnology companies, as well as specialty pharmaceutical firms. Competitors for OPZELURA include existing over-the-counter topical treatments as well as oral and injectable therapies.

OTHER RISKS RELATING TO OUR BUSINESS

Public health epidemics, such as the COVID-19 Pandemic, have and could adversely affect our business, results of operations, and financial condition.

Our global operations expose us to risks associated with public health epidemics, such as the COVID-19 Pandemic that has spread globally. The extent to which the COVID-19 Pandemic and the measures taken to limit COVID-19's spread impact our operations and those of our suppliers, collaborators, service providers and healthcare organizations

serving patients, as well as demand for our drug products, will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including the duration of the outbreak and any future resurgence of the outbreak, additional or modified government actions, including any further restrictions or reopening of local, state or national social or economic activity, new information that may emerge concerning the severity of COVID-19 and the actions taken to contain COVID-19 or treat its impact, among others.

As a result of the COVID-19 Pandemic, we may experience disruptions that could severely impact our business, results of operations and financial condition, including the following:

- When the COVID-19 Pandemic commenced, to protect the health of our employees and their families, and our communities, in accordance with – and in some cases in advance or - direction from state and local government authorities, we limited access to our facilities and a significant percentage of our personnel worked remotely. In the event that governmental authorities were to re-establish workplace restrictions, our employees conducting research and development activities may not be able to access our laboratory space, and our research and development activities may be significantly limited or curtailed, possibly for an extended period of time. These research and development activities could include completing Investigational New Drug (IND)/Clinical Trial Application (CTA)-enabling studies, our ability to select future development candidates, and initiation of additional clinical trials for our development programs. Having a significant portion of our employees work from home can strain our information technology infrastructure, which may affect our ability to operate effectively, may make us more susceptible to communications disruptions, and expose us to greater cybersecurity risks.

- Our sales and marketing activities, including our interactions with healthcare professionals, have been limited and made more difficult by the work from home orders and travel restrictions. In addition, demand for our products has been affected by decreases in new patients, which we believe resulted in large part from decreases in patient visits to healthcare professionals and prioritization of hospital resources for the COVID-19 Pandemic, resulting in decreases in disease screening and diagnosis. We cannot predict the effects on patient demand or future sales if there are prolonged quarantines, work from home orders or travel restrictions.

- Our clinical trials have been and will likely continue to be affected by delays in site initiation, patient screening, patient enrollment, and monitoring and data collection as a result of prioritization of hospital resources for the COVID-19 Pandemic, difficulty in recruiting and retaining healthcare providers and staff due to their diversion toward treating COVID-19 patients, the potential unwillingness of patients to enroll or continue in clinical trials for fear of exposure to COVID-19 at sites, and the inability to access sites for initiation and monitoring. In addition, some patients may be unable to comply with clinical trial protocols if quarantines or travel restrictions impede patient movement or interrupt health services, we may be unable to obtain blood samples for testing, and we may not be able to provide the trial drug candidate to patients. Also, we rely on independent clinical investigators, contract research organizations and other third-party service providers to assist us in managing, monitoring and otherwise carrying out our preclinical studies and clinical trials, and the COVID-19 Pandemic has affected and may continue to affect their ability to devote sufficient time and resources to our programs or to travel to sites to perform work for us.

- Health regulatory agencies globally have experienced disruptions in their operations as a result of the coronavirus pandemic. The FDA and comparable foreign regulatory agencies may have slower response times or be under-resourced to continue to monitor our clinical trials and, as a result, review, inspection, and other timelines may be materially delayed. If any of these disruptions occur or continue to occur, we cannot predict how long they may last. Our drug candidate application reviews and potential approvals could be impacted or delayed by these disruptions, if they occur or continue to occur.

- The outbreak and measures taken to limit the spread of the outbreak, especially if prolonged, could also disrupt our supply chain or limit our ability to obtain sufficient materials for our drug products and product candidates, which could adversely affect our revenues and clinical trial timelines. Currently, our supply chain for our drug products and product candidates depends on operations by us and by other companies in multiple countries around the world, and the effects of the COVID-19 Pandemic on any or all of these countries is uncertain and unpredictable and potential disruption is possible. In addition, our third-party manufacturers might experience

capacity constraints and delays in producing materials for our drug products and product candidates if they are required, under the U.S. Defense Production Act or similar governmental mandates, to prioritize production of raw materials, supplies, drugs or vaccines to address COVID-19. And, for JAKAFI, while our strategy is to maintain a 24 month stock of active pharmaceutical ingredient, or API, inclusive of finished product, ruxolitinib phosphate might be used by us either to make JAKAFI or for ruxolitinib drug candidates in clinical trials.

- Any deterioration of worldwide credit and financial markets could result in losses on our holdings of cash and investments due to failures of financial institutions and other parties, and interruptions and delays in our ability to collect, or potential losses on, our accounts receivable.

Our collaborators could be affected by similar factors as those that have or could affect our business. The ultimate impact of the COVID-19 Pandemic or a similar health epidemic is highly uncertain and subject to change. We do not yet know the full extent of potential impacts or delays on our or our collaborators' businesses, our revenues, including milestone and royalty revenues from our collaborators, our and our collaborators' clinical trials, healthcare systems or the global economy as a whole. However, these effects could have a material adverse impact on our business, results of operations, and financial condition.

We may be unsuccessful in our efforts to discover and develop drug candidates and commercialize drug products.

Our long-term success, revenue growth and diversification of revenues depends on our ability to obtain regulatory approval for new drug products and new indications for our existing drug products. Our ability to discover and develop drug candidates and to commercialize additional drug products and indications will depend on our ability to:

- hire and retain key employees;
- identify high quality therapeutic targets;
- identify potential drug candidates;
- develop products internally or license drug candidates from others;
- identify and enroll suitable human subjects, either in the United States or abroad, for our clinical trials;
- complete laboratory testing;
- commence, conduct and complete safe and effective clinical trials on humans;
- obtain and maintain necessary intellectual property rights to our products;
- obtain and maintain necessary regulatory approvals for our products, both in the United States and abroad;
- enter into arrangements with third parties to provide services or to manufacture our products on our behalf;
- deploy sales, marketing, distribution and manufacturing resources effectively or enter into arrangements with third parties to provide these functions in compliance with all applicable laws;
- obtain appropriate coverage and reimbursement levels for the cost of our products from governmental authorities, private health insurers and other third-party payors;
- lease facilities at reasonable rates to support our growth; and
- enter into arrangements with third parties to license and commercialize our products.

We may not be successful in discovering, developing, or commercializing additional drug products or our existing drug products in new indications. Discovery and development of drug candidates are expensive, uncertain and time-consuming, and we do not know if our efforts will lead to discovery of any drug candidates that can be successfully developed and marketed. Of the compounds or biologics that we identify as potential drug products or that we may in-license from other companies, including potential products for which we are conducting clinical trials, only a few, if any, are likely to lead to successful drug development programs and commercialized drug products.

We depend heavily on the success of our most advanced drug candidates. We and our collaborators might not be able to commercialize any of our or their drug candidates successfully, and we may spend significant time and money attempting to do so.

We have invested significant resources in the development of our most advanced drug candidates. We have a number of drug candidates in Phase III clinical trials as monotherapies or in combination with other drugs and drug candidates, including itacitinib, parsaclisib, pemigatinib and ruxolitinib cream. Our ability to generate product revenues will depend on the successful development and eventual commercialization of our most advanced drug candidates. We, or our collaborators or licensees, may decide to discontinue development of any or all of our drug candidates at any time for commercial, scientific or other reasons. For example, in April 2018, we along with Merck stopped the ECHO-301 study with epacadostat, and we also significantly downsized the epacadostat development program. If a product is developed but not approved or marketed, or becomes approved for a narrower set of indications than those for which we initially conducted clinical trials, we may have spent significant amounts of time and money on it without achieving potential returns initially anticipated, which could adversely affect our operating results and financial condition as well as our business plans.

If we or our collaborators are unable to obtain regulatory approval for our drug candidates in the United States and foreign jurisdictions, we or our collaborators will not be permitted to commercialize products resulting from our research.

In order to commercialize drug products in the United States, drug candidates will have to obtain regulatory approval from the FDA. Satisfaction of regulatory requirements typically takes many years. To obtain regulatory approval, we or our collaborators, as the case may be, must first show that our or our collaborators' drug candidates are safe and effective for target indications through preclinical testing (animal testing) and clinical trials (human testing). Preclinical testing and clinical development are long, expensive and uncertain processes, and we do not know whether the FDA will allow us or our collaborators to undertake clinical trials of any drug candidates in addition to our or our collaborators' compounds currently in clinical trials. If regulatory approval of a product is granted, this approval will be limited to those disease states and conditions for which the product is demonstrated through clinical trials to be safe and effective.

Completion of clinical trials may take several years and failure may occur at any stage of testing. The length of time required varies substantially according to the type, complexity, novelty and intended use of the drug candidate. Interim results of a preclinical test or clinical trial do not necessarily predict final results, and acceptable results in early clinical trials may not be repeated in later clinical trials. For example, a drug candidate that is successful at the preclinical level may cause harmful or dangerous side effects when tested at the clinical level. Our rate of commencement and completion of clinical trials may be delayed, and existing clinical trials with our or our collaborators' drug candidates may be stopped, due to many potential factors, including:

- the high degree of risk and uncertainty associated with drug development;
- our inability to formulate or manufacture sufficient quantities of materials for use in clinical trials;
- variability in the number and types of patients available for each study;
- difficulty in maintaining contact with patients after treatment, resulting in incomplete data;
- unforeseen safety issues or side effects;

- poor or unanticipated effectiveness of drug candidates during the clinical trials; or
- government or regulatory delays.

Data obtained from clinical trials are susceptible to varying interpretation, which may delay, limit or prevent regulatory approval. Many companies in the pharmaceutical and biopharmaceutical industry, including our company, have suffered significant setbacks in advanced clinical trials, even after achieving promising results in earlier clinical trials. In addition, regulatory authorities may refuse or delay approval as a result of other factors, such as changes in regulatory policy during the period of product development and regulatory agency review. For example, the FDA has in the past required, and could in the future require, that we or our collaborators conduct additional trials of any of our drug candidates, which would result in delays. In April 2017, we and our collaborator Lilly announced that the FDA had issued a complete response letter for the New Drug Application, or NDA, of OLUMIANT as a once-daily oral medication for the treatment of moderate-to-severe rheumatoid arthritis. The letter indicated that additional clinical data were needed to determine the most appropriate doses and to further characterize safety concerns across treatment arms. In June 2018, after a resubmission of the NDA, the FDA approved the 2mg dose of OLUMIANT for the treatment of adults with moderately-to-severely active rheumatoid arthritis who have had an inadequate response to one or more tumor necrosis factor inhibitor therapies. The FDA did not at that time approve any higher dose of OLUMIANT and required a warning label in connection with its approval.

Compounds or biologics developed by us or with or by our collaborators and licensees may not prove to be safe and effective in clinical trials and may not meet all of the applicable regulatory requirements needed to receive marketing approval. For example, in January 2016, a Phase II trial that was evaluating ruxolitinib in combination with regorafenib in patients with relapsed or refractory metastatic colorectal cancer and high C-reactive protein was stopped early after a planned analysis of interim efficacy data determined that the likelihood of the trial meeting its efficacy endpoint was insufficient. In addition, in February 2016, we made a decision to discontinue our JANUS 1 study, our JANUS 2 study, our other studies of ruxolitinib in colorectal, breast and lung cancer, and our study of INCB39110 in pancreatic cancer after a planned analysis of interim efficacy data of JANUS 1 demonstrated that ruxolitinib plus capecitabine did not show a sufficient level of efficacy to warrant continuation. Also, in April 2018, we along with Merck announced that the ECHO-301 study had been stopped and we also significantly downsized the epacadostat development program and in January 2020 we stopped our Phase III trial of itacitinib for the treatment of acute graft-versus-host-disease. If clinical trials of any of our or our collaborators' compounds or biologics are stopped for safety, efficacy or other reasons or fail to meet their respective endpoints, our overall development plans, business, prospects, expected operating results and financial condition could be materially harmed and the value of our company could be negatively affected.

Even if any of our applications receives an FDA Fast Track or priority review designation (including based on a priority review voucher, one of which we recently acquired and used in connection with our submission seeking FDA approval of ruxolitinib cream for atopic dermatitis), these designations may not result in faster review or approval for our product candidate compared to product candidates considered for approval under conventional FDA procedures and, in any event, do not assure ultimate approval of our product candidate by FDA. For example, in June 2021 we were informed by the FDA that the FDA had extended by three months the review period for the NDA for ruxolitinib cream for atopic dermatitis. Also, in July 2021, we announced that the FDA issued a complete response letter for the BLA of retifanlimab for the treatment of squamous cell carcinoma of the anal canal, in which the FDA stated it cannot approve the BLA and that additional data are needed.

Outside the United States, our and our collaborators' ability to market a product is contingent upon receiving a marketing authorization from the appropriate regulatory authorities. This foreign regulatory approval process typically includes all of the risks associated with the FDA approval process described above and may also include additional risks. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from country to country and may require us to perform additional testing and expend additional resources. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other countries or by the FDA.

Health care reform measures could impact the pricing and profitability of pharmaceuticals, and adversely affect the commercial viability of our or our collaborators' products and drug candidates. Our ability to generate revenues will be diminished if we or our collaborators are unable to obtain an adequate level of reimbursement from private insurers, government insurance programs or other third-party payors of health care costs, which could be affected by current and potential healthcare reform legislation, and diminished revenues will harm our operating results and financial condition and could adversely affect our ability to conduct our research and development operations.

Our ability to commercialize our current and any future approved products successfully will depend in part on the prices we are able to charge for our approved products and the extent to which adequate reimbursement levels for the cost of our products and related treatment are obtained from third-party payors, such as private insurers, government insurance programs, including Medicare and Medicaid, health maintenance organizations (HMOs) and other health care related organizations in the United States and abroad.

In recent years, through legislative and regulatory actions and executive orders, the U.S. federal government has made substantial changes to various payment systems under the Medicare and other federal health care programs. Comprehensive reforms to the U.S. healthcare system were enacted, including changes to the methods for, and amounts of, Medicare reimbursement. For example, a provision in the American Rescue Plan Act of 2021 that is expected to be implemented in 2024 will have the effect of increasing the Medicaid rebate liability for some medicines that increase prices in excess of inflation. While there is currently significant uncertainty regarding the implementation of some of these reforms or the scope of amended or additional reforms, the implementation of reforms could significantly reduce payments from Medicare and Medicaid. Reforms or other changes to these payment systems may change the availability, methods and rates of reimbursements from Medicare, private insurers and other third-party payors for our current and any future approved products. Some of these changes and proposed changes could result in reduced reimbursement rates or in eliminating dual sources of payment, which could reduce the price that we or any of our collaborators or licensees receive for any products in the future, and which would adversely affect our business strategy, operations and financial results.

In addition, there has been an increasing legislative and enforcement interest in the United States with respect to drug pricing practices. This has resulted in significant legislative activity and proposals from the prior and current Administrations relating to prescription drug prices and reimbursement, any of which, if enacted, could limit the prices that we can charge for our products and may further limit the commercial viability of our products and drug candidates. Specifically, there have been ongoing federal congressional inquiries and proposed and enacted federal and state legislation, executive orders and administrative agency rules designed to, among other things, bring more transparency to drug pricing and to make drug prices more affordable and equitable, reform government program reimbursement methodologies for prescription drugs, allow importation of drugs into the United States from other countries and limit allowable prices for drugs to a function of an average international reference price that may be substantially lower than what we currently or would otherwise charge. In certain foreign markets, pricing or profitability of prescription pharmaceuticals is subject to government control. We expect that the health care reform measures that have been adopted in the United States and in foreign markets, and further reforms that may be adopted in the future, could result in more rigorous coverage criteria and additional downward pressure on the prices that we may receive for our approved products. If reimbursement for our products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be materially harmed, including by our revenue potentially being materially adversely affected and our research and development efforts potentially being materially curtailed or, in some cases, ceasing. There may be future changes that result in reductions in current prices, coverage and reimbursement levels for our current or any future approved products, and we cannot predict the scope of any future changes or the impact that those changes would have on our operations.

The consequences of the COVID-19 Pandemic, including the economic effect on government budgets in the United States and elsewhere, may accelerate any of the healthcare reform efforts described above or result in future reform efforts, any of which could have adverse effects on our business, including higher costs for us, lower reimbursement rates for our products and lower demand for our products.

If third parties institute high co-payment amounts or other benefit limits for our products, the demand for our products and, accordingly, our revenues and results of operations, could be adversely affected. Our patient assistance programs have provided support for non-profit organizations that provide financial assistance to eligible patients or in

some cases, we have provided our products without charge to eligible patients who have no insurance coverage or are underinsured. Substantial support in this manner could harm our profitability in the future. Further, non-profit organizations' ability to provide assistance to patients is dependent on funding from external sources, and we cannot guarantee that such funding will be provided at adequate levels, or at all.

Further, if we become the subject of any governmental or other regulatory hearing or investigation with respect to the pricing of our products or other business practices, we could incur significant expenses and could be distracted from the operation of our business and execution of our business strategy. Any such hearing or investigation could also result in significant negative publicity and harm to our reputation, reduced market acceptance and demand, which could adversely affect our financial results and growth prospects.

Third-party payors are increasingly challenging the prices charged for medical products and services. Third party pharmacy benefit managers, or PBMs, other similar organizations and payors can limit coverage to specific products on an approved list, or formulary, which might not include all of the approved products for a particular indication, and to exclude drugs from their formularies in favor of competitor drugs or alternative treatments, or place drugs on formulary tiers with higher patient co-pay obligations, and/or to mandate stricter utilization criteria. Formulary exclusion effectively encourages patients and providers to seek alternative treatments, make a complex and time-intensive request for medical exemptions, or pay 100% of the cost of a drug. In addition, in many instances, certain PBMs, other similar organizations and third party payors may exert negotiating leverage by requiring incremental rebates, discounts or other concessions from manufacturers in order to maintain formulary positions, which could continue to result in higher gross to net deductions for affected products. In this regard, we are in the process of negotiating agreements with PBMs and payor accounts to provide rebates to those entities related to formulary coverage for OPZELURA, but we cannot guarantee that we will be able to agree to coverage terms with these PBMs and other third party payors. Payors could decide to exclude OPZELURA from formulary coverage lists, impose step edits that require patients to try alternative, including generic, treatments before authorizing payment for OPZELURA, limit the types of diagnoses for which coverage will be provided or impose a moratorium on coverage for products while the payor makes a coverage decision. An inability to maintain adequate formulary positions could increase patient cost-sharing for OPZELURA and cause some patients to determine not to use OPZELURA. Any delays or unforeseen difficulties in reimbursement approvals could limit patient access, depress therapy adherence rates, and adversely impact our ability to successfully commercialize OPZELURA. If we are unsuccessful in maintaining broad coverage for OPZELURA, our anticipated revenue from and growth prospects for OPZELURA could be negatively affected.

In addition, the trend toward managed health care in the United States, the organizations for which could control or significantly influence the purchase of health care services and products, as well as legislative and regulatory proposals to reform health care or address the cost of government insurance programs, may all result in lower prices for or rejection of our products. Adoption of our products by the medical community and patients may be limited without adequate reimbursement for those products. Cost control initiatives may decrease coverage and payment levels for our products and, in turn, the price that we will be able to charge for any product. Our products may not be considered cost-effective, and coverage and reimbursement may not be available or sufficient to allow us to sell our products on a profitable basis. We are unable to predict all changes to the coverage or reimbursement methodologies that will be applied by private or government payors to our current and any future approved products.

The continuing efforts of legislatures, health agencies and third-party payors to contain or reduce the costs of health care, any denial of private or government payor coverage or inadequate reimbursement for our drug candidates could materially and adversely affect our business strategy, operations, future revenues and profitability, and the future revenues and profitability of our potential customers, suppliers, collaborators and licensees and the availability of capital. The same risks apply to our compounds developed and marketed by our collaborators, and our future potential milestone and royalty revenues could be affected in a similar manner.

We depend on our collaborators and licensees for the future development and commercialization of some of our drug candidates. Conflicts may arise between our collaborators and licensees and us, or our collaborators and licensees may choose to terminate their agreements with us, which may adversely affect our business.

We have licensed to Novartis rights to ruxolitinib outside of the United States and worldwide rights to our MET inhibitor compounds, including TABRECTA, and licensed to Lilly worldwide rights to baricitinib. In addition, we have licensed to Innovent, Zai Lab and InnoCare certain Asian rights to some of our clinical stage compounds. Under the terms of our agreements with these collaborators, we have no or limited control over the further clinical development of these drug candidates in the relevant territories and any revenues we may receive if these drug candidates receive regulatory approval and are commercialized in the relevant territories will depend primarily on the development and commercialization efforts of others. While OLUMIANT was approved by the European Commission in February 2017 for the treatment of moderate-to-severe rheumatoid arthritis in adult patients and by Japan's Ministry of Health, Labor and Welfare in July 2017 for the treatment of rheumatoid arthritis in patients with inadequate response to standard-of-care therapies, the NDA for OLUMIANT for the treatment of moderate-to-severe rheumatoid arthritis was approved in June 2018, and only in the lower dosage tablet and with a warning label. Delays in any marketing approval by the FDA, European or other regulatory authorities, or any label modifications or restrictions in connection with any such approval, or the existence of other risks relating to approved drug products, including those described under "Risks Relating to Commercialization of Our Products," could delay the receipt of and reduce resulting potential royalty and milestone revenue from baricitinib or any of our other out-licensed drug candidates.

Conflicts may arise with our collaborators and licensees if they pursue alternative technologies or develop alternative products either on their own or in collaboration with others as a means for developing treatments for the diseases that we have targeted. Competing products and product opportunities may lead our collaborators and licensees to withdraw their support for our drug candidates. Any failure of our collaborators and licensees to perform their obligations under our agreements with them or otherwise to support our drug candidates could negatively impact the development of our drug candidates, lead to our loss of potential revenues from product sales and milestones and delay our achievement, if any, of profitability. Additionally, conflicts have from time to time occurred, and may in the future arise, relating to, among other things, disputes about the achievement and payment of milestone amounts and royalties owed, the ownership of intellectual property that is developed during the course of a collaborative relationship or the operation or interpretation of other provisions in our collaboration agreements. These disputes could lead to litigation or arbitration, which could be costly and divert the efforts of our management and scientific staff, and could diminish the expected effectiveness of the collaboration.

Our existing collaborative and license agreements can be terminated by our collaborators and licensees for convenience, among other circumstances. If any of our collaborators or licensees terminates its agreement with us, or terminates its rights with respect to certain indications or drug candidates, we may not be able to find a new collaborator for them, and our business could be adversely affected. Should an agreement be terminated before we have realized the benefits of the collaboration or license, our reputation could be harmed, we may not obtain revenues that we anticipated receiving, and our business could be adversely affected.

The success of our drug discovery and development efforts may depend on our ability to find suitable collaborators to fully exploit our capabilities. If we are unable to establish collaborations or if these future collaborations are unsuccessful in the development and commercialization of our drug candidates, our research, development and commercialization efforts may be unsuccessful, which could adversely affect our results of operations, financial condition and future revenue prospects.

An element of our business strategy is to enter into collaborative or license arrangements with other parties, under which we license our drug candidates to those parties for development and commercialization or under which we study our drug candidates in combination with other parties' compounds or biologics. For example, in addition to our Novartis, Lilly, Innovent, Zai Lab and InnoCare collaborations, we have entered into clinical study relationships with respect to several of our programs, including epacadostat, and are evaluating strategic relationships with respect to several of our other programs. However, because collaboration and license arrangements are complex to negotiate, we may not be successful in our attempts to establish these arrangements. Also, we may not have drug candidates that are desirable to other parties, or we may be unwilling to license a drug candidate to a particular party because such party interested in it is

a competitor or for other reasons. The terms of any such arrangements that we establish may not be favorable to us. Alternatively, potential collaborators may decide against entering into an agreement with us because of our financial, regulatory or intellectual property position or for scientific, commercial or other reasons. If we are not able to establish collaboration or license arrangements, we may not be able to develop and commercialize a drug product, which could adversely affect our business, our revenues and our future revenue prospects.

We will likely not be able to control the amount and timing of resources that our collaborators or licensees devote to our programs or drug candidates. If our collaborators or licensees prove difficult to work with, are less skilled than we originally expected, do not devote adequate resources to the program, are unable to obtain regulatory approval of our drug candidates, pursue alternative technologies or develop alternative products, or do not agree with our approach to development or manufacturing of the drug candidate, the relationship could be unsuccessful. Our collaborations with respect to epacadostat involved the study of our collaborators' drugs used in combination with epacadostat on a number of indications or tumor types, many of which were the same across multiple collaborations. We cannot assure you that potential conflicts will not arise or be alleged among these or future collaborations. If a business combination involving a collaborator or licensee and a third-party were to occur, the effect could be to terminate or cause delays in development of a drug candidate.

If we fail to enter into additional licensing agreements or if these arrangements are unsuccessful, our business and operations might be adversely affected.

In addition to establishing collaborative or license arrangements under which other parties license our drug candidates for development and commercialization or under which we study our drug candidates in combination with such parties' compounds or biologics, we may explore opportunities to develop our clinical pipeline by in-licensing drug candidates or therapeutics targets that fit within our focus on oncology, such as our collaborations with Agenus Inc., Calithera Biosciences, Inc., MacroGenics, Inc., Merus N.V., MorphoSys, and Syros Pharmaceuticals, Inc. and pending collaboration with Syndax Pharmaceuticals, Inc., or explore additional opportunities to further develop and commercialize existing drug candidates in specific jurisdictions, such as our June 2016 acquisition of the development and commercialization rights to ICLUSIG in certain countries. We may be unable to enter into any additional in-licensing agreements because suitable drug candidates that are within our expertise may not be available to us on terms that are acceptable to us or because competitors with greater resources seek to in-license the same drug candidates. Drug candidates that we would like to develop or commercialize may not be available to us because they are controlled by competitors who are unwilling to license the rights to the drug candidate to us. In addition, we may enter into license agreements that are unsuccessful and our business and operations might be adversely affected if we are unable to realize the expected economic benefits of a collaboration or other licensing arrangement, by the termination of a drug candidate and termination and winding down of the related license agreement, or due to other business or regulatory issues, including financial difficulties, that may adversely affect a licensor's ability to continue to perform its obligations under an in-license agreement. For example, we may make or incur contractual obligations to make significant upfront payments in connection with licenses for late-stage drug candidates, as we did in March 2020 in connection with the effectiveness of our collaboration agreement with MorphoSys, and if any of those drug candidates do not receive marketing approval or commercial sales as anticipated or we have to fund additional clinical trials before marketing approval can be obtained, we will have expended significant funds that might otherwise be applied for other uses or have to expend funds that were not otherwise budgeted or anticipated in connection with the collaboration, and such developments could have a material adverse effect on our stock price and our ability to pursue other transactions. As discussed above under "We depend on our collaborators and licensees for the future development and commercialization of some of our drug candidates. Conflicts may arise between our collaborators and licensees and us, or our collaborators and licensees may choose to terminate their agreements with us, which may adversely affect our business," conflicts or other issues may arise with our licensors. Those conflicts could result in delays in our plans to develop drug candidates or result in the expenditure of additional funds to resolve those conflicts that could have an adverse effect on our results of operations. We may also need to license drug delivery or other technology in order to continue to develop our drug candidates. If we are unable to enter into additional agreements to license drug candidates, drug delivery technology or other technology or if these arrangements are unsuccessful, our research and development efforts could be adversely affected, and we may be unable to increase our number of successfully marketed products and our revenues.

Even if a drug candidate that we develop receives regulatory approval, we may decide not to commercialize it if we determine that commercialization of that product would require more money and time than we are willing to invest.

Even if any of our drug candidates receives regulatory approval, it could be subject to post-regulatory surveillance, and may have to be withdrawn from the market or subject to restrictions if previously unknown problems occur. Regulatory agencies may also require additional clinical trials or testing, and the drug product may be recalled or may be subject to reformulation, additional studies, changes in labeling, warnings to the public and negative publicity. As a result, we may not continue to commercialize a product even though it has obtained regulatory approval. Further, we may decide not to continue to commercialize a product if the market does not accept the product because it is too expensive or because third parties such as insurance companies or Medicare, will not cover it for substantial reimbursement. In addition, we may decide not to continue to commercialize a product if competitors develop and commercialize similar or superior products or have proprietary rights that preclude us from ultimately marketing our products.

Any approved drug product that we bring to the market may not gain market acceptance by physicians, patients, healthcare payors and others in the medical community.

Even if we or our collaborators are successful in gaining regulatory approval of any of our or our collaborators' drug candidates in addition to JAKAFI, OLUMIANT, PEMAZYRE, MONJUVI/MINJUVI and OPZELURA or acquire rights to approved drug products in addition to ICLUSIG, we may not generate significant product revenues if these drug products do not achieve an adequate level of acceptance. Physicians may not recommend our or our collaborators' drug products until longer-term clinical data or other factors demonstrate the safety and efficacy of our or our collaborators' drug products as compared to other alternative treatments. Even if the clinical safety and efficacy of our or our collaborators' drug products is established, physicians may elect not to prescribe these drug products for a variety of reasons, including the reimbursement policies of government and other third-party payors and the effectiveness of our or our collaborators' competitors in marketing their products.

Market acceptance of our drug products, if approved for commercial sale, will depend on a number of factors, including the following, and market acceptance of our collaborators' drug products will depend on similar factors:

- the willingness and ability of patients and the healthcare community to use our drug products;
- the ability to manufacture our drug products in sufficient quantities that meet all applicable quality standards and to offer our drug products for sale at competitive prices;
- the perception of patients and the healthcare community, including third-party payors, regarding the safety, efficacy and benefits of our drug products compared to those of competing products or therapies;
- the label and promotional claims allowed by the FDA;
- the pricing and reimbursement of our drug products relative to existing treatments; and
- marketing and distribution support for our drug products.

In September 2021, the FDA updated labeling for JAKAFI and other JAK-inhibitor drugs to include warnings of increased risk of major adverse cardiovascular events, thrombosis, and secondary malignancies related to another JAK-inhibitor treating rheumatoid arthritis, a condition for which JAKAFI is not indicated. The label for OPZELURA contains similar warnings seen with JAK inhibitors for inflammatory conditions. We cannot predict the effects on sales of JAKAFI as a result of the labeling change or OPZELURA as a result of warning included in its label, but it is possible that future sales of JAKAFI and the commercial success of OPZELURA can be negatively affected by the updated labeling, which could have a material and adverse effect on our business, results of operations and prospects.

We have limited capacity to conduct preclinical testing and clinical trials, and our resulting dependence on other parties could result in delays in and additional costs for our drug development efforts.

We have limited internal resources and capacity to perform preclinical testing and clinical trials. As part of our development strategy, we often hire contract research organizations, or CROs, to perform preclinical testing and clinical trials for drug candidates. If the CROs that we hire to perform our preclinical testing and clinical trials do not meet deadlines, do not follow proper procedures, or a conflict arises between us and our CROs, our preclinical testing and clinical trials may take longer than expected, may cost more, may be delayed or may be terminated. If we were forced to find a replacement entity to perform any of our preclinical testing or clinical trials, we may not be able to find a suitable entity on favorable terms, or at all. Even if we were able to find another company to perform a preclinical test or clinical trial, the delay in the test or trial may result in significant additional expenditures. Events such as these may result in delays in our obtaining regulatory approval for our drug candidates or our ability to commercialize our products and could result in increased expenditures that would adversely affect our operating results.

We face significant competition for our drug discovery and development efforts, and if we do not compete effectively, our commercial opportunities will be reduced or eliminated.

The biotechnology and pharmaceutical industries are intensely competitive and subject to rapid and significant technological change. Our drug discovery and development efforts may target diseases and conditions that are already subject to existing therapies or that are being developed by our competitors, many of which have substantially greater resources, larger research and development staffs and facilities, more experience in completing preclinical testing and clinical trials, and formulation, marketing and manufacturing capabilities. As a result of these resources, our competitors may develop drug products that render our products obsolete or noncompetitive by developing more effective drugs, developing their products more efficiently or pricing their products more competitively. Our ability to develop competitive products would be limited if our competitors succeeded in obtaining regulatory approvals for drug candidates more rapidly than we were able to or in obtaining patent protection or other intellectual property rights that limited our drug development efforts. Any drug products resulting from our research and development efforts, or from our joint efforts with collaborators or licensees, might not be able to compete successfully with our competitors' existing and future products, or obtain regulatory approval in the United States or elsewhere. The development of products or processes by our competitors with significant advantages over those that we are developing could harm our future revenues and profitability.

Our reliance on other parties to manufacture our drug products and drug candidates could result in a short supply of the drugs, delays in clinical trials or drug development, increased costs, and withdrawal or denial of a regulatory authority's approval.

We do not currently operate manufacturing facilities for clinical or commercial production of JAKAFI, PEMAZYRE, OPZELURA and our other drug candidates or for ICLUSIG or MONJUVI/MINJUVI. We currently hire third parties to manufacture the raw materials, API and finished drug product of JAKAFI, ICLUSIG, PEMAZYRE, OPZELURA and our other drug candidates for clinical trials and our collaborator MorphoSys is currently responsible for sourcing manufacturing of MONJUVI/MINJUVI. In addition, we expect to continue to rely on third parties for the manufacture of commercial supplies of raw materials, API and finished drug product for any drugs that we successfully develop. We also hire third parties to package and label the finished product. The FDA requires that the raw materials, API and finished product for drug products such as JAKAFI, PEMAZYRE and OPZELURA and our other drug candidates be manufactured according to its current Good Manufacturing Practices regulations and regulatory authorities in other countries have similar requirements. There are only a limited number of manufacturers that comply with these requirements. Failure to comply with current Good Manufacturing Practices and the applicable regulatory requirements of

other countries in the manufacture of our drug candidates and products could result in the FDA or a foreign regulatory authority halting our clinical trials, withdrawing or denying regulatory approval of our drug product, enforcing product recalls or other enforcement actions, which could have a material adverse effect on our business.

We may not be able to obtain sufficient quantities of our drug candidates or any drug products we may develop if our designated manufacturers do not have the capacity or capability to manufacture them according to our schedule and specifications. Manufacturers of pharmaceutical products often encounter difficulties in production, especially in scaling up initial production. These problems include difficulties with production costs and yields, quality control and assurance and shortages of qualified personnel. To the extent our supply chain involves parties in China or materials originating in areas of China that are or could be affected by disease outbreaks such as the COVID-19 Pandemic in 2020, we could see disruptions to our supply chain. Currently, our supply chain for our drug products and product candidates depends on operations by us and by other companies in multiple countries around the world, and the effects of the COVID-19 Pandemic and measures to address the COVID-19 Pandemic on any or all of these countries is uncertain and unpredictable and potential disruption is possible. And, for JAKAFI, while our strategy is to maintain a 24 months stock of API, inclusive of finished product, ruxolitinib phosphate might be used by us either to make JAKAFI or for ruxolitinib drug candidates in clinical trials. In addition, we may not be able to arrange for our drug candidates or any drug products that we may develop to be manufactured by one of these parties on reasonable terms, if at all. We generally have a single source or a limited number of suppliers that are qualified to supply each of the API and finished product of our drug products and our other drug candidates and, in the case of JAKAFI, we only have a single source for its raw materials. If any of these suppliers were to become unable or unwilling to supply us with raw materials, API or finished product that complies with applicable regulatory requirements, we could incur significant delays in our clinical trials or interruption of commercial supply that could have a material adverse effect on our business. If we have promised delivery of a drug candidate or drug product and are unable to meet the delivery requirement due to manufacturing difficulties, our development programs could be delayed, we may have to expend additional sums in order to ensure that manufacturing capacity is available when we need it even if we do not use all of the manufacturing capacity, and our business and operating results could be harmed.

We may not be able to adequately manage and oversee the manufacturers we choose, they may not perform as agreed or they may terminate their agreements with us. Foreign manufacturing approval processes typically include all of the risks associated with the FDA approval process for manufacturing and may also include additional risks.

A number of our collaborations involve the manufacture of antibodies. Either we or our collaborators have primary responsibility for manufacturing activities, and we are currently using third-party contract manufacturing organizations. Manufacturing antibodies and products containing antibodies is a more complex process than manufacturing small molecule drugs and subject to additional risks. The process of manufacturing antibodies and products containing antibodies is highly susceptible to product loss due to contamination, equipment failure or improper installation or operation of equipment, vendor or operator error, inconsistency in yields, variability in product characteristics, and difficulties in scaling up the production process. Even minor deviations from normal manufacturing processes could result in reduced production yields, product defects and other supply disruptions. If microbial, viral or other contaminations are discovered in our product candidates or in the manufacturing facilities in which our product candidates are made, such manufacturing facilities may need to be closed for an extended period of time to investigate and remedy the contamination.

If we fail to comply with the extensive legal and regulatory requirements affecting the health care industry, we could face increased costs, penalties and a loss of business.

Our activities, and the activities of our collaborators, partners and third-party providers, are subject to extensive government regulation and oversight both in the United States and in foreign jurisdictions. The FDA and comparable agencies in other jurisdictions directly regulate many of our most critical business activities, including the conduct of preclinical and clinical studies, product manufacturing, advertising and promotion, product distribution, adverse event reporting and product risk management. States increasingly have been placing greater restrictions on the marketing practices of healthcare companies and have instituted pricing disclosure and other requirements for companies selling pharmaceuticals. In addition, pharmaceutical and biotechnology companies have been the target of lawsuits and investigations alleging violations of government regulations, including claims asserting submission of incorrect pricing information, improper promotion of pharmaceutical products, payments intended to influence the referral of federal or state healthcare business, submission of false claims for government reimbursement, antitrust violations, violations of the

U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and similar anti-bribery or anti-corruption laws, or violations related to environmental matters. There is also enhanced scrutiny of company-sponsored patient assistance programs, including insurance premium and co-pay assistance programs and donations to third-party charities that provide such assistance. In December 2018, we received a civil investigative demand from the U.S. Department of Justice for documents and information relating to our speaker programs and patient assistance programs, including our support of non-profit organizations that provide financial assistance to eligible patients. Violations of governmental regulation by us, our vendors or donation recipients may be punishable by criminal and civil sanctions, including damages, fines and penalties and exclusion from participation in government programs, including Medicare and Medicaid. In addition to damages, fines and penalties for violation of laws and regulations, we could be required to repay amounts we received from government payors, or pay additional rebates and interest if we are found to have miscalculated the pricing information we have submitted to the government. Actions taken by federal or local governments, legislative bodies and enforcement agencies with respect to these legal and regulatory compliance matters could also result in reduced demand for our products, reduced coverage of our products by health care payors, or both. We cannot ensure that our compliance controls, policies, and procedures will in every instance protect us from acts committed by our employees, collaborators, partners or third-party providers that would violate the laws or regulations of the jurisdictions in which we operate. Whether or not we have complied with the law, an investigation into alleged unlawful conduct could increase our expenses, damage our reputation, divert management time and attention and adversely affect our business, and any settlement of these proceedings could result in significant payments by us. Risks relating to compliance with laws and regulations may be heightened as we continue to expand our global operations and enter new therapeutic areas with different patient populations, which due to different product distribution methods, marketing programs or patient assistance programs may result in additional regulatory burdens and obligations.

The illegal distribution and sale by third parties of counterfeit or unfit versions of our or our collaborators' products or stolen products could harm our business and reputation.

We are aware that counterfeit versions of our products have been distributed or sold by entities not authorized by us using product packaging suggesting that the product was provided by us. If unauthorized third parties illegally distribute and sell counterfeit versions of our or our collaborators' products, those products may not meet our or our collaborators' rigorous manufacturing, distribution and handling standards. In addition, inventory that is stolen from warehouses, plants or while in-transit, and that is subsequently improperly stored and sold through unauthorized channels, may not meet our or our collaborators' distribution and handling standards. A patient who receives a counterfeit or unfit drug may suffer dangerous health consequences. Our reputation and business could suffer harm as a result of counterfeit or unfit drugs sold under our brand name and could result in lost sales for us and decreased revenues. If counterfeit or unfit drugs are sold under our or our collaborators' brand names, our reputation and business could suffer harm and we could experience decreased royalty revenues.

As most of our drug discovery and development operations are conducted at our headquarters in Wilmington, Delaware, the loss of access to this facility would negatively impact our business.

Our facility in Wilmington, Delaware is our headquarters and is also where we conduct most of our drug discovery, research, development and marketing activities. In addition, natural disasters, the effects of or measures taken to limit the effects of health epidemics such as the COVID-19 Pandemic, or actions of activists opposed to aspects of pharmaceutical research may disrupt our experiments or our ability to access or use our facility. The loss of access to or use of our Wilmington, Delaware facility, either on a temporary or permanent basis, would result in an interruption of our business and, consequently, would adversely affect our overall business.

We depend on key employees in a competitive market for skilled personnel, and the loss of the services of any of our key employees or our inability to attract and retain additional personnel would affect our ability to expand our drug discovery and development programs and achieve our objectives.

We are highly dependent on the members of our executive management team and principal members of our commercial, development, medical, operations and scientific staff. We experience intense competition for qualified personnel. Our future success also depends in part on the continued service of our executive management team and key personnel and our ability to recruit, train and retain essential personnel for our drug discovery and development programs,

and for our medical affairs and commercialization activities. If we lose the services of any of these people or if we are unable to recruit sufficient qualified personnel, our research and product development goals, and our commercialization efforts could be delayed or curtailed. We do not maintain "key person" insurance on any of our employees.

If we fail to manage our growth effectively, our ability to develop and commercialize products could suffer.

We expect that if our drug discovery efforts continue to generate drug candidates, our clinical drug candidates continue to progress in development, and we continue to build our development, medical and commercial organizations, we will require significant additional investment in personnel, management and resources. Our ability to achieve our research, development and commercialization objectives depends on our ability to respond effectively to these demands and expand our internal organization, systems, controls and facilities to accommodate additional anticipated growth. If we are unable to manage our growth effectively, our business could be harmed and our ability to execute our business strategy could suffer.

We may acquire businesses or assets, form joint ventures or make investments in other companies that may be unsuccessful, divert our management's attention and harm our operating results and prospects.

As part of our business strategy, we may pursue additional acquisitions of what we believe to be complementary businesses or assets or seek to enter into joint ventures. We also may pursue strategic alliances in an effort to leverage our existing infrastructure and industry experience to expand our product offerings or distribution, or make investments in other companies. For example, in June 2016, we completed the acquisition of the European operations of ARIAD. The success of our acquisitions, joint ventures, strategic alliances and investments will depend on our ability to identify, negotiate, complete and, in the case of acquisitions, integrate those transactions and, if necessary, obtain satisfactory debt or equity financing to fund those transactions. We may not realize the anticipated benefits of any acquisition, joint venture, strategic alliance or investment. We may not be able to integrate acquisitions successfully into our existing business, achieve planned synergies or cost savings, maintain the key business relationships of businesses we acquire, or retain key personnel of an acquired business, and we could assume unknown or contingent liabilities or incur unanticipated expenses. Integration of acquired companies or businesses also may require management resources that otherwise would be available for ongoing development of our existing business. Any acquisitions or investments made by us also could result in significant write-offs or the incurrence of debt and contingent liabilities, any of which could harm our operating results. For example, in the three month periods ended March 31, 2020, September 30, 2020 and March 31, 2021 we recorded unrealized losses related to our investments in our collaboration partners, and we may in experience additional losses related to our investments in future period. In addition, if we choose to issue shares of our stock as consideration for any acquisition, dilution to our stockholders could result.

Risks associated with our operations outside of the United States could adversely affect our business.

Our acquisition of ARIAD's European operations significantly expanded our operations in Europe, and we plan to continue to expand our operations and conduct certain development activities outside of the United States. For example, as part of our plans to expand our activities outside of the United States, we now conduct some of our operations in Canada, commercial and clinical development activities in Japan and have opened an office in China. International operations and business expansion plans are subject to numerous additional risks, including:

- multiple, conflicting and changing laws and regulations such as tax laws, privacy regulations, tariffs, export and import restrictions, employment, immigration and labor laws, regulatory requirements, and other governmental approvals, permits and licenses, compliance with which can increase in complexity as we enter into additional jurisdictions;

- difficulties in staffing and managing operations in diverse countries and difficulties in connection with assimilating and integrating any operations and personnel we might acquire into our company;

- risks associated with obtaining and maintaining, or the failure to obtain or maintain, regulatory approvals for the sale or use of our products in various countries;

- complexities associated with managing government payor systems, multiple payor-reimbursement regimes or patient self-pay systems;

- financial risks, such as longer payment cycles, difficulty obtaining financing in foreign markets, difficulty enforcing contracts and intellectual property rights, difficulty collecting accounts receivable and exposure to foreign currency exchange rate fluctuations;

- general political and economic conditions in the countries in which we operate, including terrorism and political unrest, curtailment of trade and other business restrictions, and uncertainties associated with the implementation of the relationship between the United Kingdom and the European Union;

- public health risks, such as the spread globally of COVID-19 in 2020, and related effects on supply chain, travel and employee health and availability; and

- regulatory and compliance risks that relate to maintaining accurate information and control over activities that may fall within the purview of the U.S. Foreign Corrupt Practices Act, its books and records provisions or its anti-bribery provisions, or similar anti-bribery or anti-corruption laws and regulations in other countries, such as the U.K. Anti-Bribery Act and the U.K. Criminal Finances Act, which may have similarly broad extraterritorial reach.

In addition, our revenues are subject to foreign currency exchange rate fluctuations due to the global nature of our operations. To the extent that our non-U.S. source revenues represent a more significant portion of our total revenues, these fluctuations could materially affect our operating results. Any of the risks described above, if encountered, could significantly increase our costs of operating internationally, prevent us from operating in certain jurisdictions, or otherwise significantly harm our future international expansion and operations, which could have a material adverse effect on our business, financial condition and results of operations.

If product liability lawsuits are brought against us, we could face substantial liabilities and may be required to limit commercialization of our products and our results of operations could be harmed.

In addition to the risks described above under "—Risks Relating to Commercialization of Our Products—If the use of our products harms patients, or is perceived to harm patients even when such harm is unrelated to our products, our regulatory approvals could be revoked or otherwise negatively impacted or we could be subject to costly and damaging product liability claims," the conduct of clinical trials of medical products that are intended for human use entails an inherent risk of product liability. If any product that we or any of our collaborators or licensees develops causes or is alleged to cause injury during clinical trials or commercialization, we may be held liable. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities, including substantial damages to be paid to the plaintiffs and legal costs, or we may be required to limit further development and commercialization of our products. Additionally, any product liability lawsuit could cause injury to our reputation, participants and investigators to withdraw from clinical trials, and potential collaborators or licensees to seek other partners, any of which could impact our results of operations.

Our product liability insurance policy may not fully cover our potential liabilities. In addition, we may determine that we should increase our coverage, and this insurance may be prohibitively expensive to us or our collaborators or licensees and may not fully cover our potential liabilities. Since December 30, 2017, we elected to self-insure a portion of our exposure to product liability risks through our wholly-owned captive insurance subsidiary, in tandem with third-party insurance policies. Our inability to obtain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the development or commercialization of our drug candidates and products, and if our liabilities from any such claims exceed our third-party insurance limits and self-insurance reserves, our results of operations, cash flows and financial condition could be adversely impacted.

Because our activities involve the use of hazardous materials, we may be subject to claims relating to improper handling, storage or disposal of these materials that could be time consuming and costly.

We are subject to various environmental, health and safety laws and regulations governing, among other things, the use, handling, storage and disposal of regulated substances and the health and safety of our employees. Our research and development processes involve the controlled use of hazardous and radioactive materials and biological waste resulting in the production of hazardous waste products. We cannot completely eliminate the risk of accidental contamination or discharge and any resultant injury from these materials. If any injury or contamination results from our use or the use by our collaborators or licensees of these materials, we may be sued and our liability may exceed our insurance coverage and our total assets. Further, we may be required to indemnify our collaborators or licensees against all damages and other liabilities arising out of our development activities or products produced in connection with these collaborations or licenses. Compliance with the applicable environmental and workplace laws and regulations is expensive. Future changes to environmental, health, workplace and safety laws could cause us to incur additional expense or may restrict our operations or impair our research, development and production efforts.

RISKS RELATING TO OUR FINANCIAL RESULTS

We may incur losses in the future, and we expect to continue to incur significant expenses to discover and develop drugs, which may make it difficult for us to achieve sustained profitability on a quarterly or annual basis in the future.

Due to historical net losses, we had an accumulated deficit of $1.3 billion as of September 30, 2021. We intend to continue to spend significant amounts on our efforts to discover and develop drugs. As a result, we may incur losses in future periods as well. Our revenues, expenses and net income (loss) may fluctuate, even significantly, due to the risks described in these “Risk Factors” and factors discussed in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” as well as the timing of charges and expenses that we may take, including those relating to transactions such as acquisitions and the entry into collaborative agreements.

We anticipate that our drug discovery and development efforts and related expenditures will increase as we focus on the studies, including preclinical tests and clinical trials prior to seeking regulatory approval, that are required before we can sell a drug product.

The development of drug products will require us to spend significant funds on research, development, testing, obtaining regulatory approvals, manufacturing and marketing. To date, we do not have any drug products that have generated significant revenues other than from sales of JAKAFI and we cannot assure you that we will generate substantial revenues from the drug candidates that we license or develop, including ICLUSIG, PEMAZYRE, MONJUVI/MINJUVI, and OPZELURA, for several years, if ever.

We cannot be certain whether or when we will achieve sustained or increased profitability on a quarterly or annual basis because of the factors discussed under “Risks Relating to Commercialization of our Products” and in the above paragraphs and the significant uncertainties relating to our ability to generate commercially successful drug products. Even if we are successful in obtaining regulatory approvals for manufacturing and commercializing drug products in addition to JAKAFI, ICLUSIG, PEMAZYRE, MONJUVI/MINJUVI, and OPZELURA, we may incur losses if our drug products do not generate significant revenues.

We may need additional capital in the future. If we are unable to generate sufficient funds from operations, the capital markets may not permit us to raise additional capital at the time that we require it, which could result in limitations on our research and development or commercialization efforts or the loss of certain of our rights in our technologies or drug candidates.

Our future funding requirements will depend on many factors and we anticipate that we may need to raise additional capital to fund our business plan and research and development efforts going-forward.

Additional factors that may affect our future funding requirements include:

- the acquisition of businesses, technologies, or drug candidates, or the licensing of technologies or drug candidates, if any;
- the amount of revenues generated from our business activities;
- any changes in the breadth of our research and development programs;
- the results of research and development, preclinical testing and clinical trials conducted by us or our current or future collaborators or licensees, if any;
- our exercise of any co-development options with collaborators that may require us to fund future development;
- costs for future facility requirements;
- our ability to maintain and establish new corporate relationships and research collaborations;
- competing technological and market developments;
- the time and costs involved in filing, prosecuting, defending and enforcing patent and intellectual property claims;
- the receipt or payment of contingent licensing or milestone fees or royalties on product sales from our current or future collaborative and license arrangements, if established; and
- the timing of regulatory approvals, if any.

If we require additional capital at a time when investment in companies such as ours, or in the marketplace generally, is limited due to the then prevailing market or other conditions, we may have to scale back our operations, eliminate one or more of our research or development programs, or attempt to obtain funds by entering into an agreement with a collaborator or licensee that would result in terms that are not favorable to us or relinquishing our rights in certain of our proprietary technologies or drug candidates. If we are unable to raise funds at the time that we desire or at any time thereafter on acceptable terms, we may not be able to continue to develop our drug candidates. The sale of equity or equity-linked securities in the future may be dilutive to our stockholders and may provide for rights, preferences or privileges senior to those of our holders of common stock, and debt financing arrangements may require us to pledge certain assets or enter into covenants that could restrict our operations or our ability to pay dividends or other distributions on our common stock or incur further indebtedness.

Our marketable securities and long term investments are subject to risks that could adversely affect our overall financial position.

We invest our cash in accordance with an established internal policy and customarily in instruments, money market funds, U.S. government backed-funds and Treasury assets, which historically have been highly liquid and carried relatively low risk. In recent periods, similar types of investments and money market funds have experienced losses in value or liquidity issues that differ from their historical pattern.

Should a portion of our cash or marketable securities lose value or have their liquidity impaired, it could adversely affect our overall financial position by imperiling our ability to fund our operations and forcing us to seek additional financing sooner than we would otherwise. Such financing, if available, may not be available on commercially attractive terms.

As discussed under "Other Risks Relating to Our Business— We may acquire businesses or assets, form joint ventures or make investments in other companies that may be unsuccessful, divert our management's attention and harm our operating results and prospects," any investments that we may make in companies with which we have strategic alliances, such as Agenus, Merus and MorphoSys, could result in our recognition of losses on those investments. In addition, to the extent we may seek to sell or otherwise monetize those investments, we may not be able to do so at our desired price or valuation levels, or at all, due to the limited liquidity of some or all of those investments.

Any loss in value of our long term investments could adversely affect our financial position on the condensed consolidated balance sheets and condensed consolidated statements of operations.

Changes in tax laws or regulations could adversely affect our results of operations, business and financial condition.

New tax laws or regulations could be enacted at any time, and existing tax laws or regulations could be interpreted, modified or applied in a manner that is adverse to us or our customers, which could adversely affect our results of operations, business and financial condition. The Administration and Congress are considering significant changes to existing U.S. tax law, including an increase in the corporate tax rate and the effective tax rate on foreign earnings. These changes could substantially increase U.S. taxation of our operations. In addition, the Organisation for Economic Co-Operation and Development (OECD) in October 2021 announced an agreement on an outline for new tax rules that would align countries on a minimum corporate tax rate and an expansion of the taxing rights of market countries. If enacted by member countries, this agreement could result in tax increases in both the United States and many foreign jurisdictions where we operate or have a presence. These initiatives not only could significantly increase our tax provision, cash tax liabilities, and effective tax rate, but could also significantly increase tax uncertainty due to differing interpretations and increased audit scrutiny.

We derive a substantial portion of our revenues from royalties, milestone payments and other payments under our collaboration agreements. If we are unable to achieve milestones, develop product candidates to license or renew or enter into new collaborations, our revenues may decrease, and future milestone and royalty payments may not contribute significantly to revenues for several years, and may never result in revenues.

We derived a substantial portion of our revenues for the year ended December 31, 2020 and the nine months ended September 30, 2021 from JAKAVI and OLUMIANT product royalties and from milestone payments under our collaboration agreements. Future revenues from research and development collaborations depend upon continuation of the collaborations, the achievement of milestones and royalties we earn from any future products developed from our research. If we are unable to successfully achieve milestones or our collaborators fail to develop successful products, we will not earn the future revenues contemplated under our collaborative agreements. For example, delays in or other limitations with respect to the approval of baricitinib in the United States for the treatment of moderate-to-severe rheumatoid arthritis, or the failure to obtain such approval as a first line therapy, as discussed under "—We depend on our collaborators and licensees for the future development and commercialization of some of our drug candidates. Conflicts may arise between our collaborators and licensees and us, or our collaborators and licensees may choose to terminate their agreements with us, which may adversely affect our business." could affect potential future royalty and milestone and contract revenue.

RISKS RELATING TO INTELLECTUAL PROPERTY AND LEGAL MATTERS

If we are subject to arbitration, litigation and infringement claims, they could be costly and disrupt our drug discovery and development efforts.

The technology that we use to make and develop our drug products, the technology that we incorporate in our products, and the products we are developing may be subject to claims that they infringe the patents or proprietary rights of others. The success of our drug discovery and development efforts will also depend on our ability to develop new compounds, drugs and technologies without infringing or misappropriating the proprietary rights of others. We are aware of patents and patent applications filed in certain countries claiming intellectual property relating to some of our drug discovery targets and drug candidates. While the validity of issued patents, patentability of pending patent applications and applicability of any of them to our programs are uncertain, if any of these patents are asserted against us or if we

choose to license any of these patents, our ability to commercialize our products could be harmed or the potential return to us from any product that may be successfully commercialized could be diminished.

From time to time we have received, and we may in the future receive, notices from third parties offering licenses to technology or alleging patent, trademark, or copyright infringement, claims regarding trade secrets or other contract claims. Receipt of these notices could result in significant costs as a result of the diversion of the attention of management from our drug discovery and development efforts. Parties sending these notices may have brought and in the future may bring litigation against us or seek arbitration relating to contract claims.

We may be involved in future lawsuits or other legal proceedings alleging patent infringement or other intellectual property rights or contract violations. In addition, litigation or other legal proceedings may be necessary to:

- assert claims of infringement;
- enforce our patents or trademarks;
- protect our trade secrets or know-how; or
- determine the enforceability, scope and validity of the proprietary rights of others.

We may be unsuccessful in defending or pursuing these lawsuits, claims or other legal proceedings. Regardless of the outcome, litigation or other legal proceedings can be very costly and can divert management's efforts. An adverse determination may subject us to significant liabilities or require us or our collaborators or licensees to seek licenses to other parties' patents or proprietary rights. We or our collaborators or licensees may also be restricted or prevented from manufacturing or selling a drug or other product that we or they develop. Further, we or our future collaborators or licensees may not be able to obtain any necessary licenses on acceptable terms, if at all. If we are unable to develop non-infringing technology or license technology on a timely basis or on reasonable terms, our business could be harmed.

We may be unable to adequately protect or enforce our proprietary information, which may result in its unauthorized use, a loss of revenue under a collaboration agreement or loss of sales to generic versions of our products or otherwise reduce our ability to compete in developing and commercializing products.

Our business and competitive position depends in significant part upon our ability to protect our proprietary technology, including any drug products that we create. Despite our efforts to protect this information, unauthorized parties may attempt to obtain and use information that we regard as proprietary. For example, one of our collaborators may disclose proprietary information pertaining to our drug discovery efforts. In addition, while we have filed numerous patent applications with respect to ruxolitinib and our drug candidates in the United States and in foreign countries, our patent applications may fail to result in issued patents. In addition, because patent applications can take several years to issue as patents, there may be pending patent applications of others that may later issue as patents that cover some aspect of ruxolitinib and our drug candidates. Our existing patents and any future patents we may obtain may not be broad enough to protect our products or all of the potential uses of our products, or otherwise prevent others from developing competing products or technologies. In addition, our patents may be challenged and invalidated or may fail to provide us with any competitive advantages if, for example, others were first to invent or first to file a patent application for the technologies and products covered by our patents. As noted above under "—Risks Relating to Commercialization of Our Products—Competition for our products could potentially harm our business and result in a decrease in our revenue," a potential generic drug company competitor has challenged certain patents relating to JAKAFI.

Additionally, when we do not control the prosecution, maintenance and enforcement of certain important intellectual property, such as a drug candidate in-licensed to us or subject to a collaboration with a third-party, the protection of the intellectual property rights may not be in our hands. If we do not control the intellectual property rights in-licensed to us with respect to a drug candidate and the entity that controls the intellectual property rights does not adequately protect those rights, our rights may be impaired, which may impact our ability to develop, market and commercialize the in-licensed drug candidate.

Our means of protecting our proprietary rights may not be adequate, and our competitors may:

- independently develop substantially equivalent proprietary information, products and techniques;
- otherwise gain access to our proprietary information; or
- design around patents issued to us or our other intellectual property.

We pursue a policy of having our employees, consultants and advisors execute proprietary information and invention agreements when they begin working for us. However, these agreements may not provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure. If we fail to maintain trade secret and patent protection, our potential future revenues may be decreased.

If the effective term of our patents is decreased due to changes in the United States patent laws or if we need to refile some of our patent applications, the value of our patent portfolio and the revenues we derive from it may be decreased.

The value of our patents depends, in part, on their duration. A shorter period of patent protection could lessen the value of our rights under any patents that we obtain and may decrease the revenues we derive from our patents. The United States patent laws provide a term of patent protection of 20 years from the earliest effective filing date of the patent application. Because the time from filing to issuance of biotechnology applications may be more than three years depending on the subject matter, a 20-year patent term from the filing date may result in substantially shorter patent protection.

Additionally, United States patent laws were amended in 2011 with the enactment of the America Invents Act and third parties are now able to challenge the validity of issued U.S. patents through various review proceedings; thus rendering the validity of U.S. patents more uncertain. We may be obligated to participate in review proceedings to determine the validity of our U.S. patents. We cannot predict the ultimate outcome of these proceedings, the conduct of which could result in substantial costs and diversion of our efforts and resources. If we are unsuccessful in these proceedings some or all of our claims in the patents may be narrowed or invalidated and the patent protection for our products and drug candidates in the United States could be substantially shortened. Further, if all of the patents covering one of our products are invalidated, the FDA could approve requests to manufacture a generic version of that product prior to the expiration date of those patents.

Other changes in the United States patent laws or changes in the interpretation of patent laws could diminish the value of our patents or narrow the scope of our patent protection. For example, the Supreme Court of the United States resolved a split among the circuit courts of appeals regarding antitrust challenges to settlements of patent infringement lawsuits under the Hatch-Waxman Act between brand-name drug companies and generic drug companies. The Court rejected the “scope of the patent” test and ruled that settlements involving “reverse payments” from brand-name drug companies to generic drug companies should be analyzed under the rule of reason. This ruling may create uncertainty and make it more difficult to settle patent litigation if a company seeking to manufacture a generic version of one of our products challenges the patents covering that product prior to the expiration date of those patents.

International patent protection is particularly uncertain and costly, and our involvement in opposition proceedings in foreign countries may result in the expenditure of substantial sums and management resources.

Biotechnology and pharmaceutical patent law outside the United States is even more uncertain and costly than in the United States and is currently undergoing review and revision in many countries. Further, the laws of some foreign countries may not protect our intellectual property rights to the same extent as United States laws. For example, certain countries do not grant patent claims that are directed to the treatment of humans. We have participated, and may in the future participate, in opposition proceedings to determine the validity of our foreign patents or our competitors’ foreign patents, which could result in substantial costs and diversion of our efforts. Successful challenges to our patent or other intellectual property rights through these proceedings could result in a loss of rights in the relevant jurisdiction and allow third parties to use our proprietary technologies without a license from us or our collaborators, which may also result in loss of future royalty payments. In addition, successful challenges may jeopardize or delay our ability to enter into new collaborations or commercialize potential products, which could harm our business and results of operations.

RISKS RELATING TO INFORMATION TECHNOLOGY AND DATA PRIVACY

Significant disruptions of information technology systems, breaches of data security, or unauthorized disclosures of sensitive data or personally identifiable information or individually identifiable health information could adversely affect our business, and could subject us to liability or reputational damage.

Our business is increasingly dependent on critical, complex, and interdependent information technology (IT) systems, including Internet-based systems, some of which are managed or hosted by third parties, to support business processes as well as internal and external communications. The size and complexity of our IT systems make us potentially vulnerable to IT system breakdowns, malicious intrusion, and computer viruses, which may result in the impairment of our ability to operate our business effectively. In addition, having a significant portion of our employees work remotely due to the COVID-19 Pandemic can strain our information technology infrastructure, which may affect our ability to operate effectively, may make us more susceptible to communications disruptions, and expose us to greater cybersecurity risks.

We are continuously evaluating and, where appropriate, enhancing our IT systems to address our planned growth, including to support our planned manufacturing operations. There are inherent costs and risks associated with implementing the enhancements to our IT systems, including potential delays in access to, or errors in, critical business and financial information, substantial capital expenditures, additional administrative time and operating expenses, retention of sufficiently skilled personnel to implement and operate the enhanced systems, demands on management time, and costs of delays or difficulties in transitioning to the enhanced systems, any of which could harm our business and results of operations. In addition, the implementation of enhancements to our IT systems may not result in productivity improvements at a level that outweighs the costs of implementation, or at all. In addition, our systems and the systems of our third-party providers and collaborators are potentially vulnerable to data security breaches which may expose sensitive data to unauthorized persons or to the public. Such data security breaches could lead to the loss of confidential information, trade secrets or other intellectual property, could lead to the public exposure of personal information (including personally identifiable information or individually identifiable health information) of our employees, clinical trial patients, customers, business partners, and others, could lead to potential identity theft, or could lead to reputational harm. Data security breaches could also result in loss of clinical trial data or damage to the integrity of that data. In addition, the increased use of social media by our employees and contractors could result in inadvertent disclosure of sensitive data or personal information, including but not limited to, confidential information, trade secrets and other intellectual property.

Any such disruption or security breach, as well as any action by us or our employees or contractors that might be inconsistent with the rapidly evolving data privacy and security laws and regulations applicable within the United States and elsewhere where we conduct business, could result in enforcement actions by U.S. states, the U.S. Federal government or foreign governments, liability or sanctions under data privacy laws, including healthcare laws such as HIPAA, that protect certain types of sensitive information, regulatory penalties, other legal proceedings such as but not limited to private litigation, the incurrence of significant remediation costs, disruptions to our development programs, business operations and collaborations, diversion of management efforts and damage to our reputation, which could harm our business and operations. Because of the rapidly moving nature of technology and the increasing sophistication of cybersecurity threats, our measures to prevent, respond to and minimize such risks may be unsuccessful.

In addition, the European Parliament and the Council of the European Union has adopted a comprehensive general data privacy regulation, known as the GDPR, which governs the collection and use of personal data in the European Union. The GDPR, which is wide-ranging in scope, imposes several requirements relating to the consent of the individuals to whom the personal data relates, the information provided to the individuals, the security and confidentiality of the personal data, data breach notification and the use of third party processors in connection with the processing of the personal data. The GDPR also imposes strict rules on the transfer of personal data out of the European Union to the United States, provides an enforcement authority and imposes large penalties for noncompliance, including the potential for fines of up to €20 million or 4% of the annual global revenues of the infringer, whichever is greater. Moreover, the European Court of Justice in July 2020 invalidated the Privacy Shield framework that had been in place between the European Union and the United States, which invalidation has created uncertainty about how data can now be shared in a compliant manner. Additionally, the California Consumer Privacy Act (CCPA) affords a private right of action to such consumers if certain data breaches result in the loss or theft of their personal information. The GDPR, CCPA and other similar laws or

regulations enacted in the United States or other jurisdictions associated with the enhanced protection of certain types of sensitive data, including healthcare data or other personal information, may increase our costs of doing business, and the differing requirements of these laws and regulations can complicate our compliance efforts.

Increasing use of social media could give rise to liability, breaches of data security, or reputational damage.

We and our employees are increasingly utilizing social media tools as a means of communication both internally and externally. Despite our efforts to monitor evolving social media communication guidelines and comply with applicable rules, there is risk that the use of social media by us or our employees to communicate about our products or business may cause us to be found in violation of applicable requirements. In addition, our employees may knowingly or inadvertently make use of social media in ways that may not comply with our social media policy or other legal or contractual requirements, which may give rise to liability, lead to the loss of trade secrets or other intellectual property, or result in public exposure of personal information of our employees, clinical trial patients, customers, and others. Furthermore, negative posts or comments about us or our products in social media could seriously damage our reputation, brand image, and goodwill.

Item 6. Exhibits

Exhibit Number	Description of Document
10.1*	Revolving Credit and Guaranty Agreement, dated as of August 18, 2021, among the Company, the guarantors party thereto, the lenders party thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent.
31.1*	Rule 13a-14(a) Certification of Chief Executive Officer.
31.2*	Rule 13a-14(a) Certification of Chief Financial Officer.
32.1**	Statement of the Chief Executive Officer under Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350).
32.2**	Statement of the Chief Financial Officer under Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350).
101.INS*	Inline XBRL Instance Document (embedded within the Inline XBRL document).
101.SCH*	XBRL Taxonomy Extension Schema Document.
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document.
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE*	XBRL Taxonomy Presentation Linkbase Document.
101.DEF*	XBRL Taxonomy Definition Linkbase Document.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

* Filed herewith.

** In accordance with Item 601(b)(32)(ii) of Regulation S-K and SEC Release No. 34-47986, the certifications furnished in Exhibits 32.1 and 32.2 hereto are deemed to accompany this Form 10-Q and will not be deemed "filed" for purposes of Section 18 of the Exchange Act. Such certifications will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act.

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.

INCYTE CORPORATION

Dated: November 2, 2021

By: /s/ HERVÉ HOPPENOT
Hervé Hoppenot
Chairman, President, and Chief Executive Officer
(Principal Executive Officer)

Dated: November 2, 2021

By: /s/ CHRISTIANA STAMOULIS
Christiana Stamoulis
Chief Financial Officer
(Principal Financial Officer)

Exhibit 10.1

REVOLVING CREDIT AND GUARANTY AGREEMENT

dated as of

August 18, 2021,

among

INCYTE CORPORATION,
as Borrower,

THE GUARANTORS PARTY HERETO,

THE LENDERS PARTY HERETO,

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

BANK OF AMERICA, N.A.
and
MIZUHO BANK, LTD.,
as Co-Syndication Agents

JPMORGAN CHASE BANK, N.A.,
BANK OF AMERICA, N.A.,
and
MIZUHO BANK, LTD.,
as Joint Lead Arrangers and Joint Bookrunners

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SCHEDULES

EXHIBITS

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This REVOLVING LOAN CREDIT AND GUARANTY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement") is entered into as of August 18, 2021, among INCYTE CORPORATION, a Delaware corporation, the GUARANTORS party hereto, the LENDERS party hereto and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

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

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

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

"Absolute Rate" means a fixed rate of interest expressed in multiples of 1/100th of one basis point.

"Absolute Rate Loan" means a Bid Loan that bears interest at a rate determined by reference to an Absolute Rate. Absolute Rate Loans may be denominated only in a Discretionary Alternative Currency.

"Acquisition" means any acquisition (in a single acquisition or series of related acquisitions) of (a) assets comprising all or substantially all of the assets of any Person, or of all or substantially all or any significant portion of a business or operating unit of a business, division, product line (including rights in respect of any drug candidate, drug or other pharmaceutical product) or line of business of any Person, or (b) Equity Interests of a Person if, as a result thereof, such Person becomes a Subsidiary.

"Acquisition Indebtedness" means any Indebtedness of the Borrower or any of its Subsidiaries that has been issued for the purpose of financing, in whole or in part, an Acquisition and any related transactions (including for the purpose of refinancing or replacing all or a portion of any related bridge facilities or any pre-existing Indebtedness of the Person or assets to be acquired); provided that (a) the release of the proceeds thereof to Borrower and its Subsidiaries is contingent upon the substantially simultaneous consummation of such Acquisition (and, if the definitive agreement for such Acquisition is terminated in accordance with its terms prior to the consummation of such Acquisition or if such Acquisition is otherwise not consummated by the date specified in the definitive documentation relating to such Indebtedness, such proceeds shall be promptly applied to satisfy and discharge all obligations of the Borrower and its Subsidiaries in respect of such Indebtedness) or (b) such Indebtedness contains a "special mandatory redemption" provision (or other similar provision) if such Acquisition is not consummated by the date specified in the definitive documentation relating to such Indebtedness (and if the definitive agreement for such Acquisition is terminated in accordance with its terms prior to the consummation of such Acquisition or such Acquisition is otherwise not consummated by the date specified in the definitive documentation relating to such Indebtedness, such

Indebtedness is so redeemed within 90 days of such termination or such specified date, as the case may be).

"Adjusted LIBO Rate" means, with respect to any Eurocurrency Rate Borrowing denominated in US Dollars for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (a) the Eurocurrency Rate for US Dollars for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Administrative Agent" means JPMCB, in its capacity as administrative agent under the Loan Documents, or any successor administrative agent. Unless the context requires otherwise, the term "Administrative Agent" shall include any Affiliate of JPMCB through which JPMCB shall perform any of its obligations in such capacity under the Loan Documents.

"Administrative Questionnaire" means an Administrative Questionnaire in a customary form supplied by the Administrative Agent.

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

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

"Agent-Related Person" has the meaning assigned to such term in Section 11.04(c).

"Aggregate Commitments" means the aggregate amount of the Commitments of all the Lenders. As of the Effective Date, the Aggregate Commitments are $500,000,000.

"Agreement" has the meaning specified in the preamble hereto.

"Agreement Currency" has the meaning specified in Section 11.17.

"Alternative Currency" means each currency (other than US Dollars) that is approved in accordance with Section 1.05. Loans denominated in an Alternative Currency may only be Eurocurrency Rate Loans.

"Alternative Currency Sublimit" means an amount equal to the lesser of the Aggregate Commitments and $25,000,000. The Alternative Currency Sublimit is part of, and not in addition to, the Aggregate Commitments.

"Ancillary Document" has the meaning specified in Section 11.10.

"Anti-Corruption Laws" shall mean all laws, rules, and regulations of any jurisdiction applicable to Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Party" has the meaning assigned to it in Section 10.03(c).

"Applicable Percentage" means, subject to Section 2.16(a)(iv), with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender's Commitment at such time. If all the Commitments have terminated, then the Applicable Percentage of each Lender will be determined based on the Commitments of the Lenders most recently in effect, giving effect to any assignments and to any Lender's status as a Defaulting Lender at the time of determination.

"Applicable Rate" means, for any day with respect to Unused Commitment Fees, Letter of Credit Fees, Eurocurrency Rate Loans and Base Rate Loans, the percentages per annum specified in the applicable column below, based upon the Consolidated Leverage Ratio:

Pricing Level	**Consolidated Leverage Ratio**	**Unused Commitment Fees**	**Letter of Credit Fees**	**Eurocurrency Rate Loans**	**Base Rate Loans**
I	Less than or equal to 1:00 to 1:00	0.150%	1.125%	1.125%	0.125%
II	Greater than 1:00 to 1:00 but less than or equal to 2:00 to 1.00	0.175%	1.375%	1.375%	0.375%
III	Greater than 2:00 to 1:00 but less than or equal to 3:00 to 1.00	0.200%	1.625%	1.625%	0.625%
IV	Greater than 3:00 to 1:00	0.225%	1.875%	1.875%	0.875%

The Applicable Rate shall be determined and adjusted quarterly on the third Business Day after the day on which the Borrower provides a Compliance Certificate of a Responsible Officer pursuant to Sections 6.02(a), for the most recently ended fiscal quarter (or fiscal year, as applicable) of the Borrower (each such date, a "Calculation Date"); provided that (a) the Applicable Rate shall be based on Pricing Level I until the first Calculation Date occurring after the Closing Date and, thereafter the Pricing Level shall be determined by reference to the Consolidated Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Borrower preceding the applicable Calculation Date and (b) if the Borrower fails to provide an Officer's Compliance Certificate when due as required by Section 6.02(a) for the most recently ended fiscal quarter (or fiscal year, as applicable) of the Borrower preceding the applicable Calculation Date, then, at the option of the Administrative Agent or upon the request of the Required Lenders, the Applicable

Rate from the date on which such Officer's Compliance Certificate was required to have been delivered shall be based on Pricing Level IV until such time as such Officer's Compliance Certificate is delivered, at which time the Pricing Level shall be determined by reference to the Consolidated Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Borrower preceding such Calculation Date. The applicable Pricing Level shall be effective from one Calculation Date until the next Calculation Date. Any adjustment in the Pricing Level shall be applicable to all Credit Extensions then existing or subsequently made or issued.

Notwithstanding the foregoing, in the event that any Compliance Certificate of a Responsible Officer delivered pursuant to Sections 6.02(a) is shown to be inaccurate, and such inaccuracy, if corrected, would have led to the application of a higher Pricing Level for any period (an "Applicable Period") than the Applicable Rate applied for such Applicable Period, then the Borrower shall promptly deliver to the Administrative Agent a corrected Compliance Certificate for such Applicable Period and the Applicable Rate for such period shall be the higher Pricing Level. This provision shall survive the Discharge of the Obligations for sixty (60) days.

"Applicable Time" means, with respect to any borrowings and payments in any Alternative Currency or Discretionary Alternative Currency, such local time in the place of settlement for such Alternative Currency or Discretionary Alternative Currency as, in each case, shall have been specified by the Administrative Agent.

"Approved Electronic Platform" has the meaning specified in Section 10.03(a).

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

"Arrangers" means JPMCB, Bank of America, N.A. and Mizuho Bank, Ltd., in their capacities as joint lead arrangers and joint bookrunners for the credit facility provided for herein.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

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

"Audited Financial Statements" means the audited consolidated balance sheet of the Borrower and its Subsidiaries as of December 31, 2020, and the related consolidated statements of operations, comprehensive income / (loss), stockholders' equity and cash flows for the fiscal year of the Borrower and its Subsidiaries then ended, including the notes thereto.

"Auto-Extension Letter of Credit" has the meaning specified in Section 2.04(b)(iii).

"Availability Period" means the period from and including the Effective Date to the earlier of the Maturity Date and the date of termination of the Aggregate Commitments pursuant to Section 2.06 or 8.02.

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

"Bail-In Legislation" means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (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", as now and hereafter in effect, or any successor statute.

"Base Rate" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% per annum and (c) the Adjusted LIBO Rate on such day (or if such day is not a Business Day, the immediately preceding Business Day) for a deposit in US Dollars with a maturity of one month plus 1% per annum; provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to Section 2.17 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.17(b)), then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

"Base Rate Borrowing" means a Borrowing comprised of Base Rate Loans.

"Base Rate Committed Borrowing" means a Committed Borrowing comprised of Base Rate Committed Loans.

"Base Rate Committed Loan" means a Committed Loan that is a Base Rate Loan.

"Base Rate Loan" means a Committed Loan that bears interest by reference to the Base Rate. Base Rate Loans may be denominated only in US Dollars.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

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

"Bid Borrowing" means a borrowing consisting of simultaneous Bid Loans of the same Type and in the same currency from each of the Lenders whose offer to make one or more Bid Loans as part of such borrowing has been accepted under the auction bidding procedures described in Section 2.03.

"Bid Loan" has the meaning specified in Section 2.03(a).

"Bid Loan Lender" means, in respect of any Bid Loan, the Lender making such Bid Loan.

"Bid Request" means a written request for one or more Bid Loans substantially in the form of Exhibit B-1.

"Borrower" means Incyte Corporation, a Delaware corporation.

"Borrowing" means a Committed Borrowing or a Bid Borrowing, as the context may require.

"Borrowing Minimum" means (a) in the case of a Eurocurrency Rate Borrowing denominated in US Dollars, $5,000,000, (b) in the case of a Base Rate Borrowing, $500,000, (c) in the case of an Absolute Rate Borrowing denominated in US Dollars, $5,000,000 and (d) in the case of a Borrowing denominated in an Alternative Currency or in a Discretionary Alternative Currency, the smallest amount of such currency that is an integral multiple of 1,000,000 units of such currency and that has a US Dollar Equivalent in excess of $5,000,000.

"Borrowing Multiple" means (a) in the case of a Eurocurrency Rate Borrowing denominated in US Dollars, $1,000,000, (b) in the case of a Base Rate Borrowing, $100,000, (c) in the case of an Absolute Rate Borrowing denominated in US Dollars, $1,000,000 and (d) in the case of a Borrowing denominated in any Alternative Currency or in a Discretionary Alternative Currency, 1,000,000 units of such currency.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to remain closed under the Laws of, or are in fact closed in, New York City, provided that:

(a) when used in connection with a Eurocurrency Rate Loan, the term "Business Day" shall also exclude when used in connection with a Eurocurrency Rate Loan denominated in US Dollars, any Alternative Currency (other than Euro) or any Discretionary Alternative Currency, any day on which dealings in deposits in US Dollars or the applicable Alternative Currency or Discretionary Alternative Currency, as the case may be, are not conducted by and between banks in the London interbank eurodollar market; and

(b) when used in connection with a Bid Loan that is an Absolute Rate Loan denominated in any Discretionary Alternative Currency, the term "Business Day" shall also exclude any day on which banks are not open for foreign exchange business in the principal financial center of the country of such Discretionary Alternative Currency.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP; provided that all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the "ASU") shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as Capital Lease Obligations in the financial statements to be delivered pursuant to Section 6.01.

"Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent, the applicable L/C Issuer and the Lenders, as collateral for L/C Obligations or obligations of Lenders to fund participations in respect thereof (as the context may require), cash or deposit account balances or, if the applicable L/C Issuer benefitting from such collateral shall agree in its sole discretion, other credit support (including backstop letters of credit), in each case pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the applicable L/C Issuer. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"CFC" means a "controlled foreign corporation" as defined in Section 957(a) of the Code.

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

"Change of Control" means the occurrence of any of the following: (a) an event or series of events by which any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act, but excluding any employee benefit plan of the Borrower or its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act), directly or indirectly, of more than 50% of the total voting power of the Equity Interests in Borrower on a fully-diluted basis or (b) within a period of twelve (12) consecutive calendar months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election, nomination or appointment to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election, nomination or appointment to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.

"Code" means the Internal Revenue Code of 1986.

"Commitment" means, as to each Lender, its obligation (a) to make Committed Loans to the Borrower pursuant to Section 2.01 and (b) to purchase participations in L/C Obligations pursuant to Section 2.04, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 or in the Assignment and Assumption or the Incremental Joinder Agreement or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) pursuant to which such Lender shall have assumed its Commitment, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Committed Borrowing" means Committed Loans of the same Type and in the same currency made, converted or continued on the same date and, in the case of Eurocurrency Rate Committed Loans, as to which a single Interest Period is in effect.

"Committed Loan" has the meaning specified in Section 2.01.

"Committed Loan Notice" means a notice of (a) a borrowing of Committed Loans, (b) a conversion of any Committed Borrowing from one Type to the other or (c) a continuation of any Eurocurrency Rate Committed Borrowing, in each case pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit C or any other form approved by the Administrative Agent.

"Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or the L/C Issuers by means of electronic communications pursuant to Section 10.03, including through an Approved Electronic Platform.

"Company Materials" means materials and/or information provided by or on behalf of the Loan Parties hereunder.

"Competitive Bid" means a written offer by a Lender to make one or more Bid Loans, substantially in the form of Exhibit B-2, duly completed and signed by a Lender.

"Compliance Certificate" means a certificate substantially in the form of Exhibit D.

"Consolidated EBITDA" means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, an amount equal to:

(a) Consolidated Net Income for such period, plus,

(b) without duplication and only to the extent deducted in calculating Consolidated Net Income for such period, the sum of: (i) interest expense, (ii) income tax expense, (iii) depreciation and amortization expense, (iv) losses attributable to noncontrolling interest, (v) stock-based compensation expense, (vi) asset impairment charges (including impairment of intangibles or goodwill), (vii) restructuring charges, (viii) charges, losses and expenses associated with any Acquisition, including Milestone Payments, integration charges, charges associated with the revaluation of assets or liabilities (including noncash charges recorded in respect of purchase accounting), any contingent or deferred payments (including earn-outs, contingent liabilities that are based, in whole or in part, on future estimated cash flows, royalties, non-compete payments and consulting payments, but excluding ongoing royalties associated therewith paid in cash in such period) made in connection with such Acquisition and any revaluation adjustments thereof, (ix) one-time non-recurring up-front and milestone payments payable under research and development licensing agreements, collaboration agreements or development agreements relating to uncommercialized product candidates, (x) charges, losses and expenses associated with unrealized losses on long term investments, (xi) charges, losses and expenses associated with the sale of assets (other than sales of inventory in the ordinary course of business) and losses attributable to discontinued operations, (xii) transaction fees and expenses incurred in connection with any Acquisition (or other similar investment), sale of assets (other than sales of inventory in the ordinary course of business), issuance or repayment of Indebtedness, issuance of equity securities by the Borrower, refinancing

transaction or amendment or other modification of definitive agreements governing any Indebtedness (in each case, including any such transaction consummated prior to the Effective Date and any such transaction undertaken but not completed), (xiii) losses attributable to early extinguishment of Indebtedness or obligations under any Swap Contract, (xiv) litigation charges and settlements, (xv) non-cash charges (including non-cash exchange, translation or performance losses) relating to foreign currency hedging transactions or extraordinary, unusual or nonrecurring non-cash charges related to currency fluctuations, (xvi) one time clinical research and outside services costs and expenses associated with the acquisition of priority review or similar vouchers in connection with applications for regulatory approval of product candidates, (xvii) the amount of any non-cash charges attributable to losses in a joint venture, (xviii) other extraordinary, unusual or nonrecurring charges or expenses and (xix) any other noncash charges not otherwise specified in the foregoing clauses (i) through (xviii), minus,

(c) without duplication and only to the extent included in calculating Consolidated Net Income for such period, the sum of (i) interest income, (ii) income tax benefit, (iii) income attributable to non-controlling interest, (iv) gains associated with any Acquisition, including gains associated with the revaluation of assets and liabilities, break-up or termination fees and gains on any revaluation adjustment of any contingent or deferred payments (including earn-outs, non-compete payments and consulting payments but excluding ongoing royalty payments) made in connection with such Acquisition, (v) unrealized gains on long term investments, (vi) gains associated with the sale of assets outside the ordinary course of business and income attributable to discontinued operations, (vii) gains attributable to early extinguishment of Indebtedness or obligations under any Swap Contract, (viii) litigation gains and settlements, (ix) non-cash gains (including non-cash exchange, translation or performance gains) relating to foreign currency hedging transactions or extraordinary, unusual or nonrecurring non-cash gains related to currency fluctuations, (x) one-time non-recurring up-front and milestone payments received under research and development licensing agreements, collaboration agreements or development agreements relating to uncommercialized product candidates and (xi) other extraordinary, unusual or nonrecurring gains or other items of income.

For the purposes of calculating Consolidated EBITDA for any period of four consecutive fiscal quarters (each, a "Reference Period"), if at any time during such Reference Period Borrower or any Subsidiary shall have made any Material Disposition or a Material Acquisition, Consolidated EBITDA for such Reference Period shall be calculated after giving pro forma effect thereto in accordance with Section 1.03(c).

"Consolidated Leverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated Total Debt as of such date to (b) Consolidated EBITDA for the period of the four fiscal quarters of the Borrower then most recently ended.

"Consolidated Net Income" means, for any period, the consolidated net income (or loss) of the Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Tangible Assets" means, at any time, total assets (less applicable reserves and other properly deductible items) after deducting all goodwill, in each case of

the Borrower and its Subsidiaries at such time that would be reflected on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP.

"Consolidated Total Assets" means, at any time, the total assets of the Borrower and its Subsidiaries at such time that would be reflected on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP.

"Consolidated Total Debt" means, at any time, for Borrower and its Subsidiaries on a consolidated basis, the aggregate amount of (a) (i) all Indebtedness for borrowed money and all Indebtedness constituting obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments and (ii) all Capital Lease Obligations minus (b) the excess, if any, of (i) the aggregate amount of cash, cash equivalents and marketable securities of the Borrower and its Subsidiaries, as reflected (under such line items) on a consolidated balance sheet of the Borrower and its Subsidiaries prepared as of such date in accordance with GAAP; provided that (x) such cash, cash equivalents and marketable securities do not appear (and would not be required to appear) as "restricted" on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP, and (y) in the case of any such marketable securities, an active trading market exists therefor and price quotations are available and such marketable securities are not subject to any lock-up or other contractual restriction on the sale or other disposition thereof by the Borrower and its Subsidiaries (it being understood and agreed, for the avoidance of doubt, that U.S. Government debt securities owned by the Borrower or its Subsidiaries that are reflected on such consolidated balance sheet satisfy the foregoing criteria in this clause (y)), over (ii) $500,000,000. Notwithstanding the foregoing, solely for the purposes of determining Consolidated Total Debt at any time after the definitive agreement for any Acquisition shall have been executed and prior to the consummation of such Acquisition, any Acquisition Indebtedness with respect thereto shall be excluded from clause (a) above (and the proceeds thereof shall be excluded from clause (b) above).

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

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

"Co-Syndication Agent" means Bank of America, N.A. and Mizuho Bank, Ltd., in their capacities as co-syndication agent for the credit facility provided for herein.

"Covered Entity" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Paty" has the meaning specified in Section 11.20.

"Credit Extension" means a Borrowing or an L/C Credit Extension, or any of the foregoing, as the context might require.

"Credit Party" means the Administrative Agent, each L/C Issuer or any other Lender.

"Debtor Relief Laws" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, court protection, insolvency, reorganization, examinership or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

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

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

"Defaulting Lender" means, subject to Section 2.16(b), any Lender that, (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date required to be funded by it hereunder unless such Lender notifies the Administrative Agent and Borrower in writing that such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default, shall be specifically identified and supported by reasonable background information provided by such Lender in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any L/C Issuer or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any L/C Issuer in writing, or has made a public statement to the effect, that it does not intend to comply with its funding obligations hereunder (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's good faith determination that a condition precedent to funding (which condition precedent, together with any applicable Default, shall be specifically identified and supported by reasonable background information provided by such Lender in such writing or public statement) cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after written request by the Administrative Agent, the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder; provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt by the Administrative Agent and the Borrower of such written confirmation in form and substance satisfactory to the Administrative Agent and Borrower, or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a Bail-In Action, (ii) become the subject of a proceeding under any Debtor Relief Law or (iii) had appointed for it a receiver, custodian, conservator, trustee, administrator, examiner, assignee for the

benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in such Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent or the Borrower that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) upon delivery of written notice of such determination to the Administrative Agent, the Borrower, Borrower, each L/C Issuer and such Lender.

"Discharge of the Obligations" means (and shall have occurred when) (a) all Obligations (other than contingent obligations as to which no claim has been asserted) shall have been paid in full in cash, (b) no L/C Borrowing and no Letter of Credit shall be outstanding (other than Letters of Credit that have been Cash Collateralized in full or as to which other arrangements satisfactory to the applicable L/C Issuer and the Administrative Agent shall have been made) and (c) all Commitments shall have terminated or expired.

"Discretionary Alternative Currency" means any lawful currency, other than US Dollars, that is freely transferable and freely convertible into US Dollars. Loans denominated in a Discretionary Alternative Currency may only be Eurocurrency Rate Loans or Absolute Rate Loans.

"Disqualified Competitor" means (a) Persons that are reasonably determined by the Borrower to be competitors of the Borrower or its Subsidiaries and which are specifically identified by the Borrower to the Administrative Agent and the Lenders in writing and delivered in accordance with Section 11.02 prior to the Effective Date, (b) any other Person that is reasonably determined by the Borrower to be a competitor of the Borrower or its Subsidiaries and which is specifically identified in a written supplement to the list of "Disqualified Competitors", which supplement shall become effective three (3) Business Days after delivery thereof to the Administrative Agent and the Lenders in accordance with Section 11.02 and (c) in the case of the foregoing clauses (a) and (b), any of such entities' Affiliates to the extent such Affiliates (x) are clearly identifiable as Affiliates of such Persons based solely on the similarity of such Affiliates' and such Persons' names and (y) are not bona fide debt investment funds. It is understood and agreed that (i) any supplement to the list of Persons that are Disqualified Competitors contemplated by the foregoing clause (b) shall not apply retroactively to disqualify any Persons that have previously acquired an assignment or participation interest in the Loans (but solely with respect to such Loans), (ii) the Administrative Agent shall have no responsibility or liability to determine or monitor whether any Lender or potential Lender is a Disqualified Competitor, (iii) the Borrower's failure to deliver such list (or supplement thereto) in accordance with Section 11.02 shall render such list (or supplement) not received and not effective and (iv) "Disqualified Competitor" shall exclude any Person that the Borrower has designated as no longer being

a "Disqualified Competitor" by written notice delivered to the Administrative Agent from time to time in accordance with Section 11.02.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition of any property by any Person, including any sale and leaseback transaction and any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Domestic Subsidiary" means a Subsidiary organized under the laws of a jurisdiction located in the United States of America other than a Subsidiary (i) that is a Subsidiary of a CFC or (ii) substantially all of the assets of which are Equity Interests or Equity Interests and debt interests in one or more CFCs.

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

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

"EEA Member Country" means any member state 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.

"Effective Date" means the date on which the conditions precedent set forth in Section 4.01 have been satisfied, which date is August 18, 2021.

"Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Sections 11.06(b)(iii) and 11.06(b)(v), subject to such consents, if any, as may be required under Section 11.06(b)(iii).

"Environmental Laws" means any and all federal, state, local and foreign statutes, Laws, regulations, ordinances, rules, judgments, orders, or decrees relating to pollution, the protection of the environment or the release of any hazardous or toxic materials into the environment.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), directly or indirectly resulting from or based upon (a) violation of any

Environmental Law or permit required thereunder, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any governmental order or acquisition or divestiture 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, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination; provided that Indebtedness that is convertible into any Equity Interests shall not constitute Equity Interests prior to the conversion thereof.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with Borrower within the meaning of Section 414(b) or (c) of the Code or Section 4001(14) of ERISA (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan or Multiemployer Plan, (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA, (c) a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) by the Borrower or any ERISA Affiliate from a Multiemployer Plan if there is any potential liability therefor, (d) the filing by a Pension Plan administrator of a notice of intent to terminate pursuant to Section 4041(a)(2) of ERISA or the commencement of proceedings by the PBGC to terminate pursuant to Section 4042 of ERISA, a Pension Plan or Multiemployer Plan, (e) the appointment of a trustee to administer any Pension Plan or Multiemployer Plan, (f) the incurrence by the Borrower or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Pension Plan pursuant to Section 4041 of ERISA or (g) the determination that any Pension Plan or Multiemployer Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA.

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

"Eurocurrency Rate" means, with respect to any Eurocurrency Rate Borrowing in Dollars for any Interest Period, the LIBO Rate.

"Eurocurrency Rate Borrowing" means a Borrowing comprised of Eurocurrency Rate Loans.

"Eurocurrency Rate Committed Loan" means a Committed Loan that bears interest by reference to the Eurocurrency Rate. All Committed Loans denominated in an Alternative Currency must be Eurocurrency Rate Committed Loans.

"Eurocurrency Rate Loan" means a Loan that bears interest by reference to the Eurocurrency Rate, which may only be a Eurocurrency Rate Committed Loan. Eurocurrency Rate Loans may be denominated in US Dollars or in an Alternative Currency.

"Event of Default" has the meaning specified in Section 8.01.

"Exchange Rate" means on any day, for purposes of determining the US Dollar Equivalent of any currency other than US Dollars, the rate at which such other currency may be exchanged into US Dollars (or, solely for purposes of Section 2.04(c)(ii), the rate at which US Dollars may be exchanged into such other currency) at the time of determination on such day as last provided (either by publication or otherwise provided to the Administrative Agent) by the applicable Reuters source on the Business Day (New York City time) immediately preceding the date of determination. In the event that such rate is not so provided to the Administrative Agent, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower; provided that, in the absence of such an agreement, the Administrative Agent may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, any L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document, (a) Taxes imposed on or measured by its net income (however denominated), branch profits Taxes and franchise Taxes, in each case, (i) imposed on it, by the United States (or any political subdivision or taxing authority thereof or therein), or by the jurisdiction (or any political subdivision or taxing authority thereof or therein) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, or (ii) that are Other Connection Taxes, (b) any withholding Tax that is imposed by the United States on amounts payable to a recipient with respect to an applicable interest in the Loan or Commitment pursuant to any Law in effect at the time such recipient acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 11.13) or designates a new Lending Office, except to the extent that such recipient (or its assignor, in the case of an assignment) was entitled, immediately before the designation of a new Lending Office (or assignment), to receive additional amounts from the Loan Parties with respect to such withholding Tax pursuant to Section 3.01(a), (c) any Tax that is attributable to a recipient's failure to comply with Section 3.01(e) or 3.01(g), and (d) any withholding Taxes imposed pursuant to FATCA.

"Existing Letter of Credit" means any letter of credit issued and outstanding as of the Effective Date and listed on Schedule 2.04(b); provided that the issuer thereof is a Lender as of the Effective Date. Each such letter of credit so designated shall be deemed to constitute a Letter of Credit and a Letter of Credit issued hereunder on the Effective Date for all purposes under this Agreement and the other Loan Documents.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

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

"FCA" has the meaning assigned to such term in Section 1.09.

"Federal Funds Effective Rate" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depository institutions (as determined in such manner as shall be set forth on the NYFRB's Website from time to time) and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate; provided that if such rate as so determined would be be less than zero, such rate shall be deemed to be zero for all purposes of this Agreement.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Fiscal Year" means the fiscal year of the Borrower ending on December 31st of each calendar year.

"Foreign Lender" means any Lender that is not a US Person.

"Fronting Exposure" means, at any time there is a Defaulting Lender, with respect to any L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by such L/C Issuer, other than any such L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

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

"GAAP" means, subject to Section 1.03, generally accepted accounting principles in the United States, applied in accordance with the consistency requirements thereof.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency,

authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

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

"Guaranteed Parties" means, collectively, the Administrative Agent, the Arrangers, the Lenders, each L/C Issuer and each Indemnitee.

"Guarantor Counterpart" means the Guarantor Counterpart Agreement to be entered into by the Borrower (if applicable) or any Domestic Subsidiary that may become a Subsidiary Guarantor after the Effective Date, in each case, in favor of the Administrative Agent, substantially in the form of Exhibit G, with such modifications thereto as may be reasonably agreed by the Administrative Agent and Borrower in accordance with Section 10.10(b).

"Guarantors" means, collectively, the Subsidiary Guarantors.

"Hazardous Materials" means all explosive, radioactive, hazardous or toxic substances or wastes and other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, in each case, that are regulated, or for which liability may be imposed, pursuant to any Environmental Law.

"Honor Date" has the meaning specified in Section 2.04(c)(ii).

"Impacted Interest Period" has the meaning assigned to such term in the definition of "LIBO Rate".

"Incremental Effective Date" has the meaning specified in Section 2.14(d).

"Incremental Joinder Agreement" means a joinder agreement among the Borrower, the Administrative Agent and one or more Eligible Assignees that, pursuant to such agreement, provides a Commitment as contemplated by Section 2.14(c), in each case in form and substance reasonably satisfactory to the Administrative Agent.

"Incremental Term Loan" has the meaning assigned to such term in Section 2.14.

"Incremental Term Loan Amendment" has the meaning assigned to such term in Section 2.14.

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

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guarantees, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and purchase price adjustments, earnouts and similar contingent payments due with respect to Acquisitions either permitted hereby or completed prior to the Effective Date);

(e) all obligations which would constitute Indebtedness of any other Person (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness will have been assumed by such Person or is limited in recourse;

(f) Capital Lease Obligations; and

(g) all Guarantees of such Person in respect of any of the foregoing of any other Person; provided that Indebtedness shall not include any performance guarantee or any other Guarantee that is not a Guarantee of other Indebtedness.

For all purposes hereof, the Indebtedness of any Person will include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person (except for customary exceptions to non-recourse provisions such as fraud, misappropriation of funds

and environmental liabilities). The amount of any net obligation under any Swap Contract on any date will be deemed to be the Swap Termination Value thereof as of such date.

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

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

"Ineligible Institution" means (a) a natural person, (b) any Defaulting Lender or any of its Subsidiaries, or any Person that, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (b), (c) the Borrower, or any of its Subsidiaries or any of its Affiliates, (d) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof, or (e) unless the Borrower's prior consent is obtained and in accordance with Section 11.06(h), a Disqualified Competitor.

"Information" has the meaning specified in Section 11.07.

"Interest Payment Date" means (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that (i) if any Interest Period for a Eurocurrency Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period will also be Interest Payment Dates therefor and (ii) if any Interest Period for an Absolute Rate Loan exceeds ninety (90) days, then, unless otherwise specified in the applicable Bid Request, each day prior to the last day of such Interest Period that occurs at intervals of ninety (90) days will also be an Interest Payment Date therefor, and (b) as to any Base Rate Loan, the first Business Day following the last day of each March, June, September and December and the Maturity Date.

"Interest Period" means (a) as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the numerically corresponding day that is one, three or six months thereafter (or, if agreed to by all Lenders, a period of shorter than one month), as selected by the Borrower in the applicable Committed Loan Notice or Bid Request, as the case may be, and (b) as to each Absolute Rate Loan, a period of not less than 14 days and not more than 180 days, as selected by the Borrower in the applicable Bid Request; provided that:

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

(ii) any Interest Period pertaining to a Eurocurrency Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest

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

(iii) no Interest Period will extend beyond the Maturity Date.

"Interpolated Rate" means, at any time, for any Eurocurrency Rate Borrowing denominated in Dollars, for any Interest Period, the rate *per annum* (rounded to the same number of decimal places as the Adjusted LIBO Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time; provided that if any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"IP Rights" means trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights.

"IRS" means the United States Internal Revenue Service.

"ISP" means, with respect to any Letter of Credit, the "International Standby Practices 1998" published in the International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the time of issuance).

"Issuer Documents" means with respect to any Letter of Credit, the Letter of Credit Application and any other document, agreement and instrument (other than this Agreement or any other Loan Document) entered into by the applicable L/C Issuer and the Borrower (or any Subsidiary of the Borrower that is a co-applicant in respect thereof) or in favor of such L/C Issuer and relating to such Letter of Credit.

"JPMCB" means JPMorgan Chase Bank, N.A. and its successors.

"Judgment Currency" has the meaning specified in Section 11.17.

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

"L/C Advance" means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit that has not been reimbursed on the date when made or refinanced as a Committed Borrowing.

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

"L/C Issuer" means (a) JPMCB and (b) any other Lender that agrees to act in such capacity appointed by the Borrower with the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), such appointment evidenced by a written agreement, in form and substance reasonably satisfactory to the Administrative Agent and the Borrower, executed by the Borrower, the Administrative Agent and such appointed Lender. Each L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such L/C Issuer, in which case the term "L/C Issuer" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such L/C Issuer shall, or shall cause such Affiliate to, comply with the requirements of Section 2.04 with respect to such Letters of Credit). Each reference herein to the "L/C Issuer" in connection with a Letter of Credit or other matter shall be deemed to be a reference to the relevant L/C Issuer with respect thereto.

"L/C Obligations" means, as of any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit will be determined in accordance with Section 1.07. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or Rule 3.14 of the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit shall be deemed to be "outstanding" and "undrawn" in the amount so remaining available to be paid, and the obligations of the Borrower and each Lender shall remain in full force and effect until the L/C Issuer and the Lenders shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

"Lender-Related Person" has the meaning specified in Section 11.04(d).

"Lenders" means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption or an Incremental Joinder Agreement, other than any such Person that shall have ceased to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term "Lenders" includes the L/C Issuers.

"Lending Office" means, as to any Lender, the office or branch of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or branch as such Lender may from time to time notify to the Borrower, and the Administrative Agent.

"Letter of Credit" means any letter of credit issued or deemed to have been issued hereunder, including each Existing Letter of Credit.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable L/C Issuer and provided to the Borrower upon its request for such issuance or amendment of such Letter of Credit.

"Letter of Credit Commitment" means, with respect to any L/C Issuer, the maximum permitted Outstanding Amount of the L/C Obligations that may be attributable to Letters of Credit issued by such L/C Issuer. The initial amount of each L/C Issuer's Letter of Credit Commitment is set forth on Schedule 2.04(a) or, in the case of any L/C Issuer that becomes an L/C Issuer pursuant to clause (d) of the definition of such term, in the agreement referred to in such clause. The Letter of Credit Commitment of any L/C Issuer may be increased or reduced from time to time by a written agreement between such L/C Issuer and the Borrower; provided that a copy of such written agreement shall have been delivered to the Administrative Agent.

"Letter of Credit Expiration Date" means the day that is five (5) Business Days prior to the Maturity Date (or, if such day is not a Business Day, the immediately preceding Business Day).

"Letter of Credit Fee" has the meaning specified in Section 2.04(h).

"Letter of Credit Sublimit" means an amount equal to the lesser of $25,000,000 and the Aggregate Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Commitments.

"Liabilities" means any losses, claims (including intraparty claims), demands, damages or liabilities of any kind.

"LIBO Rate" means, with respect to any Eurocurrency Rate Borrowing denominated in US Dollars for any Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an "Impacted Interest Period") then the LIBO Rate shall be the Interpolated Rate.

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

"LIBOR" has the meaning assigned to such term in Section 1.09.

"Lien" means any mortgage, pledge, hypothecation, encumbrance, lien (statutory or other), charge or other security interest or preferential arrangement in the nature of a security interest of any kind (including any conditional sale or other title retention agreement, any easement and right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing); provided that in no event shall an operating lease be deemed to be a Lien.

"Limited Condition Transaction" means any investment or Acquisition (whether by merger, amalgamation, consolidation or other business combination or the acquisition of Equity Interests or otherwise), whose consummation is not conditioned on the availability of, or on obtaining, third party financing.

"Loan" means a Committed Loan or a Bid Loan, as the context may require.

"Loan Documents" means this Agreement, each Incremental Joinder Agreement, each Guarantor Counterpart and, other than for purposes of Section 11.01, each agreement referred to in the definition of "L/C Issuer" pursuant to which any Lender becomes an L/C Issuer hereunder, each agreement referred to in the definition of "Letter of Credit Commitment" as to the amount thereof with respect to any L/C Issuer, each Letter of Credit Application and any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.15 and each Note.

"Loan Parties" means, collectively, the Borrower and the Guarantors.

"Local Time" means (a) with respect to a Loan or Borrowing denominated in US Dollars that is a Base Rate Loan or Base Rate Borrowing and with respect to any Letter of Credit, New York City time and (b) with respect to any Loan or Borrowing denominated in US Dollars that is a Eurocurrency Rate Loan or Eurocurrency Rate Borrowing or any Loan or Borrowing denominated in an Alternative Currency or a Discretionary Alternative Currency, London time.

"Major Default" means a Default that has occurred and is continuing under Section 8.01(a), (b), (e), (f), (g), (j) (solely with respect to this Agreement, including Article IX) or (k).

"Material Acquisition" means any Acquisition that involves the payment of non-contingent consideration (including the aggregate principal amount of any Indebtedness that is assumed or refinanced by the Borrower or any Subsidiary concurrent with or following such Acquisition) by the Borrower and its Subsidiaries in excess of $200,000,000 (including the value of any Equity Interests of the Borrower or any of its Subsidiaries used as consideration in such Acquisition). For purposes hereof, any Acquisition that is a Qualified Acquisition shall be deemed to be a Material Acquisition.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the business, results of operations or financial condition of the Borrower and its Subsidiaries taken as a whole, (b) a material adverse effect on the ability of any Loan Party to perform its payment Obligations under any Loan Document to which it is a party, or (c) a material adverse effect on the rights and remedies of the Administrative Agent or any Lender under any Loan Document.

"Material Disposition" means any Disposition (in a single transaction or series of related transactions) of (a) assets comprising all or substantially all of the assets of any Person, or of all or substantially all or any significant portion of a business or operating unit of a business, division, product line (including rights in respect of any drug or other pharmaceutical product) or line of business of any Person or (b) Equity Interests in any Subsidiary if, as a result thereof, such Subsidiary shall cease to be a Subsidiary, in each case, that involves gross proceeds to Borrower and its Subsidiaries (including as proceeds the aggregate principal amount of any Indebtedness that is assumed by the acquiror) in excess of $200,000,000.

"Material Indebtedness" means Indebtedness (other than the Obligations) of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding $75,000,000.

"Material Subsidiary" means (a) the Borrower and each Subsidiary Guarantor and (b) each other Domestic Subsidiary, whether existing as of the Effective Date or formed or acquired thereafter (i) the revenues of which, as of the end of any fiscal quarter, for the period of the four fiscal quarters of the Borrower then most recently ended, were equal to or greater than 10% of the consolidated revenues of the Borrower and its Subsidiaries for such period or (ii) the consolidated assets of which, as of the end of any fiscal quarter, were equal to or greater than 10% of the Consolidated Total Assets of the Borrower and its Subsidiaries, in each case, as reflected on the most recent annual or quarterly consolidated financial statements of the Borrower and its Subsidiaries.

"Maturity Date" means the third anniversary of the Effective Date; provided, however, that, if such date is not a Business Day, the Maturity Date shall be the immediately preceding Business Day.

"Maximum Rate" has the meaning assigned to it in Section 11.09.

"Milestone Payments" means payments made under contractual arrangements arising in connection with any acquisition (or licensing) of assets (including rights in respect of any drug candidate, drug or other pharmaceutical product) or Equity Interests by the Borrower or any Subsidiary to the sellers (or licensors) of such assets (including rights in respect of any drug candidate, drug or other pharmaceutical product) or Equity Interests acquired (or licensed) under such contractual arrangements based on the achievement of specified revenue, profit or other performance targets (financial or otherwise).

"MNPI" means material non-public information (within the meaning of the United States federal or state securities Laws or the securities Laws of other applicable jurisdictions) with respect to Borrower or its Subsidiaries, or the respective securities of any of the foregoing.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA that is subject to Title IV of ERISA and to which Borrower or any ERISA Affiliate makes or is obligated to make contributions.

"Net Worth" means, as at any time, (a) the Consolidated Total Assets at such time less (b) all liabilities of the Borrower and its Subsidiaries at such time, calculated in accordance with GAAP on a consolidated basis.

"Non-Extension Notice Date" has the meaning specified in Section 2.04(b)(iii).

"Non-Qualifying Lender" means a Lender that is (a) not a U.S. citizen, (b) not a "resident of a member State of the European Union", (c) a Disqualified Competitor or (d) a Defaulting Lender. For the avoidance of doubt, any Lender that is a U.S. corporation that is publicly traded, or is a Subsidiary of a publicly traded U.S. corporation, shall not be treated as a Non-Qualifying Lender.

"Note" means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender to the Borrower, substantially in the form of Exhibit E.

"NYFRB" means the Federal Reserve Bank of New York.

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

"NYFRB's Website" means the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

"Obligations" means (a) the due and punctual payment by the Borrower of (i) the principal of and interest (including interest accruing during the pendency of any proceeding under any Debtor Relief Laws, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by the Borrower in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements and interest thereon, and (iii) all other monetary obligations of the Borrower under this Agreement and each of the other Loan Documents, including obligations to pay fees, expense reimbursement obligations and indemnification obligations, whether primary, secondary, direct, indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising (including monetary obligations incurred during the pendency of any proceeding under any Debtor Relief Laws, regardless of whether allowed or allowable in such proceeding) and obligations to provide Cash Collateral with respect to Letters of Credit and (b) all other debts, liabilities, obligations, covenants and duties of any Loan Party arising under this Agreement or any other Loan Document, whether primary, secondary, direct, indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising (including all such debts, liabilities, obligations, covenants

and duties incurred during the pendency of any proceeding under any Debtor Relief Laws, regardless of whether allowed or allowable in such proceeding).

"Obligations Guarantee" means the Guarantee of the Guarantors contained in Article IX.

"OFAC" means the Office of Foreign Assets Control of the U.S. Department of Treasury.

"Organization Documents" means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws, (b) with respect to any limited liability company, the certificate or articles of formation, association or organization (or analogous constitutional documents) and operating agreement, and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Connection Taxes" means, with respect to any recipient, Taxes imposed by any jurisdiction with which such recipient has a present or former connection (other than on account of the execution, delivery, performance, filing, recording and enforcement of, and the other activities contemplated in, this Agreement).

"Other Taxes" means all present or future stamp or documentary Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery, registration, performance or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than pursuant to an assignment request by the Borrower under Section 11.13).

"Outstanding Amount" means (a) with respect to Committed Loans on any date, the sum of the US Dollar Equivalents of the outstanding principal amounts thereof after giving effect to any borrowings and prepayments or repayments of such Committed Loans occurring on such date, (b) with respect to Bid Loans on any date, the sum of the US Dollar Equivalents of the outstanding principal amounts thereof after giving effect to any borrowings and prepayments or repayments of such Bid Loans occurring on such date, and (c) with respect to any L/C Obligations on any date, the sum of the US Dollar Equivalents of the outstanding amounts of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

"Overnight Bank Funding Rate" means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.–managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on the NYFRB's Website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate; provided that

if such rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Overnight Rate" means, for any day, (a) with respect to any amount denominated in US Dollars, the NYFRB Rate, and (b) with respect to any amount denominated in an Alternative Currency or a Discretionary Alternative Currency, an overnight rate reasonably determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation.

"Participant" has the meaning specified in Section 11.06(e).

"Participant Register" has the meaning specified in Section 11.06(e).

"Patriot Act" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"Payment" has the meaning specified in Section 11.21.

"Payment Notice" has the meaning specified in Section 11.21.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"Pension Plan" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Borrower or any ERISA Affiliate or to which Borrower or any ERISA Affiliate has an obligation to contribute.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes that have not yet been paid (to the extent such non-payment does not violate Section 6.03) or that are being contested in compliance with Section 6.03 and Liens for unpaid utility charges;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's, supplier's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than sixty (60) days or are being contested in compliance with Section 6.03;

(c) pledges and deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security or retirement benefits laws, to secure liability to insurance carriers under insurance of self-insurance arrangements or regulations or employment laws or to secure other public, statutory or regulatory regulations;

(d) pledges and deposits to secure the performance of bids, trade contracts, government contracts, leases, statutory obligations, customer deposit and advances, company credit cards, travel cards and other employee credit card programs, surety, customs and appeal bonds, performance and completion bonds and other obligations of a like nature, in each case in the ordinary course of business,

and Liens to secure letters of credit or bank guarantees supporting any of the foregoing;

(e) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 8.01(h) or Liens securing appeal or surety bonds related to such judgments;

(f) easements, zoning restrictions, rights-of-way and similar charges or encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of the Borrower and its Subsidiaries, taken as a whole;

(g) leases, licenses, subleases or sublicenses granted (i) to others not adversely interfering in any material respect with the business of the Borrower and its Subsidiaries as conducted at the time granted, taken as a whole, (ii) between or among any of the Loan Parties or any of their Subsidiaries or (iii) granted to other Persons and permitted under Section 7.04;

(h) Liens in favor of a banking or other financial institution arising as a matter of law or in the ordinary course of business under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of setoff) and that are within the general parameters customary in the banking industry or arising pursuant to such banking institution's general terms and conditions;

(i) Liens on specific items of inventory or other goods (other than fixed or capital assets) and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(j) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business so long as such Liens only cover the related goods;

(k) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(l) any interest or title of a landlord, lessor or sublessor under any lease of real estate or any Lien affecting solely the interest of the landlord, lessor or sublessor;

(m) purported Liens evidenced by the filing of precautionary UCC financing statements or similar filings relating to operating leases of personal

property entered into by the Borrower or any of its Subsidiaries in the ordinary course of business;

(n) any interest or title of a licensor under any license or sublicense entered into by the Borrower or any Subsidiary as a licensee or sublicensee (i) existing on the Effective Date or (ii) in the ordinary course of its business; and

(o) with respect to any real property, immaterial title defects or irregularities that do not, individually or in the aggregate, materially impair the use of such real property; and

(p) non-exclusive licenses of Intellectual Property rights in the ordinary course of business;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

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

"Plan Asset Regulations" means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

"Prepayment Notice" means a notice of a prepayment of any Committed Borrowing pursuant to Section 2.05(a), which shall be substantially in the form of Exhibit F.

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

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Public Lender" has the meaning specified in Section 6.02.

"Qualified Acquisition" means any Acquisition consummated after the Effective Date that (a) involves the payment of non-contingent consideration in excess of $200,000,000 (or any two Acquisitions occurring in the same 12-month period involving the payment of non-contingent consideration in excess of $200,000,000 in the aggregate) and (b) has been designated by the Borrower as a "Qualified Acquisition" by written notice to the Administrative Agent.

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

"QFC Credit Support" has the meaning specified in Section 11.20.

"Register" has the meaning specified in Section 11.06(d).

"Regulation D" means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Related Indemnified Parties" means, with respect to any Indemnitee, (a) any controlling Person or controlled Affiliate of such Indemnitee, (b) the respective directors, officers or employees of such Indemnitee or any of its controlling Persons or controlled Affiliates and (c) the respective Agent of such Indemnitee or any of its controlling Persons or controlled Affiliates, in the case of this clause (c), acting at the instructions of such Indemnitee, controlling Person or such controlled Affiliate; provided that each reference to a controlled Affiliate or controlling Person in this definition pertains to a controlled Affiliate or controlling Person involved in the negotiation of this Agreement or any other Loan Document.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the directors, officers, employees, agent or advisors of such Person and of such Person's Affiliates.

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

"Request for Credit Extension" means (a) with respect to a borrowing, conversion or continuation of Committed Loans, a Committed Loan Notice, (b) with respect to a Bid Loan, a Bid Request and (c) with respect to an L/C Credit Extension, a Letter of Credit Application.

"Required Lenders" means, as of any date of determination, Lenders holding in the aggregate more than 50% of the sum of the aggregate unused Commitments and the aggregate principal amount of the Total Outstandings (excluding any portion thereof attributable to Bid Loans; provided that for purposes of declaring the Loans to be due and payable pursuant to Section 8.02, and for all purposes after the Loans have become due and payable pursuant to Section 8.02 or all the Commitments have expired or terminated, any portion thereof attributable to Bid Loans shall be included) (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations being deemed "held" by such Lender for purposes of this definition); provided that the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender will be excluded for purposes of making a determination of Required Lenders.

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

"Responsible Officer" means, with respect to any Person, the chief executive officer, a director, the chief financial officer, the treasurer, the chief legal officer, the chief accounting officer, any vice president or any other duly authorized signatory of such Person (or, in the case of any Person that is partnership, of the general partner of such Person);

provided that, when such term is used in reference to any document executed by, or certification of, a Responsible Officer, the secretary or assistant secretary or other duly authorized signatory of such Person shall have delivered an incumbency certificate to the Administrative Agent as to the authority of such individual. Any document delivered hereunder that is signed by a Responsible Officer of any Loan Party will be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party, and such Responsible Officer will be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash, securities 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 in the Borrower or any Subsidiary or any option or warrant to acquire any such Equity Interests in the Borrower or any Subsidiary.

"Reuters" means, as applicable, Thomson Reuters Corp., Refinitiv, or any successor thereto.

"Revaluation Date" means (a) with respect to any Loan denominated in any Alternative Currency, each of the following: (i) the date of the Borrowing of such Loan and (ii) with respect to any Eurocurrency Rate Loan, each date of a conversion into or continuation of such Loan pursuant to the terms of this Agreement; (b) with respect to any Letter of Credit denominated in an Alternative Currency, each of the following: (i) the date on which such Letter of Credit is issued, (ii) the first Business Day of each calendar month and (iii) the date of any amendment of such Letter of Credit that has the effect of increasing the face amount thereof; and (c) any additional date as the Administrative Agent may determine at any time when an Event of Default exists.

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

"Sanctioned Country" means, at any time, a country, region or territory that is the subject or target of any Sanctions that broadly prohibit dealings with that country, region or territory.

"Sanctioned Person" means, at any time, (a) any Person whose name appears on the list of Specially Designated Nationals and Blocked Persons or on any other similar list of designated Persons published by OFAC, the United States Department of State, the United States Department of the Treasury or the United States Department of Commerce, (b) any

Person listed in any Sanctions-related list of designated Persons maintained by Her Majesty's Treasury of the United Kingdom, the European Union or any EU member state, (c) any Person located, organized or resident in a Sanctioned Country, (d) any Person subject to Sanctions by reason of a relationship of ownership or control with any such Person or Persons identified in clauses (a) or (b) above or (e) any Person otherwise the subject of Sanctions.

"Sanctions" means any economic or financial sanctions or trade embargoes administered or enforced by the United States federal government (including OFAC, the United States Department of State, the United States Department of the Treasury and the United States Department of Commerce), Her Majesty's Treasury of the United Kingdom, the European Union or any EU member state in which the Borrower or a Subsidiary is organized or operates.

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

"SEC Documents" means all reports, schedules, forms, proxy statements, prospectuses (including prospectus supplements), registration statements and other information filed by the Borrower with the SEC or furnished by the Borrower to the SEC pursuant to the Securities Exchange Act.

"Securities Act" means the Securities Act of 1933.

"Securities Exchange Act" means the Securities Exchange Act of 1934.

"Special Notice Currency" means, at any time, an Alternative Currency or a Discretionary Alternative Currency that is not the currency of a country that is a member of the Organization for Economic Cooperation and Development at such time located in North America or Europe.

"Specified Time" means, with respect to any Eurocurrency Rate Borrowing, 11:00 a.m., London time.

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

"Subsidiary" means, with respect to any Person, a corporation, partnership, joint venture, limited liability company or other business entity (a) of which a majority of the

Equity Interests having ordinary voting power for the election of directors or other governing body (other than Equity Interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or (b) that is, at the time any determination is made, otherwise Controlled, by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" will refer to a Subsidiary or Subsidiaries of the Borrower.

"Subsidiary Guarantor" means (a) Incyte Holdings Corporation and (b) each other Subsidiary of the Borrower that, after the Effective Date, becomes a party to this Agreement as a "Guarantor", either pursuant to Section 7.03 or Section 9.11.

"Supported QFC" has the meaning specified in Section 11.20.

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

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

"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.

"Total Outstandings" means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

"Trade Date" has the meaning specified in Section 11.06(h)(i).

"Type" means (a) with respect to a Committed Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan, and (b) with respect to a Bid Loan, its character as an Absolute Rate Loan.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

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

"UK Financial Institution" 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.

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

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning specified in Section 2.04(c)(ii).

"Unused Commitment Fees" has the meaning specified in Section 2.09(a).

"US Dollar" and "$" mean lawful money of the United States.

"US Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in US Dollars, such amount and (b) with respect to any amount denominated in any Alternative Currency or any Discretionary Alternative Currency, the equivalent amount thereof in US Dollars as determined by the Administrative Agent pursuant to Section 1.04 on the basis of the Exchange Rate (determined as of the most recent applicable Revaluation Date) with respect to such Alternative Currency or such Discretionary Alternative Currency in effect for such amount on such date.

"US Person" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regime" has the meaning specified in Section 11.20.

"Voidable Transfer" has the meaning specified in Section 9.10.

"Wholly Owned Subsidiary" means, with respect to any Person, a Subsidiary of such Person all the Equity Interests of which (except for directors' qualifying shares and other

nominal amounts of Equity Interests that are required to be held by other Persons under applicable Law) are, at the time any determination is being made, owned, Controlled or held by such Person and/or one or more Wholly Owned Subsidiaries of such Person.

"Withholding Agent" means any Loan Party or 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.

SECTION 1.02. Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

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

(b) In the computation of periods of time from a specified date to a later

specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including".

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

SECTION 1.03. Accounting Terms. (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP; provided that, notwithstanding anything in this Agreement or any other Loan Document to the contrary, (i) for purposes of determining compliance with any covenant (including the computation of any financial covenant, but excluding compliance with Section 6.01) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 shall be disregarded and (ii) treatment of operating leases shall be subject to the proviso set forth in the definition of "Capital Lease Obligations".

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Pro Forma Calculations. All pro forma computations required to be made hereunder giving effect to any Material Acquisition or Material Disposition shall be calculated after giving pro forma effect thereto (and to any other such transaction consummated since the first day of the period for which such pro forma computation is being made and on or prior to the date of such computation) as if such transaction had occurred on the first day of the period of four consecutive fiscal quarters ending with the most recent fiscal quarter of the Borrower for which financial statements shall have been delivered pursuant to Section 6.01(a) or 6.01(b) (or, prior to the first such delivery, ending with the most recent fiscal quarter referred to in Section 5.05(a)), and, to the extent applicable, the historical earnings and cash flows associated with the assets acquired or disposed of, any related incurrence or reduction of Indebtedness and, in the case of any Material Acquisition, any related cost savings, operating expense reductions and synergies which (i) are calculated on a basis that is consistent with Article 11 of Regulation S-X under the Securities Act or (ii) are implemented, committed to be implemented, the commencement of implementation of which has begun or is reasonably expected to be implemented in good faith by the business that was the subject of any such Material Acquisition within eighteen (18) months of the date of such Material Acquisition and that

are factually supportable and quantifiable and expected to have a continuing impact, as if, in the case of each of clauses (i) and (ii), all such cost savings, operating expense reductions and synergies had been effected as of the beginning of such period, decreased by any recurring incremental expenses incurred or to be incurred during such period in order to achieve such cost savings, operating expense reductions and synergies. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Swap Contract applicable to such Indebtedness).

SECTION 1.04. Exchange Rates; US Dollar Equivalents. The Administrative Agent will determine, for each Loan or L/C Obligation denominated in an Alternative Currency or a Discretionary Alternative Currency, as of each applicable Revaluation Date, the Exchange Rate to be used for calculating the US Dollar Equivalent amount thereof. Such Exchange Rate shall become effective as of such Revaluation Date and shall be the Exchange Rate employed in determining the US Dollar Equivalent of such Loan or L/C Obligation until the next Revaluation Date to occur in respect of such Loan or L/C Obligation. The Administrative Agent shall notify the Borrower, the Lenders and the applicable L/C Issuer of each determination of the US Dollar Equivalent of each Loan and each L/C Obligation.

SECTION 1.05. Additional Alternative Currencies. (a) The Borrower may from time to time request that Eurocurrency Rate Committed Loans be made and/or Letters of Credit be issued in a currency other US Dollars; provided that such requested currency is freely available, freely transferable and freely convertible into US Dollars; provided further that (i) in the case of any such request with respect to the making of Eurocurrency Rate Committed Loans, such request will be subject to the approval of the Administrative Agent and each Lender and (ii) in the case of any such request with respect to Letters of Credit, such request will be subject to the approval of the Administrative Agent and, as to Letters of Credit to be issued by such L/C Issuer, each L/C Issuer.

(b) Any such request will be made to the Administrative Agent not later than 10:00 a.m., New York City time, twenty (20) Business Days prior to the date of the desired Credit Extension (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the applicable L/C Issuer, in its or their sole discretion). In the case of any such request pertaining to Eurocurrency Rate Committed Loans, the Administrative Agent will promptly notify each Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent will promptly notify each L/C Issuer thereof. Each Lender (in the case of any such request pertaining to Eurocurrency Rate Committed Loans) or each L/C Issuer (in the case of any such request pertaining to Letters of Credit) will notify the Administrative Agent, not later than 10:00 a.m., New York City time, ten (10) Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Eurocurrency Rate Committed Loans or the issuance of Letters of Credit, as the case may be, in such requested currency. Any failure by a Lender or an L/C Issuer to respond to such request within the time period specified in the preceding sentence will be deemed to be a refusal by such Lender or such L/C Issuer, as the case may be, to permit Eurocurrency Rate Committed Loans to be made or Letters of Credit to be issued in such

requested currency. If the Administrative Agent and all the Lenders consent to making Eurocurrency Rate Committed Loans in such requested currency, the Administrative Agent will so notify the Borrower and such currency will thereupon be deemed to be an "Alternative Currency" hereunder for purposes of any Eurocurrency Rate Committed Loans; and if the Administrative Agent and any L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent will so notify the Borrower and such currency will thereupon be deemed for all purposes to be an "Alternative Currency" hereunder for purposes of any Letter of Credit issuances by such L/C Issuer. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.05, the Administrative Agent will promptly so notify the Borrower.

SECTION 1.06. Divisions. 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) if 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) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 1.07. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time will be deemed to be the US Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit will be deemed to be the US Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

SECTION 1.08. Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.09. Interest Rates; LIBOR Notification. The interest rate on Eurodollar Loans is determined by reference to the LIBO Rate, which is derived from the London interbank offered rate ("LIBOR"). LIBOR is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. On March 5, 2021, the U.K. Financial Conduct Authority (the "FCA") publicly announced that: (a) immediately after December 31, 2021, publication of the 1-week and 2-month U.S. Dollar LIBOR settings will permanently cease; (b) immediately after June 30, 2023, publication of the overnight and 12-month U.S. Dollar LIBOR settings will permanently cease; and (c) immediately after June 30, 2023, the 1-month, 3-month and 6-month U.S. Dollar LIBOR settings will cease to be provided or, subject to the FCA's consideration of the case, be provided on a changed methodology (or "synthetic") basis and no longer be representative of the underlying market and economic reality they are

intended to measure and that representativeness will not be restored. There is no assurance that dates announced by the FCA will not change or that the administrator of LIBOR and/or regulators will not take further action that could impact the availability, composition, or characteristics of LIBOR or the currencies and/or tenors for which LIBOR is published. Each party to this agreement should consult its own advisors to stay informed of any such developments. Public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of LIBOR. Upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, Section 2.17(b) and Section 2.17(c) provide a mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Borrower, pursuant to Section 2.17(e), of any change to the reference rate upon which the interest rate on Eurodollar Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to LIBOR or other rates in the definition of "LIBO Rate" or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 2.17(b) or Section 2.17(c), whether upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.17(d)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the LIBO Rate or have the same volume or liquidity as did LIBOR prior to its discontinuance or unavailability. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any rate with respect to Eurodollar Loans, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE II

THE COMMITMENTS AND CREDIT EXTENSIONS

SECTION 2.01. Committed Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a "Committed Loan") to the Borrower in US Dollars or in one or more Alternative Currencies from time to time, on any Business Day during the Availability Period, in an aggregate principal amount that will not result in (a) the Total Outstandings exceeding the Aggregate Commitments, (b) the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations exceeding such Lender's Commitment or (c) the aggregate Outstanding Amount of all Committed Loans, all Bid Loans and all L/C Obligations denominated in Alternative Currencies or Discretionary Alternative Currencies exceeding the Alternative Currency Sublimit. Within the limits of each Lender's Commitment, and subject to the

other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Committed Loans denominated in US Dollars may be Base Rate Loans or Eurocurrency Rate Loans, and Committed Loans denominated in any Alternative Currency may only be Eurocurrency Rate Loans, all as further provided herein.

SECTION 2.02. Borrowings, Conversions and Continuations of Committed Loans. (a) Each Committed Borrowing, each conversion of any Committed Borrowing denominated in US Dollars from one Type to the other, and each continuation of any Eurocurrency Rate Committed Borrowing will be made upon the Borrower's notice to the Administrative Agent, which must be given by hand delivery, fax or e-mail to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower; provided that, subject to Section 3.05, a Committed Loan Notice requesting a borrowing of Committed Loans may state that it is conditioned upon the occurrence of one or more events specified therein, in which case such Committed Loan Notice may be revoked by the Borrower (by notice to the Administrative Agent prior to the time specified herein for the funding by the Lenders of the applicable Committed Borrowing) if such condition is not satisfied. Each such written Committed Loan Notice must be received by the Administrative Agent (i) not later than 12:00 noon, Local Time, three (3) Business Days prior to the requested date of any Committed Borrowing of, or conversion to or continuation of, Eurocurrency Rate Committed Loans denominated in US Dollars, (ii) not later than 12:00 noon, Local Time, four (4) Business Days (or five (5) Business Days in the case of a Special Notice Currency) prior to the requested date of any Committed Borrowing of, or conversion to or continuation of, Eurocurrency Rate Committed Loans denominated in any Alternative Currency, and (iii) not later than 1:00 p.m., Local Time, on the requested date of any Borrowing of, or conversion to, Base Rate Committed Loans; provided that if the Borrower wishes to request Eurocurrency Rate Committed Borrowing having an Interest Period other than one, two, three or six months in duration as provided in the definition of "Interest Period", the applicable notice must be received by the Administrative Agent not later than 12:00 noon, Local Time, (A) four (4) Business Days prior to the requested date of such Committed Borrowing of, conversion to or continuation of, Eurocurrency Rate Committed Loans denominated in US Dollars, or (B) five (5) Business Days (or six (6) Business Days in the case of a Special Notice Currency) prior to the requested date of such Committed Borrowing, or conversion to or continuation of, Eurocurrency Rate Committed Loans denominated in any Alternative Currency, whereupon the Administrative Agent will give prompt notice to the Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 12:00 noon, Local Time, (x) three (3) Business Days before the requested date of such Committed Borrowing of, or conversion to or continuation of, Eurocurrency Rate Committed Loans denominated in US Dollars, or (y) four (4) Business Days (or five (5) Business Days in the case of a Special Notice Currency) prior to the requested date of such Committed Borrowing of, or conversion to or continuation of, Eurocurrency Rate Committed Loans denominated in any Alternative Currency, the Administrative Agent will notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders.

Each Committed Loan shall be made as part of a Committed Borrowing consisting of Committed Loans of the same Type and in the same currency made by the Lenders ratably in accordance with their respective Commitments. Each Committed Borrowing initially shall be of the Type specified in the applicable Committed Loan Notice and, in the case of a Eurocurrency Rate Committed Borrowing, each Committed Borrowing shall have an initial Interest Period as specified in such applicable Committed Loan Notice or as otherwise provided in this Section 2.02. Thereafter, the Borrower may elect to convert such Committed Borrowing denominated in US Dollars to a Committed Borrowing of a different Type or to continue such Eurocurrency Rate Committed Borrowing and, in the case of a Eurocurrency Rate Committed Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.02. The Borrower may elect different conversion or continuation options with respect to different portions of the affected Committed Borrowing (and all references herein to conversion or continuation of a Committed Borrowing shall be understood to include any such election of different options with respect thereto), in which case each such portion shall be allocated ratably among the Lenders holding the Committed Loans comprising such Committed Borrowing, and the Committed Loans comprising each such portion shall be considered a separate Committed Borrowing.

At the commencement of each Interest Period for any Eurocurrency Rate Committed Borrowing, such Committed Borrowing shall be in a principal amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum; provided that a Eurocurrency Rate Committed Borrowing that results from a continuation of an outstanding Eurocurrency Rate Committed Borrowing may be in an aggregate amount that is equal to such outstanding Borrowing. At the time that each Base Rate Committed Borrowing is made, such Committed Borrowing shall be in a principal amount that is an integral multiple of the Borrowing Multiple; provided that a Base Rate Committed Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Aggregate Commitments.

Each Committed Loan Notice will specify (i) whether the Borrower is requesting a Committed Borrowing, a conversion of any Committed Borrowing denominated in US Dollars from one Type to the other, or a continuation of any Eurocurrency Rate Committed Borrowing, (ii) the requested date of such Committed Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the aggregate principal amount and currency of Committed Loans to be borrowed or the existing Committed Borrowing that is to be converted or continued (and, if different conversion or continuation options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Committed Borrowing), (iv) the Type of each requested resulting Committed Borrowing, (v) the duration of the Interest Period with respect to each requested resulting Eurocurrency Rate Committed Borrowing and (vi) if applicable, the location and number of the account to which funds are to be disbursed (which shall be an account of the Borrower or another account reasonably acceptable to the Administrative Agent and shall be located in New York City or another jurisdiction reasonably acceptable to the Administrative Agent). If the Borrower fails to specify a currency in a Committed Loan Notice requesting a Committed Borrowing, then the Committed Loans so requested will be made in US Dollars. If the Borrower fails to specify a Type of the requested Committed Loans denominated in US Dollars in a Committed Loan Notice, then the applicable Committed Loans will be made as Base Rate Loans. If the

Borrower fails to give timely notice requesting a conversion or continuation of any Eurocurrency Rate Committed Borrowing, such Eurocurrency Rate Committed Borrowing will be continued with an Interest Period of one month and in its original currency. If the Borrower requests a Committed Borrowing of, or conversion to or continuation of, Eurocurrency Rate Committed Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. No Committed Loan may be converted into or continued as a Committed Loan denominated in a different currency, but instead must be prepaid in the original currency of such Committed Loan and reborrowed in the other currency.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent will promptly notify each Lender of the details thereof and of the amount (and currency) of its Applicable Percentage of each resulting Committed Borrowing. In the case of a Committed Loan Notice requesting the making of a Committed Borrowing, each Lender will make the amount of its Committed Loan to be made as part of such Committed Borrowing available to the Administrative Agent, in Same Day Funds for the applicable currency by wire transfer to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders, not later than 1:00 p.m., Local Time (2:00 p.m., Local Time, in the case of any Base Rate Committed Loan), in the case of any Committed Loan denominated in US Dollars, and not later than the Applicable Time in the case of any Committed Loan denominated in an Alternative Currency, in each case on the date of such Committed Borrowing specified in the applicable Committed Loan Notice. The Administrative Agent will make such Committed Loans available to the Borrower by remitting the amounts so received, in Same Day Funds for the applicable currency by wire transfer to the account of the Borrower specified in the applicable Committed Loan Notice, not later than 2:00 p.m., Local Time (3:00 p.m., Local Time, in the case of any Base Rate Committed Borrowing), on the same Business Day such funds are so received by the Administrative Agent.

(c) Notwithstanding anything in this Agreement to the contrary, during the existence of an Event of Default, (i) no Committed Borrowing denominated in US Dollars may be converted to or continued as Eurocurrency Rate Committed Borrowing and (ii) no Eurocurrency Rate Committed Borrowing denominated in an Alternative Currency may be converted to or continued as a Committed Borrowing with an Interest Period of other than one month's duration, in each case, without the consent of the Required Lenders.

(d) The applicable Base Rate or Eurocurrency Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error. The Administrative Agent will notify the Borrower and the Lenders of the Eurocurrency Rate applicable to any Eurocurrency Rate Committed Borrowing for any Interest Period promptly upon determination thereof. At any time that Base Rate Committed Loans are outstanding, the Administrative Agent will notify the Borrower and the Lenders of any change in the Prime Rate used in determining the Base Rate promptly following the public announcement of such change.

(e) Notwithstanding anything in this Agreement to the contrary, after giving effect to all Committed Borrowings, all conversions of Committed Borrowings denominated in US Dollars from one Type to the other, and all continuations of

Eurocurrency Rate Committed Borrowings, there will not be more than ten (10) Interest Periods (or such greater number as may be agreed to by the Administrative Agent) in effect with respect to Eurocurrency Rate Committed Loans.

SECTION 2.03. Bid Loans. (a) General. Subject to the terms and conditions set forth herein, each Lender agrees that the Borrower may from time to time request the Lenders to submit offers to make loans in a Discretionary Alternative Currency (each such loan, a "Bid Loan") to the Borrower prior to the Maturity Date pursuant to this Section 2.03; provided, however, that after giving effect to any Bid Borrowing, (i) the Total Outstandings shall not exceed the Aggregate Commitments and (ii) the aggregate Outstanding Amount of all Bid Loans, all Committed Loans and all L/C Obligations denominated in Alternative Currencies or Discretionary Alternative Currencies shall not exceed the Alternative Currency Sublimit. There shall not be more than ten (10) different Interest Periods in effect with respect to Bid Loans at any time.

(b) Requesting Competitive Bids. The Borrower may request the submission of Competitive Bids by hand delivery, fax or e-mail of a Bid Request, appropriately completed and signed by a Responsible Officer of the Borrower, to the Administrative Agent not later than 12:00 noon, Local Time, five (5) Business Days prior to the requested date of any Bid Borrowing (or six (6) Business Days in the case of any Special Notice Currency). Each Bid Request shall specify (i) the requested date of the Bid Borrowing (which shall be a Business Day), (ii) the aggregate principal amount of Bid Loans requested (which shall be an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum), (iii) the Type and currency of Bid Loans requested, (iv) the duration of the Interest Period with respect thereto and (v) the requested Discretionary Alternative Currency. No Bid Request shall contain a request for (A) more than one Type or currency of Bid Loan or (B) Bid Loans having more than three different Interest Periods. Bid Loans may only be Absolute Rate Loans. Unless the Administrative Agent otherwise agrees in its sole discretion, the Borrower may not submit a Bid Request if it has submitted another Bid Request within the prior 30 days.

(c) Submitting Competitive Bids. (i) The Administrative Agent shall promptly notify each Lender of each Bid Request received by it from the Borrower and the contents of such Bid Request.

(i) Each Lender may (but shall have no obligation to) submit a Competitive Bid containing an offer to make one or more Bid Loans in response to such Bid Request. Such Competitive Bid must be delivered to the Administrative Agent not later than 11:30 a.m., Local Time, four (4) Business Days prior to the requested date of any Bid Borrowing (or five (5) Business Days in the case of any Special Notice Currency); provided, however, that any Competitive Bid submitted by JPMCB in its capacity as a Lender in response to any Bid Request must be submitted to the Administrative Agent not later than 11:15 a.m., Local Time, on the date on which Competitive Bids are required to be delivered by the other Lenders in response to such Bid Request. Each Competitive Bid shall specify (A) the proposed date of the Bid Borrowing, (B) the principal amount of each Bid Loan for which such Competitive Bid is being made, which principal amount (x) may be equal to, greater than or less than the Commitment of the bidding Lender, (y) must

be an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum and (z) may not exceed the principal amount of Bid Loans for which Competitive Bids were requested, (C) the Absolute Rate offered for each such Bid Loan and the Interest Period applicable thereto, (D) that such bidding Lender may advance the Bid Borrowing in the proposed Discretionary Alternative Currency and (E) the identity of the bidding Lender.

(ii) Any Competitive Bid shall be disregarded if it (A) is received after the applicable time specified in clause (ii) above, (B) is not substantially in the form of a Competitive Bid as specified herein, (C) contains qualifying, conditional or similar language, (D) proposes terms other than or in addition to those set forth in the applicable Bid Request or (E) is otherwise not responsive to such Bid Request. Any Lender may correct a Competitive Bid containing a manifest error by submitting a corrected Competitive Bid (identified as such) not later than the applicable time required for submission of Competitive Bids. Any such submission of a corrected Competitive Bid shall constitute a revocation of the Competitive Bid that contained the manifest error. The Administrative Agent may, but shall not be required to, notify any Lender of any manifest error it detects in such Lender's Competitive Bid.

(iii) Subject only to the provisions of Sections 3.02, 3.03 and 4.02 and clause (iii) above, each Competitive Bid shall be irrevocable.

(d) Notice to the Borrower of Competitive Bids. Not later than 12:00 noon, Local Time, four (4) Business Days prior to the requested date of any Bid Borrowing (or five (5) Business Days in the case of any Special Notice Currency), the Administrative Agent shall notify the Borrower of the identity of each Lender that has submitted a Competitive Bid that complies with Section 2.03(c) and of the terms of the offers contained in each such Competitive Bid.

(e) Acceptance of Competitive Bids. Not later than 12:30 p.m., Local Time, four (4) Business Days prior to the requested date of any Bid Borrowing (or five (5) Business Days in the case of any Special Notice Currency), the Borrower shall notify the Administrative Agent of its acceptance or rejection of the offers notified to it pursuant to Section 2.03(d). The Borrower shall be under no obligation to accept any Competitive Bid and may choose to reject all Competitive Bids. In the case of acceptance, such notice shall specify the aggregate principal amount of Competitive Bids for each Interest Period that is accepted. The Borrower may accept any Competitive Bid in whole or in part; provided that:

(i) the aggregate principal amount of each Bid Borrowing may not exceed the applicable amount set forth in the related Bid Request;

(ii) the principal amount of each Bid Loan must be an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum;

(iii) the acceptance of offers may be made only on the basis of ascending Absolute Rates within each Interest Period; and

(iv) the Borrower may not accept any offer that is described in Section 2.03(c)(iii) or that otherwise fails to comply with the requirements hereof.

(f) Procedure for Identical Bids. If two or more Lenders have submitted Competitive Bids at the same Absolute Rate for the same Interest Period, and the result of accepting all of such Competitive Bids in whole (together with any other Competitive Bids at lower Absolute Rates accepted for such Interest Period in conformity with the requirements of Section 2.03(e)(iii)) would be to cause the aggregate outstanding principal amount of the applicable Bid Borrowing to exceed the amount specified therefor in the related Bid Request, then, unless otherwise agreed by the Borrower, the Administrative Agent and such Lenders, such Competitive Bids shall be accepted as nearly as possible in proportion to the amount offered by each such Lender in respect of such Interest Period, with such accepted amounts being rounded to the nearest whole multiple of the Borrowing Multiple.

(g) Notice to Lenders of Acceptance or Rejection of Bids. The Administrative Agent shall promptly notify each Lender having submitted a Competitive Bid whether or not its offer has been accepted and, if its offer has been accepted, of the amount of the Bid Loan or Bid Loans to be made by it on the date of the applicable Bid Borrowing. Any Competitive Bid or portion thereof that is not accepted by the Borrower by the applicable time specified in Section 2.03(e) shall be deemed rejected.

(h) [Intentionally Omitted].

(i) Funding of Bid Loans. Each Lender that has received notice pursuant to Section 2.03(g) that all or a portion of its Competitive Bid has been accepted by the Borrower shall make the amount of its Bid Loan(s) available to the Administrative Agent in Same Day Funds for the applicable Discretionary Alternative Currency by wire transfer to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders, not later than 2:00 p.m., Local Time, on the date of the requested Bid Borrowing. The Administrative Agent shall make all funds so received available to the Borrower in Same Day Funds for the applicable Discretionary Alternative Currency by wire transfer to the account of the Borrower specified by it to the Administrative Agent (which account shall be located in a jurisdiction reasonably acceptable to the Administrative Agent) not later than 3:00 p.m., Local Time, on the date of the requested Bid Borrowing.

(j) Notice of Range of Bids. After each Competitive Bid auction pursuant to this Section 2.03, the Administrative Agent shall notify each Lender that submitted a Competitive Bid in such auction of the ranges of bids submitted (without the bidder's name) and accepted for each Bid Loan and the aggregate amount of each Bid Borrowing.

SECTION 2.04. Letters of Credit. (a) The Letter of Credit Commitment. (i) Subject to the terms and conditions set forth herein, each L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.04, (1) from time to time on any Business Day during the period from the Effective Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in US Dollars or in one or more Alternative Currencies (but in the case of any Alternative Currency, only if such Alternative Currency shall have been approved by such L/C Issuer as provided in Section

1.05) for the account of the Borrower or, so long as the Borrower is a joint and several co-applicant with respect thereto, any other Subsidiary of the Borrower, and to amend Letters of Credit previously issued by it, in accordance with Section 2.04(b), and (2) to honor complying drawings under the Letters of Credit; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (A) the Total Outstandings shall not exceed the Aggregate Commitments, (B) the aggregate Outstanding Amount of all Bid Loans, all Committed Loans and all L/C Obligations denominated in Alternative Currencies or Discretionary Alternative Currencies shall not exceed the Alternative Currency Sublimit, (C) the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Lender's Commitment, (D) the Outstanding Amount of the L/C Obligations attributable to Letters of Credit issued by any L/C Issuer will not exceed the Letter of Credit Commitment of such L/C Issuer and (E) the Outstanding Amount of the L/C Obligations shall not exceed the total Letter of Credit Commitments. Each request by the Borrower for any L/C Credit Extension will be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the ability to obtain Letters of Credit will be fully revolving, and accordingly, during the foregoing period, Letters of Credit may be obtained to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Effective Date shall be subject to and governed by the terms and conditions hereof.

(ii) No L/C Issuer will issue any Letter of Credit (other than an Existing Letter of Credit) if:

(A) subject to Section 2.04(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension thereof, unless the Required Lenders have approved such expiry date, such Letter of Credit is Cash Collateralized or a back-stop letter of credit issued by a bank or financial institution reasonably acceptable to the Administrative Agent and the applicable L/C Issuer is provided therefor; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date.

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

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the

issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate one or more policies of such L/C Issuer applicable to letters of credit issued to customers of such L/C Issuer that are similarly situated to the Borrower;

(C) except as otherwise agreed by the Administrative Agent and such

L/C Issuer, the Letter of Credit is in an initial stated amount the US Dollar Equivalent of which is less than $100,000, in the case of a commercial Letter of Credit, or $250,000, in the case of a standby Letter of Credit;

(D) such Letter of Credit is to be denominated in a currency other than US Dollars or an Alternative Currency that has been approved by such L/C Issuer as provided in Section 1.05;

(E) such L/C Issuer does not as of the issuance date of such requested Letter of Credit issue Letters of Credit in the requested currency; provided that such currency is not US Dollars;

(F) any Lender is at that time a Defaulting Lender, unless such L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, reasonably satisfactory to such L/C Issuer (in its sole discretion) with the Borrower or such Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to such Defaulting Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Obligations as to which such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(G) such Letter of Credit is not of the type approved for issuance by such L/C Issuer (with each L/C Issuer acknowledging that standby Letters of Credit are of the type approved for issuance by such L/C Issuer).

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

(v) No L/C Issuer will be under any obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary

of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

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

(b) Procedures for Issuance and Amendment of Letters of Credit; AutoExtension Letters of Credit; Expiration Date. (i) Each Letter of Credit will be issued or amended, as the case may be, upon the request of the Borrower delivered to the applicable L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower and, if applicable, any Subsidiary of the Borrower that is a co-applicant with respect thereto. In the event of an inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Application, the terms and conditions of this Agreement shall control. Such Letter of Credit Application must be received by hand delivery, e-mail or fax by the applicable L/C Issuer and the Administrative Agent not later than 3:00 p.m., Local Time, at least two (2) Business Days (or such later date and time as the Administrative Agent and the applicable L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day), (B) the amount and currency (which shall be US Dollars or, subject to Section 2.04(a)(iii)(D), an Alternative Currency) thereof, (C) the expiry date thereof, (D) the name and address of the beneficiary thereof, (E) the documents to be presented by such beneficiary in case of any drawing thereunder, (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder, (G) the purpose and nature of the requested Letter of Credit and (H) such other matters as the applicable L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer (A) the Letter of Credit to be amended, (B) the proposed date of amendment thereof (which shall be a Business Day), (C) the nature of the proposed amendment and (D) such other matters as the applicable L/C Issuer may require. Additionally, the Borrower will furnish to the applicable L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the applicable L/C Issuer or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable L/C Issuer will confirm with the Administrative Agent (by telephone or in writing by hand delivery, fax or e-mail) that the Administrative Agent has

received a copy of such Letter of Credit Application from the Borrower and, if not, the applicable L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the applicable L/C Issuer has received written notice from the Required Lenders, the Administrative Agent or the Borrower, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Section 4.02 will not then be satisfied (or waived), then, subject to the terms and conditions hereof, the applicable L/C Issuer will, on the requested date, issue a Letter of Credit for the account of the Borrower and, if applicable, any Subsidiary of the Borrower that is a co-applicant with respect thereto, or enter into the applicable amendment, as the case may be, in each case in accordance with the applicable L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without further action on the part of the applicable L/C Issuer or the Lenders, the applicable L/C Issuer hereby grants to each Lender, and each Lender hereby irrevocably and unconditionally acquires from the applicable L/C Issuer, a risk participation in such Letter of Credit in an amount equal to such Lender's Applicable Percentage of the amount available to be drawn under such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the applicable L/C Issuer shall issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the applicable L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower will not be required to make a specific request to the applicable L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders will be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the applicable L/C Issuer will not permit any such extension if (A) the applicable L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.04(a) or otherwise), or (B) it has received written notice (by hand delivery, fax or e-mail) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Lenders have elected not to permit such extension or (2) from the Administrative Agent, the Required Lenders or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied (or waived), and in each such case directing the applicable L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary

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

(c) Drawings and Reimbursements; Funding of Participations. (i) On the Effective Date and without further action by any party hereto, each L/C Issuer shall be deemed to have granted to each Lender, and each Lender shall be deemed to have acquired from each L/C Issuer, a participation in each Existing Letter of Credit equal to such Lender's Applicable Percentage of (A) the aggregate amount available to be drawn thereunder and (B) the aggregate unpaid amount of any outstanding reimbursement obligations in respect thereof. Such participations shall be on all the same terms and conditions as participations otherwise granted under this Section 2.04(c).

(ii) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable L/C Issuer will notify the Borrower and the Administrative Agent promptly thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the Borrower will reimburse the applicable L/C Issuer in such Alternative Currency, unless (A) such L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in US Dollars, or (B) in the absence of any such requirement for reimbursement in US Dollars, the Borrower shall have notified such L/C Issuer promptly following receipt of the notice of drawing that the Borrower will reimburse such L/C Issuer in US Dollars. In the case of any such reimbursement in US Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the applicable L/C Issuer will notify the Borrower of the US Dollar Equivalent (which, solely for such purpose, shall be determined by the applicable L/C Issuer on the basis of the Exchange Rate determined by it as of the date of the applicable drawing) of the amount of the drawing promptly following the determination thereof. Not later than 1:00 p.m., Local Time, on the date of any payment by the applicable L/C Issuer under a Letter of Credit to be reimbursed in US Dollars, or not later than the Applicable Time on the date of any payment by the applicable L/C Issuer under a Letter of Credit to be reimbursed in an Alternative Currency (each such date, an "Honor Date"), the Borrower will reimburse the applicable L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency (or, if notice of payment is delivered to the Borrower after 11:00 a.m., Local Time, on the Honor Date, the next Business Day). If the Borrower fails so to reimburse the applicable L/C Issuer by such time, the applicable L/C Issuer will promptly notify the Administrative Agent thereof, whereupon the Administrative Agent will promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in US Dollars in the amount of the US Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the "Unreimbursed Amount"), and the amount of such Lender's Applicable Percentage thereof. In such event, (x) in the

case of a drawing under a Letter of Credit denominated in an Alternative Currency, automatically and with no further action, the obligation of the Borrower to reimburse such drawing shall be permanently converted into an obligation to reimburse the Unreimbursed Amount and (y) the Borrower will be deemed to have requested a Committed Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount (without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the limitations set forth in Section 2.01 and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice)), the proceeds of which will be used to satisfy the Borrower's reimbursement obligations. Any notice given by the applicable L/C Issuer or the Administrative Agent pursuant to this Section 2.04(c)(ii) may be given by telephone if immediately confirmed in writing by hand delivery, fax or e-mail; provided that the lack of such an immediate confirmation will not affect the conclusiveness or binding effect of such notice. If the Borrower's reimbursement of, or obligation to reimburse, any amounts in any Alternative Currency would subject the Administrative Agent, the applicable L/C Issuer or any Lender to any stamp duty, ad valorem charge or similar Tax that would not be payable if such reimbursement were made or required to be made in US Dollars, the Borrower shall pay the amount of any such Tax requested by the Administrative Agent, such L/C Issuer or such Lender.

(iii) Each Lender will upon any notice from the Administrative Agent pursuant to Section 2.04(c)(ii) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) to the Administrative Agent, for the account of the applicable L/C Issuer, in US Dollars in Same Day Funds by wire transfer to the account of the Administrative Agent most recently designated for such purpose by notice to the Lenders, in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 2:00 p.m., Local Time, on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to Section 2.04(c)(iv), each Lender that so makes funds available will be deemed to have made a Base Rate Committed Loan to the Borrower in such amount. The Administrative Agent will remit the funds so received to the applicable L/C Issuer in US Dollars in Same Day Funds.

(iv) With respect to any Unreimbursed Amount that is not fully refinanced by a Committed Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower will be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing will be due and payable on demand (together with interest). In such event, each Lender's payment to the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.04(c)(iii) will be deemed payment in respect of its participation in such L/C Borrowing and will constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.04.

(v) If any L/C Issuer shall make any disbursement under any Letter of Credit, then, unless the Borrower shall reimburse such disbursement in accordance

with this Section 2.04(c) in full on the Honor Date thereof, each resulting L/C Borrowing shall bear interest, for each day from and including the Honor Date to the date of reimbursement thereof in full, at (A) in the case of any Letter of Credit denominated in US Dollars, the rate per annum then applicable to Base Rate Committed Loans and (B) in the case of any Letter of Credit denominated in any Alternative Currency, a rate perannum equal to the applicable Overnight Rate from time to time plus the Applicable Rate used to determine interest applicable to Eurocurrency Rate Committed Loans; provided that if the Borrower fails to reimburse such disbursement when due pursuant to this Section 2.04(c), from and including the date of such failure such L/C Borrowing shall, on the US Dollar Equivalent thereof, bear interest at the default rate specified in Section 2.08(b). Interest accrued pursuant to this Section 2.04(c)(v) shall be for the account of the applicable L/C Issuer, except that interest accrued on and after the date of payment by any Lender of its applicable L/C Advance shall be for the account of such Lender to the extent of such L/C Advance, and shall be payable on demand.

(vi) Each Lender's obligation to make Committed Loans or L/C Advances to reimburse the L/C Issuers for amounts drawn under Letters of Credit, as contemplated by this Section 2.04(c), shall be absolute and unconditional and will not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against any L/C Issuer, any Loan Party, any Subsidiary or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Committed Loans pursuant to this Section 2.04(c) is subject to the satisfaction of the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No L/C Advance will relieve or otherwise impair the obligation of the Borrower to reimburse the applicable L/C Issuer for the amount of any payment made by the applicable L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vii) If any Lender fails to make available to the Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(iii), then, without limiting the other provisions of this Agreement, the applicable L/C Issuer will be entitled to recover from such Lender, on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the applicable L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the applicable L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Committed Loan included in the relevant Committed Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the applicable L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vii) will be conclusive absent manifest error.

(d) Repayment of Participations. (i) At any time after an L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.04(c), if the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute such payment to such L/C Issuer and to such Lender ratably on the basis of the portion of such Unreimbursed Amount represented by such Lender's L/C Advance (taking into account, in the case of interest payments, the period of time during which such Lender's L/C Advance was outstanding) in the same currency, and in the same funds, as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of an L/C Issuer pursuant to Section 2.04(c)(ii) is required to be returned under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Lender will pay to the Administrative Agent for the account of such L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause will survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse each L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing will be absolute, unconditional and irrevocable, and will be paid strictly in accordance with the terms of this Agreement under all circumstances whatsoever and irrespective of:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, any Letter of Credit Application or any other Loan Document, or any term or provision herein or therein;

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

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

(iv) any payment by the applicable L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not comply with the terms of such Letter of Credit; or any payment made by the applicable L/C Issuer

under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

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

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, a discharge of, or provide a right of setoff against, the Borrower or any other Subsidiary.

(f) Role of L/C Issuer. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable L/C Issuer will not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties or any correspondent, participant or assignee of the applicable L/C Issuer will be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable, (ii) any action taken or omitted in the absence of its gross negligence, willful misconduct or bad faith, with such absence to be presumed unless otherwise determined by a court of competent jurisdiction in a final and nonappealable judgment, or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and will not, preclude the Borrower and/or another Subsidiary of the Borrower, as applicable, from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties or any correspondent, participant or assignee of the applicable L/C Issuer will be liable or responsible by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the matters described in clauses (i) through (v) of Section 2.04(e)), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the applicable L/C Issuer; provided, however, that anything in the foregoing to the contrary notwithstanding, the Borrower and/or another Subsidiary of the Borrower, as applicable, may have a claim against the applicable L/C Issuer, and the applicable L/C Issuer may be liable to the Borrower or such other Subsidiary of the Borrower, to the extent, but only to the extent, of any direct (as opposed to special, punitive, consequential or exemplary) damages suffered by it and that it proves were caused by (x) such L/C Issuer's failure to exercise care when

determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof or (y) such L/C Issuer's willful failure to pay or material breach in bad faith under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit, in each case as determined by a court of competent jurisdiction in a final and nonappealable judgment. The parties hereto expressly agree that, in the absence of willful misconduct, gross negligence or bad faith on the part of an L/C Issuer (with such absence to be presumed unless otherwise determined by a court of competent jurisdiction in a final and nonappealable judgment), such L/C Issuer shall be deemed to have exercised care in each such determination. In furtherance and not in limitation of the foregoing, the applicable L/C Issuer may, in its sole discretion, either accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit. The applicable L/C Issuer will not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Applicability of ISP and UCP. Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit and those relating to payment of fees of correspondent banks in the case of Letters of Credit denominated in Alternative Currencies), (i) the rules of the ISP will apply to each standby Letter of Credit and (ii) the rules of the UCP will apply to each commercial Letter of Credit. Notwithstanding the foregoing, no L/C Issuer shall be responsible to the Borrower for, and each L/C Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of such L/C Issuer required under, or expressly authorized under the circumstances by, any applicable law, order, or practice that is required to be applied to any Letter of Credit or this Agreement, including the law or any order of a jurisdiction where such L/C Issuer or the beneficiary of any Letter of Credit is located, the practice stated in the ISP or the UCP, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade, Inc. (BAFT), or the Institute of International Banking Law & Practice, whether or not any such law or practice is applicable to any Letter of Credit.

(h) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent, for the account of the Lenders, in accordance with their Applicable Percentages, in US Dollars, a letter of credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the US Dollar Equivalent of the daily maximum amount then available to be drawn under such Letter of Credit. Each Defaulting Lender shall be entitled to receive Letter of Credit Fees pursuant to this Section 2.04(h) for any period during which such Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral satisfactory to the applicable L/C Issuer pursuant to Section 2.15; provided, however, any Letter of Credit Fees not payable for the account of a Defaulting Lender pursuant to this sentence shall be payable, to the maximum extent permitted by applicable Law, to the other Lenders in accordance with the upward adjustments in their respective Applicable

Percentages allocable to such Letter of Credit pursuant to Section 2.16(a)(iv), with the balance of such Letter of Credit Fees, if any, payable to the applicable L/C Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. Letter of Credit Fees shall be (i) due and payable on the fifteenth day following the last Business Day of each March, June, September and December in respect of the most recently-ended quarterly period (or the applicable portion thereof), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) Fronting Fees and Documentary and Processing Charges Payable to L/C Issuers. The Borrower will pay directly to each L/C Issuer for its own account, in US Dollars, a fronting fee with respect to each Letter of Credit issued by it, at the rate per annum separately agreed in writing by the Borrower and such L/C Issuer, computed on the US Dollar Equivalent of the daily maximum amount then available to be drawn under such Letter of Credit. Such fronting fee shall be (i) due and payable on the fifteenth day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or the applicable portion thereof), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit will be determined in accordance with Section 1.07. In addition, the Borrower will pay directly to each L/C Issuer for its own account, in US Dollars, the customary issuance, presentation, amendment, extension and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

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

(k) Reporting. Unless otherwise agreed by the Administrative Agent, each L/C Issuer shall report in writing to the Administrative Agent (i) on or prior to each Business Day on which such L/C Issuer issues, amends or extends any Letter of Credit, the date of such issuance, amendment or extension, and the currencies and amounts of the Letters of Credit issued, amended or extended by it and outstanding after giving effect to such issuance, amendment or extension (and whether the amounts thereof shall have changed), it being agreed that such L/C Issuer shall not effect any issuance, extension or amendment resulting in an increase in the amount of any Letter of Credit without first obtaining written confirmation from the Administrative Agent that such issuance, extension or increase would not result in any limit referred to in Section 2.04(a)(i)(A), (B) or (C) being exceeded, (ii) on each Business Day on which such L/C Issuer makes any disbursement in respect of a Letter of Credit drawing, the date, currency and amount of such disbursement, (iii) on any Business Day on which a Borrower fails to reimburse a Letter of Credit drawing

required to be reimbursed to such L/C Issuer on such day, the date of such failure and the currency and amount of such Letter of Credit drawing and (iv) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such L/C Issuer.

(l) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, any other Subsidiary of the Borrower, or states that a Subsidiary is the "account party", "applicant," "customer," "instructing party," or the like of or for such Letter of Credit, and without derogating from any rights of the applicable L/C Issuer (whether arising by contract, at law, in equity or otherwise) against such Subsidiary in respect of such Letter of Credit, the Borrower shall be obligated to reimburse, indemnify and compensate the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit (and the Borrower hereby irrevocably waives any defenses that might otherwise be available to it as a guarantor or surety of the obligations of any such Subsidiary in respect of any such Letter of Credit). The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of any other Subsidiary of the Borrower inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

SECTION 2.05. Prepayments. (a) The Borrower may, by hand delivery, fax or e-mail of a Prepayment Notice, appropriately completed and signed by a Responsible Officer of the Borrower, to the Administrative Agent, at any time or from time to time voluntarily prepay any Committed Borrowing in whole or in part, without premium or penalty; provided that (i) such Prepayment Notice must be received by the Administrative Agent not later than 11:00 a.m., Local Time, (A) three (3) Business Days prior to any date of prepayment of any Eurocurrency Rate Committed Borrowing denominated in US Dollars (or such shorter period of time as may be agreed to by the Administrative Agent), (B) four (4) Business Days (or five (5) Business Days, in the case of prepayment of any Eurocurrency Rate Committed Borrowing denominated in Special Notice Currencies) (or such shorter period of time as may be agreed to by the Administrative Agent) prior to the date of prepayment of any Eurocurrency Rate Committed Borrowing denominated in Alternative Currencies, and (C) on the date of prepayment of any Base Rate Committed Borrowing and (ii) any prepayment of Committed Loans must be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum for the applicable currency or, in each case, if less, the entire principal amount thereof then outstanding.

Each Prepayment Notice shall specify the prepayment date, the Committed Borrowing or Committed Borrowings to be prepaid and the principal amount of each Committed Borrowing or portion thereof to be prepaid. The Administrative Agent will promptly notify each Lender of its receipt of each Prepayment Notice, and of the amount of such Lender's Applicable Percentage of such prepayment of any Committed Borrowing. If a Prepayment Notice is given by the Borrower, it will make such prepayment and the payment amount specified in such notice will be due and payable on the date specified therein; provided that, subject to Section 3.05, such Prepayment Notice may state that it is conditioned upon the occurrence of one or more events specified therein, in which case such Prepayment Notice 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 and, in the case of such revocation, the Borrower shall not be required to make such prepayment and such prepayment amount shall cease to be due and payable. Any prepayment of a Committed Loan shall, to the extent required by Section 2.08(d), be accompanied by all accrued interest on the amount prepaid and, in the case of any prepayment of Eurocurrency Rate Committed Loans on any day other than on the last day of the Interest Period applicable thereto, shall be subject to Section 3.05. Each prepayment of a Committed Borrowing shall be applied ratably to the Committed Loans comprising the prepaid Committed Borrowing.

(b) No Bid Loan may be prepaid without the prior consent of the applicable Bid Loan Lender.

(c) If the Administrative Agent notifies the Borrower at any time that the Total Outstandings at such time exceed the Aggregate Commitments then in effect, then, no later than the next Business Day after receipt of such notice, the Borrower shall prepay Committed Borrowings (and, if no Committed Borrowings are outstanding, shall deposit Cash Collateral in respect of L/C Obligations) in an aggregate amount equal to the lesser of (i) the amount necessary to eliminate such excess and (ii) the Total Outstandings (less the US Dollar Equivalent of Bid Loans then outstanding).

(d) If the Administrative Agent notifies the Borrower at any time that the Outstanding Amount of all Loans and all Letters of Credit denominated in an Alternative Currency or a Discretionary Alternative Currency at such time exceeds an amount equal to 105% of the Alternative Currency Sublimit then in effect, then, within two (2) Business Days after receipt of such notice, the Borrower shall prepay Committed Borrowings denominated in an Alternative Currency (and, if no Committed Borrowings denominated in an Alternative Currency are outstanding, shall deposit Cash Collateral in respect of Letters of Credit denominated in an Alternative Currency) in an aggregate amount equal to the lesser of (i) the amount necessary to eliminate such excess and (ii) the sum of the Outstanding Amount of such Committed Borrowings and the Outstanding Amount of the L/C Obligations in respect of such Letters of Credit.

SECTION 2.06. Termination or Reduction of Commitments. Unless previously terminated, the Commitments shall terminate on the Maturity Date. The Borrower may, upon written notice to the Administrative Agent, terminate the Aggregate Commitments, or from time to time permanently reduce the Aggregate Commitments; provided that (a) any such notice must be received by the Administrative Agent not later than 11:00 a.m., New York City time, three (3) Business Days prior to the date of termination or reduction (or such shorter period of time as may be agreed to by the Administrative Agent), (b) any such partial reduction will be in an aggregate amount of $5,000,000 or any whole multiple of $1,000,000 in excess thereof, (c) the Borrower will not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, (A) the Outstanding Amount of the Committed Loans of any Lender, plus the Outstanding Amount of such Lender's Bid Loans plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations would exceed its Commitment or (B) the Total Outstandings would exceed the Aggregate Commitments, unless, in each of cases (A) and (B), the Total Outstandings consist solely of the Outstanding Amount of L/C Obligations and the Borrower has concurrently Cash

Collateralized the Outstanding Amount of L/C Obligations and (d) if, after giving effect to any reduction of the Aggregate Commitments, the Alternative Currency Sublimit or the Letter of Credit Sublimit exceeds the amount of the Aggregate Commitments, such sublimit shall automatically be reduced by the amount of such excess. Each notice delivered by the Borrower pursuant to this Section 2.06 shall be irrevocable; provided that a notice of termination of the Aggregate Commitments delivered by the Borrower may state that such notice is conditioned upon the occurrence of one or more events specified therein, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent prior to the specified date of termination) if such condition is not satisfied and, in the case of such revocation, such termination will not be effective. Promptly following receipt of any notice pursuant to Section 2.06, the Administrative Agent will notify the Lenders of the details thereof. Any partial reduction of the Aggregate Commitments will be applied to the Commitment of each Lender according to its Applicable Percentage. Any termination or reduction of the Commitments shall be permanent. All Unused Commitment Fees accrued through the date of any termination or reduction of the Commitments (in the case of any reduction, in respect of the aggregate amount of the Commitments subject to such reduction) shall be payable on the date of such termination or reduction. Except as otherwise set forth above, the amount of any such Aggregate Commitment reduction will not be applied to the Alternative Currency Sublimit or the Letter of Credit Sublimit unless otherwise specified by the Borrower.

SECTION 2.07. Repayment of Loans. (a) The Borrower will repay to the Administrative Agent, for the account of the Lenders, on the Maturity Date the aggregate principal amount of Committed Loans outstanding on such date.

(b) The Borrower shall repay to the Administrative Agent, for the account of the applicable Bid Loan Lender, each Bid Loan on the last day of the Interest Period in respect thereof.

SECTION 2.08. Interest. (a) Subject to the provisions of Section 2.08(b), (i) each Eurocurrency Rate Committed Loan denominated in US Dollars will bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Adjusted Eurocurrency Rate for such Interest Period plus the Applicable Rate, (ii) each Eurocurrency Rate Committed Loan denominated in an Alternative Currency will bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate, (iii) each Base Rate Committed Loan will bear interest on the outstanding principal amount thereof at a rate per annum equal to the Base Rate plus the Applicable Rate and (iv) each Bid Loan shall bear interest on the outstanding principal amount thereof for the Interest Period therefor at a rate per annum determined in accordance with Section 2.03.

(b) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount (including any Unreimbursed Amount) payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% per annum plus the rate otherwise applicable to such Loan as provided in Section 2.08(a) or (ii) in the case of any other amount, (A) in the case of any such amount denominated in US Dollars, 2.00%

per annum plus the rate applicable to Base Rate Committed Loans as provided in Section 2.08(a) and (B) in the case of any such amount denominated in any other currency, 2.00% per annum plus the Overnight Rate for such currency plus the Applicable Rate for Eurocurrency Rate Committed Loans.

(c) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(d) Interest on each Loan will be due and payable in arrears on each Interest Payment Date applicable thereto, at such other times as may be specified herein and upon termination of the Aggregate Commitments; provided that (i) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Base Rate Committed Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (ii) in the event of any conversion of any Eurocurrency Rate Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion. All interest shall be payable in the currency in which the applicable Loan is denominated. Interest hereunder will be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

SECTION 2.09. Fees. In addition to certain fees described in Sections 2.04(h) and 2.04(i):

(a) Unused Commitment Fee. The Borrower shall pay to the Administrative Agent, for the account of each Lender (subject to Section 2.16, in the case of any Defaulting Lender), an unused commitment fee (collectively, the "Unused Commitment Fees") in US Dollars equal to the Applicable Rate times the actual daily amount by which the Commitment of such Lender exceeds the sum of the Outstanding Amount of all the Committed Loans of such Lender and its Applicable Percentage of the Outstanding Amount of all the L/C Obligations. The Unused Commitment Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Section 4.02 is not met, and shall be due and payable quarterly in arrears on the fifteenth day following the last day of each March, June, September and December, commencing with the first such date to occur after the Effective Date, and on the last day of the Availability Period. The Unused Commitment Fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees. The Borrower will pay to the Arrangers and the Administrative Agent, for their own respective accounts, in US Dollars, fees in the amounts and at the times separately agreed in writing by the Borrower and the Arrangers or the Administrative Agent, as the case may be.

(c) General. All fees payable hereunder shall be paid on the dates due, in US Dollars in immediately available funds, to the Administrative Agent (or to the Arrangers or the applicable L/C Issuer, in the case of fees payable to it) for distribution, in the case of

Unused Commitment Fees and Letter of Credit Fees, to the Lenders entitled thereto. All fees will be fully earned when paid and will not be refundable for any reason whatsoever.

SECTION 2.10. Computation of Interest and Fees. All computations of interest for Base Rate Loans when the Base Rate is determined by reference to the Prime Rate and any Alternative Currency Loan (or any other currency with respect to which it is customary to compute interest on the basis of a year of 365 or 366 days, as the case may be) will be made on the basis of a year of 365 or, solely in the case of such Base Rate Loans (or any such other currency), 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest will be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year), or, in the case of interest in respect of Loans denominated in Alternative Currencies and Discretionary Alternative Currencies as to which market practice differs from the foregoing, in accordance with such market practice, as expressly agreed by the Borrower and the Administrative Agent. Interest will accrue on each Loan for the day on which the Loan is made, and will not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made will, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder will be conclusive and binding for all purposes, absent manifest error.

SECTION 2.11. Evidence of Debt. (a) The Credit Extensions made by each Lender will be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender will be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so will not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. The Administrative Agent will provide to the Borrower, upon their request, a statement of Loans, payments and other transactions pursuant to this Agreement. Such statement will be deemed correct, accurate, and binding on the Borrower (except for corrections and errors discovered by the Administrative Agent), unless the Borrower notifies the Administrative Agent in writing to the contrary within thirty (30) days after such statement is rendered. In the event a timely written notice of objections is given by the Borrower, only the items to which exception is expressly made will be considered to be disputed by the Borrower. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent will control in the absence of manifest error. Upon the request of any Lender to the Borrower made through the Administrative Agent, the Borrower will execute and deliver to such Lender (through the Administrative Agent) a Note, which will evidence such Lender's Loans to the Borrower in addition to such accounts or records. Each Lender may attach schedules to a Note and endorse thereon the date, Type (if applicable), amount, currency and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent will maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in

Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent will control in the absence of manifest error.

SECTION 2.12. Payments Generally; Agent' Clawback. (a) General. All payments to be made by the Borrower will be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein (including the next succeeding sentence), all payments by the Borrower hereunder will be made to the Administrative Agent, for the account of the Lenders to which such payments are due, except that (i) payments pursuant to 3.01, 3.04, 3.05 and 11.04 shall be made directly to the Persons entitled thereto, and payments to be made directly to an L/C Issuer as expressly provided herein shall be so made, in each case in US Dollars and in Same Day Funds not later than 1:00 p.m., Local Time, on the date specified herein and (ii) all other payments under each Loan Document (including all fees) shall be made in US Dollars. Except as otherwise expressly provided herein, all payments by the Borrower hereunder with respect to principal and interest on Loans denominated in an Alternative Currency or a Discretionary Alternative Currency or on Loans denominated in US Dollars that are Eurocurrency Rate Loans will be made to the Administrative Agent, for the account of the Lenders to which such payments are due, in the currency of the applicable Loan in Same Day Funds, not later than 1:00 p.m., Local Time (or, in the case of Loans denominated in any Discretionary Alternative Currency, not later than the Applicable Time) on the dates specified herein. All such payments to the Administrative Agent shall be made to such account as may be specified by the Administrative Agent. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, the Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency or a Discretionary Alternative Currency, it will make such payment in US Dollars in the US Dollar Equivalent of the Alternative Currency or the Discretionary Alternative Currency payment amount. The Administrative Agent shall distribute any such payment received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. All payments received by the Administrative Agent (A) after 1:00 p.m., Local Time, in the case of payments in US Dollars or an Alternative Currency, or (B) after the Applicable Time in the case of payments in a Discretionary Alternative Currency will, in each case, be deemed received on the next succeeding Business Day and any applicable interest or fee will continue to accrue. If any payment to be made by the Borrower will come due on a day that is not a Business Day, payment will be made on the next following Business Day, except (x) as otherwise set forth in the definition of "Interest Period" or "Maturity Date", (y) that no payment will extend past the end of the Availability Period or (z) as otherwise agreed between the Borrower and Bid Loan Lender with respect to a Bid Loan, and such extension of time will be reflected in computing interest or fees, as the case may be.

(b) Funding by Lenders; Presumption by the Administrative Agent. (i) Unless the Administrative Agent will have received notice from a Lender prior to the proposed date of any Committed Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Committed Borrowing, the Administrative Agent may assume that such Lender has made such share available on such

date in accordance with Section 2.02 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, (x) if denominated in US Dollars, the interest rate applicable to Base Rate Committed Loans and (y) if denominated in an Alternative Currency, the interest rate applicable to the subject Loan. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent will promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Committed Borrowing to the Administrative Agent, then the amount so paid will constitute such Lender's Committed Loan included in such Committed Borrowing. Any payment by the Borrower will be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by the Borrower; Presumptions by the Administrative Agent. Unless the Administrative Agent will have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or an L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or such L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or such L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such L/C Issuer, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing.

(iii) A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(b) will be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. In the event that any Lender made available to the Administrative Agent funds for any Loan to be made by such Lender to the Borrower as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Section 4.02 are not satisfied (or waived in accordance with Section 11.01), the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder will not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender will be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) Funding Source. Nothing herein will be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

SECTION 2.13. Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Committed Loans made by it, or the participations in L/C Obligations held by it, resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Committed Loans or such participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion will (a) notify the Administrative Agent of such fact and (b) purchase (for cash at face value) participations in the Committed Loans and subparticipations in L/C Obligations of the other Lenders, or make such other adjustments as will be equitable, so that the benefit of all such payments will be shared by the Lenders ratably in accordance with the aggregate amounts of principal of and accrued interest on their respective Committed Loans and such participations held by them; provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations will be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section 2.13 will not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (for the avoidance of doubt, as in effect from time to time), including the application of funds arising from the existence of a Defaulting Lender, (B) the application of Cash Collateral provided for in Section 2.15 or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Loans or subparticipations in L/C Obligations to any Eligible Assignee or Participant.

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Laws, that any Lender acquiring a participation or subparticipation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation or subparticipation as fully as if such

Lender were a direct creditor of such Loan Party in the amount of such participation or subparticipation.

SECTION 2.14. Expansion Option. (a) Request for Increase. Upon written notice to the Administrative Agent (which will promptly notify the Lenders), the Borrower may from time to time request an increase in the Aggregate Commitments or enter into one or more tranches of term loans (each an "Incremental Term Loan"), in each case by an amount (in the aggregate for all such requests) not exceeding the sum of (i) $250,000,000, plus (ii) an unlimited amount so long as the Consolidated Leverage Ratio (calculated on a pro forma basis and assuming any such increased commitment is fully drawn and excluding the cash proceeds of any borrowing under any such increase not applied promptly for the specified transaction in connection with such incurrence upon receipt thereof) is not greater than 0.25:1.00 above the Consolidated Leverage Ratio in effect immediately prior to giving effect to such increase; provided that any such request for an increase or Incremental Term Loan will be in a minimum amount of $25,000,000. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) will specify the time period within which each Lender is requested to respond (which will in no event be less than ten (10) Business Days from the date of delivery of such notice to the Lenders). Nothing contained in this Section 2.14 shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its Commitment hereunder, or provide Incremental Term Loans, at any time.

(b) Lender Elections. Each Lender will notify the Administrative Agent within such time period whether or not it agrees to increase its Commitment or participate in such Incremental Term Loans, which decision shall be in such Lender's sole discretion, and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase or tranche. Any Lender not responding within such time period will be deemed to have declined to increase its Commitment or participate in the Incremental Term Loans.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent will notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase or tranche, the Borrower may also invite additional Eligible Assignees to become Lenders pursuant to an Incremental Joinder Agreement.

(d) Effective Date and Allocations. If the Aggregate Commitments are increased or a tranche of Incremental Term Loans are established in accordance with this Section 2.14, the Administrative Agent and the Borrower will determine the effective date (the "Incremental Effective Date") and the final allocation of such increase or tranche. The Administrative Agent will promptly notify the Borrower and the Lenders of the final allocation of such increase or tranche and the Incremental Effective Date.

(e) Conditions to Effectiveness. As a condition precedent to such increase or tranche, the Borrower will deliver to the Administrative Agent (i) a certificate dated as of the Incremental Effective Date signed by a Responsible Officer of the Borrower certifying that, before and after giving effect to such increase or tranche, (A) the representations and

warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the Incremental Effective Date, except to the extent that such representations and warranties are already qualified by materiality, in which case such representations and warranties shall be true and correct in all respects, and except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.14, the representations and warranties contained in clause (a) of Section 5.05 will be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b) of Section 6.01, and (B) no Default exists and (ii) to the extent reasonably requested by the Administrative Agent, the documents and opinions of the types referred to in Sections 4.01(b)(i) and 4.01(b)(iii) and customary reaffirmations by the Guarantors; provided that, with respect to any Incremental Term Loans incurred for the purpose of financing an acquisition or investment for which the Borrower has determined, in good faith, that limited conditionality is reasonably necessary (any such acquisition, a "Limited Conditionality Acquisition" and such Incremental Term Loans, "Acquisition-Related Incremental Term Loans"), clause (i) of this sentence shall be deemed to have been satisfied so long as (1) as of the date of execution of the definitive acquisition or investment documentation in respect of a Limited Conditionality Acquisition (a "Limited Conditionality Acquisition Agreement") by the parties thereto, no Default or Event of Default shall have occurred and be continuing or would result from entry into such documentation, (2) as of the date of the borrowing of such Acquisition-Related Incremental Term Loans, no Event of Default under Sections 8.01(a), (f) or (g) is in existence immediately before or immediately after giving effect (including on a pro forma basis) to such borrowing and to any concurrent transactions and any substantially concurrent use of proceeds thereof, (3) the representations and warranties set forth in Article V shall be true and correct in all material respects (except that any representation and warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) as of the date of execution of the applicable Limited Conditionality Acquisition Agreement by the parties thereto, except to the extent any such representation and warranty specifically refers to an earlier date, in which case such representation and warranty shall be true and correct in all material respects (except that any representation and warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) as of such earlier date and (4) as of the date of the borrowing of such Acquisition-Related Incremental Term Loans, customary "Sungard" representations and warranties (with such representations and warranties to be reasonably determined by the Lenders providing such Acquisition-Related Incremental Term Loans) shall be true and correct in all material respects (except that any representation and warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) immediately prior to, and immediately after giving effect to, the incurrence of such Acquisition-Related Incremental Term Loans, except to the extent any such representation and warranty specifically refers to an earlier date, in which case such representation and warranty shall be true and correct in all material respects (except that any representation and warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) as of such earlier date. With respect to any increase in the Aggregate Commitments, the Borrower will prepay any Committed Loans outstanding on the Incremental Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Committed Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Aggregate Commitments under this Section 2.14.

(f) Incremental Term Loans. The Incremental Term Loans (a) shall rank pari passu in right of payment with the Loans, (b) shall not mature earlier than the Maturity Date (but may have amortization prior to such date) and (c) shall be treated no more favorably than the Loans (taken as a whole); provided that (i) the terms and conditions applicable to any tranche of Incremental Term Loans maturing after the Maturity Date may provide for financial or other covenants or prepayment requirements that are more favorable than the Loans to the extent applicable only during periods after the Maturity Date and (ii) the Incremental Term Loans may be priced differently than the Loans. Incremental Term Loans may be made hereunder pursuant to an amendment or restatement (an "Incremental Term Loan Amendment") of this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each lender participating in such tranche and the Administrative Agent. The Incremental Term Loan Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.14.

(g) Conflicting Provisions. This Section 2.14 will supersede any provisions in Section 2.13 or 11.01 to the contrary.

(h) For purposes of calculating the aggregate principal amount of all increased Commitments or Incremental Term Loans established pursuant to Section 2.14(a) above, the Borrower may elect to use sub-clauses (i) or (ii) of Section 2.14(a) above in any order or concurrently. If both sub-clause (i) and (ii) of Section 2.14(a) are available and the Borrower does not make an election, the Borrower will be deemed to have elected sub-clause (ii) of Section 2.14(a). If the Borrower incurs any amounts under such sub-clause (i) above concurrently with sub-clause (ii) above, any amounts incurred under sub-clause (i) above at such time will not count as Indebtedness for purposes of calculating the Consolidated Leverage Ratio at such time.

(i) The Borrower may, in its sole discretion, classify and reclassify or later divide, classify or reclassify such increased Commitments or Incremental Term Loans established pursuant to Section 2.14(a) (or any portion thereof). In the event that a portion of Indebtedness incurred pursuant to Section 2.14(a)(i) could later be classified under sub-clause (ii) of Section 2.14(a) (giving pro forma effect to the incurrence of such portion of such Indebtedness or other obligations), such portion of Indebtedness (and any obligations in respect thereof) shall be deemed be automatically re-classified under sub-clause (ii) even if not elected by the Borrower (unless the Borrower otherwise notifies the Administrative Agent).

SECTION 2.15. Cash Collateral. (a) Certain Credit Support Events. (i) Upon the request of the Administrative Agent or any L/C Issuer (A) if such L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing or (B) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, promptly, but in any event, if such request is made by 1:00 p.m., Local Time, on the same Business Day and, if such request is made after 1:00 p.m., Local Time, on the next Business Day, Cash Collateralize the then Outstanding Amount of all L/C Obligations.

(ii) At any time that there shall exist a Defaulting Lender, upon the request of the Administrative Agent or any L/C Issuer, the Borrower shall promptly, but in any event, if such request is made by 1:00 p.m., Local Time, on the same Business Day and, if such request is made after 1:00 p.m., Local Time, on the next Business Day, deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure relating to such Defaulting Lender (after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by the Defaulting Lender).

(iii) In addition, if the Administrative Agent notifies the Borrower at any time that the Outstanding Amount of all L/C Obligations at such time exceeds 105% of the Letter of Credit Sublimit then in effect, then, within two (2) Business Days after receipt of such notice, the Borrower shall Cash Collateralize the L/C Obligations in an amount equal to the amount by which the Outstanding Amount of all L/C Obligations exceeds the Letter of Credit Sublimit.

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) will be maintained in blocked, segregated interest-bearing (such interest to be for the account of the Borrower if such Cash Collateral was provided by the Borrower) deposit accounts ("Cash Collateral Accounts") at the Administrative Agent or, if consented to by the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), another depositary institution that is a Lender; provided that the Borrower shall cause any depositary institution other than the Administrative Agent to take any actions necessary to enable the Administrative Agent to obtain Control (within the meaning of Section 9-104 of the Uniform Commercial Code as from time to time in effect in the State of New York) of such Cash Collateral Accounts, including executing and delivering and causing the relevant depositary bank to execute and deliver an agreement in form and substance reasonably satisfactory to the Administrative Agent. The Borrower, and to the extent provided by any Lender, such Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, each L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such Cash Collateral Accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.15(c). If at any time the Administrative Agent reasonably determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby (including by reason of exchange rate fluctuations), the Borrower or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Section 2.04 or 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other

obligations for which such Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.06(c))) or (ii) upon the Borrower's request if there exists Cash Collateral in excess of the requirements of this Section 2.15; provided, however, that Cash Collateral furnished by or on behalf of the Borrower shall not be released during the continuance of a Default or Event of Default (and following application as provided in this Section 2.15 may be otherwise applied in accordance with Section 8.03).

SECTION 2.16. Defaulting Lenders. (a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then the following provisions shall apply until such time as such Lender is no longer a Defaulting Lender:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement or any other Loan Document shall be restricted as set forth in Section 11.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative Agent by such Defaulting Lender pursuant to Section 11.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any L/C Issuer hereunder; *third*, if so determined by the Administrative Agent or requested by any L/C Issuer, to be held as Cash Collateral for future funding obligations of such Defaulting Lender in respect of any participation in any Letter of Credit; *fourth*, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders or any L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any L/C Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against

such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Advances owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Advances owed to, such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. Such Defaulting Lender (x) shall not be entitled to receive any Unused Commitment Fee pursuant to Section 2.09(a) (and the Borrower shall not be required to pay any Unused Commitment Fee that otherwise would have been required to be paid to such Defaulting Lender) for any period during which such Lender is a Defaulting Lender and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.04(h).

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 2.04, the "Applicable Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Commitment of such Defaulting Lender; provided that such reallocation shall be given effect only to the extent that, after giving effect thereto, the aggregate obligation of each non-Defaulting Lender to acquire or fund participations in Letters of Credit shall not exceed the positive difference, if any, of (1) the Commitment of such non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Committed Loans of such Lender.

(v) No Default. Operation of the allocations provided in clauses (ii) through (iv) above shall not be deemed to result in a default of the Borrower's or any other Loan Party's obligations to a Defaulting Lender under this Agreement or any other Loan Document.

(vi) No Waiver. Subject to Section 11.19, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a non-Defaulting Lender as a result of such non-Defaulting Lender's increased exposure following such reallocation.

(b) Defaulting Lender Cure. If Borrower, the Administrative Agent and the L/C Issuers agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the

parties hereto, whereupon as of the date such confirmation is so received or the effective date specified in such notice (and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral)), as applicable, such Lender will, to the extent applicable, purchase at par that portion of outstanding Committed Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Committed Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a)(iv)), together with any payments reasonably determined by the Administrative Agent to be necessary to compensate the non-Defaulting Lenders for any loss, cost or expense of the type described in Section 3.05 (all of which purchases are hereby consented to by the Borrower and each Lender) whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.

SECTION 2.17. Alternate Rate of Interest.

(a) Subject to clauses (b), (c), (d), (e), (f) and (g) of this Section 2.17, if prior to the commencement of any Interest Period for a Eurocurrency Rate Borrowing:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including because the LIBO Screen Rate is not available or published on a current basis) for such Interest Period; or

(ii) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period,

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or facsimile as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Committed Loan Notice that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurocurrency Rate Borrowing shall be ineffective and (ii) if any Committed Loan Notice requests a Eurocurrency Rate Borrowing then such Borrowing shall be made as an Base Rate Borrowing; provided, however, that, in each case, the Borrower may revoke any Committed Loan Notice that is pending when such notice is received.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date have occurred for a currency prior to the Reference Time in respect of any setting of the then-

current Benchmark for such currency, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any other Loan Document in respect of any such Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that, this clause (c) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after the occurrence of a Term SOFR Transition Event and may do so in its sole discretion.

(d) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(e) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.17, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or

their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.17.

(f) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or the LIBO Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurocurrency Rate Borrowing of, conversion to or continuation of Eurocurrency Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

(h) As used in this Section 2.17:

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to clause (f) of Section 2.17.

"Benchmark" means, initially, the LIBO Rate; provided that if a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to the LIBO Rate or the then-current Benchmark, then "Benchmark"

means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) or clause (c) of Section 2.17.

"Benchmark Replacement" means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date; provided that, in the case of an Other Benchmark Rate Election, "Benchmark Replacement" shall mean the alternative set forth in (3) below:

(1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;

(2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;

(3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; provided further that, in the case of clause (3), when such clause is used to determine the Benchmark Replacement in connection with the occurrence of an Other Benchmark Rate Election, the alternate benchmark rate selected by the Administrative Agent and the Borrower shall be the term benchmark rate that is used in lieu of a LIBOR-based rate in the relevant other Dollar-denominated syndicated credit facilities; provided further that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the "Benchmark Replacement" shall revert to and shall be deemed to be the sum of (a) Term SOFR and (b) the related Benchmark Replacement Adjustment, as set forth in clause (1) of this definition (subject to the first proviso above).

If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (1) and (2) of the definition of "Benchmark Replacement," the first alternative set forth in the order below that can be determined by the Administrative Agent:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of "Benchmark Replacement," the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities;

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the

administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Benchmark Replacement Date" means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date;

(3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Lenders and the Borrower pursuant to Section 2.17(c); or

(4) in the case of an Early Opt-in Election or an Other Benchmark Rate Election, the sixth (6^{th}) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5^{th}) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, written notice of objection to such Early Opt-in Election or Other Benchmark Rate Election, as applicable, from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board, the NYFRB, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Unavailability Period" means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.17 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.17.

"Corresponding Tenor" with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

"Daily Simple SOFR" means, for any day, SOFR, with the conventions for this rate (which may include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for business loans; provided that, if the Administrative Agent decides that any such convention is not administratively

feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

"Early Opt-in Election" means, if the then-current Benchmark is the LIBO Rate, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from the LIBO Rate and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders.

"Floor" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the LIBO Rate.

"ISDA Definitions" means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

"Other Benchmark Rate Election" means, if the then-current Benchmark is the LIBO Rate, the occurrence of:

(a) a request by the Borrower to the Administrative Agent to notify each of the other parties hereto that, at the determination of the Borrower, Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed), in lieu of a LIBOR-based rate, a term benchmark rate as a benchmark rate, and

(b) the Administrative Agent, in its sole discretion, and the Borrower jointly elect to trigger a fallback from the LIBO Rate and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders.

"Reference Time" with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the LIBO Rate, 11:00 a.m., London time, on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not the LIBO Rate, the time determined by the Administrative Agent in its reasonable discretion.

"Relevant Governmental Body" means the Board and/or the NYFRB, or a committee officially endorsed or convened by the Board and/or the NYFRB or, in each case, any successor thereto.

"SOFR" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding Business Day.

"SOFR Administrator" means the NYFRB (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the NYFRB's Website, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"Term SOFR" means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"Term SOFR Notice" means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

"Term SOFR Transition Event" means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable (and, for the avoidance of doubt, not in the case of an Other Benchmark Rate Election), has previously occurred resulting in a Benchmark Replacement in accordance with Section 2.17 that is not Term SOFR.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

SECTION 3.01. Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. (i) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, any Withholding Agent shall be required by applicable Law to withhold or deduct any Taxes from any payment, then (A) such Withholding Agent shall be entitled to withhold or make such deductions as are determined by such Withholding Agent to be required, including based upon the information and documentation it has received pursuant to Section 3.01(e), (B) such Withholding Agent shall timely pay the full amount withheld or deducted

to the relevant Governmental Authority in accordance with applicable Law, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by such Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including withholding or deductions applicable to additional sums payable under this Section 3.01) the Administrative Agent, the applicable Lender or the applicable L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of Section 3.01(a), the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Laws or at the option of the Administrative Agent timely reimburse it for the payment of any Other Taxes.

(c) Tax Indemnifications. (i) Without limiting or duplication of the provisions of Section 3.01(a) or 3.01(b), each Loan Party shall, and does hereby, indemnify the Administrative Agent, each Lender and each L/C Issuer, and shall make payment in respect thereof within 20 days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by the Administrative Agent, such Lender or such L/C Issuer or required to be withheld or deducted from a payment to such Lender or such L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses (including the fees, charges and disbursements of any counsel for the Administrative Agent, such Lender or such L/C Issuer) 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 any amount due pursuant to this Section 3.01(c)(i) delivered to the Borrower by a Lender or a L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an L/C Issuer, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of Section 3.01(a) or 3.01(b), and except as provided below, each Lender and each L/C Issuer shall, and does hereby, severally indemnify the Administrative Agent, and shall make payment in respect thereof within 20 days after written demand therefor, against any and all (A) Indemnified Taxes (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (B) any Taxes attributable to such Lender's or such L/C Issuer's failure to comply with the provisions of Section 11.06(e) relating to the maintenance of a Participant Register, and (C) 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 or any L/C Issuer by the Administrative Agent shall be conclusive absent manifest error. Each Lender and each L/C Issuer hereby authorizes the Administrative Agent (on its own behalf or on behalf of such Lender or such L/C Issuer) to set off and apply any and all amounts (including interest and fees) at any time owing to such Lender or such L/C Issuer, as the case may be, under this Agreement or any other

Loan Document against any amount due to the Administrative Agent under this Section 3.01(c)(ii). The agreements in this Section 3.01(c)(ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or an L/C Issuer, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. As soon as reasonably practicable after any payment of Taxes by the Loan Parties or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by applicable Laws to report such payment or other evidence of such payment reasonably satisfactory to Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation. (i) The Administrative Agent, each Lender and each L/C Issuer shall deliver to the Borrower and to the Administrative Agent (if applicable), if reasonably requested by the Borrower or the Administrative Agent in writing, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not payments made by the Loan Parties hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) the entitlement of the Administrative Agent, such Lender or such L/C Issuer to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Person by the Loan Parties pursuant to this Agreement or otherwise to establish such Person's status for withholding tax or information reporting purposes in the applicable jurisdictions. Notwithstanding anything to the contrary in this Section 3.01(e), the completion, execution and submission of the documentation referred to in this Section 3.01(e) (other than such documentation set forth in Sections 3.01(e)(ii)(A), (ii)(B)(I), (ii)(B)(II), (ii)(B)(III), (ii)(B)(IV) and 3.01(g)) 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 materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a US Person shall, on or prior to the date it becomes a party to this Agreement (and from time to time thereafter upon the expiration, obsolescence or invalidity of any form, documentation or information previously delivered pursuant to this clause (A)), deliver to the Borrower and the Administrative Agent two properly completed and executed copies of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower or the Administrative Agent as will establish its exemption from backup withholding; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding Tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Foreign Lender under this Agreement (and from time to time thereafter upon the expiration, obsolescence or invalidity of any form, documentation or information previously delivered pursuant to this clause (B), or upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), two of whichever of the following is applicable:

(I) properly completed and executed copies of IRS Form W-8BEN or W-8BEN-E (or successor form) claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(II) properly completed and executed copies of IRS Form W-8ECI or W-8EXP (or successor form),

(III) to the extent a Foreign Lender is not the beneficial owner of such payments, properly completed and executed copies of IRS Form W-8IMY (or successor form), accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or successor form), and all required supporting documentation, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership for U.S. federal income tax purposes and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide certification documents on behalf of each such direct and indirect partner,

(IV) 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 H-1, H-2, H-3 or H-4, as applicable, and (y) properly completed and executed copies of IRS Form W-8BEN or W-8BEN-E (or successor form), or

(V) properly completed and executed copies of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States federal withholding tax 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.

(iii) The Administrative Agent, each Lender and each L/C Issuer shall promptly (A) notify the Borrower and the Administrative Agent (if applicable) of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be disadvantageous to it, in the reasonable judgment of such Person, and as may be reasonably necessary

(including, in the case of any Lender, the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that any Loan Party or the Administrative Agent make any withholding or deduction for Taxes from amounts payable to such Person.

(iv) The Borrower shall promptly deliver to the Administrative Agent, any Lender or any L/C Issuer, as the Administrative Agent, such Lender or such L/C Issuer shall reasonably request in writing, in a timely fashion after the Effective Date, such documents and forms required by any relevant taxing authorities under the Laws of any jurisdiction, duly executed and completed by the Borrower, as are required to be furnished by the Administrative Agent, such Lender or such L/C Issuer under such Laws in connection with any payment by the Administrative Agent, such Lender or such L/C Issuer of Taxes, or otherwise in connection with the Loan Documents, with respect to such jurisdiction.

(f) Treatment of Certain Refunds. If the Administrative Agent, any Lender or any L/C Issuer determines, in its sole discretion exercised in good faith, that it has received a refund (including, for this purpose, a credit in lieu of a refund) of any Taxes as to which it has been indemnified by the Loan Parties or with respect to which a Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by the Administrative Agent, such Lender or such L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that such Loan Party, upon the request of the Administrative Agent, such Lender or such L/C Issuer, agrees to repay the amount paid over to such Loan Party to the Administrative Agent, such Lender or such L/C Issuer (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event the Administrative Agent, such Lender or such L/C Issuer is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) 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 3.01(f) shall not be construed to require the Administrative Agent, any Lender or any L/C Issuer to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Loan Parties or any other Person.

(g) Additional Withholding Documentation. If a payment made to a Lender under this Agreement may be subject to United States federal withholding Tax under FATCA, such Lender shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by applicable Law and at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by applicable Law and such additional documentation reasonably requested by the Borrower or the Administrative Agent to comply with its withholding obligations, to determine that such

Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 3.01(g), "FATCA" shall include any amendments made to FATCA after the Effective Date.

(h) Defined Terms. For purposes of this Section 3.01, the term "Lender" includes any L/C Issuer and the term "applicable Law" includes FATCA.

SECTION 3.02. Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans (whether denominated in US Dollars, an Alternative Currency or a Discretionary Alternative Currency), or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, US Dollars, any Alternative Currency or a Discretionary Alternative Currency in the Relevant Interbank Market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (a) any obligation of such Lender to make or continue Eurocurrency Rate Loans in the affected currency or currencies or, in the case of Eurocurrency Rate Committed Loans denominated in US Dollars, to convert Base Rate Committed Loans to Eurocurrency Rate Committed Loans, will be suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower will, upon demand from such Lender (with a copy to the Administrative Agent), prepay such Loans or, if such Loans are denominated in US Dollars, convert to Base Rate Loans all such Eurocurrency Rate Loans of such Lender, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest on which is determined by reference to Eurocurrency Rate component of the Base Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Upon any such prepayment or conversion, the Borrower will also pay accrued interest on the amount so prepaid or converted.

SECTION 3.03. [Intentionally Omitted].

SECTION 3.04. Increased Costs; Additional Reserve Requirements.

(a) Increased Costs Generally. If any Change in Law will:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity, compulsory loan, insurance charge or similar requirement against assets

of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Adjusted Eurocurrency Rate or referred to in Section 3.04(e)) or any L/C Issuer;

(ii) subject the Administrative Agent, any Lender or any L/C Issuer to any Tax on its loans, loan principal, letters of credit, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by the Administrative Agent, such Lender or such L/C Issuer); or

(iii) impose on any Lender or any L/C Issuer or the Relevant Interbank Market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing will be to increase the cost to the Administrative Agent or such Lender of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by the Administrative Agent, such Lender or such L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of the Administrative Agent, such Lender or such L/C Issuer, as the case may be, the Borrower will pay to the Administrative Agent, such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate the Administrative Agent, such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital or Liquidity Requirements. If any Lender or any L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender, or such Lender's or such L/C Issuer's holding company, if any, regarding capital or liquidity requirements has had or would have the effect of reducing the rate of return on such Lender's or such L/C Issuer's capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or such L/C Issuer or its holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's or its holding company's policies with respect to capital adequacy or liquidity), then from time to time the Borrower upon request of such Lender or such L/C Issuer, as the case may be, will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or its holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or an L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in Section 3.04(a) or 3.04(b)

and delivered to the Borrower will be conclusive absent manifest error. The Borrower will pay such Lender or such L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 will not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation; provided that the Borrower will not be required to compensate a Lender or an L/C Issuer pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than three (3) months prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the three-month period referred to above will be extended to include the period of retroactive effect thereof).

(e) Additional Reserve Requirements. Without duplication of any reserve requirement reflected in the Adjusted Eurocurrency Rate, the Borrower shall pay to each Lender (i) as long as such Lender shall be required by a central banking or financial regulatory authority with regulatory authority over such Lender to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocable to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Eurocurrency Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which in each case shall be due and payable on each date on which interest is payable on such Loan; provided, that the Borrower shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender with a reasonably detailed explanation of the regulatory requirements imposing such costs and a calculation of the allocation of such costs to the relevant Loan or Commitment. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest or costs shall be due and payable ten (10) days from receipt of a proper notice. Notwithstanding the foregoing, if any reserves described in this Section 3.04(e) are based upon the financial strength or creditworthiness of a Lender, for the purposes of calculating the actual costs of a Lender with respect to such reserves, each such Lender shall be deemed to be in the highest applicable category of financial strength or creditworthiness.

(f) Certain Agreements. With respect to amounts due under this Section 3.04 as a result of any Change in Law, the claim for additional amounts shall be generally consistent with such Lender's or such L/C Issuer's treatment of customers of such Lender or such L/C Issuer that such Lender or such L/C Issuer considers, in its reasonable

discretion, to be similarly situated to the Borrower and having generally similar provisions in their credit agreements with such Lender or such L/C Issuer.

SECTION 3.05. Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower will promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower (whether or not any such notice may be revoked in accordance herewith);

(c) any failure by the Borrower to make payment of any Loan or drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency; or

(d) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.13.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender will be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the Relevant Interbank Market for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded.

SECTION 3.06. Mitigation Obligations. If any Lender requests compensation under Section 3.04, or the Loan Parties are required to pay any additional amount to any Lender, any L/C Issuer or any Governmental Authority for the account of any Lender or any L/C Issuer pursuant to Section 3.01, or if any Lender or any L/C Issuer gives a notice pursuant to Section 3.02, then such Lender or such L/C Issuer, as applicable, will use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender or such L/C Issuer, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (b) in each case, would not subject such Lender or such L/C Issuer to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or such L/C Issuer. The Loan Parties hereby agree to pay all reasonable costs and expenses incurred by any Lender or any L/C Issuer in connection with any such designation or assignment. Each party hereto agrees that (i) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by

reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

SECTION 3.07. Survival. Each party's obligations under this Article III will survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

ARTICLE IV

CONDITIONS PRECEDENT

SECTION 4.01. Conditions to Effectiveness. This Agreement and the obligations of the Lenders to make Loans and of the L/C Issuers to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions shall be satisfied (or waived in accordance with Section 11.01):

(a) The Administrative Agent's receipt from each party hereto a counterpart of this Agreement signed on behalf of such party (which, subject to Section 11.10, may include any Electronic Signatures transmitted by telecopy, emailed pdf, or any other electronic means that reproduces an image of an actual executed signature page).

(b) The Administrative Agent's receipt of the following, each of which may be delivered by facsimile or other electronic transmission (including "pdf" and "tif"), followed promptly after the Effective Date by originals; provided that the delivery of any originals shall not be a condition precedent to the Effective Date:

(i) a certificate, dated the Effective Date and signed by a Responsible Officer of each of the Loan Parties, (A) certifying and attaching a copy of the resolutions adopted by such Loan Party authorizing the execution, delivery and performance of this Agreement and, if applicable, the Notes, (B) certifying as to the incumbency and specimen signature of each Responsible Officer executing this Agreement and, if applicable, the Notes, on behalf of such Person, (C) attaching a good standing certificate (or the local equivalent, to the extent applicable in the relevant jurisdiction) and a certificate of incorporation (or the local equivalent) evidencing that such Loan Party is validly existing and in good standing (or the local equivalent, to the extent applicable in the relevant jurisdiction) in its jurisdiction of organization and (D) certifying and attaching a true and complete copy of the Organization Documents of such Loan Party (where customary and applicable, certified by the relevant Governmental Authority);

(ii) a certificate, dated the Effective Date and signed by a Responsible Officer of the Borrower, certifying that (A) the representations and warranties

contained in Article V are true and correct (1) in the case of the representations and warranties qualified as to materiality, in all respects and (2) otherwise, in all material respects, in each case on and as of the Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are so true and correct as of such earlier date, and (B) on and as of the Effective Date, no Default has occurred and is continuing; and

(iii) an executed legal opinion of Pillsbury Winthrop Shaw Pittman LLP, counsel to the Loan Parties, addressed to the Administrative Agent, each L/C Issuer and each Lender, dated the Effective Date and in form and substance reasonably satisfactory to the Administrative Agent.

(c) All fees due to the Administrative Agent, the Arrangers and the Lenders pursuant to this Agreement and, to the extent invoiced at least two (2) Business Days prior to the Effective Date, all reasonable and documented expenses to be paid or reimbursed to the Administrative Agent and the Arrangers on or prior to the Effective Date pursuant to this Agreement shall have been paid.

(d) (i) The Administrative Agent shall have received, at least five (5) days prior to the Effective Date, all documentation and other information regarding the Borrower requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, to the extent requested in writing of the Borrower at least ten (10) days prior to the Effective Date and (ii) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five (5) days prior to the Effective Date, any Lender that has requested, in a written notice to the Borrower at least ten (10) days prior to the Effective Date, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (d) shall be deemed to be satisfied).

Without limiting the generality of the provisions of Section 10.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender will be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter referred to in this Section 4.01 unless the Administrative Agent will have received notice from such Lender prior to the proposed Effective Date, specifying its objection thereto. The Administrative Agent shall promptly notify in writing the Loan Parties and the Lenders of the occurrence of the Effective Date, and such notice shall be conclusive and binding.

SECTION 4.02. Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Borrowings of one Type to the other Type, or a continuation of Eurocurrency Rate Committed Loans) on and after the Effective Date is, subject to Section 2.14 (as relating to Acquisition-Related Incremental Term Loans), subject to the following conditions precedent:

(a) The representations and warranties contained in Article V will be true and correct (i) in the case of the representations and warranties qualified as to materiality, in all

respects and (ii) otherwise, in all material respects, in each case on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they will be so true and correct as of such earlier date.

(b) No Default exists or would immediately result from such proposed Credit Extension.

(c) The Administrative Agent and, if applicable, the applicable L/C Issuer will have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension on and after the Effective Date (other than a Committed Loan Notice requesting a conversion of Committed Borrowings denominated in US Dollars to the other Type or a continuation of Eurocurrency Rate Committed Borrowings) submitted by the Borrower will be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and 4.02(b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

The Borrower and the other Loan Parties represents and warrants to the Administrative Agent and the Lenders that:

SECTION 5.01. Existence, Qualification and Power. Borrower and each Material Subsidiary (a) is duly organized or formed, validly existing and in good standing (or the local equivalent) under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power, capacity and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) in the case of any Loan Party, execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and in good standing (or the local equivalent) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, except, in each case referred to in clause (a) (other than as to any Loan Party), (b)(i) or (c), to the extent that failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.02. Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any such Person's Organization Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under, any Contractual Obligation to which such Person is a party or affecting such Person or (c) violate any Law, except, in each case referred to in clause (b) or (c), to the extent that failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.03. Material Governmental Authorization. Other than any filings with the SEC and any approvals, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect, no approval, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document to which it is a party, except those approvals, authorizations, actions, notices and filings the failure of which to obtain, take, give or make, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.04. Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is a party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of each Loan Party that is a party thereto, in each case enforceable against such Loan Party in accordance with its terms, subject to applicable Debtor Relief Laws and the effect of general principles of equity, whether applied by a court of law or equity.

SECTION 5.05. Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements and the unaudited condensed consolidated balance sheet of the Borrower and its Subsidiaries, and the related unaudited condensed consolidated statements of operations, comprehensive income / (loss), stockholders' equity and cash flows of the Borrower and its Subsidiaries, as of and for the fiscal quarter ended March 31, 2021, have been prepared in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein, and fairly present, in all material respects, the consolidated financial position of the Borrower and its Subsidiaries at such dates and the consolidated results of their operations and cash flows for such periods (subject, in the case of such unaudited financial statements, to the absence of footnotes and to year-end audit adjustments).

(b) Since December 31, 2020, except for events and circumstances disclosed in any SEC Documents, in each case filed or furnished and publicly available before the Effective Date (but excluding any disclosure in the "Forward Looking Statements" section of any SEC Document and any other statements that are solely forward looking in nature included in any SEC Document (including in a "Risk Factors" section)), there has been no event or circumstance that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect.

SECTION 5.06. Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Borrower or any of its Subsidiaries that (a) would reasonably be likely to affect this Agreement or any other Loan Document or (b) except as specifically disclosed in any SEC Documents filed or furnished and publicly available before the Effective Date (but excluding any disclosure in the "Forward Looking Statements" section of any SEC Document and any other statements that are solely forward looking in nature included in any SEC Document (including in a

"Risk Factors" section)) or on Schedule 5.06, individually or in the aggregate, if determined adversely, would reasonably be expected to have a Material Adverse Effect.

SECTION 5.07. Anti-Corruption Laws and Sanctions. (a) Borrower and the other Subsidiaries have implemented and maintain in effect policies and procedures designed to ensure compliance by the Borrower and the Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and Borrower and, to Borrower's knowledge, the other Subsidiaries and their respective directors, officers, employees and agents are in compliance with Anti-Corruption Laws and applicable Sanctions, except where the failure to comply therewith, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(b) None of the Borrower or any Guarantor (or, to the knowledge of the Borrower, any officer or director of the Borrower or any Guarantor), or any other Subsidiary, is a Sanctioned Person.

SECTION 5.08. Margin Regulations; Investment Company Act. (a) None of the Borrower or any other Loan Party is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of any Loan will be used, directly or indirectly, for any purpose that violates Regulation U or X of the Federal Reserve Board.

(b) No Loan Party is required to be registered as an "investment company" under the Investment Company Act of 1940.

SECTION 5.09. Disclosure. The written information (other than projected financial information and information of a general economic or general industry nature) that has been furnished to the Arrangers or any of the Lenders in connection with the negotiation of, or pursuant to the terms of, this Agreement by or on behalf of the Borrower or any other Loan Party, did not and will not, in each case, when so furnished and taken as a whole, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading in the light of the circumstances under which such statements were made (in each case after giving effect to all supplements and updates provided thereto on or prior to the Effective Date); provided that, with respect to projected financial information, the Borrower and the other Loan Parties represent only that such information was prepared in good faith based upon reasonable assumptions that are believed by the preparer thereof to be reasonable at the time made and at the time such projected financial information was delivered to the Arrangers or any of the Lenders (it being understood and agreed that such projected financial information is not to be viewed as facts and that actual results during the period or periods covered by any such projected financial information may differ significantly from the projected results, and no assurance can be given that the projected results will be realized). As of the Effective Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 5.10. Compliance with Laws. Each of the Borrower and each Material Subsidiary is in compliance with the requirements of all Laws applicable to it or

its business or property (including applicable Anti-Corruption Laws), except in such instances in which (a) such requirement of Law is being contested in good faith by appropriate proceedings or (b) the failure to comply therewith, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.11. Properties. Except as would not reasonably be expected to result in a Material Adverse Effect, individually or in the aggregate:

(a) each of the Borrower and its Subsidiaries has good title to, or (to the knowledge of the Borrower or any Subsidiary) valid leasehold interests in, all its real and personal property (other than IP Rights, which is subject to Section 5.11(b)) material to its business; and

(b) each of the Borrower and its Subsidiaries owns, or is licensed to use (subject to the knowledge-qualified infringement representation in this Section 5.11(b)), all IP Rights used in its business and, subject to the exceptions set forth in Section 5.06(b), to any Loan Party's knowledge does not infringe upon the IP Rights of any other Person.

ARTICLE VI

AFFIRMATIVE COVENANTS

Until the Commitments shall have expired or been terminated, all Loans and other Obligations (other than contingent obligations as to which no claim has been made) shall have been paid in full, all Letters of Credit shall have expired or been terminated (other than Letters of Credit that have been Cash Collateralized in full or as to which other arrangements satisfactory to the applicable L/C Issuer and the Administrative Agent shall have been made) and all L/C Borrowings shall have been reimbursed in full, each of the Borrower and the other Loan Parties covenants and agrees with the Lenders that:

SECTION 6.01. Financial Statements. The Borrower will deliver to the Administrative Agent (which will make available copies to each Lender):

(a) as soon as available, but in any event within 90 days after the end of each Fiscal Year of the Borrower (commencing with the Fiscal Year ending December 31, 2021), a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Year, and the related consolidated statements of operations, comprehensive income / (loss), cash flows and stockholders' equity for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of Ernst & Young LLP or another independent public registered accounting firm of recognized national standing, which report and opinion will be prepared in accordance with audit standards of the Public Company Accounting Oversight Board and will not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit or with respect to the absence of material misstatement in accordance with GAAP; and

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each Fiscal Year of the Borrower (commencing with the

first full fiscal quarter ending after the Effective Date), a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal quarter, and the related consolidated statements of operations and comprehensive income / (loss) for such fiscal quarter and for the portion of the Fiscal Year then ended and the related consolidated statements of cash flows for the portion of the Fiscal Year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous Fiscal Year and the corresponding portion of the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, certified by the chief financial officer or the vice president and controller of the Borrower as fairly presenting, in all material respects, the consolidated financial position of the Borrower and its Subsidiaries as of the end of such fiscal quarter and the consolidated results of their operations and cash flows for such periods, subject only to normal year-end audit adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to Section 6.02(b), the Borrower will not be separately required to furnish such information under clause (a) or (b) above, but the foregoing will not be in derogation of the obligation of the Borrower to furnish the information and materials described in clauses (a) and (b) above at the times specified therein.

SECTION 6.02. Certificates; Notice of Default; Other Information. The Borrower will deliver to the Administrative Agent (which will distribute copies to the Lenders):

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and 6.01(b), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower (which delivery may be by electronic communication, including fax or e-mail, and shall be deemed to be an original authentic counterpart thereof for all purposes);

(b) promptly, after the same are available, copies of each proxy statement sent to the shareholders of the Borrower and copies of all annual, regular, periodic and special reports and registration statements which the Borrower files with the SEC under Section 13 or 15(d) of the Securities Exchange Act, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(c) promptly, upon any Default becoming known to any Responsible Officer of the Borrower, a written statement of a Responsible Officer of the Borrower containing a heading or a reference line that reads “Notice under Section 6.02(c) of Incyte Corporation Credit Agreement dated August 18, 2021” and setting forth details of such Default and stating what action the Borrower or its Subsidiaries have taken and propose to take with respect thereto;

(d) promptly following request, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation;

(e) prompt written notice of any change in the information provided in the Beneficial Ownership Certification delivered to any Lender that would result in a change to the list of beneficial owners identified in such certification; and

(f) promptly following request, subject to the Borrower's and its Subsidiaries' internal policies for the protection and preservation of intellectual property, trade secrets and other non-financial proprietary information, such additional information regarding the corporate, financial or operating affairs of the Borrower or any Subsidiary (but excluding any financial information that the Borrower and its Subsidiaries do not produce in the ordinary course of business), or compliance with the terms of the Loan Documents by any Loan Party, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request in relation to this Agreement; provided that (i) in no case shall the Borrower be required to disclose any information if doing so would be reasonably likely to result in a violation of Regulation FD and (ii) if in the Borrower's reasonable judgment the disclosure of any requested information would compromise attorney-client privilege, privilege afforded to attorney work product or similar privilege, the Borrower shall make available redacted versions of requested documents or, if unable to do so consistent with the preservation of such privilege, shall endeavor in good faith otherwise to disclose information responsive to such request in a manner that will protect such privilege; provided further that the Borrower shall not be required to deliver such information to the extent such information is publicly available.

Documents required to be delivered pursuant to Section 6.01(a), 6.01(b) or 6.02(b) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, will be deemed to have been delivered on the date on which (i) the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at http://www.incyte.com (or such other website address as may be updated from time to time and provided to the Administrative Agent in writing) or (ii) such documents are posted on the Borrower's behalf on an Approved Electronic Platform. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

SECTION 6.03. Payment of Taxes. The Borrower, the other Loan Parties and each other Material Subsidiary will pay and discharge its Tax liabilities at such time as they are due and payable, unless the same are being contested in good faith by appropriate proceedings diligently conducted and it is maintaining adequate reserves in accordance with GAAP, except to the extent that failure to pay or discharge such Tax liabilities, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

SECTION 6.04. Preservation of Existence, Etc. The Borrower, the other Loan Parties and each other Material Subsidiary will (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or incorporation; provided that this clause (a) shall not prohibit any transaction permitted by Section 7.03, and (b) take all reasonable action to maintain all

rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

SECTION 6.05. Compliance with Laws. The Borrower, the other Loan Parties and each other Material Subsidiary will comply with the requirements of all Laws applicable to it or to its business or property, except in such instances in which (a) such requirement of Law is being contested in good faith by appropriate proceedings or (b) the failure to comply therewith, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

SECTION 6.06. Use of Proceeds. (a)The Borrower and the other Loan Parties and each other Subsidiary will use the proceeds of the Credit Extensions for general corporate purposes, including (but not limited to) working capital, capital expenditures, acquisitions, investments, dividends, distributions and share buybacks.

(b) The Borrower will not request any Loan or Letter of Credit, and the Borrower shall not use, and shall procure that Borrower and the Subsidiaries and their respective directors, officers, employees and Agent shall not use, the proceeds of any Loan or any Letter of Credit (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 Anti-Corruption Laws or (ii) (A) for the purpose of funding any activity or business in any Sanctioned Country or for the purpose of funding any activity or business of or with any Sanctioned Person or (B) in any other manner, in each case, as will result in any violation by any Lender, any L/C Issuer, any Arranger or the Administrative Agent of any Sanctions.

SECTION 6.07. Maintenance of Property and Insurance. The Borrower will, and will cause each of its Material Subsidiaries to, (a) keep and maintain all tangible property material to the conduct of its business in good working order and condition, ordinary wear and tear and casualty excepted and except (i) as otherwise permitted by Section 7.03 or (ii) where the failure to do so would not reasonably be expected to result in a Material Adverse Effect and (b) maintain, in all material respects, with carriers reasonably believed by the Borrower to be financially sound and reputable or through reasonable and adequate self-insurance insurance in such amounts and against such risks and such other hazards, as is customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations or where the Material Subsidiary operates.

ARTICLE VII

NEGATIVE COVENANTS

Until the Commitments shall have expired or been terminated, all Loans and other Obligations (other than contingent obligations as to which no claim has been made) shall have been paid in full, all Letters of Credit shall have expired or been terminated (other than Letters of Credit that have been Cash Collateralized in full or as to which other arrangements satisfactory to the applicable L/C Issuer and the Administrative Agent shall have been made)

and all L/C Borrowings shall have been reimbursed in full, each of the Borrower and the other Loan Parties covenants and agrees with the Lenders that:

SECTION 7.01. Liens. None of the Borrower, the other Loan Parties or any other Subsidiary will create, incur, assume or permit to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens created pursuant to any Loan Document;

(b) Liens existing on the Effective Date and set forth on Schedule 7.01 and any renewals, extensions and refinancings thereof; provided that (i) such Liens do not encumber property other than the property subject to the original Lien or improvements thereon or replacements thereof and (ii) the amount of Indebtedness secured or benefited thereby is not increased, except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with any renewal, extension or refinancing of such Indebtedness;

(c) Liens on any assets acquired by the Borrower or any Subsidiary after the Effective Date existing at the time of the acquisition thereof or on any asset of any Person that becomes a Subsidiary (or of any Person not previously Borrower or a Subsidiary that is merged or consolidated with or into Borrower or a Subsidiary in a transaction or series of related transactions permitted hereunder) after the Effective Date existing at the time such Person becomes a Subsidiary (or is so merged or consolidated), and any renewals, extensions and refinancings thereof; provided that (i) such Liens were not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary (or such merger or consolidation), (ii) such Liens do not encumber property other than the property subject to the original Lien or improvements thereon or replacements thereof and (iii) the amount of Indebtedness secured or benefited thereby is not increased, except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with any renewal, extension or refinancing of such Indebtedness;

(d) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Subsidiary; provided that (i) such Liens secure only Indebtedness incurred to finance the acquisition, construction or improvement of such fixed or capital assets (and obligations relating thereto not constituting Indebtedness), including any Capital Lease Obligations, and renewals, extensions and refinancings of any such Indebtedness that do not increase the amount of Indebtedness secured or benefited thereby, except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with any renewal, extension or refinancing of such Indebtedness and (ii) such Liens and the Indebtedness secured thereby (other than any such renewals, extensions or refinancings thereof) are incurred prior to or within 120 days after the later of such acquisition, the completion of such construction or improvement or full operation of such acquired asset; provided further that in the event purchase money obligations are owed to any Person with respect to financing of more than one purchase of any fixed or capital assets, such Liens may secure all such purchase money obligations and may apply to all such fixed or capital assets financed by such Person;

(e) Liens in favor of the Borrower or any Subsidiary of the Borrower;

(f) any Lien securing any obligation of the Borrower or any Subsidiary in respect of interest rate, currency exchange rates or commodity pricing Swap Contracts entered into in the ordinary course of business for bona fide business purposes;

(g) Liens on the proceeds of any Acquisition Indebtedness held in escrow prior to the release thereof from escrow;

(h) Permitted Encumbrances;

(i) Liens arising out of any conditional sale, title retention, consignment, licensing or other similar arrangements for the sale of goods or commercialization of IP Rights entered into by the Borrower or any of its Subsidiaries the ordinary course of business;

(j) Liens securing Indebtedness permitted hereunder to finance insurance premiums solely to the extent of such premiums;

(k) statutory and common law rights of setoff and other Liens, similar rights and remedies arising as a matter of law encumbering deposits of cash, securities, commodities and other funds in favor of banks, financial institutions, other depository institutions, securities or commodities intermediaries or brokerage, and Liens of a collecting bank arising under Section 4-208 or 4-210 of the UCC in effect in the relevant jurisdiction or any similar law of any foreign jurisdiction on items in the course of collection;

(l) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(m) Liens on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any Acquisition permitted by this Agreement, including, without limitation, in connection with any letter of intent or purchase agreement relating thereto;

(n) in connection with the sale or transfer of any assets in a transaction permitted under Section 7.04, customary rights and restrictions contained in agreements relating to such sale or transfer pending the completion thereof;

(o) Liens in the nature of the right of setoff in favor of counterparties to contractual agreements with the Loan Parties (i) in the ordinary course of business or (ii) otherwise permitted hereunder other than in connection with Indebtedness;

(p) dispositions and other sales of assets permitted under Section 7.04;

(q) to the extent constituting a Lien, Liens with respect to repurchase obligations related to investments;

(r) Liens in favor of a credit card or debit card processor arising in the ordinary course of business under any processor agreement and relating solely to the amounts paid or payable thereunder, or customary deposits on reserve held by such credit card or debit card processor;

(s) Liens that are contractual rights of set-off (i) relating to the establishment of depositary relations with banks or other financial institutions not given in connection with the issuance of Indebtedness, or (ii) relating to pooled deposit or sweep accounts of any Loan Party or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the any such Loan Party or Subsidiary;

(t) Liens of sellers of goods to any Loan Party and any of their respective Subsidiaries arising under Article II of the UCC or similar provisions of applicable law in the ordinary course of business, covering only the goods sold and securing only the unpaid purchase price for such goods and related expenses;

(u) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary, (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof (except by the amount of any accrued interest and premiums with respect to such Indebtedness and transaction fees, costs and expenses in connection with such extension, renewal or replacement thereof) and (iv) the aggregate principal amount of Indebtedness and other obligations secured by any Lien permitted by this clause (u) shall not exceed $100,000,000 at any time outstanding;

(v) Liens not securing Indebtedness that are created or deemed to exist in favor of any purchaser or transferee of assets, accounts, or other rights to payment in connection with any Disposition permitted under Section 7.04, including UCC financing statements (or equivalent filings or registrations in foreign jurisdictions) that evidence or perfect the interests of such purchasers or transferees; and

(w) other Liens securing other Indebtedness (and obligations relating thereto not constituting Indebtedness) of the Borrower and its Subsidiaries; provided that, at the time any such Lien or Indebtedness is created, incurred or assumed, the aggregate outstanding principal amount of Indebtedness secured pursuant to this clause (w), when added to, without duplication, the aggregate outstanding principal amount of Indebtedness permitted pursuant to Section 7.02(f), does not exceed $100,000,000 at any time outstanding.

SECTION 7.02. Subsidiary Indebtedness. The Borrower will not permit any Subsidiary (other than the Borrower or any Subsidiary Guarantor) to create, incur, assume or permit to exist any Indebtedness, other than:

(a) Indebtedness outstanding on the Effective Date and set forth on Schedule 7.02 and any renewals, extensions or refinancings thereof; provided that the amount of such Indebtedness is not increased except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with any renewal, extension or refinancing thereof and by an amount equal to any existing commitments unutilized thereunder;

(b) obligations (contingent or otherwise) of any Subsidiary existing or arising under any Swap Contract; provided that (i) such obligations are (or were) entered into by such Person for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(c) Guarantees by any Subsidiary of Indebtedness otherwise permitted hereunder of any other Subsidiary or of the Borrower;

(d) Indebtedness of any Person that becomes a Subsidiary (or of any Person not previously a Subsidiary that is merged or consolidated with or into a Subsidiary in a transaction or series of related transactions permitted hereunder) after the Effective Date existing at the time such Person becomes a Subsidiary (or is so merged or consolidated), and any renewals, extensions or refinancings thereof; provided that (i) such Indebtedness is not created in contemplation of or in connection with such Person becoming a Subsidiary (or such merger or consolidation) and (ii) the amount of such Indebtedness is not increased, except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with any renewal, extension or refinancing of such Indebtedness;

(e) Indebtedness incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations, or assumed in connection with the acquisition of any fixed or capital assets, and any extensions, renewals and refinancings thereof that do not increase the outstanding principal amount thereof except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with any renewal, extension or refinancing of such Indebtedness;

(f) other Indebtedness; provided that, at the time such Indebtedness is created, incurred or assumed, the aggregate outstanding principal amount of Indebtedness permitted by this clause (f), when added to, without duplication, the aggregate outstanding principal amount of Indebtedness that is secured by Liens permitted by Section 7.01(w), does not exceed $100,000,000 at any time outstanding;

(g) intercompany loans owed by any Subsidiary to Borrower or to any other Subsidiary; provided that such Indebtedness shall not have been transferred or assigned to any Person other than Borrower or any Subsidiary;

(h) obligations arising in connection with the administration and operation of cash management services for the Borrower and any of its Subsidiaries, including cash pooling arrangements and overdraft facilities;

(i) direct or contingent obligations arising under letters of credit (including standby and commercial), bankers' acceptances, bank guarantees, surety bonds and similar instruments; obtained or applied for in the ordinary course of business; and

(j) Indebtedness of a Person that becomes a Subsidiary after the date hereof pursuant to an acquisition; provided, that such Indebtedness (i) was in existence prior to the date of such acquisition and (ii) was not incurred in connection with, or in contemplation of, such acquisition.

SECTION 7.03. Fundamental Changes. (a) None of the Borrower or the other Loan Parties will (i) dissolve or be liquidated or (ii) merge or consolidate with or into another Person, unless, in the case of this clause (ii), (A) at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing, (B) if the Borrower is party to such consolidation or merger, the Borrower is the survivor of such consolidation or merger and (C) if any other Loan Party is party to such consolidation or merger and is not the survivor of any such consolidation or merger, (1) the surviving Person of such consolidation or merger shall expressly assume all the rights and obligations of such other Loan Party under this Agreement and the other Loan Documents pursuant to documentation reasonably satisfactory to the Administrative Agent and shall thereafter be deemed to be such other Loan Party for all purposes hereunder and (2) such consolidation or merger will not result in a change in the jurisdiction of organization of such other Loan Party (other than to any state within the United States).

(b) None of the Borrower and the other Loan Parties or any other Subsidiary will Dispose of (whether in one transaction or in a series of transactions) all or substantially all of the assets (whether now owned or hereafter acquired) of the Borrower and the Subsidiaries, taken as a whole; provided that assets of and Equity Interests in any Subsidiary may be disposed of to any other Wholly-Owned Subsidiary or to Borrower.

SECTION 7.04. Dispositions. The Borrower will not, and will not permit any Subsidiary to, make any Disposition, except:

(a) Dispositions of obsolete, worn out or surplus property (other than IP Rights) that is not material to the business of the Borrower or its Subsidiaries, property no longer used or useful or economically practicable to maintain in the conduct of the business of the Borrower and its Subsidiaries in the ordinary course of business;

(b) Dispositions of cash and inventory in the ordinary course of business;

(c) Dispositions of (i) long-term investments and (ii) other investments acquired pursuant to the Borrower's investment policy approved by its board of directors (or committee thereof);

(d) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(e) Dispositions of property by the Borrower or any Subsidiary Guarantor to the Borrower or any other Subsidiary Guarantor;

(f) leases, licenses, subleases or sublicenses (including the provision of open source software under an open source license) granted in the ordinary course of business or as approved by the board of directors of the Borrower and, in each case, on ordinary commercial terms that do not interfere in any material respect with the business of the Borrower and its Subsidiaries;

(g) Dispositions of intellectual property rights (other than as permitted by clause (e) above) that are no longer used or useful in the business of the Borrower and its Subsidiaries;

(h) the discount, write-off or Disposition of accounts receivable overdue by more than ninety days, in each case in the ordinary course of business;

(i) Dispositions of non-core assets acquired in an Acquisition; provided that such Dispositions shall be consummated within 360 days of such Acquisition; provided, further, that (i) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the board of directors of the Borrower) and (ii) no less than 75% thereof shall be paid in cash;

(j) Restricted Payments permitted by Section 7.05;

(k) Dispositions of property to the Borrower or any of its Subsidiaries; provided that if the transferor of such property is a Guarantor, the transferee thereof must either be the Borrower or a Guarantor;

(l) Dispositions of investments in joint ventures, to the extent required by, or made pursuant to buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(m) Dispositions in any transaction or series of transactions not constituting Indebtedness pursuant to which the Borrower or any Subsidiary conveys, assigns, or otherwise transfers for fair market value (as determined by the Borrower in good faith) its right to receive royalty payments and related rights thereto from any Person that is not an Affiliate of Borrower; provided that the consolidated revenues of the Borrower and its Subsidiaries, when calculated on a pro forma basis in accordance with Section 1.03(c) after giving effect to any such Disposition for each Reference Period in which any such Disposition shall have been consummated, have not decreased by more than 10% in the aggregate for all such Dispositions made pursuant to (i) this clause (m) *plus* (ii) clause (n) of this Section, (determined on the date of consummation of any such Disposition by reference to the amount of consolidated revenues of the Borrower and its Subsidiaries for the most recent Reference Period for which financial statements shall have been delivered

pursuant to Section 6.01(a) or 6.01(b) (or, prior to the first such delivery, as of the end of the most recent fiscal quarter covered by the financial statements referred to in Section 5.05)); and

(n) Dispositions by the Borrower and its Subsidiaries not otherwise permitted under this Section; provided that the consolidated revenues of the Borrower and its Subsidiaries, when calculated on a pro forma basis in accordance with Section 1.03(c) after giving effect to any such Disposition for each Reference Period in which any such Disposition shall have been consummated, have not decreased by more than 3% in the aggregate for all such Dispositions made pursuant to this clause (n) (determined on the date of consummation of any such Disposition by reference to the amount of consolidated revenues of the Borrower and its Subsidiaries for the most recent Reference Period for which financial statements shall have been delivered pursuant to Section 6.01(a) or 6.01(b) (or, prior to the first such delivery, as of the end of the most recent fiscal quarter covered by the financial statements referred to in Section 5.05)); and provided, further that the consolidated revenues of the Borrower and its Subsidiaries, when calculated on a pro forma basis in accordance with Section 1.03(c) after giving effect to any such Disposition for each Reference Period in which any such Disposition shall have been consummated, have not decreased by more than 10% in the aggregate for all such Dispositions made pursuant to (i) this clause (n) *plus* (ii) clause (m) of this Section (determined on the date of consummation of any such Disposition by reference to the amount of consolidated revenues of the Borrower and its Subsidiaries for the most recent Reference Period for which financial statements shall have been delivered pursuant to Section 6.01(a) or 6.01(b) (or, prior to the first such delivery, as of the end of the most recent fiscal quarter covered by the financial statements referred to in Section 5.05)).

SECTION 7.05. Restricted Payments. The Borrower 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, except:

(a) the Borrower may declare and pay dividends or make other Restricted Payments with respect to its Equity Interests payable solely in additional Equity Interests;

(b) Subsidiaries may (i) make dividends or other distributions to their respective equityholders with respect to their Equity Interests (which distributions shall be (x) made on at least a ratable basis to any such equityholders that are Loan Parties and (y) in the case of a Subsidiary that is not a wholly-owned Subsidiary, made on at least a ratable basis to any such equityholders that are the Borrower or a Subsidiary), (ii) make other Restricted Payments to the Borrower or any Subsidiary Guarantor (either directly or indirectly through one or more Subsidiaries that are not Loan Parties) and (iii) make any Restricted Payments that the Borrower would have otherwise been permitted to make pursuant to this Section 7.05;

(c) the Borrower may make Restricted Payments (i) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of the Borrower from any future, present or former employee, officer, director, manager or consultant of the Borrower or any Subsidiary upon the death, disability, retirement or termination of

employment of any such Person or (ii) pursuant to and in accordance with any agreement (including any employment agreement), stock option or stock purchase plans, incentive plans or other benefit plans, in each case for future, present or former directors, officers, managers, employees or consultants of the Borrower and its Subsidiaries (including, without limitation, in respect of tax withholding or other similar tax obligation related to the foregoing);

(d) the Borrower may repurchase Equity Interests upon the exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants or with the proceeds received from the substantially concurrent issue of new Equity Interests;

(e) the Borrower and its Subsidiaries may make any other Restricted Payment so long as the aggregate amount of all such Restricted Payments during any fiscal year does not exceed $100,000,000;

(f) the Borrower or any Subsidiary may distribute Equity Interests (or rights thereto) pursuant to a stockholder rights plan or redeem such rights in accordance with the terms of such plan to the extent such Equity Interests, by their terms (or by the terms of any security, instrument, agreement or other Equity Interest into which it is convertible, or for which it is exchangeable), or upon the happening of any event or condition, do not require the Borrower or any Subsidiary to purchase, redeem, retire, defease or otherwise make any payment prior to the date which is ninety-one (91) days after the Maturity Date in respect of any such Equity Interests or any warrant, right or option to acquire such Equity Interests; and

(g) the Borrower and its Subsidiaries may make any other Restricted Payment so long as the Consolidated Leverage Ratio, calculated as of the last day of the most recently ended fiscal quarter of the Borrower to give effect to the making of such Restricted Payment on a pro forma basis does not exceed 3.00:1.00.

SECTION 7.06. Consolidated Leverage Ratio. Borrower will not permit the Consolidated Leverage Ratio as of the last day of any fiscal quarter of the Borrower to exceed 3.50:1.00; provided that on no more than two (2) occasions during the term of this Agreement, upon the consummation of a Qualified Acquisition, then the ratio set forth above shall be deemed increased to 4.00:1.00 as of the last day of each of the four fiscal quarters ending immediately after the most recent such Qualified Acquisition (including the fiscal quarter in which such Qualified Acquisition was consummated).

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.01. Events of Default. Subject to Section 8.04, any of the following will constitute an "Event of Default":

(a) Non-Payment. The Borrower fails to pay when and as required to be paid herein, and in the currency required hereunder, (i) any amount of principal of any Loan or any L/C Obligation or (ii) within five (5) Business Days after the same becomes due, any

interest on any Loan or on any L/C Obligation, any fee due hereunder or any other amount payable hereunder or under any other Loan Document (other than an amount specified in clause (i) above);

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in Section 6.02(c), 6.04(a) (with respect to existence of the Borrower or any other Loan Party), 6.06 or 9.11 or in Article VII;

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or 8.01(b)) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after notice thereof from the Administrative Agent (given at the request of any Lender) to the Borrower;

(d) Representations and Warranties. Any representation and warranty made or deemed made by or on behalf of any Loan Party herein or in any other Loan Document, or any statement made by or on behalf of any Loan Party or any Responsible Officer thereof in any certificate delivered in connection with any Loan Document, is incorrect in any material respect when made or deemed made;

(e) Cross-Default. (i) The Borrower or any Material Subsidiary fails to make any payment of principal or interest in respect of any Material Indebtedness, when and as the same shall become due and payable (after giving effect to any applicable grace periods), (ii) any event or condition occurs that (A) results in any Material Indebtedness becoming due prior to its scheduled maturity or (B) enables or permits (after giving effect to any applicable grace periods) the holder or holders of any Material Indebtedness, or any trustee or agent on its or their behalf, to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this Section 8.01(e)(ii) 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 Indebtedness if such secured Indebtedness is paid when due, (y) any repayment, satisfaction and discharge or redemption of any Acquisition Indebtedness if the related Acquisition is not consummated or (z) any Indebtedness that becomes due as a result of a voluntary refinancing thereof or (iii) there occurs under any Swap Contract an early termination date resulting from (x) any event of default under such Swap Contract as to which the Borrower or any Material Subsidiary is the defaulting party thereunder or (y) any termination event under such Swap Contract as to which the Borrower or any Material Subsidiary is an affected party thereunder and, in either event, the Swap Termination Value owed by the Borrower or such Material Subsidiary as a result thereof is greater than $75,000,000;

(f) Insolvency Proceedings, Etc. The Borrower or any Material Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, examiner or similar officer for it or for all or any material part of its property; any receiver, trustee, custodian, conservator, liquidator, rehabilitator, examiner or similar officer is appointed without the application or consent of the Borrower or any Material Subsidiary

and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to the Borrower or any Material Subsidiary or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding;

(g) Inability to Pay Debts; Attachment. (i) The Borrower or any Material Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the Borrower or any Material Subsidiary and is not released, vacated or fully bonded within thirty (30) days after its issue or levy;

(h) Judgments. There is entered against the Borrower or any Material Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding $75,000,000 (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage) and (i) enforcement proceedings are commenced by any creditor upon such judgment or order and (ii) there is a period of thirty (30) consecutive days during which execution shall not have been effectively stayed, vacated or bonded pending appeal or otherwise;

(i) ERISA. An ERISA Event occurs with respect to a Pension Plan or

Multiemployer Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect;

(j) Invalidity of Loan Documents. Any material provision of this Agreement, any other Loan Document or any material Guarantee under the Obligations Guarantee shall, for any reason, cease to be in full force and effect, or any Loan Party shall contest in writing the validity or enforceability of this Agreement, any other Loan Document or any such Guarantee, in each case, other than in accordance with the terms hereof and thereof (including, in the case of a Subsidiary Guarantor, as a result of the release of such Subsidiary Guarantor in accordance with Section 10.10); or

(k) Change of Control. There occurs any Change of Control.

SECTION 8.02. Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent will at the request of, or may with the consent of, the Required Lenders, take any or all of the following actions from and after the Effective Date:

(a) declare the Commitments and any obligation of each L/C Issuer to make L/C Credit Extensions to be terminated, whereupon all the Commitments and all such obligations shall immediately terminate;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment,

demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof), without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties; and

(d) exercise on behalf of itself, the Lenders and the L/C Issuers all rights and remedies available to the Administrative Agent, the Lenders and the L/C Issuers under the Loan Documents; provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under Debtor Relief Laws, all Commitments and all the obligations of each L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent, any Lender or any L/C Issuer and without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties.

SECTION 8.03. Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations will, subject to Sections 2.15 and 2.16, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in their capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and reimbursements payable to the Lenders, the L/C Issuers or the Arrangers (including fees, charges and disbursements of counsel to the Lenders, the L/C Issuers or the Arrangers and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, the L/C Borrowings and the other Obligations, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of each L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount

of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.04 and 2.15; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Subject to Sections 2.04(c) and 2.15, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above will be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired (other than Letters of Credit as to which other arrangements satisfactory to the applicable L/C Issuer and the Administrative Agent shall have been made), such remaining amount will be applied to the other Obligations, if any, in the order set forth above.

SECTION 8.04. Cleanup Period. Notwithstanding anything to the contrary, if on the date of consummation of any Qualified Acquisition a matter or circumstance exists which constitutes a Default, such matter or circumstance will not constitute (other than for purposes of Section 4.02) a Default on the date of consummation of such Qualified Acquisition and during the five-day period following such date; provided that (a) such matter or circumstance does not constitute (i) a Major Default or (ii) a Default incapable of being cured, (b) reasonable steps are being taken by the Borrower and its Subsidiaries to cure such Default and (c) such Default is cured or otherwise ceases to exist within five days after the date of consummation of such Qualified Acquisition.

ARTICLE IX

GUARANTEE

SECTION 9.01. Guarantee of Obligations. Each of the Guarantors hereby, jointly and severally, absolutely, unconditionally and irrevocably, guarantees, as primary obligor and not merely as surety, to the Administrative Agent, for the benefit of the Guaranteed Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower and each other Guarantor, when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations. Each Guarantor shall be liable under its guarantee set forth in this Section 9.01, without any limitation as to amount, for all present and future Obligations, including specifically all future increases in the outstanding principal amount of the Loans and other future increases in the Obligations, whether or not any such increase is committed, contemplated or provided for by the Loan Documents on the date hereof. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all Obligations (including interest, fees, costs and expenses) that would be owed by any other obligor on the Obligations but for the fact that they are unenforceable or not allowable due to the existence of a proceeding under any Debtor Relief Law involving such other obligor because it is the intention of the Guarantors and the Guaranteed Parties that the Obligations that are guaranteed by the Guarantors pursuant hereto should be determined without regard to any applicable Law or order that may relieve the Borrower or any other Guarantor of any portion of any Obligations.

SECTION 9.02. Limitation on Obligations Guaranteed. (a) Notwithstanding any other provision hereof, the right of recovery against each Guarantor under this Article IX shall not exceed $1.00 less than the lowest amount which would render such Guarantor's obligations under this Article IX void or voidable under applicable Law, including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to the Obligations Guarantee set forth herein and the obligations of such Guarantor hereunder. To effectuate the foregoing, the Administrative Agent and the Guarantors hereby irrevocably agree that the obligations of each Guarantor in respect of the Obligations Guarantee set forth in this Article IX at any time shall be limited to the maximum amount as will result in the obligations of such Guarantor under the Obligations Guarantee not constituting a fraudulent transfer or conveyance after giving full effect to the liability under the Obligations Guarantee set forth in this Article IX and its related contribution rights but before taking into account any liabilities under any other Guarantee by such Guarantor.

(b) Each Guarantor agrees that Obligations may at any time and from time to time be incurred or permitted in an amount exceeding the maximum liability of such Guarantor under Section 9.02(a) without impairing the Obligations Guarantee contained in this Article IX or affecting the rights and remedies of any Guaranteed Party hereunder.

SECTION 9.03. Nature of Guarantee; Continuing Guarantee; Waivers of Defenses. (a) Each Guarantor understands and agrees that the Obligations Guarantee contained in this Article IX shall be construed as a continuing guarantee of payment and performance and not merely of collectability. To the extent permitted by applicable Law, each Guarantor waives diligence, presentment, protest, marshaling, demand for payment, notice of dishonor, notice of default and notice of nonpayment to or upon the Borrower or any of the other Guarantors with respect to the Obligations. Without limiting the generality of the foregoing, this Obligations Guarantee and the obligations of the Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, set-off, defense, counterclaim, discharge or termination for any reason (other than a Discharge of Obligations).

(b) Each Guarantor agrees that the Obligations Guarantee of each Guarantor hereunder is independent of the Obligations Guarantee of each other Guarantor and of any other guarantee of the Obligations and when making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, any Guaranteed Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower and any other Guarantor or any other Person or against any other guarantee for the Obligations or any right of offset with respect thereto, and any failure by any Guaranteed Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower and any other Guarantor or any other Person or to realize upon any such guarantee or to exercise any such right of offset, or any release of the Borrower and any other Guarantor or any other Person or any such guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Guaranteed Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

(c) No payment made by the Borrower, any of the other Guarantors, any other guarantor or any other Person or received or collected by any Guaranteed Party from the Borrower and any of the other Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment remain liable for the Obligations until the Discharge of the Obligations.

(d) Without limiting the generality of the foregoing, each Guarantor agrees that its obligations under and in respect of the Obligations Guarantee contained in this Article IX shall not be affected by, and shall remain in full force and effect without regard to, and hereby waives all, rights, claims or defenses that it might otherwise have (now or in the future) with respect to each of the following (whether or not such Guarantor has knowledge thereof):

(i) the validity or enforceability of this Agreement or any other Loan Document, any of the Obligations or any guarantee or right of offset with respect thereto at any time or from time to time held by any Guaranteed Party;

(ii) any renewal, extension or acceleration of, or any increase in the amount of, the Obligations, or any amendment, supplement, modification or waiver of, or any consent to departure from, the Loan Documents;

(iii) any failure or omission to assert or enforce or agreement or election not to assert or enforce, delay in enforcement, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under any Loan Documents, at law, in equity or otherwise) with respect to the Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Obligations;

(iv) any change, reorganization or termination of the corporate structure or existence of any Loan Party or any Subsidiary of any Loan Party and any corresponding restructuring of the Obligations;

(v) any settlement, compromise, release, or discharge of, or acceptance or refusal of any offer of payment or performance with respect to, or any substitutions for, the Obligations or any subordination of the Obligations to any other obligations;

(vi) any Law of any jurisdiction or any other event affecting any term of an Obligation; and

(vii) any other circumstance whatsoever which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Obligations or which constitutes, or might be construed to constitute, an equitable or legal discharge of any Guarantor for the Obligations, or of such Guarantor under this Article IX.

(e) In addition, each Guarantor further waives any and all other defenses, set-offs or counterclaims (other than a defense of payment or performance in full hereunder) which may at any time be available to or be asserted by it, the Borrower or any other Guarantor or Person against any Guaranteed Party, including, without limitation, failure of consideration, breach of warranty, statute of frauds and statute of limitations.

SECTION 9.04. Rights of Reimbursement, Contribution and Subrogation. In case any payment is made on account of the Obligations by any Guarantor or is received or collected on account of the Obligations from any Guarantor:

(a) If such payment is made by a Guarantor in respect of the Obligations of another Guarantor, such Guarantor shall be entitled, subject to and upon (but not before) a Discharge of the Obligations (and each Guarantor hereby waives its right to exercise such rights until a Discharge of the Obligations), (A) to demand and enforce reimbursement for the full amount of such payment from such other Guarantor, and (B) to demand and enforce contribution in respect of such payment from each other Guarantor which has not paid its fair share of such payment, as necessary to ensure that (after giving effect to any enforcement of reimbursement rights provided hereby) each Guarantor pays its fair share of the unreimbursed portion of such payment. For this purpose, the fair share of each Guarantor as to any unreimbursed payment shall be determined based on an equitable apportionment of such unreimbursed payment among all Guarantors (other than the Guarantor whose primary obligations were so guaranteed by the other Guarantors) based on the relative value of their assets and any other equitable considerations deemed appropriate by the court.

(b) If and whenever any right of reimbursement or contribution becomes enforceable by any Guarantor against the Borrower or other Guarantor whether under Section 9.04(a) or otherwise, such Guarantor shall be entitled, subject to and upon (but not before) a Discharge of the Obligations (and each Guarantor hereby waives its right to subrogation until a Discharge of the Obligations), to be subrogated (equally and ratably with all other Guarantors entitled to reimbursement or contribution from any other Guarantor as set forth in this Section 9.04). Any right of subrogation of any Guarantor shall be enforceable solely after a Discharge of the Obligations and solely against the Borrower or the other Guarantors, and not against the Guaranteed Parties, and neither the Administrative Agent nor any other Guaranteed Party shall have any duty whatsoever to warrant, ensure or protect any such right of subrogation or to obtain, perfect, maintain, hold, enforce or retain any collateral securing or purporting to secure any of the Obligations for any purpose related to any such right of subrogation. Without limiting any other rights of contribution or subrogation then available to a Guarantor under applicable law, if subrogation is demanded by any Guarantor, then, after Discharge of the Obligations, the Administrative Agent shall deliver to the Guarantors making such demand, or to a representative of such Guarantors or of the Guarantors generally, an instrument satisfactory to the Administrative Agent transferring, on a quitclaim basis without any recourse, representation, warranty or any other obligation whatsoever, whatever security interest the Administrative Agent then may hold in whatever collateral securing or purporting to secure any of the Obligations that may then exist that was not previously released or disposed of or acquired by the Administrative Agent.

(c) The obligations of the Guarantors under this Obligations Guarantee and the other Loan Documents, including their liability for the Obligations and the enforceability of the security interests granted thereby, are not contingent upon the validity, legality, enforceability, collectability or sufficiency of any right of reimbursement, contribution or subrogation arising under this Section 9.04 or otherwise. The invalidity, insufficiency, unenforceability or uncollectability of any such right shall not in any respect diminish, affect or impair any such obligation or any other claim, interest, right or remedy at any time held by any Guaranteed Party against any Guarantor. The Guaranteed Parties make no representations or warranties in respect of any such right and shall have no duty to assure, protect, enforce or ensure any such right or otherwise relating to any such right.

SECTION 9.05. Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to the Administrative Agent, for the account of the applicable Guaranteed Parties to which such payment is owed, to such account as may be specified by the Administrative Agent, in US Dollars and in Same Day Funds.

SECTION 9.06. Subordination of Other Obligations. If the Administrative Agent so requests while an Event of Default is then continuing, then the payment of all obligations and Indebtedness of the Borrower or any other Guarantor owing to such Guarantor, whether now existing or hereafter arising, including but not limited to any such obligation to such Guarantor as subrogee of the Guaranteed Parties or resulting from such Guarantor's performance under this Obligations Guarantee, shall be subrogated to the indefeasible payment in full in cash of all Obligations. If the Administrative Agent so requests, any such obligation or Indebtedness of the Borrower or any other Guarantor to such Guarantor shall be enforced and performance received by such Guarantor as trustee for the Guaranteed Parties and the proceeds thereof shall be paid over to the Administrative Agent on account of the Obligations, but without reducing or affecting in any manner the liability of such Guarantor under this Obligations Guarantee.

SECTION 9.07. Financial Condition of the Borrower and other Guarantors. Any extension of credit may be made to the Borrower or continued from time to time, without notice to or authorization from any Guarantor regardless of the financial or other condition of the Borrower or any other Guarantor at the time of any such grant or continuation. No Guaranteed Party shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of the Borrower or any other Guarantor. Each Guarantor has adequate means to obtain information from the Borrower and each other Guarantor on a continuing basis concerning the financial condition of the Borrower and each other Guarantor and its ability to perform its obligations under the Loan Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and each other Loan Party and each other Guarantor and of all circumstances bearing upon the risk of nonpayment of the Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Guaranteed Party to disclose any matter, fact or thing relating to the business, operations or condition of the Borrower or any other Guarantor now known or hereafter known by any Guaranteed Party.

SECTION 9.08. Bankruptcy, Etc. Until a Discharge of the Obligations, no Guarantor shall, without the prior written consent of the Administrative Agent, commence

or join with any other Person in commencing any proceeding under any Debtor Relief Law against the Borrower or any other Guarantor. The obligations of the Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding under any Debtor Relief Law, voluntary or involuntary, involving the Borrower or any other Guarantor or by any defense which the Borrower or any Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. To the fullest extent permitted by law, the Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay the Administrative Agent, or allow the claim of the Administrative Agent in respect of, any interest, fees, costs, expenses or other Obligations accruing or arising after the date on which such case or proceeding is commenced.

SECTION 9.09. Duration of Guarantee. The Obligations Guarantee contained in this Article IX shall remain in full force and effect until the Discharge of the Obligations.

SECTION 9.10. Reinstatement. If at any time payment of any of the Obligations or any portion thereof is rescinded, disgorged or must otherwise be restored or returned by any Guaranteed Party upon the insolvency, bankruptcy, dissolution, liquidation, examinership or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any other Guarantor or any substantial part of its property, or otherwise, or if any Guaranteed Party repays, restores, or returns, in whole or in part, any payment or property previously paid or transferred to the Guaranteed Party in full or partial satisfaction of any Obligation, because the payment or transfer or the incurrence of the obligation is so satisfied, is declared to be void, voidable, or otherwise recoverable under any state or federal law (collectively, a "Voidable Transfer"), or because such Guaranteed Party elects to do so on the reasonable advice of its counsel in connection with an assertion that the payment, transfer, or incurrence is a Voidable Transfer, then, as to any such Voidable Transfer, and, subject to Section 11.04, as to all reasonable costs, expenses and attorney's fees of the Guaranteed Party related thereto, the liability of each Guarantor hereunder will automatically and immediately be revived, reinstated, and restored and will exist as though the Voidable Transfer had never been made.

SECTION 9.11. Additional Guarantors. (i) As promptly as possible but in any event within forty-five (45) days (or such later date as may be agreed upon by the Administrative Agent) after any Person becomes a Material Subsidiary, (ii) as promptly as possible but in any event within forty-five (45) days (or such later date as may be agreed upon by the Administrative Agent) after the end of the calendar quarter during which any Subsidiary so qualifies as a Material Subsidiary pursuant to the definition of "Material Subsidiary" or (iii) at the time that Borrower either elects to cause any of its Subsidiaries to become a Guarantor or is required to cause any of its Subsidiaries to become a Guarantor pursuant to Section 7.03, Borrower shall deliver or shall cause the applicable Subsidiary to deliver, as the case may be, to the Administrative Agent (a) a duly executed Guarantor Counterpart pursuant to which Borrower or such Subsidiary, as the case may be, agrees to be bound by the terms and provisions of the Obligations Guarantee and such Guarantor

Counterpart and (b) the documents and opinions of the types referred to in Sections 4.01(b)(i), 4.01(b)(iii) and 4.01(d).

ARTICLE X
The Administrative Agent

SECTION 10.01. Authorization and Action. (a)Each Lender and each L/C Issuer hereby irrevocably appoints the entity named as Administrative Agent in the heading of this Agreement and its successors and assigns to serve as the administrative agent under the Loan Documents and each Lender and each L/C Issuer authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. Without limiting the foregoing, each Lender and each L/C Issuer hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, and to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents.

(b) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions shall be binding upon each Lender and each L/C Issuer; provided, however, that the Administrative Agent shall not be required to take any action that (i) the Administrative Agent in good faith believes exposes it to liability unless the Administrative Agent receives an indemnification and is exculpated in a manner satisfactory to it from the Lenders and the L/C Issuers with respect to such action or (ii) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors; provided, further, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. Except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, any Subsidiary or any Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. Nothing in this Agreement shall require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the L/C

Issuers (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and its duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

(i) the Administrative Agent does not assume and shall not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary or trustee of or for any Lender or L/C Issuer other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term "agent" (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and/or the transactions contemplated hereby; and

(ii) nothing in this Agreement or any Loan Document shall require the Administrative Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account;

(d) The Administrative Agent may perform any of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities pursuant to this Agreement. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

(e) None of any Co-Syndication Agent or any Arranger shall have obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and shall incur no liability hereunder or thereunder in such capacity, but all such persons shall have the benefit of the indemnities provided for hereunder.

(f) In case of the pendency of any proceeding with respect to any Loan Party under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan or any Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on any Loan Party) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letters of Credit 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, the L/C Issuers and the Administrative Agent (including any claim under Sections 2.08, 2.09, 3.01, 3.04 or 11.04) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each Lender, each L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders or the L/C Issuers, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 11.04). Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or L/C Issuer or to authorize the Administrative Agent to vote in respect of the claim of any Lender or L/C Issuer in any such proceeding.

(g) The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and, except solely to the extent of the Borrower's rights to consent pursuant to and subject to the conditions set forth in this Article, none of the Borrower or any Subsidiary, or any of their respective Affiliates, shall have any rights as a third party beneficiary under any such provisions. Each party that is a holder of Obligations, whether or not a party hereto, will be deemed to have agreed to the provisions of this Article X.

SECTION 10.02. Administrative Agent's Reliance, Limitation of Liability, Etc.

(a)Neither the Administrative Agent nor any of its Related Parties shall be (i) liable for any action taken or omitted to be taken by such party, the Administrative Agent or any of its Related Parties under or in connection with this Agreement or the other Loan Documents (x) with the consent of or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in the Loan Documents) or (y) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and non-appealable judgment) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (including, for the avoidance of

doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) or for any failure of any Loan Party to perform its obligations hereunder or thereunder.

(b) The Administrative Agent shall be deemed not to have knowledge of any (i) notice of any of the events or circumstances set forth or described in Section 6.02(c)unless and until written notice thereof stating that it is a "notice under Section 5.02" in respect of this Agreement and identifying the specific clause under said Section is given to the Administrative Agent by the Borrower, or (ii) notice of any Default or Event of Default unless and until written notice thereof (stating that it is a "notice of Default" or a "notice of an Event of Default") is given to the Administrative Agent by the Borrower, a Lender or an L/C Issuer. Further, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (A) any statement, warranty or representation made in or in connection with any Loan Document, (B) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (C) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (D) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (E) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent.

(c) Without limiting the foregoing, the Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 11.06, (ii) may rely on the Register to the extent set forth in Section 11.06(d), (iii) may consult with legal counsel (including counsel to the Borrower), independent public accountants and other experts selected by it, and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (vi) makes no warranty or representation to any Lender or L/C Issuer and shall not be responsible to any Lender or L/C Issuer for any statements, warranties or representations made by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document, (v) in determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, may presume that such condition is satisfactory to such Lender or L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or L/C Issuer sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit and (vi) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate or other instrument or writing (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

SECTION 10.03. Posting of Communications. (a)The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make any Communications available to the Lenders and the L/C Issuers by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic platform chosen by the Administrative Agent to be its electronic transmission system (the "Approved Electronic Platform").

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, each of the L/C Issuers and the Borrower acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there may be confidentiality and other risks associated with such distribution. Each of the Lenders, each of the L/C Issuers and the Borrower hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED "AS IS" AND "AS AVAILABLE". THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT, ANY ARRANGER, ANY CO-SYNDICATION AGENT OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, "APPLICABLE PARTIES") HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER, ANY L/C ISSUER OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM.

(d) Each Lender and each L/C Issuer agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and L/C Issuer agrees (i) to

notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender's or L/C Issuer's (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(e) Each of the Lenders, each of the L/C Issuers and the Borrower agrees that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally applicable document retention procedures and policies.

(f) Nothing herein shall prejudice the right of the Administrative Agent, any Lender or any L/C Issuer to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

SECTION 10.04. The Administrative Agent Individually. With respect to its Commitment, Loans, Letter of Credit Commitments and Letters of Credit, the Person serving as the Administrative Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or L/C Issuer, as the case may be. The terms "L/C Issuers", "Lenders", "Required Lenders" and any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender, L/C Issuer or as one of the Required Lenders, as applicable. The Person serving as the Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust or other business with, the Borrower, any Subsidiary or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent and without any duty to account therefor to the Lenders or the L/C Issuers.

SECTION 10.05. Successor Administrative Agent. (a)The Administrative Agent may resign at any time by giving 30 days' prior written notice thereof to the Lenders, the L/C Issuers and the Borrower, whether or not a successor Administrative Agent has been appointed. Upon receipt of any such notice of resignation, the Required Lenders will have the right, in consultation with the Borrower, to appoint a successor, which will be a bank with an office in the United States or an Affiliate of any such bank. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the L/C Issuers, appoint a successor Administrative Agent, meeting the qualifications set forth above. In either case, such appointment shall be subject to the prior written approval of the Borrower (which approval may not be unreasonably withheld and shall not be required while an Event of Default has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent. Upon the acceptance of appointment as Administrative Agent by a successor Administrative Agent, the retiring Administrative Agent shall be discharged from its duties and obligations under

this Agreement and the other Loan Documents. Prior to any retiring Administrative Agent's resignation hereunder as Administrative Agent, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents.

(b) Notwithstanding paragraph (a) of this Section, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the L/C Issuers and the Borrower, whereupon, on the date of effectiveness of such resignation stated in such notice, (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; *provided* that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (B) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall directly be given or made to each Lender and each L/C Issuer. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article and Section 11.04, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by JPMCB as Administrative Agent pursuant to this Section 10.05 will also constitute its resignation as L/C Issuer. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor will succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer (provided that such successor agrees to act in such capacity), (b) the retiring L/C Issuer will be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer will issue letters of credit in substitution for the Letters of Credit, if any, issued by the retiring L/C Issuer that are outstanding at the time of such succession or make other arrangements reasonably satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

SECTION 10.06. Acknowledgements of Lenders and L/C Issuers. (a)Each Lender and each L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, in each case in the ordinary course of business, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument (and each Lender and each L/C Issuer agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon the Administrative Agent, any Arranger, any Co-Syndication Agent or any other Lender or L/C Issuer, or any of the Related Parties of any of the foregoing, and based on such documents and information as

it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder and (iv) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger, any Co-Syndication Agent or any other Lender or L/C Issuer, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date.

(c)

(i) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, 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 Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 10.06(c) shall be conclusive, absent manifest error.

(ii) Each Lender hereby further agrees that if it receives a Payment 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 sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(iii) The Borrower and each other Loan Party hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except 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 Loan Party for the purpose of satisfying an Obligation.

(iv) Each party's obligations under this Section 10.06(c) shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

SECTION 10.07. Certain ERISA Matters. (a)Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, or any Arranger, any Co-Syndication Agent, or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent, and each Arranger and Co-Syndication Agent, hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being

paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

SECTION 10.08. Guarantee Matters. (a) The Lenders and the L/C Issuers irrevocably authorize the Administrative Agent to release any Subsidiary Guarantor from its obligations under the Obligations Guarantee if (i) such Subsidiary Guarantor after the Effective Date ceases to be a Material Subsidiary of the Borrower as a result of a transaction permitted hereunder or (ii) such Subsidiary Guarantor was voluntarily designated by the Borrower as a Subsidiary Guarantor pursuant to Section 9.11 and Borrower requests, in writing, that the Administrative Agent release it from the Obligations Guarantee and certifies that (x) no Event of Default would immediately result from such a release and (y) such Subsidiary is not required to be a Subsidiary Guarantor pursuant to Section 9.11. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Subsidiary Guarantor from its obligations under the Obligations Guarantee pursuant to this Section 10.08.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. Amendments, Etc. Except as expressly provided in Sections 2.14 (with respect to an Incremental Term Loan Amendment), 2.17(b), 2.17(c) and 2.17(d) and in the definition of "Letter of Credit Commitment", no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Loan Parties therefrom, will be effective unless in writing signed by the Required Lenders and the Borrower (and, if the rights of any other Loan Party shall be affected thereby, such Loan Party), and acknowledged by the Administrative Agent (such acknowledgement not to be unreasonably withheld, conditioned or delayed) and each such waiver or consent will be effective only in the specific instance and for the specific purpose for which given; provided that any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent to cure any ambiguity, omission, defect or inconsistency so long as, in each case, (x) such amendment does not adversely affect the rights of any Lender or (y) the Lenders shall have received at least five (5) Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment; provided further that no such amendment, waiver or consent will:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest or fees due to any Lender hereunder or under any other Loan Document without the written consent of such Lender, or postpone any date fixed by this Agreement for any payment of an L/C Borrowing without the written consent of each Lender;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or any fees payable hereunder or under any other Loan Document, without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders will be necessary to waive any obligation of the Borrower to pay interest at the default rate or change the amount of the default rate specified in Section 2.08(b); provided, further, however, that no amendment or modification of the financial covenant in this Agreement (or defined terms used in the financial covenant in this Agreement) shall constitute a reduction in the rate of interest or fees for purposes of this clause (c);

(d) change Section 2.06 or Section 8.03 in a manner that would alter the ratable reduction of Commitments or the pro rata sharing of payments required thereby without the written consent of each Lender directly affected thereby;

(e) amend Section 1.05 or the definition of "Alternative Currency" without the written consent of each Lender;

(f) release Borrower (if it shall have become a Guarantor) or any of the other Subsidiary Guarantors from the Obligations Guarantee in Section 9.01 (including, in each case, by limiting liability in respect thereof (other than as required by applicable Law)) without the written consent of each Lender, except, in the case of any Subsidiary Guarantor, as permitted pursuant to Section 10.10 (in which case such release may be made by the Administrative Agent acting alone); or

(g) change any provision of this Section 11.01 or the percentage set forth in the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender (it being understood that, solely with the consent of the parties prescribed by Section 2.14 to be parties to an Incremental Term Loan Amendment, Incremental Term Loans may be included in the determination of Required Lenders on substantially the same basis as the Commitments and the Loans are included on the Effective Date); provided further that (i) no amendment, waiver or consent will, unless in writing and signed by such L/C Issuer in addition to the Lenders required above, affect the rights or duties of any L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it and (ii) no amendment, waiver or consent will, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document. Notwithstanding anything to the contrary herein, (A) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders

other than Defaulting Lenders), except that (x) any amendment, waiver or consent referred to in clause (a), (b) or (c) above shall require the consent of such Defaulting Lender in the event such Defaulting Lender shall be directly affected thereby and (y) any amendment, waiver or consent requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender and (B) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower, the Administrative Agent (and, if their rights or duties are affected thereby, each L/C Issuer) and the Lenders that will remain parties hereto after giving effect to such amendment if (x) by the terms of such agreement the Commitment of each Lender not consenting to the amendment provided for therein shall terminate upon the effectiveness of such amendment, (y) at the time such amendment becomes effective, each Lender not consenting thereto receives payment in full of the principal of and interest accrued on each Loan made by it and all other amounts owing to it or accrued for its account under this Agreement and (z) after giving effect to such amendment and all contemporaneous repayments of Loans and reductions of Commitments, the Total Outstandings shall not exceed the Aggregate Commitments. The Administrative Agent may, but shall have no obligation to, with the written concurrence of any Lender, execute amendments, waivers or consents on behalf of such Lender. Any amendment, waiver or consent effected in accordance with this Section 11.01 shall be binding upon each Person that is at the time thereof a Lender and each Person that subsequently becomes a Lender.

(h) Notwithstanding the foregoing, this Agreement and any other Loan Document may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (x) to add one or more credit facilities (in addition to the Incremental Term Loans pursuant to an Incremental Term Loan Amendment) to this Agreement and to permit extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Loans, Incremental Term Loans and the accrued interest and fees in respect thereof and (y) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders and Lenders.

(i) Notwithstanding anything to the contrary herein, if the Administrative Agent and the Borrower acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document, then the Administrative Agent and the Borrower shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

SECTION 11.02. Notices; Effectiveness; Electronic Communication. (a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.03), all notices and other communications provided for herein will be in writing and will be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax or e-mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone will be made to the applicable telephone number, as follows:

(i) if to any Loan Party or the Administrative Agent, to the address, fax number, e-mail address or telephone number specified for such Person on Schedule 11.02;

(ii) if to any other Lender, to the address, fax number, e-mail address or telephone number specified in its Administrative Questionnaire; and

(iii) if to any L/C Issuer, to it at its address, fax number, e-mail address or telephone number most recently specified by it in a notice delivered to the Administrative Agent and the Borrower (or, in the absence of any such notice, to the address, fax number, e-mail address or telephone number set forth in the Administrative Questionnaire of the Lender that is serving as such L/C Issuer or is an Affiliate thereof).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, will be deemed to have been given when received; notices and other communications sent by fax will be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, will be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in Section 10.03 will be effective as provided in such Section.

(b) Reserved.

(c) Reserved.

(d) Change of Address, Etc. Each of the Loan Parties and the Administrative Agent and any L/C Issuer may change its address, fax number, telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, fax number, telephone number or e-mail address for notices and other communications hereunder by notice to the Loan Parties, the Administrative Agent and each L/C Issuer. In addition, each Lender and each L/C Issuer agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, fax number and e-mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender or such L/C Issuer.

(e) Reliance by Agent, L/C Issuers and Lenders. The Administrative Agent, the L/C Issuers and the Lenders will be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Bid Requests) purportedly given by or on behalf of the Borrower or any other Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower will indemnify the Administrative Agent, each L/C Issuer, each Lender and their respective Related Parties from all losses, costs, expenses and liabilities resulting from the reliance by such Person on any notice purportedly given by or on behalf of the Borrower or any other Loan Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

SECTION 11.03. No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender, any L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document will operate as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges of the Administrative Agent, the L/C Issuers and the Lenders provided hereunder or under the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by Section 11.01, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. Without limiting the generality of the foregoing, the execution and delivery of this Agreement or the making of a Credit Extension shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any L/C Issuer, any Lender or any Related Party of any of the foregoing may have had notice or knowledge of such Default at the time.

SECTION 11.04. Expenses; Indemnity; Damage Waiver. (a) Costs and Expenses. The Borrower and each other Loan Party will pay (i) all reasonable and documented out of pocket expenses incurred by the Administrative Agent, the Arrangers and their respective Affiliates (including the reasonable and documented fees, charges and disbursements of counsel for the Administrative Agent and the Arrangers, which shall be limited to Latham & Watkins LLP and, if deemed reasonably necessary by the Administrative Agent or the Arrangers, each jurisdiction of organization of any other Loan Party), in connection with the structuring, arrangement, syndication, preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents and the credit facility provided for herein and any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out of pocket expenses incurred by the L/C Issuers in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out of pocket expenses incurred by the Administrative Agent, the Arrangers and their respective Affiliates, the L/C Issuers and the Lenders (including the reasonable fees, disbursements and other charges of counsel, which shall be limited to one primary counsel and, if deemed reasonably necessary by the Administrative Agent, the Arrangers, the Lenders or the L/C Issuers, each jurisdiction of organization of any other Loan Party (and, solely in the case of an actual or perceived conflict of interest, one additional counsel (and one additional local counsel in each such jurisdiction) to each group of affected parties that are similarly situated, taken as a whole) in connection with the enforcement or protection of their respective rights in connection with this Agreement and the other Loan Documents and the credit facility provided for herein, including their rights under this Section 11.04.

(b) Indemnification by the Borrower. The Borrower and the other Loan Parties will indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Co-Syndication Agent, each Lender, each L/C Issuer and each Related Party of any of the

foregoing Persons and the successors and assigns of each of the foregoing (each an "Indemnitee") from and against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of counsel, which shall be limited to one primary counsel, and, if deemed necessary by the Indemnitees, one local counsel in each other appropriate jurisdiction and, solely in the case of an actual or perceived conflict of interest, one additional counsel (and one additional local counsel in each such jurisdiction) to each group of affected Indemnitees that are similarly situated, taken as a whole) arising out of, in connection with, or as a result of (i) the preparation, execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan, Commitment, Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any release of Hazardous Materials on or from any property currently owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability arising from any connection with Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by a Loan Party, or any Affiliate thereof, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity will not, as to any Indemnitee, apply to (A) losses, claims, damages, liabilities or related expenses to the extent they (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, willful misconduct or bad faith of such Indemnitee or any of its Related Indemnified Parties or (y) result from a claim brought by a Loan Party against such Indemnitee for a material breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, but only if such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction, or (B) a claim of any Indemnitee solely against one or more Indemnitees (other than a dispute involving a claim against the Administrative Agent, any Co-Syndication Agent, any Arranger or any L/C Issuer) not arising out of or in connection with any act or omission of the Borrower or its Subsidiaries or any of their respective Related Parties. Notwithstanding any of the foregoing provisions to the contrary, this Section 11.04(b) shall not apply with respect to Taxes, other than any Taxes that represent losses, claims or damages arising from a non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under Section 11.04(a) or 11.04(b) to be paid by them to the Administrative Agent (or any sub-agent thereof), any L/C Issuer or any Related Party of any of the foregoing Persons (each, an "Agent-Related Person"), each Lender severally agrees to pay to such Agent-Related Person such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against such Agent-Related Person in its capacity as such,

or against any Related Party of any of the foregoing acting for such Agent-Related Person in connection with such capacity. The obligations of the Lenders under this Section 11.04(c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, (i) the Borrower and any Loan Party shall not assert, and the Borrower and each Loan Party hereby waives, any claim against the Administrative Agent, any Arranger, any Co-Syndication Agent, any L/C Issuer and any Lender, and any Related Party of any of the foregoing Persons (each such Person being called a "Lender-Related Person") for any losses, claims (including intraparty claims), demands, damages or liabilities of any kind arising from the use by others of information or other materials (including, without limitation, any personal data) obtained through telecommunications, electronic or other information transmission systems (including the Internet), except to the extent that such damages are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Lender-Related Person; provided, however, that in no event will any Lender-Related Person have any liability for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages) and (ii) none of the parties to this Agreement shall assert, and each party hereto hereby any waives, losses, claims (including intraparty claims), demands, damages or liabilities of any kind against any other party hereto, on any on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof; provided, however, that nothing in this Section 11.04(d) relieve the Borrower or any other Loan Party of any obligation it may have to indemnify an Indemnitee, as provided in Section 11.04(b), against any special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party. Nothing in this Section 11.04(d) shall abrogate, modify or diminish the obligations of the Administrative Agent, the Lenders and the L/C Issuers to keep certain information confidential in the manner and to the extent provided in Section 11.07.

(e) Payments. All amounts due under this Section 11.04 will be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section 11.04 will survive the resignation of the Administrative Agent or any L/C Issuer, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of any and all of the Obligations.

SECTION 11.05. Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the

extent of such recovery, the obligation or part thereof originally intended to be satisfied will be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred and (b) each Lender and each L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence will survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 11.06. Successors and Assigns. (a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any L/C Issuer that issues any Letter of Credit), except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (except in connection with any merger or consolidation permitted by Section 7.03) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 11.06(b), (ii) by way of participation in accordance with the provisions of Section 11.06(e) or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(g) (and any other attempted assignment or transfer by any such party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of any L/C Issuer that issues any Letter of Credit), Participants to the extent provided in Section 11.06(e), the Arrangers, the Co-Syndication Agent, the Indemnitees and, to the extent expressly contemplated hereby, the sub-Agent of the Administrative Agent and the Related Parties of any of the Administrative Agent, the Arrangers, any Co-Syndication Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may, at any time, assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in Section 11.06(b)(i)(A), the aggregate amount of the Commitment or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning

Lender subject to each such assignment, determined as of the date the Assignment and Assumption (or an agreement incorporating by reference a form of Assignment and Assumption posted on the Approved Electronic Platform) with respect to such assignment is delivered to the Administrative Agent or, if a "Trade Date" is specified in the Assignment and Assumption (or such an agreement), as of the Trade Date, shall not be less than $5,000,000 (or the US Dollar Equivalent thereof in the case of any Loan denominated in an Alternative Currency or a Discretionary Alternative Currency) unless each of the Administrative Agent and, so long as no Event of Default under Section 8.01(a) or 8.01(f) has occurred and is continuing, Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided that Borrower shall be deemed to have consented thereto unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof; provided further that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment so assigned, except that this clause (ii) shall not apply to rights and obligations in respect of Bid Loans.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 11.06(b)(i)(B) and in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (1) an Event of Default under Section 8.01(a) or 8.01(f) has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund, in each case that is not a Non-Qualifying Lender; provided that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund; and

(C) the consent of each L/C Issuer (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment of a Commitment or any L/C Obligation or participations therein.

The parties hereto acknowledge and agree that (x) the Administrative Agent shall have no duty or obligation to ascertain whether any Lender is a Non-Qualifying Lender or with respect to obtaining (or confirming the receipt) of any written consent of the Borrower to any assignment to a Non-Qualifying Lender, any such duty and obligation being solely with the assigning Lender and the assignee, and (y) the Administrative Agent may rely upon, and shall incur no liability therefor, any determination by the Borrower, any Lender or any prospective Lender as to whether any Person is a Non-Qualifying Lender (and, in connection with any proposed assignment, may require confirmation by the Borrower as to Borrower's determination whether the proposed assignee is a Non-Qualifying Lender prior to accepting any such assignment for recordation in the Register).

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption (or an agreement incorporating by reference a form of Assignment and Assumption posted on the Approved Electronic Platform), together with a processing and recordation fee in the amount of $3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to an Ineligible Institution.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 11.06(d), from and after the effective date specified in each Assignment and Assumption (or an agreement incorporating by reference a form of Assignment and Assumption posted on the Approved Electronic Platform), the assignee thereunder shall be a party to this Agreement and shall, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. If any Assignment and Assumption is executed by any Lender holding any Note, the assigning Lender shall, upon the effectiveness of such Assignment and Assumption or as promptly thereafter as practicable, surrender such Note to the Borrower for cancellation.

Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 11.06(b) shall be

treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.06(e).

(c) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this Section 11.06(c), then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(d) Register. (i) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Loan Parties (and such agency being solely for Tax purposes), shall maintain at one of its offices 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 and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Loan Parties, the Administrative Agent, the Lenders and the L/C Issuers 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, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Loan Parties and, solely with respect to the Commitments of, and principal amounts (and stated interest) of the Loans or L/C Obligations owing to, any Lender, such Lender or such L/C Issuer, in each case at any reasonable time and from time to time upon reasonable prior notice.

(ii) Upon receipt by the Administrative Agent of an Assignment and Assumption (or an agreement incorporating by reference a form of Assignment and Assumption posted on an Approved Electronic Platform) executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder) and the processing and recordation fee referred to above, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that the Administrative Agent shall not be required to accept such Assignment and Assumption or so record the information contained therein if

the Administrative Agent reasonably believes that such Assignment and Assumption lacks any written consent required by this Section 11.06 or is otherwise not in proper form, it being acknowledged that the Administrative Agent shall have no duty or obligation (and shall incur no liability) with respect to obtaining (or confirming the receipt) of any such written consent or with respect to the form of (or any defect in) such Assignment and Assumption, any such duty and obligation being solely with the assigning Lender and the assignee. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 11.06(d)(ii). Each assignee, by its execution and delivery of an Assignment and Assumption, shall be deemed to have represented to the assigning Lender and the Administrative Agent that such assignee is not a Person made ineligible under Section 11.06(b)(v).

(e) Participations. Any Lender may at any time, without the consent of, or notice to the Borrower, the Administrative Agent or any L/C Issuer, sell participations to any Person (other than an Ineligible Institution) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its 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 Loan Parties, the Administrative Agent, the Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Loan Parties, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under this Agreement) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) or Proposed Section 1.163-5(b) (or, in each case, any amended or successor sections) of the United States Treasury Regulations. For the avoidance of doubt, no Agent (in its capacity as the Administrative Agent) shall have any responsibility for maintaining a Participant Register. 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.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the second proviso to Section 11.01 that affects such Participant. Subject to Section 11.06(f), the Borrower and the other Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and

limitations therein) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.06(b) (it being understood that any documentation required under Section 3.01 shall be delivered to the participating Lender); provided that such Participant agrees to be subject to the provisions of Section 3.06 as if it were a Lender. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

The Borrower may from time to time request any Lender to disclose whether or not such Lender has sold a participation in all or any portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) no Lender shall be required to respond to any such request by the Borrower, (ii) any failure by any Lender to respond to such inquiry, and any inaccuracy in the response by any Lender that elects in its sole discretion to respond to such inquiry, in each case shall not cause such Lender to be in breach, default, violation or other noncompliance of this Agreement, (iii) any Lender that fails to respond to such inquiry, and any Lender that elects in its sole discretion to respond to such inquiry, in each case shall not have any liability of any kind to the Borrower or any other Person as a result of such failure to respond or any inaccuracy in any such response and (iv) any failure by such Lender to respond to such inquiry, and any inaccuracy in any response provided by such Lender in its sole discretion, in each case shall not affect the legality, validity or enforceability of any participation sold by such Lender.

(f) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower’s prior written consent. Participant agrees, for the benefit of the Borrower, to comply with Sections 3.01(e) and 3.01(g) as though it were a Lender (it being understood that any documentation required under Section 3.01 shall be delivered by the Participant to the participating Lender).

(g) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note(s), if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank having jurisdiction over such Lender, and this Section 11.06 shall not apply to any such pledge or assignment to secure obligations; 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.

(h) Disqualified Competitors.

(i) No assignment or participation shall be made to any Person that was a Disqualified Competitor as of the date (the “Trade Date”) on which the assigning Lender entered into a binding agreement to sell and assign or grant a participation in all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment or participation in writing

in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Competitor for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any assignee or Participant that becomes a Disqualified Competitor after the applicable Trade Date (including as a result of the delivery of a written supplement to the list of "Disqualified Competitors" referred to in, the definition of "Disqualified Competitor"), (x) such assignee or Participant shall not retroactively be disqualified from becoming a Lender or Participant and (y) the execution by the Borrower of an Assignment and Assumption with respect to such assignee will not by itself result in such assignee no longer being considered a Disqualified Competitor. Any assignment or participation in violation of this clause (h)(i) shall not be void, but the other provisions of this clause (h) shall apply.

(ii) If any assignment or participation is made to any Disqualified Competitor without the Borrower's prior written consent in violation of clause (i) above, or if any Person becomes a Disqualified Competitor after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Competitor and the Administrative Agent, require such Disqualified Competitor to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 11.06), all of its interest, rights and obligations under this Agreement to one or more Persons (other than an Ineligible Institution) at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Competitor paid to acquire such interests, rights and obligations in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Competitors to whom an assignment or participation is made in violation of clause (i) above (A) will not have the right to (x) receive information, reports or other materials provided to Lenders by the Borrower, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Competitor will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Competitors consented to such matter and (y) for purposes of voting on any plan of reorganization, each Disqualified Competitor party hereto hereby agrees (1) not to vote on such plan of reorganization, (2) if such Disqualified Competitor does vote on such plan of reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other applicable laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such plan of reorganization in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other applicable laws) and (3) not to contest any request by

any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(iv) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to (A) post the list of Disqualified Competitors provided by the Borrower and any updates thereto from time to time (collectively, the "DQ List") on a Platform, including that portion of such Platform that is designated for "public side" Lenders and/or (B) provide the DQ List to each Lender or potential Lender requesting the same.

(v) The Administrative Agent and the Lenders shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Competitors. Without limiting the generality of the foregoing, neither the Administrative Agent nor any Lender shall (x) be obligated to ascertain, monitor or inquire as to whether any other Lender or Participant or prospective Lender or Participant is a Disqualified Competitor or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, by any other Person to any Disqualified Competitor.

(i) Resignation as L/C Issuer after Assignment. Notwithstanding anything to the contrary contained herein, if at any time any Lender that is also an L/C Issuer assigns all of its Commitment and Loans pursuant to Section 11.06(b), such Lender may, upon 30 days' notice to the Borrower and the Lenders, resign as L/C Issuer. In the event of any such resignation as an L/C Issuer, the Borrower shall be entitled to appoint from among the Lenders consenting to act in such capacity a successor L/C Issuer; provided, however, that neither failure by the Borrower to appoint any such successor nor such successor's acceptance of such appointment shall affect the resignation of such Lender as an L/C Issuer. If a Lender resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Committed Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.04(c)). Upon the appointment of a successor L/C Issuer, and such successor's acceptance of such appointment, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of an L/C Issuer.

SECTION 11.07. Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective directors, officers, employees, Agent, advisors and other representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it or its Affiliates (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the

exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 11.07, to (i) any assignee of or Participant (or its advisors) in, or any prospective assignee of or Participant (or its advisors) in, any of its rights or obligations under this Agreement (it being understood that the DQ List may be disclosed to any assignee or Participant, or prospective assignee or Participant, in reliance on this clause (f)) or any Eligible Assignee invited to be a Lender pursuant to Section 2.15(c) or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any other Subsidiary and its obligations, (g) with the consent of the Borrower, (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 11.07, (ii) becomes available to the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a third party that is not to the knowledge of the Administrative Agent, any Lender or any L/C Issuer subject to confidentiality obligations to the Borrower with respect to such Information, (i) to market data collectors or similar service providers, including league table providers, to the lending industry, in each case, limited to information regarding the closing, size and type of facilities hereunder and the purpose of and parties to this Agreement or (j) on a confidential basis to any rating agency. It is agreed that, notwithstanding the restrictions of any prior confidentiality agreement with Borrower or any Subsidiary binding on the Administrative Agent, any Arranger or any Co-Syndication Agent, or any of their respective Affiliates, such Persons (and their respective Affiliates) may disclose Information as provided in this Section 11.07.

For purposes of this Section 11.07, "Information" means all information received from Borrower or any Subsidiary relating to Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary; provided that, in the case of information received from Borrower or any Subsidiary after the Effective Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 11.07 will be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Information may include MNPI, (b) it has developed compliance procedures regarding the use of MNPI and (c) it will handle all MNPI in accordance with applicable Law, including United States federal and state and applicable foreign securities Laws.

Subject to any applicable requirements of United State federal, state or local or applicable foreign Laws or regulations, including securities Laws or regulations, none of the Administrative Agent, the Lenders or the L/C Issuers will make or cause to be made, whether orally, in writing or otherwise, any public announcement or statement that is intended for the general public and not targeted primarily to reach audiences in the banking industry and the banking industry's customers with respect to the transactions contemplated by this Agreement, or any of the provisions of this Agreement, without the prior written

approval of the Borrower as to the form, content and timing of such announcement or disclosure, which approval may be given or withheld in Borrower's sole discretion.

SECTION 11.08. Right of Setoff. If an Event of Default will have occurred and be continuing, each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of any Loan Party against any and all of its obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer will have made any demand under this Agreement or any other Loan Document and although such obligations of such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or such L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each L/C Issuer and its Affiliates under this Section 11.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or its Affiliates may have. Each Lender and each L/C Issuer agrees to notify the Loan Parties and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice will not affect the validity of such setoff and application. Notwithstanding the provisions of this Section 11.08, if at any time any Lender, any L/C Issuer or any of their respective Affiliates maintains one or more deposit accounts for the Borrower or any other Loan Party into which Medicare and/or Medicaid receivables are deposited, such Person shall waive the right of setoff set forth herein.

SECTION 11.09. Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents will not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender will receive interest in an amount that exceeds the Maximum Rate, the excess interest will be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 11.10. Counterparts; Integration; Electronic Execution; Effectiveness. This may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by telecopy, emailed pdf, or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf, or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower and each other Loan Party hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, the Borrower and the other Loan Parties, Electronic Signatures transmitted by telecopy, emailed pdf, or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (ii) agrees that the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in

any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (iii) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (iv) waives any claim against any Lender-Related Person for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf, or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of the Borrower and/or any other Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

SECTION 11.11. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith will survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent, each L/C Issuer and each Lender, regardless of any investigation made by or on behalf of the Administrative Agent, any L/C Issuer or any Lender or any of their respective Affiliates and notwithstanding that the Administrative Agent, any L/C Issuer or any Lender or any of their respective Affiliates may have had notice or knowledge of any Default on the Effective Date or at the time of any Credit Extension, and will continue in full force and effect as long as any Loan or any other Obligation hereunder will remain unpaid or unsatisfied or any Letter of Credit will remain outstanding.

SECTION 11.12. Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents will not be affected or impaired thereby and (b) the parties will endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

SECTION 11.13. Replacement of Lenders. In the event (a) any Lender requests compensation under Section 3.04, (b) the Loan Parties are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, (c) any Lender becomes a Defaulting Lender or (d) any Lender refuses to consent to any amendment, waiver or other modification of this Agreement or any other Loan Document requested by a Loan Party that requires the consent of all the Lenders (or all the affected Lenders) and such amendment, waiver or

other modification is consented to by the Required Lenders, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.01 or 3.04) and obligations under this Agreement and the other Loan Documents to an assignee that will assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment and delegation); provided that:

(a) the Borrower will have paid to the Administrative Agent the assignment fee specified in Section 11.06(b);

(b) such Lender will have received payment of an amount equal to 100% of the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

A Lender will not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the applicable Loan Party to require such assignment and delegation cease to apply. Each party hereto agrees that an assignment and delegation required pursuant to this Section 11.13 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and that the Lender required to make such assignment and delegation need not be a party thereto.

SECTION 11.14. Governing Law; Jurisdiction; Etc. (a) GOVERNING LAW. THIS AGREEMENT WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN (OR IF SUCH COURT LACKS SUBJECT MATTER JURISDICTION, THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN), AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND

UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY (AND ANY SUCH CLAIMS, CROSS-CLAIMS OR THIRD PARTY CLAIMS BROUGHT AGAINST THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES MAY ONLY) BE HEARD AND DETERMINED IN SUCH FEDERAL (TO THE EXTENT PERMITTED BY LAW) OR NEW YORK STATE COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY L/C ISSUER OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. 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 OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 11.14(b). 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.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

SECTION 11.15. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.15.

SECTION 11.16. USA PATRIOT Act. Each Lender that is subject to the Patriot Act and the requirements of the Beneficial Ownership Regulation and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name, address and tax identification number of the Loan Parties and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Loan Parties in accordance with the Patriot Act and the Beneficial Ownership Regulation and other applicable "know your customer" and anti-money laundering rules and regulations. The Loan Parties shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation.

SECTION 11.17. Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used will be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of any Loan Party in respect of any such sum due from it to the Administrative Agent, any L/C Issuer or any Lender hereunder or under the other Loan Documents will, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent, such L/C Issuer or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent, such L/C Issuer or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent, any L/C Issuer or any Lender from any Loan Party in the Agreement Currency, such Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent, such L/C Issuer or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent, any L/C Issuer or any Lender in such currency, the Administrative Agent, such L/C Issuer or such Lender, as the case may be, agrees to return the amount of any excess to such Loan Party (or to any other Person that may be entitled thereto under applicable Law).

SECTION 11.18. No Advisory or Fiduciary Responsibility.

(a) Each Loan Party acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that no Credit Party will have any obligations except those obligations expressly set forth herein and in the other Loan Documents and each Credit Party is acting solely in the capacity of an arm's length contractual counterparty to such Loan Party with respect to the Loan Documents and the transactions contemplated herein and therein and not as a financial advisor or a fiduciary to, or an agent of, such Loan Party

or any other person. Each Loan Party agrees that it will not assert any claim against any Credit Party based on an alleged breach of fiduciary duty by such Credit Party in connection with this Agreement and the transactions contemplated hereby. Additionally, each Loan Party acknowledges and agrees that no Credit Party is advising such Loan Party as to any legal, tax, investment, accounting, regulatory or any other matters in any jurisdiction. Each Loan Party shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated herein or in the other Loan Documents, and the Credit Parties shall have no responsibility or liability to any Loan Party with respect thereto.

(b) Each Loan Party further acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party, together with its Affiliates, is a full service securities or banking firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, any Credit Party may provide investment banking and other financial services to, and/or acquire, hold or sell, for its own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of, the Borrower, its Subsidiaries and other companies with which the Borrower or any of its Subsidiaries may have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Credit Party or any of its customers, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion.

(c) In addition, each Loan Party acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party and its Affiliates may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which the Borrower or any of its Subsidiaries may have conflicting interests regarding the transactions described herein and otherwise. No Credit Party will use confidential information obtained from the Borrower or any of its Subsidiaries by virtue of the transactions contemplated by the Loan Documents or its other relationships with the Borrower in connection with the performance by such Credit Party of services for other companies, and no Credit Party will furnish any such information to other companies. Each Loan Party also acknowledges that no Credit Party has any obligation to use in connection with the transactions contemplated by the Loan Documents, or to furnish to the Borrower or any of its Subsidiaries, confidential information obtained from other companies.

SECTION 11.19. Acknowledgement and Consent of Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties hereto, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document 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 entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(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.

SECTION 11.20. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts or any other agreement or instrument that is a QFC (such support "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

INCYTE CORPORATION, as Borrower

By: /s/ Christiana Stamoulis
Name: Christiana Stamoulis
Title: Executive Vice President and Chief Financial Officer

INCYTE HOLDINGS CORPORATION,
as a Subsidiary Guarantor

By: /s/ Maria E. Pasquale
Name: Maria E. Pasquale
Title: Secretary

JPMORGAN CHASE BANK, N.A., individually as a Lender, as a L/C Issuer and as Administrative Agent

By: /s/ Helen D. Davis
Name: Helen D. Davis
Title: Authorized Officer

BANK OF AMERICA, N.A., individually as a Lender

By: /s/ Linda Alto
Name: Linda Alto
Title: Senior Vice President

BARCLAYS BANK PLC, individually as a Lender

By: /s/ Ronnie Glen
Name: Ronnie Glen
Title: Director

CITIZENS BANK, N.A., individually as a Lender

/s/ James G. Rogers
James G. Rogers

By: /s/ Benjamin Rogers
Name: Benjamin Rogers
Title: SVP-RM

GOLDMAN SACHS LENDING PARTNERS LLC,
individually as a Lender

By: /s/ Rebecca Kratz
Name: Rebecca Kratz
Title: Authorized Signatory

HSBC BANK USA, N.A., individually as a Lender

By: /s/ Chris Burns
Name: Chris Burns
Title: Senior Vice President

MIZUHO BANK, LTD., individually as a Lender

By: /s/ John Davies
Name: John Davies
Title: Authorized Signatory

MORGAN STANLEY BANK, N.A., individually as a Lender

By: /s/ Michael King
Name: Michael King
Title: Authorized Signatory

SUMITOMO MITSUI BANKING CORPORATION,
individually as a Lender

By: /s/ Gail Motonaga
Name: Gail Motonaga
Title: Executive Director

U.S. BANK NATIONAL ASSOCIATION,
individually as a Lender

By: /s/ Maria Massimino
Name: Maria Massimino
Title: Senior Vice President

Exhibit 31.1

CERTIFICATION

I, Hervé Hoppenot, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Incyte Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2021

/s/ HERVÉ HOPPENOT

Hervé Hoppenot
Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Christiana Stamoulis, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Incyte Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2021

/s/ CHRISTIANA STAMOULIS

Christiana Stamoulis
Chief Financial Officer

Exhibit 32.1

STATEMENT PURSUANT TO
18 U.S.C. SECTION 1350

With reference to the Quarterly Report of Incyte Corporation (the "Company") on Form 10-Q for the quarter ended September 30, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Hervé Hoppenot, Chief Executive Officer of the Company, certify, for the purposes of 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ HERVÉ HOPPENOT

Hervé Hoppenot
Chief Executive Officer
November 2, 2021

Exhibit 32.2

STATEMENT PURSUANT TO
18 U.S.C. SECTION 1350

With reference to the Quarterly Report of Incyte Corporation (the "Company") on Form 10-Q for the quarter ended September 30, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Christiana Stamoulis, Chief Financial Officer of the Company, certify, for the purposes of 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ CHRISTIANA STAMOULIS

Christiana Stamoulis
Chief Financial Officer
November 2, 2021